

**From:** [Meitl, Sarah J \(DNR\)](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#); [Decleva, Edward J](#); [Bittner, Judith E \(DNR\)](#); [Bill Marzella](#); [Tom McCulloch](#)  
**Cc:** [King, Robert \(Bob\)](#); [Loya, Wendy M](#)  
**Subject:** [EXTERNAL] RE: Definitions Appendix  
**Date:** Tuesday, August 20, 2019 4:00:32 PM  
**Attachments:** [CP NHPA PA Definitions 8 15 19 SRBA sjm.docx](#)  
**Importance:** High

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Comments from me.

-Sarah

**From:** Hayes, Miriam (Nicole) <mnhayes@blm.gov>  
**Sent:** Friday, August 16, 2019 4:39 PM  
**To:** Edward Decleva <edward\_decleva@fws.gov>; Bittner, Judith E (DNR) <judy.bittner@alaska.gov>; Meitl, Sarah J (DNR) <sarah.meitl@alaska.gov>; Bill Marzella <bmarzella@achp.gov>; Tom McCulloch <tmcculloch@achp.gov>  
**Cc:** Robert (Bob) King <r2king@blm.gov>; Wendy Loya <wendy\_loya@fws.gov>  
**Subject:** Definitions Appendix

Attached is the definitions appendix that will be part of the CP PA. Please let me know by COB Tuesday 8/20 if you have any comments.

Thank you!

Nicole

**Nicole Hayes**  
Project Coordinator  
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## **ih** APPENDIX F: DEFINITIONS

**Administrative Action:** Actions or decisions made by BLM or other federal agencies that relate to the internal administration of their agency, personnel, or jurisdiction, which do not authorize activities that will alter the physical environment or character of a place.

**Adverse Effect:** When an Undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the Undertaking that may occur later in time, be farther removed in distance or be cumulative.

**Area of Potential Effect (APE):** The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking [as noted in 36 C.F.R. § 800.16(d)].

**Concurring Parties:** The signatory parties may agree to invite others (concurring parties) to concur in the PA. The refusal of any party invited to concur in the PA does not invalidate the PA, (as noted in 36 C.F.R. § 800.6(c)(3)). Concurring Parties may not terminate the PA. Signing this PA as a Concurring Party does not imply endorsement or approval of the Project itself, or limit or restrict in any way the Concurring Party's right to object to, petition against, litigate against or in any other way express or advance critical or negative comments toward, the Project or its proponent.

**Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary of the Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation (36 C.F.R. § 800.16(f)).

**Consulting Parties:** Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c). These include the SHPO, Indian Tribes (which include native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), representatives of local governments, individuals and organizations with a demonstrated interest in the undertaking, and the public.

**Cultural Resource:** Locations of human activity, occupation, or usage that contain materials, structures, or landscapes that were used, built, or modified by people.

**Curation:** The disposition of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and

associated records that are prepared or assembled in connection with the survey, excavation or other study.

**Data Recovery:** The gathering of archaeological information from a historic property subject to an adverse effect. The associated procedures generally include, but are not limited to, excavation of subsurface archaeological deposits and documentation in the form of maps, photographs, feature drawings, field notes, and technical reports. The data recovered during these procedures can be utilized for future research.

**Days:** Days refer to calendar days unless otherwise noted.

**Determination of Eligibility (DOE):** A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of Consulting Indian Tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 63 and 36 CFR § 800.16(l)(2).

Deleted: 0

**Effect:** Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

**Eligible for Inclusion in the National Register:** This term includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Commented [MSJ(1)]: Properties that have been determined by the Keeper or through consultation with the appropriate SHPO/THPO to meet the criteria (36 CFR 60.4) and have sufficient integrity to convey their significance.

**Environmental Impact Statement (EIS):** An analysis of a major federal action's environmental impacts conducted under the auspices of NEPA.

**Federal Agency:** Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an Undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the Undertaking and can commit the Federal agency to take appropriate action for a specific Undertaking as a result of Section 106 compliance.

**Finding of Effect:** A finding made by a Federal agency in consultation with the SHPO and other Consulting Parties in regards to a Project's effect upon a historic property consistent with 36 CFR Part 800.

Deleted: coordination

**Historic Property:** Any historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior pursuant to the criteria for evaluation set forth in 36 C.F.R. § 60.4.

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Commented [MSJ(2)]: Just as an archaeological site can be an historic property, an historic district can be archaeological or be comprised of archaeological sites.

**Historic Property Management Plan (HPMP):** HPMPs are developed to help meet the requirements under Section 106 of the NHPA. These plans provide detailed procedures and requirements to be implemented to resolve adverse effects to historic properties. HPMPs are often developed in conjunction with agreement documents (i.e. Memorandum of Agreement or PA).

Deleted: prehistoric or

**Indian Tribe:** An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

Invited Signatory: The agency official may invite additional parties to be signatories to a PA; any such party that signs the PA shall have the same rights with regard to seeking amendment or termination of the agreement as other Signatories. The refusal of any party invited to become a Signatory pursuant to paragraph (c)(2) does not invalidate the PA.

**Deleted:** The BLM has invited the State to be a Signatory to this PA pursuant to 36 C.F.R. § 800.6(c)(2).

National Environmental Policy Act (NEPA): NEPA is a federal law that requires federal agencies to disclose to the public the effects that major federal actions would have on environmental quality. These disclosures are reported as environmental assessments or environmental impact statements and quantify the potential environmental effects of proposed actions.

National Historic Preservation Act (NHPA): The NHPA is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Among other things, the act requires federal agencies to evaluate the impact of all federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

National Register of Historic Places (NRHP): The NRHP is the official list of the Nation's historic places worthy of preservation. Authorized by the NHPA and maintained by the Secretary of the Interior, it is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Native American Graves Protection and Repatriation Act (NAGPRA): (25 U.S.C. 3001 et. seq.). The Act requires federal agencies and institutions that receive federal funding to return Native American cultural items to lineal descendants and culturally affiliated Indian Tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties on museums that fail to comply. NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discoveries or excavations on private or state lands, the collection provisions of the Act may apply to Native American cultural items if they come under the control of an institution that receives federal funding.

Programmatic Agreement (PA): A Programmatic Agreement is a document that spells out the terms of a formal, legally binding agreement between state and/or federal agencies. A PA establishes a process for consultation, review, and compliance with one or more federal laws, most often with those federal laws concerning historic preservation.

Qualified Archaeologist: An archaeologist that meets the Secretary of the Interior's Standards and Guidelines for archeology (36 C.F.R. Part 61), which consist of, at a minimum, a graduate degree in archeology, anthropology, or closely related field plus, at least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management; at least four

months of supervised field and analytic experience in general North American archeology, demonstrated ability to carry research to completion, and at least one year of full-time professional experience at a supervisory level in the study of prehistoric or historic period archeology.

Signatories: In accordance with 36 C.F.R. § 800.6(c)(1), signatories have the authority to execute, amend, or terminate the agreement.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both"(Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

State Historic Preservation Officer (SHPO): The SHPO is responsible for administering the State Historic Preservation Program which includes providing assistance to Federal and State agencies and local governments in carrying out their historic preservation responsibilities.

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

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**Deleted:** State: In this document the term is used to specifically identify the Alaska Department of Natural Resources.¶

**Deleted:** Traditional Cultural Property (TCP): A property that is eligible for inclusion in the NRHP based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of the community. See <https://www.nps.gov/history/tribes/Documents/TCP.pdf>

**Deleted:** .

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**Subject:** [EXTERNAL] RE: Draft Final Programmatic Agreement- COMMENTS DUE 7/12/19  
**Date:** Friday, July 12, 2019 4:10:25 PM  
**Attachments:** [EMP18 Draft PA 6 12 19 clean SHPO.docx](#)  
**Importance:** High

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Good afternoon,

Please find attached comments from the Alaska SHPO on the Draft Final Programmatic Agreement for the Coastal Plain Oil and Gas Leasing Program. Feel free to contact me if you have any questions or if our office can be of further assistance.

Best,

**Sarah Meitl**

Review and Compliance Coordinator

Alaska State Historic Preservation Office / Office of History and Archaeology

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**Subject:** Draft Final Programmatic Agreement- COMMENTS DUE 7/12/19

Good afternoon,

Attached is the DRAFT Final Programmatic Agreement (PA) based on the comments received on the March 25, 2019 draft.

In addition to content changes, you will see structural changes were made to the PA to:

- 1) Ensure the PA is in conformance with the 36 CFR Part 800 regulations written by the Advisory Council on Historic Preservation (ACHP);
- 2) Take into account the ACHP's written guidance on how to appropriately write PAs and what their contents should be, etc. (e.g., coordination processes between FWS and BLM were taken out of the PA);
- 3) Create a PA that does not include stipulations that were inappropriate per the ACHP's regulations and guidance;
- 4) Improve wording, eliminate redundancies, and bring better focus to the PA, thus making it more understandable to everyone; and
- 5) Ensure the document is reflective of the PA objective: Trying to plan for events and corresponding actions to be taken in the future, yet recognizing the lack of total certainty of what may happen in the future requires the need for the PA to be reasonable, workable, and provide adequate flexibility.

The attached version (dated June 12), thoroughly considers all of the comments received to date. If you would like to see the response to comments and/or set up an individual meeting to discuss the response to your comments prior to the next consulting parties meeting, please let me know.

Comments on the attached draft final PA are **due by close of business July 11th**. Our next consulting parties meeting will **be July 16th**. Will send out meeting invite in the next couple of weeks.

Please feel free to contact me directly anytime to discuss further.

Thank you,  
Nicole

**Nicole Hayes**  
Project Coordinator  
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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed ~~in~~ or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

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**WHEREAS**, the Public Law 115-97 directs the BLM to implement the ~~Program~~, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

Deleted: leasing p

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

Deleted: Appendix B: Consulting Parties

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)   
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties

8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

10 **I. Administrative**

- 11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
13 ensure that all lessees are aware that they must comply with the terms of this PA  
14 during activities on their lease(s).  
15  
16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.  
22  
23 C. BLM shall require that any type of archaeological work associated with BLM’s  
24 Program proposed within the APE not performed by BLM or FWS professional  
25 staff will be conducted only under terms of a federally issued Permit For  
26 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
27 application to the BLM or otherwise coordinated by BLM.  
28  
29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.  
31  
32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.  
35  
36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41 (5) business days. Contact information for Signatories and Consulting Parties is  
42 included below in *Appendix B: Consulting Parties*.

Deleted:

Commented [MSJ(1)]: Will this be a revised Appendix B?

- 1  
2 G. At any time, Signatories to this PA may request additional time for reviews of  
3 documentation, preparation of guidance documents, or any other time-sensitive  
4 materials outlined in this PA by providing a written request to all Signatories.  
5  
6 H. The Signatories may execute this PA in counterparts, with a separate page for  
7 each Signatory.

8 **II. Scope of the PA**

- 9 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and  
10 other federal laws that may be affected by the BLM's Undertaking within the  
11 APE.  
12  
13 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
14 under Section 106 of NHPA, including consultation with Indian Tribes, for  
15 Program decisions that may be implemented in accordance with the decisions  
16 supported by the Program EIS and BLM policy.  
17  
18 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
19 involving reimbursement or contribution of funds between the parties to this PA  
20 will be handled in accordance with applicable laws, regulations, and procedures  
21 including those for Federal Government procurement and printing. Separate  
22 agreements will outline such endeavors and will be made in writing by  
23 representatives of the parties and will be independently authorized by  
24 appropriate statutory authority. This PA does not provide such authority.

25 **III. Agency Coordination Procedures**

- 26 A. Agency Roles and Coordination  
27 1. BLM  
28 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
29 106 compliance, is responsible for the following actions:  
30 i. Conducting Section 106 reviews of Projects the PA addresses;  
31 ii. Receiving permit applications and issuing permits that may be needed  
32 for Section 106 compliance work for oil and gas-related projects in the  
33 APE. Such permits needed may include various types of land use  
34 authorizations as well as Permits for Archaeological Investigations  
35 ("ARPA" Permits).  
36  
37 2. FWS  
38 a. FWS, as surface manager of the APE, is responsible for the following  
39 actions:  
40 i. Receiving, reviewing, commenting on, and evaluating applications for  
41 ARPA permits;  
42 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
43 determinations and findings made by BLM;

- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

6 **IV. Section 106 Consultation Plan and Procedures**

- 7 A. BLM anticipates that the Program will include several Project types and that each
- 8 type will require consultation with Signatories and Consulting Parties. Project
- 9 types include:
- 10       1. Leasing;
- 11       2. Inventory, Research, and Monitoring Activities;
- 12       3. Geophysical Exploration;
- 13       4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14       5. Marine and Intertidal Activities and Operations;
- 15       6. Operations and Production;
- 16       7. Inspections and Enforcement; and
- 17       8. Reclamation
- 18
- 19 B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as
- 20 necessary” basis throughout the life of this PA on the above Project types to
- 21 include, but not limited to the following:
- 22       1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23       selection of alternatives;
- 24       2. Develop appropriate research designs and investigative methods for potential
- 25       Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26       studies;
- 27       3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28       BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29       Historic Properties within the Project-specific APE;
- 30       4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31       interested Consulting Parties) site visits within the Project-specific APE(s).
- 32       5. Develop project-specific Memorandum of Agreements or Programmatic
- 33       Agreements;
- 34       6. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 35       avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 36       may result from Program activities. These plans may include, but are not
- 37       limited to:
- 38           a. Monitoring lessee activities and effects on Historic Properties within the
- 39           Project-specific APE(s);
- 40           b. Periodic Historic Property condition assessments;
- 41           c. Documentation review to ensure lessees have fulfilled commitments
- 42           stipulated by BLM, and have complied with the terms of this PA.
- 43       C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c) and
- 44       Section 304 of the NHPA, the USACE shall withhold from public disclosure
- 45       information about the location, character, or ownership of a historic property

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1 when disclosure may cause a significant invasion of privacy, risk harm to the  
2 historic property, or impede the use of a traditional religious site by practitioners.

- 3  
4 D. The implementing regulations of Section 106 of the NHPA (36 CFR §  
5 800.2[c][2][ii][A-C]) require BLM to:  
6 1. Consult with any Indian Tribe that attaches religious and cultural significance  
7 to Historic Properties that may be affected by an Undertaking,  
8 2. Provide Indian Tribes with a reasonable opportunity to identify their concerns  
9 about Historic Properties, to advise on the identification and evaluation of  
10 Historic Properties, including those of traditional religious and cultural  
11 importance, to articulate their views on the Undertaking's effects on such  
12 properties, and to participate in the resolution of adverse effects,  
13 3. Consult with Indian Tribes in a sensitive manner respectful of tribal  
14 sovereignty, and in a manner sensitive to the concerns and needs of the  
15 Indian Tribe.  
16 4. In addition to those items listed above concerning BLM's consultation  
17 obligations to Indian Tribes under the NHPA, BLM shall consult with Indian  
18 Tribes as appropriate and needed, to:  
19 a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see  
20 *Appendix D*); and  
21 b. Consider including Tribal representatives to participate in fieldwork,  
22 monitoring, post-field analyses, and reporting activities.  
23  
24 E. At any time throughout the life of the PA, Consulting Parties may contact the  
25 BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of  
26 concern to the Signatories and other Consulting Parties at the Annual PA  
27 Meeting.  
28  
29 F. At any time throughout the life of the PA, any outside entity not initially part of this  
30 PA, including any Indian Tribes, may contact the BLM and request to become a  
31 Consulting Party. BLM will consider any such request and notify the Signatories  
32 and other Consulting Parties of the request and BLM's decision.

33 **V. Section 106 Procedures**

- 34 A. BLM's Undertaking involves a number of activities associated with oil and gas  
35 leasing and associated activities within the APE that have varying potentials to  
36 cause effects to Historic Properties, all of which are covered by this PA. The  
37 steps below outline an alternate process for BLM to comply with NHPA for the  
38 Undertaking, which will be carried out by BLM or FWS professional staff or non-  
39 federal professionals who meet the Secretary of the Interior's (SOI) Professional  
40 Qualifications Standards (48 Federal Register 44716-44742), as appropriate.  
41  
42 B. BLM shall make a good faith effort to identify and evaluate historic properties but  
43 anticipates that in certain cases a 100 percent identification of a Project APE may  
44 not be necessary, and NHRP evaluations may be conducted on all or some of  
45 identified properties. BLM will collect, or direct lessees and/or their contractors to



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1 collect, the amount of information necessary for the BLM to make decisions  
2 regarding the potential of the Project Type(s) to affect Historic Properties.

3  
4 C. At its discretion, BLM may submit documentation requesting SHPO concurrence  
5 on determinations of eligibility and findings of effect concurrently in a combined  
6 submission for Project Types described below.

7  
8 D. Nothing shall prevent the BLM from seeking informal consultation with the  
9 Signatories or Consulting Parties regarding the preparation of determinations of  
10 eligibility or findings of effect.

11  
12 A. **Step 1: Oil and Gas Program Project Types Addressed under this PA**

13 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
14 that this PA will address the following Project types associated with the BLM's  
15 Oil and Gas Program within the APE:

- 16 a. Lease Sales
- 17 b. Inventory, Research, and Monitoring Activities
- 18 c. Geophysical Exploration
- 19 d. APD
- 20 e. Marine and Intertidal Activities and Operations
- 21 f. Operations and Production
- 22 g. Inspection and Enforcement
- 23 h. Reclamation

24  
25 B. **Step 2: Assess Project Potential to Cause Effects**

26 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
27 under review has potential to cause effects on Historic Properties. BLM shall  
28 determine that a Project type does not have the potential to cause effects if it  
29 meets one or more of the following conditions:

- 30 a. No new ground disturbance;
- 31 b. Lease Sale or other Administrative Action; or
- 32 c. Standard maintenance, repairs, or replacement of existing facilities or  
33 equipment.

34 2. If the Project type meets one or more of the above conditions, BLM shall  
35 make a determination that the Project type has "no potential to cause effects"  
36 and attach letter to the Project file [36 CFR 800.3(a)(1) determination].

37 3. If the Project type does not meet the above conditions, and the Project type  
38 consists of Inventory, Research, and Monitoring Activities, Geophysical  
39 Exploration, Marine and Intertidal Activities and Operations, Operations and  
40 Production, or Inspection and Enforcement, proceed to Step 3.

41 4. If the Project type does not meet the above conditions, and the Project type is  
42 an APD or Reclamation, BLM will consult with Signatories and Consulting  
43 Parties, and BLM will determine if the Project should be addressed under this  
44 PA, or if a separate Section 106 process and agreement document ("kick-  
45 out") must occur in accordance with Step 8 below.

**Commented [MSJ(2):** Ice roads technically do not cause ground disturbance but could cause effects (grave markers).

Given the need to move towards execution, our office recommends deleting item "a" rather than trying to figure out conditions that would allow this type of action to not have potential to cause effects.

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**C. Step 3: APE**

- 1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.
  - b. If no, BLM defines the APE in consultation with SHPO.

**D. Step 4: Identification**

- 1. Has BLM determined that adequate efforts to identify Historic Properties consistent with the procedures described in *Appendix C: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix C: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project.

**Commented [MSJ(3):** At the last meeting I remember discussing whether we could replace Appendix C with Manual 8110. Was that issue resolved?

**E. Step 5: Preliminary APE Assessment**

- 1. Has BLM determined that identification efforts documented properties that have not been previously evaluated for NRHP eligibility within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no or if all known properties have been evaluated for NRHP eligibility, proceed to Step 7.

**Deleted:** have resulted in the identification of  
**Deleted:** potential Historic P

**F. Step 6: Evaluation**

- a. ~~\_\_\_\_\_~~
- b. The BLM will evaluate previously unevaluated properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15) consistent with guidance found in Appendix C concerning level of effort.
  - i. BLM will concurrently consult with FWS on all determinations of eligibility (DOEs), and with Indian Tribes on DOEs concerning unevaluated properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
    - 1. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
    - 2. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
  - ii. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal.
  - iii. Within five days of the end of the FWS and Indian Tribes review period, including any extensions granted, BLM will submit the DOE to

**Deleted:** <#>Has BLM determined that potential Historic Properties identified within the APE have been evaluated for NRHP eligibility?¶  
<#>If yes, proceed to Step 7.

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1 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
2 does not offer comment within the review period, then BLM will  
3 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
4 Step 7.

5 1. BLM may combine the DOE submittal to SHPO with a finding of  
6 effect determination and request for concurrence as outlined below  
7 in Step 7.

8 iv. Additional time to review a BLM submittal of a DOE(s) may be  
9 requested by SHPO, up to thirty (30) days per submittal.

10 v. If agreement cannot be reached on a DOE between BLM and SHPO,  
11 then the BLM shall follow the procedures outlined at 36 CFR §  
12 800.4(c)(2).

13 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe  
14 disagrees with BLM's DOE regarding a property of religious and  
15 cultural significance, it may ask the Council to request that the BLM  
16 obtain a determination from the Secretary of the Interior, as  
17 delegated to the Keeper of the NRHP.

18 vi. Once BLM completes the required NRHP evaluations in the APE, BLM  
19 may then proceed to Step 7.

20  
21 **G. Step 7: Assess Effects**

22 1. Has BLM determined there are Historic Properties in the APE?

23 a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]),  
24 which shall include consultation with Signatories and Consulting Parties.

25 i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM  
26 shall notify Signatories and Consulting Parties of the finding and  
27 provide them with documentation supporting this finding.

28 1. If SHPO concurs with the BLM's determination, BLM shall  
29 document SHPO concurrence to the Project file.

30 2. If SHPO does not concur, and resolution cannot be reached  
31 through consultation, BLM shall follow the procedures outlined at  
32 36 CFR 800.5(c)(2-3).

33 ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then  
34 BLM shall request the lessee or applicant propose methods to avoid,  
35 minimize, and/or mitigate adverse effects.

36 1. Upon receipt of the applicant's proposed methods to avoid,  
37 minimize, and/or mitigate adverse effects, BLM shall reapply the  
38 criteria of adverse effect in consultation with Signatories and  
39 Consulting Parties, and if necessary, revise their finding of effect.

40 iii. If BLM, in consultation with Signatories and Consulting Parties  
41 determines that an applicant's proposed methods to avoid, minimize,  
42 and/or mitigate adverse effects will still result in adverse effects to  
43 Historic Properties, the process shall revert to the standard Section

**Commented [MSJ(4):** There doesn't seem to be any alternative process in a.i, but a lot of detail in the regs that is not included here. Is there any reason why we can state "BLM shall follow 36 CFR 800.5" and leave the content from a.ii and a.iii as guidance for those situations?

**Commented [MSJ(5):** How, when, and for how long?

**Commented [MSJ(6):** Consulting parties can also object to a no adverse effect finding (36 CFR 800.5(c)(2)).

**Commented [MSJ(7):** What does this look like and how long will it take?

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106 procedures at 36 CFR 800.6.

- b. If no, BLM will make a finding of “no historic properties affected” (36 CFR 800.4[d][1]) and submit to SHPO for concurrence with appropriate supporting documentation. SHPO shall have thirty (30) days to review the BLM’s determination. BLM shall also provide notice to the Signatories and Consulting Parties of this finding in accordance with 36 CFR 800.4(d)(1).
  - i. If SHPO concurs with the BLM’s determination, BLM shall document SHPO concurrence to the Project file.
  - ii. If SHPO does not concur, and resolution cannot be reached through consultation between SHPO and BLM, BLM shall follow the procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

**H. Step 8: Decision regarding Undertaking**

- 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as applicable, and BLM has documented the appropriate finding of effect and resolution efforts, as required, to the Project file.
- 2. Alternatively, if BLM has determined that a separate Section 106 process and agreement document (“kick-out”) is required for an APD or Reclamation Project (see Step 2), BLM may authorize an APD or Reclamation Project subject to this PA only after the separate Section 106 review has been completed, and if necessary, the appropriate agreement document (e.g., Memorandum of Agreement or Programmatic Agreement) has been executed for the Project.

**I. Step 9: Reporting**

- 1. BLM will include a summary of all Projects reviewed under this PA in the previous year in the annual PA report [Stipulation XII]. The summary will include a synopsis for each project, including at minimum:
  - a. A description of the Project;
  - b. Delineation of the APE;
  - c. Identification efforts within the APE;
  - d. NRHP eligibility of known properties within the APE;
  - e. BLM’s finding of effect for the Project; and,
  - f. The Qualifications of the Individual who conducted the PA Compliance Review.
- 2. BLM will submit reports associated with identification, evaluation, and assessments of effect that were used to support BLM findings of effect to the SHPO.

BLM may append reports associated with identification, evaluation, and assessments of effect that were used to support BLM finding to the annual PA

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1 report, provided they do not contain sensitive information regarding Historic  
2 Properties.

3 **VI. Methods to Inventory APE**

- 4 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*,  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the  
7 Signatories for concurrence.  
8  
9 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
10 comment.  
11  
12 C. BLM will consider timely comments received and revise the draft accordingly.  
13 Multiple drafts may be required, and a final draft will be sent out for review no  
14 later than one year from the execution of the PA.  
15  
16 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
17 the first draft and the final draft concurrent with Signatory review.  
18  
19 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*  
20 *Inventory the APE*, before it is considered final.  
21  
22 F. Drafts cannot be used as interim guidance. If a project needs to move through  
23 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*  
24 *APE*, then the appropriate level of effort and methods will be determined through  
25 consultation among BLM, FWS, and SHPO on a case-by-case basis.

**Commented [MSJ(8):** The PA should include a guidance statement to assist with content development for the appendix.

For example: Appendix C will include parameters on when an unevaluated property within the APE will not be evaluated for the NRHP, guidance on intensity of fieldwork based on proposed actions/activity, guidance on when and at what level archaeological, ethnographic, historical, and archival research should be conducted, and the role of GIS-based modeling for the identification of historic properties.

**Deleted:** *Appendix C: Methods to Inventory the APE*

**Deleted:** *Appendix C: Methods to Inventory the APE*

**Deleted:** *Appendix C: Methods to Inventory the APE*

26 **VII. Standards**

- 27 A. Professional Qualifications:  
28 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
29 shall ensure that all work carried out pursuant to this Agreement shall be  
30 done by or under the direct supervision of a qualified historic preservation  
31 professionals who meet the (SOI) Professional Qualifications Standards (48  
32 Federal Register 44716-44742). The BLM and FWS, through review of permit  
33 applications or other means, shall ensure that consultants retained for  
34 services pursuant to the Agreement meet these standards.  
35  
36 2. A “qualified historic preservation professional” is a person who meets the  
37 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
38 Standards and Guidelines [As Amended and Annotated]  
39 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised  
40 equivalent.  
41  
42 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
43 identifying and assessing the eligibility of Historic Properties that may

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1 possess religious or cultural significance to Indian Tribes (36 CFR  
2 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
3 identifying and evaluating Historic Properties of religious or cultural  
4 significance to them.  
5

6 B. Professional Standards:

- 7 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
8 ensure that all work conducted as a result of this PA not otherwise done by  
9 BLM or FWS professional staff is performed in accordance with the SOI  
10 Standards for Archeology and Historic Preservation (Standards and  
11 Guidelines) (48 Fed. Reg. 44716-44742).  
12  
13 2. BLM shall require that persons supervising and conducting work on the behalf  
14 of lessees hold the appropriate BLM permits and/or authorizations as  
15 appropriate for inventory, monitoring, and other investigations, and meet the  
16 Standards and Guidelines, as well as the SOI Professional Qualification  
17 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
18 that persons supervising and conducting work on the behalf of lessees  
19 comply with the NAGPRA POA.  
20  
21 3. Investigations associated with Program activities will be conducted in  
22 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
23 the standards presented in BLM Manual 8110  
24 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
25 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanu)).  
26  
27 4. Reports regarding Historic Properties shall meet the standards outlined in the  
28 SOI Standards for Archeology and Historic Preservation (Standards and  
29 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
30 guidance (i.e., BLM Manual 8110), and Alaska Office of History and  
31 Archaeology guidelines.

32 VIII. **Unanticipated Discoveries**

- 33 A. During the entire implementation of this Undertaking, BLM will ensure that the  
34 Signatories and Consulting Parties are informed of unanticipated discoveries  
35 within the Undertaking's APE during lessees or their contractor related activities  
36 associated with the BLM's oil and gas leasing program.  
37  
38 B. Lessees or their contactors will not take any actions that would adversely affect  
39 the discovery which may be eligible for listing in the NRHP without written  
40 approval from BLM.  
41  
42 C. ~~Stipulation IX will be undertaken if an unanticipated discovery is made.~~ If the  
43 unanticipated discovery includes human remains, burials, or funerary items, ~~then~~  
44 the additional steps listed in Stipulation ~~X~~ shall be followed.  
45

**Deleted:** Upon the unanticipated discovery , the following steps listed below

**Deleted:** IX

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1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further subsurface finds can be reasonably expected to occur, to be no less than fifty (50) feet, and will notify the BLM within one business day;
2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two business days of the discovery;
3. The BLM or a SOI-qualified archaeologist approved by them will inspect the property as soon as possible and collect enough information to determine (if possible):
  - a. The extent of cultural materials associated with the inadvertent discovery or effect;
  - b. The degree of integrity; and
  - c. The cultural affiliation of the materials (if possible).
4. Within five (5) business days, BLM shall provide a summary of the information collected at the discovery to Signatories and Consulting Parties, which will include BLM's preliminary assessment of the NRHP eligibility of the discovery.
5. Within 14 days of the BLM's distribution of the information regarding the discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.
  - a. If the BLM determines that the discovery is not eligible for listing in the NRHP and SHPO concurs, BLM shall authorize the lessee to continue activities in the area of the discovery.
  - b. If the BLM determines the discovery is eligible for listing in the NRHP and SHPO concurs, BLM will direct the lessee to prepare a plan for its avoidance, protection, or recovery of information in consultation with BLM, Signatories and Consulting Parties, as appropriate.
    - i. Within five (5) business days of receipt, BLM shall distribute copies of the proposed plan to Signatories and Consulting Parties for review and comment.
    - ii. Signatories and Consulting Parties shall have seven (7) days to review the proposed plan and provide comments to BLM.
    - iii. BLM shall take into consideration timely comments received on the proposed plan and make a determination to either approve or request revisions to the proposed plan.
      - A. In the event that BLM requests revisions to the plan, BLM shall redistribute the revised plan under the same timelines as above, and Signatories and Consulting Parties shall have the same period of review. BLM may request revisions to the plan two times or until the plan adequately responds to comments. BLM will finalize the

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Commented [MSJ(9)]: Our office recommends providing direction on how to end the review process.

1 plan and provide the final plan to Signatories and Consulting  
2 Parties for their information.

- 3  
4 6. Work in the established buffer will not proceed until either:  
5 a. BLM approves the plan and requires its implementation; or  
6 b. The BLM determines that the discovery is not eligible for the NRHP, and  
7 the SHPO concurs with this determination.  
8

9 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
10 discoveries as provided in Stipulation XIII of this PA.

11 **IX. Unanticipated Effects**

12 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
13 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
14 Property, BLM, in consultation with Signatories and Consulting Parties, will  
15 assess the effect(s), develop a plan to address the unanticipated adverse  
16 effect(s), and avoid, minimize, and/or mitigate the unanticipated adverse  
17 effect(s).

18 B. BLM will notify Signatories and Consulting Parties of unanticipated effects within  
19 two business days if caused by a current action (i.e. construction) or other  
20 situation requiring expedited review. Within 7 days of discovery, BLM will submit  
21 to Signatories and Consulting Parties for a 7-day comment period a finding on  
22 whether the unanticipated effect was adverse.

23 C. If the unanticipated effect is the result of cumulative or past actions, then BLM  
24 will notify Signatories and Consulting Parties within 30 days of discovery, which  
25 will include a finding on whether the effect was adverse.

26 D. If BLM, in consultation with Signatories and Consulting Parties determines that  
27 the unanticipated effect was adverse, then the process shall revert to the  
28 standard Section 106 procedures at 36 CFR 800.6.

29 E. BLM will attempt to complete this process within 180 days of the recognition of  
30 the unanticipated effect(s).

31  
32 F. BLM will address any disputes over the resolution of unanticipated effects as  
33 provided in Stipulation XIII of this PA.

34 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
35 **Objects, and Objects of Cultural Patrimony**

36 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
37 that any Native American burials, human remains, and/or related items  
38 discovered on federal lands during implementation of the terms of the Agreement  
39 will be treated with dignity and respect, and that all procedures guiding the  
40 treatment of human remains, funerary objects, sacred objects, or objects of  
41 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
42

Commented [MSJ(10)]: Initial thoughts on making this process clearer.



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1 B. As surface manager of the APE, FWS is the managing agency for any and all  
2 human remains and NAGPRA materials.

3  
4 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
5 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
6 state laws six (6) months after the execution of this PA. Upon completion, the  
7 Human Remains and NAGPRA POA shall be incorporated into this PA as  
8 *Appendix D*. At minimum, the POA shall contain:

- 9 1. Notification Procedures and Protocols;
- 10 2. Chain of Custody Procedures; and,
- 11 3. Contact information for Law Enforcement, Tribal Representatives, and  
12 Agency personnel.

13  
14 D. In the event that any Native American burials, human remains, or funerary items  
15 are inadvertently encountered during any Program activity, the activity shall  
16 immediately cease, the area shall be secured from further disturbance, and the  
17 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
18 1. Upon notification, the BLM shall follow the procedures described in the  
19 NAGPRA POA (*Appendix D*).

Commented [MSJ(11)]: To be consistent with Stipulation III.A.2.iv, should FWS be the lead on all NAGPRA actions?

Commented [MSJ(12)]: Likely need at least one year.

Commented [MSJ(13)]: Recommend using the same process or similar as is used for development of Appendix C.

20 **XI. Curation**

21 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
22 during any activities associated with the Undertaking are property of FWS as  
23 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
24 *Curation of Federally-Owned and Administered Archaeological Collections* under  
25 FWS' existing agreement with the University of Alaska Museum of the North  
26 (UAMN).

27  
28 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
29 submitting all materials recovered from federal lands to the UAMN within six  
30 months following approval of a final report, within one year following completion  
31 of the fieldwork that generated the collection, or other period of time as specified  
32 in the ARPA permit. All collections will be curation-ready, as determined by the  
33 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
34 behalf, will safeguard all materials from theft or damage by providing adequate  
35 interim storage facilities and conservation actions, consistent with the  
36 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
37 Permittee will provide BLM with all accession records and documentation  
38 associated with the transfer and curation of materials. BLM will share the  
39 documentation with the FWS. Information will be shared with the other  
40 Signatories and Consulting Parties as appropriate.

41  
42 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
43 the curation of any materials that are collected during the implementation this PA,  
44 in perpetuity. Curation costs may include, but are not limited to, curation fees

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1 charged by approved institutions, acquisition of archival materials, shipping,  
2 cleaning, rehousing, and any other conservation action.

3  
4 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
5 described above in Stipulation IX and in the NAGPRA POA (Appendix D).

6  
7 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
8 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
9 other transfers of artifacts recovered from the APE to local communities or  
10 facilities to support and enhance cultural ties to the APE.

11 **XII. Annual PA Meeting and Reports**

12 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
13 day annual meeting concerning this PA within one (1) year of the PA execution,  
14 and each succeeding year by that approximate same date, thereafter. The  
15 meeting will consist of: an initial day where Consulting Parties and Signatories  
16 meet to discuss (1) the program activities conducted under the PA during the  
17 past year, (2) program activities scheduled for the upcoming year, (3)  
18 verify/update contact information for Consulting Parties, (4) ensure the Human  
19 Remains and NAGPRA Plan of Action is current, (5) cumulative effects, and (6)  
20 any other topics necessary to ensure the PA is functioning to all parties benefit.  
21 The second day of meetings shall be held by the Signatories to consider the  
22 input received by Consulting Parties, discuss the PA's implementation, required  
23 amendments (as necessary) or other changes, and other business related to the  
24 application of the PA terms.

25 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
26 Archaeology, or at another location by consensus of the Signatories. The  
27 parties may participate by telephone if they so desire.

28 2. The BLM will distribute meeting minutes to the meeting participants within  
29 thirty (30) days of the meeting, and meeting participants will provide  
30 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
31 amend the minutes as a result of comments and distribute finalized minutes  
32 within another fifteen (15) days to Signatories and Consulting Parties.

33 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
34 BLM that a meeting is necessary outside of the regularly scheduled annual  
35 meeting, the Signatories and Consulting Parties will consider their request.  
36 BLM, taking into consideration the results of consultation, shall decide  
37 whether to convene additional meetings.

38  
39 B. Annual PA Report:

40 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
41 and Consulting Parties with a draft copy of that year's annual report that  
42 describes the completed and upcoming activities associated with the  
43 stipulations of this agreement. The report will include the following  
44 information, as appropriate:

45 a. Number of leases issued;

**Commented [MSJ(14)]:** A two-day annual meeting was not included in the previous draft reviewed by our office. We recommend having one annual meeting among Signatories and Consulting Parties without a specified duration on its length. This meeting can be followed by a meeting among Signatories, if necessary.

**Commented [MSJ(15)]:** Recommend revising: being implemented appropriately and is fulfilling BLM's and FWS' obligations under federal law and statute.

**Commented [MSJ(16)]:** Listing out the many of the same topics as will be covered in the annual report is redundant, but if you wish to re-state these topics then we recommend including summaries of CRM activities and reporting – see comments in the annual report section.

Recommended language: The goal of the meeting will be to discuss the PA's implementation to ensure that it is fulfilling BLM's and FWS' obligations under federal law and statute. Attendees will discuss the contents of the annual report and concerns about the implementation of the PA.

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- b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
- c. Consultation activities undertaken;
- d. A summary of the past year's and anticipated upcoming efforts to related to cultural resource management, which may include but not be limited to:
  - 1. Efforts to identify, evaluate, and protect historic properties;
  - 2. Measures drafted or implemented to resolve adverse effects;
  - 3. A summary of materials submitted to an approved repository for curation; and
  - 4. References for cultural resources reports produced in the past year.
- e. A summary of historic properties adversely affected, as well as any;
- f. Clear maps of areas leased, surveyed, or otherwise investigated;
- g. Upcoming/Planned activities for the Program; and
- h. An evaluation of this PA and recommendations for any amendments or changes.

Commented [MSJ(17)]: Should this be Stipulation V?

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- 2.
- 3. Signatories and Consulting Parties may provide comments to BLM at or before the Annual meeting regarding the content of the Annual Report.
- 4. Thirty (30) days after the annual meeting have concluded, BLM will prepare and submit a Final Annual Report to Signatories and Consulting Parties.

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**C. Technical Reports**

- 1. Cultural resource activities, such as archaeological surveys, site evaluations, excavations, data recovery for mitigation, and monitoring, will be documented in technical reports subject to review by Signatories and Consulting Parties, as allowed by Stipulation IV.C, to allow timely and meaningful comment on findings and determinations made during implementation of Stipulation V Section 106 Procedures. Review and comment periods will follow the process outlined in Stipulation V. If a report is not accompanied by a determination or finding, then Signatories and Consulting Parties shall have 30 days to review and provide comment.
- 2. Full attachment of reports that have not been submitted to SHPO as part of a project review shall be attached to the Annual Report sent to SHPO.

Commented [MSJ(18)]: Confidentiality provision

**XIII. Dispute Resolution**

- A. Should any of the Signatories or Consulting Parties who have become Concurring Parties to this PA have insight, improvements, or objections regarding the manner in which the terms of this PA are implemented, the BLM will consult with such party to determine if the inclusion, suggestion, recommendation, or objection may be addressed to the satisfaction of the party, which may include presenting a proposed amendment to this PA in accordance with Stipulation XV.

43

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
2 notify the Signatories of the dispute, and seek input from Signatories to resolve  
3 the dispute.  
4
- 5 B. If the Signatories determine that an objection cannot be resolved, the BLM will:  
6 1. Forward all documentation relevant to the dispute, including the BLM's  
7 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
8 advice on the resolution of the objection within thirty (30) calendar days of  
9 receiving adequate documentation. Prior to reaching a final decision on the  
10 dispute, BLM will prepare a written response that takes into account any  
11 timely advice or comments regarding the dispute from the ACHP, Signatories,  
12 and Consulting Parties, and provide them with a copy of this written response.  
13 BLM will then proceed according to its final decision.  
14
- 15 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
16 (30) calendar-day time period, BLM may make a final decision on the dispute  
17 and proceed accordingly. Prior to reaching such a final decision, BLM will  
18 prepare a written response that takes into account any timely comments  
19 regarding the dispute from the Signatories and Consulting Parties to the PA  
20 and provide them and the ACHP with a copy of such written response.  
21
- 22 3. Regardless of the results of the dispute resolution measures described  
23 above, the BLM's responsibility is to carry out all other actions subject to the  
24 terms of this PA that are not the subject of the dispute.

25 **XIV. Duration**

- 26 A. The date the ACHP signs this PA is the ratification date, which officially executes  
27 the PA.  
28
- 29 B. This PA will remain in effect for ten (10) years after its execution.  
30
- 31 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
32 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
33 below no later than six (6) months prior to expiration of the agreement. If  
34 appropriate, the Signatories may execute a new agreement or amend to extend  
35 the duration of the current agreement.

**Commented [MSJ(19)]:** 36 CFR 800.14(b)(iii) The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region..." ACHP signature alone does not execute the PA. Recommend revising to be more consistent with the implementing regulations.

36 **XV. Amendments**

- 37 A. The Signatories may amend this PA at any time when such amendment is  
38 agreed to in writing by all Signatories. The amendment will be effective on the  
39 date a copy signed by all of the Signatories is filed with the ACHP.  
40
- 41 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
42 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
43

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 C. In the event that another federal agency not initially a party to or subject to this  
2 PA receives an application for funding/licensing/or permitting an Undertaking in  
3 the 1002 area as described in this PA, that agency may fulfill its Section 106  
4 responsibilities by stating in writing it concurs with the terms of this PA and  
5 notifying the Signatories and Consulting Parties that it intends to do so. Such  
6 agreement shall be evidenced by execution of a signature page signed by an  
7 authorized individual for that agency, distribution of said page to all Signatories  
8 and Consulting Parties, filing this page with the ACHP, and implementation of the  
9 terms of this PA.  
10  
11 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
12 to reflect changes in personnel or contact information without requiring the PA to  
13 be amended in accordance with the procedures described above.

14 **XVI. Termination**

- 15 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
16 carried out, that party shall immediately consult with the other Signatories to  
17 attempt to develop an amendment or agreement on other actions that would  
18 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
19 such consultation (or another time period agreed to by all Signatories) an  
20 amendment or agreement on other actions that would avoid termination cannot  
21 be reached, any Signatory may terminate the Agreement upon written notification  
22 to the other Signatories.  
23  
24 B. In the event that a Signatory terminates this PA, and prior to further Program  
25 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
26 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
27 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
28 as to the course of action it will pursue.

29 **XVII. Emergency Situations**

- 30 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
31 Consulting Parties of an emergency situation, which represents an imminent  
32 threat to public health or safety or creates a hazardous condition, that also has  
33 potential to harm Historic Properties or the subsequent response has potential to  
34 harm Historic Properties and the measures taken to respond to the emergency or  
35 hazardous condition. Should the Signatories or Consulting Parties desire to  
36 provide technical assistance to the BLM, they shall submit comments to BLM  
37 within seven (7) calendar days from notification, if the nature of the emergency or  
38 hazardous condition allows for such coordination.  
39  
40 B. If the APE of the emergency situation has been surveyed for Historic Properties  
41 and none ~~are~~ within the APE, then BLM will request concurrence on a  
42 determination of “no Historic Properties affected” from the SHPO within five (5)  
43 calendar days from the initial notification.

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- 1  
2  
3 C. If the APE has not been surveyed for potential Historic Properties, then  
4 emergency actions will be monitored by a SOI qualified professional or the APE  
5 will be inventoried by a SOI-qualified professional no later than one (1) year after  
6 the emergency action is completed. BLM will require that a monitoring report or  
7 inventory report will be submitted to Signatories and Consulting Parties within  
8 thirty (30) days of the end of fieldwork.  
9  
10 D. If a previously known or unknown Historic Property is adversely affected by  
11 emergency actions the BLM will consult with Signatories and Consulting Parties  
to resolve the adverse effect pursuant 36 CFR § 800.6.

12 **XVIII. Anti-Deficiency Provision**

- 13 A. Any obligation of the federal agencies set forth in this PA is subject to and  
14 dependent on appropriations by Congress and allocation of sufficient funds for  
15 that purpose. The federal agencies shall make reasonable and good faith efforts  
16 to secure the necessary funds to implement this PA in its entirety. If compliance  
17 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
18 implement the stipulations of this agreement, the federal agencies shall consult in  
19 accordance with the amendment and termination procedures found at  
20 Stipulations XV and XVI of this agreement.

21 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
22 that the BLM and FWS have taken into account the effects of the Undertaking on  
23 Historic Properties and have afforded the ACHP an opportunity to comment.  
24

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

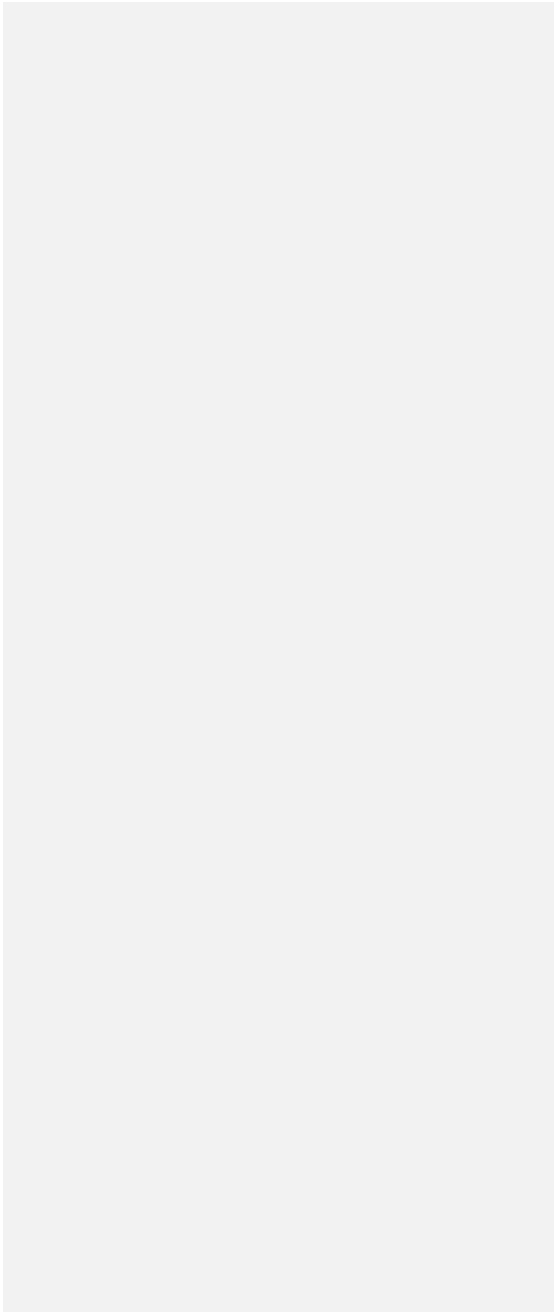
**[ORGANIZATION NAME PLACEHOLDER]**

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

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1 **Appendix A: Area of Potential Effects**  
2

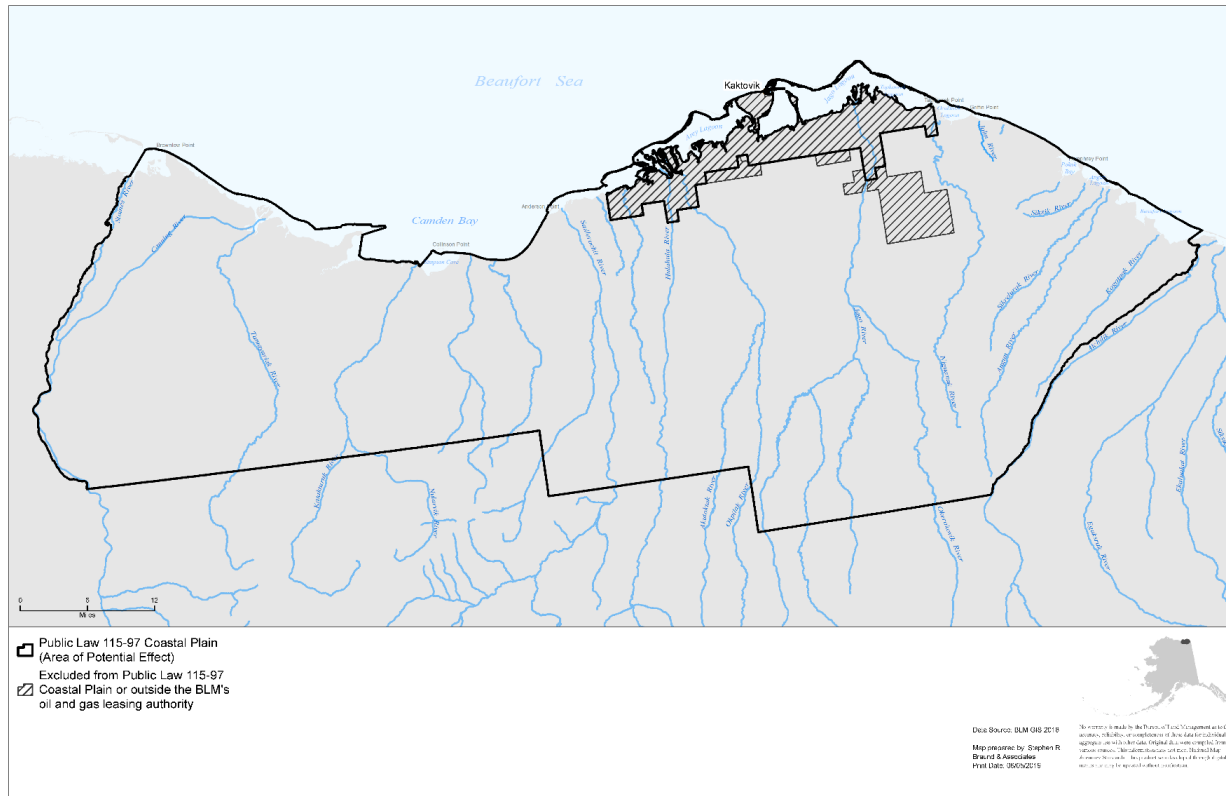
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



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1 **Appendix B: Consulting Parties**

2

3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsragmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

6

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

DRAFT



1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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1 **Appendix F: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

3

4

DRAFT

**From:** [Meitl, Sarah J \(DNR\)](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#); [Wesley Furlong](#)  
**Cc:** [Tiffany Yatlin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](mailto:imatt@achp.gov); [gordon.brower@north-slope.org](mailto:gordon.brower@north-slope.org); [City of Kaktovik - City Clerk](#); [Martineau, Faith C \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tomlohman2@aol.com](mailto:Tomlohman2@aol.com); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keeney, Joseph W](#); [Jake Anders](#); [Bittner, Judith E \(DNR\)](#); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](mailto:fenton.rexford@north-slope.org); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [Arlene Pitka <apitka@beavercouncil.org>](mailto:Arlene.Pitka@beavercouncil.org); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Soplly](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [jda.angasan@ilisagvik.edu](mailto:jda.angasan@ilisagvik.edu); [Kevin S. Fisher](#); [Donna Thomas](#); [Tyler Janowski](#); [Declava, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org); [Bill Marzella](#); [amy lewis](#); [janet.cadzow@fortyukon.org](mailto:janet.cadzow@fortyukon.org); [dale.hardy@fortyukon.org](mailto:dale.hardy@fortyukon.org); [Loya, Wendy M](#); [Monty Rogers](#)  
**Subject:** [EXTERNAL] RE: DRAFT MEETING NOTES FROM March 27 Section 106 Programmatic Agreement Consulting Parties Meeting  
**Date:** Monday, April 1, 2019 10:22:48 AM  
**Importance:** High

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Hi Nicole,

Thank you for sending out the meeting notes. As a quick clarification, on page 3 when talking about treatment of human remains my comment was directed at notification of discovery as the SHPO doesn't really have a role in NAGPRA, although we would like to review the NAGPRA POA if it is to be an appendix or otherwise a part of the PA.

Best,

**Sarah Meitl**

Review and Compliance Coordinator

Alaska State Historic Preservation Office / Office of History and Archaeology

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**From:** Hayes, Miriam (Nicole) <mnhayes@blm.gov>

**Sent:** Friday, March 29, 2019 3:43 PM

**To:** Wesley Furlong <wfurlong@narf.org>

**Cc:** Tiffany Yatlin <tiffany\_tritt\_99722@hotmail.com>; Rob Rosenfeld <robrosej@gmail.com>; Ray Atos <ray.atos@inupiatgov.com>; imatt@achp.gov; gordon.brower@north-slope.org; City of Kaktovik - City Clerk <office@cityofkaktovik.org>; Martineau, Faith C (DNR) <faith.martineau@alaska.gov>; Kathy Ahgeak <kathy.ahgeak@north-slope.org>; Charlene Stern <charlenestern@gmail.com>; patrick hanson <p\_jhanson@hotmail.com>; Robert (Bob) King <r2king@blm.gov>; Frederick Brower <frederick.brower@inupiatgov.com>; Tomlohman2@aol.com; Chad Ricklefs <chad.ricklefs@empis.com>; Rhonda Pitka <rpitka@beavercouncil.org>; Joseph Keeney <jkeeney@blm.gov>; Jake Anders <jake.anders@srbak.com>; Bittner, Judith E (DNR) <judy.bittner@alaska.gov>; Charleen Fisher <charleen.fisher@catg.org>; Doreen Leavitt <doreen.leavitt@nvbarrow.net>; fenton.rexford@north-slope.org; Nichelle (Shelly) Jones <njones@blm.gov>; Jacqueline Carroll <jacqueline.carroll@fortyukon.org>; Matthew Newman <mnewman@narf.org>; Arlene Pitka <apitka@beavercouncil.org> <apitka@beavercouncil.org>;

Sarah LaMarr <slamarr@blm.gov>; Myra Thumma <myethumma@yahoo.com>; Eugene Marino <eugene\_marino@fws.gov>; Fannie Sopluf <sopluf82@gmail.com>; Roy Varner <rvarner@nvbarrow.net>; Sarah Obed <obeds@doyon.com>; Matthew Rexford <nvkaktovik@gmail.com>; Tommy Nageak <tommy.nageak@north-slope.org>; Teresa Imm <timm@asrc.com>; Stephen Braund <stephen.braund@srbak.com>; ida.angasan@ilisagvik.edu; Kevin S. Fisher <kevin.fisher@north-slope.org>; Meitl, Sarah J (DNR) <sarah.meitl@alaska.gov>; Donna Thomas <donna.thomas@catg.org>; Tyler Janowski <tjanowski@asrc.com>; Edward Decleva <edward\_decleva@fws.gov>; Paul Lawrence <paul.lawrence@srbak.com>; Tom McCulloch <tmcculloch@achp.gov>; Tonya Garnett <tonyagarnett@hotmail.com>; norajane.burns@north-slope.org; Bill Marzella <bmarzella@achp.gov>; amy lewis <amy.lewis@empfi.com>; janet.cadzow@fortyukon.org; dale.hardy@fortyukon.org; Wendy Loya <wendy\_loya@fws.gov>; Monty Rogers <culturalalaska@gmail.com>

**Subject:** DRAFT MEETING NOTES FROM March 27 Section 106 Programmatic Agreement Consulting Parties Meeting

All,

Thank you for your participation in the meeting this week and thank you to SRBA for such thorough notes (see attached). Please look closely at the attendance list and let me know if there was anyone I may have missed, or if there are any other additions/edits/corrections to the notes. Any comments should be sent directly to me **by close of business 4/3/19**.

I will send out the table of comments received by consulting parties on the bulleted PA and the table of consulting parties, with the final meeting notes, by the end of next week.

Have a nice weekend.

Nicole

**Nicole Hayes**

Project Coordinator  
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**From:** [Wesley Furlong](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Tiffany Yatlin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](mailto:imatt@achp.gov); [Gordon Brower](#); [City of Kaktovik - City Clerk](#); [Faith C Martineau \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tom Lohman](#); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keeney, Joseph W](#); [Jake Anders](#); [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](mailto:fenton.rexford@north-slope.org); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [arlene.pitka@beavercouncil.org](mailto:arlene.pitka@beavercouncil.org); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Sopl](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [ida.angasan@ilisagvik.edu](mailto:ida.angasan@ilisagvik.edu); [Kevin S. Fisher](#); [Meitl, Sarah J \(DNR\)](#); [Donna Thomas](#); [Tyler Janowski](#); [Declava, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org); [Bill Marzella](#); [amy lewis](#); [janet.cadzow@fortyukon.org](mailto:janet.cadzow@fortyukon.org); [dale.hardy@fortyukon.org](mailto:dale.hardy@fortyukon.org); [Loya, Wendy M](#); [Monty Rogers](#)  
**Subject:** [EXTERNAL] RE: March 26: Section 106 Programmatic Agreement Consulting Parties Meeting tomorrow  
**Date:** Wednesday, March 27, 2019 5:22:48 PM  
**Importance:** High

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Nicole,

Thank you for these documents. I wanted to quickly follow up with a few of the Native Village of Venetie Tribal Government's, Arctic Village Council's, and Venetie Village Council's requests from today's PA meeting.

- 1) Can the BLM provide the Consulting Parties with the other Consulting Parties' previous comments on the Draft PA? And all future comments be provided to all Consulting Parties going forward?
- 2) Can the BLM provide the complete list of entities that were invited, or requested, to become Consulting Parties, regardless of whether they are now participating?
- 3) The Tribes also request that the BLM extend the deadline to comment on this most current draft of the PA to 30 days, ending on April 25. The last time the Consulting Parties were able to review a draft of the PA was last fall and had to submit their comments by mid-December 2018. At the time, the PA contained only two pages of recitals; there was no substance to review. The BLM and other Signatories have had over three months to review those comments and develop the current draft we discussed today. Indeed, the current draft now has 17 substantive pages, and as today's meeting indicates, there are substantial revisions, edits, and comments that need to be made—moreover, these suggesting revisions and edits came after only a day's review of the PA. Based on these considerations, the Tribes believe that 30 days to review the PA is appropriate. In the future, shorter timeframes to review may certainly be appropriate as the Draft PA solidifies and the revisions become less substantial.

The Tribes look forward to your response.

Thank you,

**Wesley James Furlong**

Staff Attorney

Native American Rights Fund

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**From:** Hayes, Miriam (Nicole) [mailto:mnhayes@blm.gov]

**Sent:** Wednesday, March 27, 2019 2:21 PM

**To:** Tiffany Yatlin <tiffany\_tritt\_99722@hotmail.com>; Rob Rosenfeld <robrosey@gmail.com>; Ray Atos <ray.atos@inupiatgov.com>; imatt@achp.gov; Gordon Brower <gordon.brower@north-slope.org>; City of Kaktovik - City Clerk <office@cityofkaktovik.org>; Faith C Martineau (DNR) <faith.martineau@alaska.gov>; Kathy Ahgeak <kathy.ahgeak@north-slope.org>; Charlene Stern <charlenestern@gmail.com>; patrick hanson <p\_jhanson@hotmail.com>; Robert (Bob) King <r2king@blm.gov>; Frederick Brower <frederick.brower@inupiatgov.com>; Tom Lohman <tomlohman2@aol.com>; Chad Ricklefs <chad.ricklefs@empai.com>; Rhonda Pitka <rpitka@beavercouncil.org>; Joseph Keeney <jkeeney@blm.gov>; Wesley Furlong <wfurlong@narf.org>; Jake Anders <jake.anders@srbak.com>; judy.bittner@alaska.gov; Charleen Fisher <charleen.fisher@catg.org>; Doreen Leavitt <doreen.leavitt@nvbarrow.net>; fenton.rexford@north-slope.org; Nichelle (Shelly) Jones <njones@blm.gov>; Jacqueline Carroll <jacqueline.carroll@fortyukon.org>; Matthew Newman <mnewman@narf.org>; Arlene Pitka <apitka@beavercouncil.org> <apitka@beavercouncil.org>; Sarah LaMarr <slamarr@blm.gov>; Myra Thumma <myethumma@yahoo.com>; Eugene Marino <eugene\_marino@fws.gov>; Fannie Sopluf <sopluf82@gmail.com>; Roy Varner <rvarner@nvbarrow.net>; Sarah Obed <obeds@doyon.com>; Matthew Rexford <nvkaktovik@gmail.com>; Tommy Nageak <tommy.nageak@north-slope.org>; Teresa Imm <timm@asrc.com>; Stephen Braund <stephen.braund@srbak.com>; ida.angasan@ilisagvik.edu; Kevin S. Fisher <kevin.fisher@north-slope.org>; Meitl, Sarah J (DNR) <sarah.meitl@alaska.gov>; Donna Thomas <donna.thomas@catg.org>; Tyler Janowski <tjanowski@asrc.com>; Edward Decleva <edward\_decleva@fws.gov>; Paul Lawrence <paul.lawrence@srbak.com>; Tom McCulloch <tmcculloch@achp.gov>; Tonya Garnett

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dale.hardy@fortyukon.org; Wendy Loya <wendy\_loya@fws.gov>

**Subject:** Re: March 26: Section 106 Programmatic Agreement Consulting Parties Meeting tomorrow

Good afternoon,

I have attached a couple of guidance documents on reviewing Programmatic Agreements (PA) produced by the Advisory Council on Historic Preservation that may aid in your review of the draft PA. You are not required to use so feel free to ignore if you do not find them helpful.

Thank you all again for an informative and productive meeting today.

Nicole

**Nicole Hayes**

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On Tue, Mar 26, 2019 at 12:51 PM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

All,

Please see the attached agenda for tomorrow's meeting as well as the Draft Programmatic Agreement (PA) to ensure compliance with the Section 106 National Historic Preservation Act for the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge. Consulting Parties will have 3 weeks to review and provide comments on the Draft PA and are not asked to provide feedback on it tomorrow.

Thank you,  
Nicole

**Nicole Hayes**

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**From:** [Kathy Ahgeak](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#); [Matthew Rexford](#); [City of Kaktovik - City Clerk](#); [Imm, Teresa](#); [Tonya Garnett](#); [Tiffany Yatlin](#); [patrick hanson](#); [Norajane Burns](#); [Thomas L. Lohman](#); [Kevin S. Fisher](#); [Fannie Soplu](#); [Tyler Janowski](#); [Tommy Nageak](#); [Fenton Rexford](#)  
**Cc:** [Keeney, Joseph W](#); [LaMarr, Sarah L](#); [Jones, Nichelle \(Shelly\) W](#); [Decleva, Edward J](#); [Faith C Martineau \(DNR\)](#); [Marino, Eugene](#); [Jake.Anders@srbak.com](#); [Paul Lawrence](#); [judy.bittner@alaska.gov](#); [Loya, Wendy M](#); [Chad Ricklefs](#); [sarah.meitl@alaska.gov](#); [King, Robert \(Bob\)](#); [Tom McCulloch](#); [Stephen Braund](#)  
**Subject:** [EXTERNAL] RE: Notes from 10.25.18 Coastal Plain PA meeting  
**Date:** Friday, October 26, 2018 4:46:23 PM  
**Importance:** High

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Kathy with IHLC noted the importance of involving the affected tribal governments and include ICAS Executive Director Frederick Brower, and to also include Fenton Rexford, NSB Tribal Liaison from Kaktovik and NSB Cultural Resource Specialist Tommy Nageak. Kathy hoped that all available cultural resource information includes publications such as the Archaeological and Historic Resource Reconnaissance of the Coastal Plain Area of the Arctic National Wildlife Refuge by Ed Hall and Associates. The NSB also has the Traditional Land Use Inventory that has at least 41 sites in the Kaktovik land use area.

Kathy with IHLA noted it was really important to loop Frederick Brower, ICAS Executive Director, Tommy Nageak and Fenton Rexford (tribal liaison) into the process. Fenton had been instrumental in developing the TLUI with the SHPO for the AHRS. She also noted that there was a draft report available with a lot of good information by Ed Hall and Associates. 41 sites were identified in the Kaktovik TLUI and it is important that work is conducted sensitive to these areas and considerate of the information out there.

**From:** Hayes, Miriam (Nicole) [<mailto:mnhayes@blm.gov>]  
**Sent:** Friday, October 26, 2018 4:24 PM  
**To:** Matthew Rexford; City of Kaktovik - City Clerk; Imm, Teresa; Tonya Garnett; Tiffany Yatlin; patrick hanson; Norajane Burns; Thomas L. Lohman; Kevin S. Fisher; Fannie Soplu; Janowski, Tyler; Kathy Ahgeak; Tommy Nageak; Fenton Rexford  
**Cc:** Joseph Keeney; Sarah LaMarr; Nichelle (Shelly) Jones; Edward Decleva; Faith C Martineau (DNR); Eugene Marino; Jake.Anders@srbak.com; Paul Lawrence; judy.bittner@alaska.gov; Wendy Loya; Chad Ricklefs; sarah.meitl@alaska.gov; Robert (Bob) King; Tom McCulloch; Stephen Braund  
**Subject:** Notes from 10.25.18 Coastal Plain PA meeting

Hi,

Thank you all for your participation in the meeting yesterday. I am attaching the draft notes but please let me know if there are any errors or additions. I may have missed a few names.

Also, I apologize to those who may have had trouble calling in due to the bridge line reaching capacity. I will work to ensure this doesn't happen again.

I will be reaching out to you all individually in the very near future.

Respectfully,  
Nicole

**Nicole Hayes**

Project Coordinator

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**From:** [Bill Marzella](#)  
**To:** [Meitl, Sarah J \(DNR\)](#); [Hayes, Miriam \(Nicole\) N](#); [Judith E. Bittner](#); [Decleva, Edward J](#); [Loya, Wendy M](#); [Tom McCulloch](#)  
**Cc:** [Chad Ricklefs](#); [amy lewis](#); [Jake Anders](#); [Stephen Braund](#); [Paul Lawrence](#); [King, Robert \(Bob\)](#)  
**Subject:** [EXTERNAL] Re: Response to comments on Draft Final PA  
**Date:** Friday, July 26, 2019 7:49:07 AM  
**Attachments:** [NVVTG, AVC, VVC Comments on Draft PA 07.11.19 BLM response ACHP edits.docx](#)  
**Importance:** High

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Nicole and all—See attached responses from the ACHP attached. A few additional notes below:

1. I second the SHPO's recommendation of 100' avoidance buffer.
2. Agree generally about the ground disturbance. If this is to be left in, it should be more inclusive to describe other types of direct effects. Suggested language included in the comments, but generally physical alteration, atmospheric changes, etc. At that point it may be too restrictive and just work removing this point entirely.
3. Agreed it would be helpful to see the specific language. It seems this section is serving to differentiate NAGPRA discoveries from other more Section-106 focused discoveries. If so, I would feel more comfortable with more explicit language to that effect, or at least that separates a NAGPRA discovery with the determination of effect under 106.

Thanks,

Bill

---

**From:** "Meitl, Sarah J (DNR)" <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>  
**Date:** Friday, July 19, 2019 at 6:29 PM  
**To:** Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>, "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>, "Judith E. Bittner" <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>, Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>  
**Cc:** Chad Ricklefs <[chad.ricklefs@emp.si.com](mailto:chad.ricklefs@emp.si.com)>, amy lewis <[amy.lewis@emp.si.com](mailto:amy.lewis@emp.si.com)>, Jake Anders <[Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com)>, Stephen Braund <[Stephen.Braund@srbak.com](mailto:Stephen.Braund@srbak.com)>, Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>, "Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>  
**Subject:** RE: Response to comments on Draft Final PA

Hi Nicole,

Thanks for sending these out. It is really helpful to see the full spread of comments. We are looking forward to seeing a clean document that has taken into account the various comments and responses.

Comments on BLM's response to SHPO comments:

I.F comment – BLM's response seems inconsistent with the process in the Amendments section (XV.D), which allows us to update Appendix B as necessary without the amendment process. I recommend clarifying that the step in I.F updates Appendix B or revise the amendments section to follow the process presented in the response.

V.B.1.a comment – How will the existing project footprint be defined? Even with this qualifier, the continued use of the 'no ground disturbance' condition is problematic, as it is a legacy condition that

in the past has led to unfortunate outcomes for historic properties and we are encouraging agencies to think beyond ground disturbance for possible effects. Another not-so-great example of an adverse effect that did not involve ground disturbance would be the cabin that was destroyed with a hydro-ax. Our office still recommends deleting 'a'.

Request for language from SHPO: The blue text currently serving as a placeholder is probably fine as is or could include reference to Stipulation IV.C.

Inadvertent discovery stop work zone – The five hundred feet avoidance zone used on the North Slope is for known properties and is so large to account for potential GPS error and personnel getting lost, as well as to provide some buffer for the anticipated error margin on known site locations. One hundred feet seems to be the consensus distance used in agreements our office has on file for inadvertent discovery situations, including agreements for projects on the North Slope. One document included one hundred feet from the known extent of the property, which I think would be a good addition for this situation.

Question about using 800.13 language in the inadvertent discovery section – Which language would you like to use? At present this section of the PA is providing an alternative to the process outlined in 800.13 with different timelines or other details such as the stop work zone distance.

Best,

**Sarah Meitl**

Review and Compliance Coordinator

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---

**From:** Bill Marzella

**Sent:** Friday, July 19, 2019 12:27 PM

**To:** Hayes, Miriam (Nicole) <mnhayes@blm.gov>; Bittner, Judith E (DNR) <judy.bittner@alaska.gov>; Meitl, Sarah J (DNR) <sarah.meitl@alaska.gov>; Edward Decleva <edward\_decleva@fws.gov>; Wendy Loya <wendy\_loya@fws.gov>; Tom McCulloch <tmcculloch@achp.gov>

**Cc:** Chad Ricklefs <chad.ricklefs@emp.si.com>; amy lewis <amy.lewis@emp.si.com>; Jake Anders <Jake.Anders@srbak.com>; Stephen Braund <Stephen.Braund@srbak.com>; Paul Lawrence <paul.lawrence@srbak.com>; Robert (Bob) King <r2king@blm.gov>

**Subject:** RE: Response to comments on Draft Final PA

Nicole—Thanks for sending, I'm sure it was no small task to reconcile all of these comments. Responses to the ACHP version look good to me. Next week I will take a closer look at the other responses and the additional feedback requested on the NVVTG, AVC, VVC comments. Signing for

the ACHP will be: John M. Fowler, Executive Director.

Thanks,

**Bill Marzella**

Program Analyst/BLM Liaison  
(202) 517-0209

Register TODAY for the [Section 106 Practitioners Workshop](#) on August 6-7 or the [Agreements Seminar](#) on August 8 in Cheyenne, WY!

**From:** Hayes, Miriam (Nicole) [<mailto:mnhayes@blm.gov>]

**Sent:** Friday, July 19, 2019 2:18 PM

**To:** Judith E. Bittner; Meitl, Sarah J (DNR); Bill Marzella; Edward Decleva; Wendy Loya; Tom McCulloch

**Cc:** Chad Ricklefs; amy lewis; Jake Anders; Stephen Braund; Paul Lawrence; Robert (Bob) King

**Subject:** Response to comments on Draft Final PA

Dear Signatories,

Attached are BLM's response to comments on the Draft Final PA, consistent with previous responses to comments and conversations we have had on the various topics.

A few things we still need to finalize this PA are:

1. SIGNATORY INPUT on a couple of responses on the NVVTG, AVC, VVC comments (you can see the request for input in the comment bubbles that start with "SIGNATORIES:...").
2. Judy/Sarah, there is one comment on the SHPO comments I need recommended language (comment bubble starts with "SHPO:...")
3. Review of all the responses to comments. If there is any concern with how the BLM responded please advise ASAP (**but NLT July 26th**) as SRBA will be proceeding with changes.
4. Identify person with your agency that will be signing PA and correct title so we can prepare signature pages accordingly.

Attached are comments with BLM responses from:

ACHP

SHPO

NSB

NVVTG, AVC, VVC (also attached w/o comment response so you can see all edits made in track changes since several inserts and deletions were rejected)

Schedule of next steps:

**JULY 26**-DUE from signatories - requests above

**AUG 5**- FINAL PA will be distributed for review by signatories

**AUG 13**- LAST Signatories meeting before signing to discuss any minor fixes needed

Please let me know if I may have missed anything or there are any questions.

THANK YOU!

Nicole

**Nicole Hayes**

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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14 X. Curation ..... 16

15 XI. Annual PA Meeting and Reports ..... 16

16 XII. PA Oversight and Dispute Resolution ..... 17

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22 Appendix A: Area of Potential Effects ..... A-1

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26 Appendix E: PA Amendments (reserved) ..... E-1

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28

29



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed on or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing program, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a [Programmatic Agreement \(PA\)](#) as the BLM cannot fully determine effects on Historic

**Commented [MJR2]:** As we requested in the previous PA drat, make sentences active. Who is doing this directing?

The [ACHP, in their guidance on reviewing agreement documents](#), recommends using active voice. The ACHP states:

"Because the stipulations of a Section 106 agreement assign responsibilities for certain measures and commit parties to identified actions, it is important to clearly state those responsibilities and commitments. Avoiding wordy, passive voice sentences (e.g., "the building will be recorded") makes the terms of the agreement easier to understand. Using active voice in an agreement helps answer the above questions and provides a construct to insert timeframes."

**Commented [HM(N3R2):** BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice

**Deleted:** undertaking

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 Properties within the APE prior to approval of the Undertaking as defined in 36 Code of  
2 Federal Regulations (CFR) § 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to, activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation as Consulting Parties, consistent with 54 USC §  
18 302706 and 36 CFR 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None of the 34  
39 properties have been evaluated for their eligibility for listing in the NRHP; and

**Commented [MJR4]:** As we asked in the previous PA draft, when and how? Adding these specifics will aid the cold reader understand this agreement per the, [ACHP's Section 106 Agreement Document Guidance](#) they explicitly state that in the Preamble

"This information documents the federal agency's Section 106 compliance effort and should be written to allow a cold reader to understand the context for the stipulations to follow."

**Commented [MJR5]:** When and how?

**Commented [HM(N6R5):** BLM has determined this level of detail is not necessary

**Commented [MJR7]:** When and how?

**Commented [HM(N8R7):** BLM has determined this level of detail is not necessary

**Commented [WF9]:** What does this mean?

**Commented [HM(N10R9):** Inserted to memorialize that previous investigations and documentation are not totally sufficient to provide complete knowledge of the Historic Properties that may be found within the APE

**Commented [WF11]:** The AHRs does not list "properties." "Properties" has a very specific definition under the Part 800 regulations, and what the AHRs covers often do not meet that definition. Indeed, this recital staets alter that only 5 "properties" are el

**Commented [HM(N12R11):** "Historic Properties" has a specific definition, not "properties" in general

**Commented [WF13]:** Again, "property" has a very specific meaning in the Part 800 regulations

**Commented [HM(N14R13):** "Historic Properties" has a specific definition, not "properties" in general

**Commented [MJR15]:** This is more of an information request than a comment on the PA. How often does the NSB reconcile their TLUI database with the AHRs and when was the last time this reconciliation occurred?

**Commented [HM(N16R15):** Contact the NSB for further details.

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)  
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties

**Commented [WF17]:** Are these stipulations not applicable for post-leasing activities? Because that doesn't make sense.

**Commented [HM(N18R17):** These stipulations are not necessarily all-inclusive for post-lease activities as additional stipulations may be required in accordance with the PA and Section 106 requirements

8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

10 **I. Administrative**

11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Program and will ensure that all lessees are aware that they must  
13 comply with the terms of this PA during activities on their lease(s).

**Commented [WF19]:** Is this PA not going to be incorporated into any authorizations that the FWS issues pursuant to the Program? What about other federal agencies later on, such as the USACE?

14 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
15 contractors engaged in exploration, development, production, or reclamation  
16 work associated with an issued Program lease prior to their arrival within the  
17 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
18 all contractors are made aware of the PA and that BLM requires compliance with  
19 its terms.

**Commented [HM(N20R19):** Please refer to Amendments Section

**Deleted:** Coastal Plain Oil and Gas Leasing Program (

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20 C. BLM shall require that any type of archaeological work associated with the  
21 Program within the APE not performed by BLM or FWS professional staff will be  
22 conducted only under terms of a federally issued Permit For Archaeological  
23 Investigations (“ARPA permit”). Such permits are obtained upon application to  
24 the BLM or otherwise coordinated by BLM.

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**Deleted:** proposed

25 D. If ownership of a lease is transferred, BLM will include as a condition of the  
26 transfer that the new lessee must adhere to the terms of this PA.

**Deleted:**

27 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
28 communications regarding this PA and its provisions, with an alternative method  
29 of postal mail delivery if the contacts do not have reliable e-mail.

30 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
31 It is the responsibility of each Signatory and Consulting Party to immediately  
32 inform BLM of any change in name, mailing address, e-mail address, or phone  
33 number for any point-of-contact. Once received, the BLM will forward this  
34 information to all Signatories and Consulting Parties by e-mail or mail within five  
35 (5) business days. Contact information for Signatories and Consulting Parties is  
36 included below in *Appendix B: Consulting Parties*.

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- G. At any time, Signatories to this PA may request additional time for reviews of documentation, preparation of guidance documents, or any other time-sensitive materials outlined in this PA by providing a written request to the BLM.
- H. The Signatories may execute this PA in counterparts, with a separate page for each Signatory.

**Commented [WF21]:** The BLM is the lead federal agency. It is in charge of ensuring the PA is carried out, thus it should be the only signatory that should sign off on these request.

**Deleted:** all

**Deleted:** Signatories

**II. Scope of the PA**

- A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and other federal laws that may be affected by the BLM's Undertaking within the APE.
- B. This PA establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of NHPA, including consultation with Indian Tribes, for Program decisions that may be implemented in accordance with the decisions supported by the Program EIS and BLM policy.
- C. This PA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this PA will be handled in accordance with applicable laws, regulations, and procedures including those for Federal Government procurement and printing. Separate agreements will outline such endeavors and will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority.

**III. Agency Coordination Procedures**

A. Agency Roles and Coordination

1. BLM

- a. BLM, as the lead federal agency for the purposes of NHPA and Section 106 compliance, is responsible for the following actions:
  - i. Conducting Section 106 reviews of Projects the PA addresses;
  - ii. Receiving permit applications and issuing permits that may be needed for Section 106 compliance work for oil and gas-related projects in the APE. Such permits needed may include various types of land use authorizations as well as Permits for Archaeological Investigations ("ARPA" Permits).

**Deleted:** projects

**Commented [WF22]:** BLM is not the land manager, FWS is. How is this discrepancy reconciled?

**Commented [HM(N23R22)]:** Activities related to the implementation of PL 115-97 are the responsibility of the BLM

**Commented [WF24]:** Why would the FWS "receive" ARPA permit applications, if that is the responsibility of the BLM? I get reviewing, commenting on, and evaluating, as the land manager, but the PA cannot obligate two different agencies to receive the same permit applications.

The PA needs to stipulate how the BLM will provide the FWS the ARPA permit application, how long the FWS has to respond, and how to resolve issues if the FWS and BLM disagree about its issuance or features of the permit/application

**Commented [HM(N25R24)]:** BLM disagrees that the coordination between the two agencies needs to be spelled out in the PA

2. FWS

- a. FWS, as surface manager of the APE, is responsible for the following actions:
  - i. Receiving, reviewing, commenting on, and evaluating applications for ARPA permits provided by the BLM;
  - ii. Receiving, reviewing, commenting on, and evaluating Section 106 determinations and findings made by BLM;

- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

6 **IV. Section 106 Consultation Plan and Procedures**

7 A. BLM anticipates that the Program will include several Project types and that each

8 type will require consultation with Signatories and Consulting Parties. Project

9 types include:

- 10 1. Leasing;
- 11 2. Inventory, Research, and Monitoring Activities;
- 12 3. Geophysical Exploration;
- 13 4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14 5. Marine and Intertidal Activities and Operations;
- 15 6. Operations and Production;
- 16 7. Inspections and Enforcement; and
- 17 8. Reclamation
- 18

19 B. As appropriate and needed, BLM shall consult with [Signatories and Consulting](#)

20 Parties on an “as necessary” basis throughout the life of this PA on the above

21 Project types to include, but not limited to, the following:

- 22 1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23 selection of alternatives;
- 24 2. Develop appropriate research designs and investigative methods for potential
- 25 Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26 studies;
- 27 3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28 BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29 Historic Properties within the Project-specific APE;
- 30 4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31 interested [Signatories and Consulting Parties](#)) site visits within the Project-
- 32 specific APE(s).
- 33 5. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 34 avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 35 may result from Program activities. These plans may include:
- 36 a. Monitoring lessee activities and effects on Historic Properties within the
- 37 Project-specific APE(s);
- 38 b. Periodic Historic Property condition assessments;
- 39 c. Documentation review to ensure lessees have fulfilled commitments
- 40 stipulated by BLM, and have complied with the terms of this PA.
- 41

42 C. The implementing regulations of Section 106 of the NHPA (36 CFR §

43 800.2[c][2][ii][A-C]) require BLM to:

- 44 1. Consult with any Indian Tribe that attaches religious and cultural significance
- 45 to Historic Properties that may be affected by an Undertaking,

**Commented [WF26]:** We made this comment before, but we'll make it again. It is easier for the BLM to create a list that is exclusive, rather than inclusive. Meaning, projects types are anything but X, Y, and Z.

**Commented [HM(N27R26):** The list reflects all types of activities associated with an oil and gas leasing program.

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2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects,
3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe.
4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
  - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see Appendix D); and
  - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.

Commented [WF28]: When is this happening?

Commented [HM(N29R28)]: Please refer to Appendix D

D. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.

Commented [WF30]: So consulting parties cannot

Commented [HM(N31R30)]: Consulting parties raise their issues to the BLM so that the BLM can bring up, however, the consulting parties are invited to the meeting so may also bring up issues they otherwise do not think have been addressed

E. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

- A. BLM's The Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying potentials to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- B. BLM shall make a good faith effort to identify and evaluate historic properties but anticipates that in certain cases a 100-percent identification of a Project APE may not be necessary, and NHRP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect, the amount of information necessary for the BLM to make decisions regarding the potential of the Project Type(s) to affect Historic Properties.
- C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility and findings of effect concurrently in a combined submission for Project Types described below.

Deleted:

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D. Nothing shall prevent the BLM from seeking informal consultation with the Signatories or Consulting Parties regarding the preparation of determinations of eligibility or findings of effect.

F. Step 1: Oil and Gas Program Project Types Addressed under this PA

1. BLM, in consultation with Signatories and Consulting Parties, has determined that this PA will address the following Project types associated with the Program within the APE:
  - a. Lease Sales;
  - b. Inventory, Research, and Monitoring Activities;
  - c. Geophysical Exploration;
  - d. APD;
  - e. Marine and Intertidal Activities and Operations;
  - f. Operations and Production;
  - g. Inspection and Enforcement; and
  - h. Reclamation.

G. Step 2: Assess Project Potential to Cause Effects

1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type under review has potential to cause effects on Historic Properties. BLM shall determine that a Project type does not have the potential to cause effects if it meets one or more of the following conditions:
  - a. No new visual, auditory, atmospheric, olfactory, and/or ground disturbances;
  - b. Lease Sale or other Administrative Action; or
  - c. Standard maintenance, repairs, or replacement of existing facilities or equipment.
2. If the Project type meets one or more of the above conditions (Section V.G.1.a-c), BLM shall make a determination that the Project type has “no potential to cause effects” and attach letter to the Project file [36 CFR 800.3(a)(1) determination].
3. If the Project type does not meet the above conditions (Section V.G.1.a-c), and the Project type consists of Inventory, Research, and Monitoring Activities, Geophysical Exploration, Marine and Intertidal Activities and Operations, Operations and Production, or Inspection and Enforcement, the BLM will proceed to Step 3.
4. If the Project type does not meet the above conditions, and the Project type is an APD or Reclamation, BLM will consult with Signatories and Consulting Parties, and BLM will determine if the Project should be addressed under this PA, or if a separate Section 106 process and agreement document (“kick-out”) must occur in accordance with Step 8 below.

H. Step 3: APE

1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.

**Commented [WF32]:** What about non-listed project types that may, under certain circumstances rise to the level of needing 106 review? A bright line cut off is not necessarily appropriate

**Commented [HM(N33R32):** The list reflects all types of activities associated with an oil and gas leasing program.

**Deleted:** BLM's Oil and Gas

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**Commented [MJR34]:** Archaeological bias just including ground disturbance. Effects are more than physical impacts. [In March, the D.C. circuit court issued an opinion clarifying the meaning of the term "directly" for the NHPA.](#) Direct includes visual, auditory, and atmospheric along with physical impacts. Please review court opinion and update this PA accordingly.

**Commented [WF35R34]:** See the ACHP's discussion of this opinion here:

<https://www.achp.gov/news/court-rules-definitions-informs-agencies-determining-effects>

**Commented [HM(N36R34):** In consideration of SHPO concern as well, suggest revising this. Suggest the following language to be more consistent with the regs:

"No new introduction of visual, atmospheric, or audible elements that diminish the integrity of a property; physical changes; or ground disturbance."

**Commented [WF37]:** The Tribes fundamentally disagree with the BLM that lease sales are not an undertaking without potential to effect historic properties. This statement ignores the definition of adverse effects, which includes "reasonably foreseeable adverse effects by the undertaking that may occur later in time, be farther removed in distance or be cumulative." 36 CFR § 800.5(a)(1). This position makes it impossible for the BLM to ensure that the Section 106 process informs the development of project/leasing alternatives (see 36 C.F.R. §§ 800.1(c), 800.6(a)), such as lease-wide stipulations, avoidance areas, etc. compartmentalizing Section 106 review until the ADP phase is inappropriate, undercuts the very purpose of the Section 106 process, and is unlawful.

Indeed, the ACHP recently published guidance on this issue, stating:

"Planning activities" avoid triggering Section 106 so long as they do not narrow the range of alternatives to avoid, minimize, or mitigate adverse effects to historic properties. For federal property managers, "planning" often includes long-term management of lands or properties under their purview. Such agencies may develop general or site-specific

**Commented [HM(N38R37):** This is stating that under this PA for implementation of PL 115-97, a lease sale itself will not necessitate separate 106 compliance

**Commented [WF39]:** Is there no instance in which such repairs, maintenance, or replacements could affect historic properties? This statement is pretty absolutist and inflexible for larger, unforeseen projects

**Commented [HM(N40R39):** Based on experience with implementation of an oil and gas program there have not been instances or examples where these types of activities may result in an effect on a historic property

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1 b. If no, BLM defines the APE in consultation with SHPO.  
2

3 **I. Step 4: Identification**

- 4 1. Has BLM determined that adequate efforts to identify Historic Properties  
5 consistent with the procedures described in *Appendix C: Methods to*  
6 *Inventory the APE* have been completed within the APE?  
7 a. If yes, proceed to Step 5.  
8 b. If no, BLM will implement or direct the implementation of methods detailed  
9 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
10 level of effort to identify Historic Properties within the APE of the Project.  
11

12 **J. Step 5: Preliminary APE Assessment**

- 13 1. Has BLM determined that identification efforts have resulted in the  
14 identification of potential Historic Properties within the APE?  
15 a. If yes, proceed to Step 6.  
16 b. If no, proceed to Step 7.  
17

18 **K. Step 6: Evaluation**

- 19 1. Has BLM determined that potential Historic Properties identified within the  
20 APE have been evaluated for NRHP eligibility?  
21 a. If yes, proceed to Step 7.  
22 b. If no, the BLM will evaluate potential Historic Properties in the APE of the  
23 Project for NRHP eligibility (NRHP Bulletin 15).  
24 i. BLM will concurrently consult with FWS on all determinations of  
25 eligibility (DOEs), and with Indian Tribes on DOEs concerning potential  
26 Historic Properties of religious and cultural significance prior to  
27 submitting them to SHPO for concurrence.  
28 1. FWS will have thirty (30) days to review and respond to  
29 determinations submitted by BLM. If FWS does not offer comment  
30 within the review period, then BLM will presume agreement with the  
31 DOE(s).  
32 2. Indian Tribes will have thirty (30) days to review and respond to  
33 determinations submitted by BLM. If an Indian Tribe(s) does not  
34 offer comment within the review period, then BLM will presume  
35 agreement with the DOE(s).  
36 ii. Additional time to review a BLM submittal of a DOE(s) may be  
37 requested by FWS and/or Indian Tribes, up to thirty (30) days per  
38 submittal.  
39 iii. After the review period for FWS and Indian Tribes has elapsed,  
40 including any extensions requested, BLM will submit the DOE to  
41 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
42 does not offer comment within the review period, then BLM will  
43 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
44 Step 7.



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- 1. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
- iv. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
- v. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
  - 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
- vi. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

**L. Step 7: Assess Effects**

- 1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), which shall include consultation with Signatories, Indian Tribes, and Consulting Parties.
    - i. If BLM makes a finding of “no adverse effect” (36 CFR 800.5[b]), BLM shall notify Signatories, Indian Tribes, and Consulting Parties of the finding and provide them with documentation supporting this finding.
      - 1. If SHPO concurs with the BLM's determination, BLM shall document the concurrence to the Project file.
      - 2. If SHPO does not concur, and resolution cannot be reached through consultation, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
    - ii. If BLM makes a finding of “adverse effect” (36 CFR 800.5[d][2]), then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
      - 1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the criteria of adverse effect in consultation with Signatories, Indian Tribes, and Consulting Parties, and if necessary, revise their finding of effect.
    - iii. If BLM, in consultation with Signatories, Indian Tribes, and Consulting Parties determines that an applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects will still result in adverse effects to Historic Properties, the process shall revert to the standard Section 106 procedures at 36 CFR 800.6.

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- 1 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR  
2 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty  
3 (30) days to review the BLM’s determination. BLM shall also provide  
4 notice to the Signatories and Consulting Parties of this finding in  
5 accordance with 36 CFR 800.4(d)(1).  
6 i. If SHPO concurs with the BLM’s determination, BLM shall document  
7 SHPO concurrence to the Project file.  
8 ii. If SHPO does not concur, and resolution cannot be reached through  
9 consultation ~~among SHPO, ACHP,~~ and BLM, BLM shall follow the  
10 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

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11 **M. Step 8: Decision regarding Undertaking**

- 12 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
13 applicable, and BLM has documented the appropriate finding of effect and  
14 resolution efforts, as required, to the Project file.  
15  
16 2. Alternatively, if BLM has determined that a separate Section 106 process and  
17 agreement document (“kick-out”) is required for an APD or Reclamation  
18 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
19 subject to this PA only after the separate Section 106 review has been  
20 completed, and if necessary, the appropriate agreement document (e.g.,  
21 Memorandum of Agreement or Programmatic Agreement) has been executed  
22 for the Project.

23  
24 **N. Step 9: Reporting**

- 25 1. BLM will include a summary of all Projects reviewed under this PA in the  
26 previous year in the annual PA report [Stipulation XII]. The summary will  
27 include a synopsis for each project, including at minimum:  
28 a. A description of the Project;  
29 b. Delineation of the APE;  
30 c. Identification efforts within the APE;  
31 d. NRHP eligibility of known properties within the APE;  
32 e. BLM’s finding of effect for the Project; and,  
33 f. The Qualifications of the Individual who conducted the PA Compliance  
34 Review.  
35  
36 2. BLM will submit reports associated with identification, evaluation, and  
37 assessments of effect that were used to support BLM findings of effect to the  
38 SHPO.

39  
40 BLM may append reports associated with identification, evaluation, and  
41 assessments of effect that were used to support BLM finding to the annual PA  
42 report, provided they do not contain sensitive information regarding Historic  
43 Properties.

VI. Methods to Inventory APE

- A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE* within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.
- B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day comment.
- C. BLM will consider timely comments received and revise the draft accordingly. Multiple drafts may be required, and a final draft will be sent out for review no later than one year from the execution of the PA.
- D. Consulting Parties shall be offered the opportunity to comment on, at a minimum, the first draft and the final draft concurrent with Signatory review.
- E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to Inventory the APE* before it is considered final.
- F. Drafts cannot be used as interim guidance. If a project needs to move through Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the APE*, then the appropriate level of effort and methods will be determined through consultation among BLM, FWS, and SHPO on a case-by-case basis.

**Commented [MJR41]:** BLM needs to consult with Tribes, Signatories and Consulting Parties to finalize inventory methods prior to completion of the PA. When reviewing agreement documents, the [ACHP](#) states, "Where the Section 106 agreement cites or references an attachment or appendix, it is imperative that the actual attachment or appendix be appended to the agreement document." Appendices are an integral component of the PA. Without referenced appendices, the PA is incomplete, and Signatories should not sign an incomplete PA. The ACHP asks in their [Section 106 Agreement Checklist: Reviewer's Guide](#), "Are all attachments and appendices cited in the agreement included?" Failing to include Appendix C means the answer is no, which means BLM is not using:

"best drafting practices [according to the [ACHP](#)] for writing agreements that are clear and comprehensible and that provide wisely for contingencies. ... [and failing to consider] ... important preparation practices that can help agreement document development move forward smoothly."

If I am misreading BLM's intent for when they intend to draft Appendix C, please let me know.

**Commented [HM(N42R41):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA

**Commented [BM43R41]:** Concur with this approach

**Commented [MJR44]:** This is a moot point because BLM must complete appendices prior to finalizing the PA.

**Commented [HM(N45R44):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA

VII. Standards

- A. Professional Qualifications:
  - 1. For work not performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of qualified historic preservation professionals who meet the SOI Professional Qualifications Standards (48 Federal Register 44716-44742). The BLM and FWS, through review of permit applications or other means, shall ensure that consultants retained for services pursuant to the Agreement meet these standards.
  - 2. A "qualified historic preservation professional" is a person who meets the relevant standards outlined in the Archeology and Historic Preservation: (SOI) Standards and Guidelines [as Amended and Annotated] ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised equivalent.
  - 3. BLM acknowledges that Indian Tribes possess specialized expertise in identifying and assessing the eligibility of Historic Properties that may possess religious or cultural significance to Indian Tribes (36 CFR 800.4(c)(1)), and as such, do not need to meet the SOI standards regarding

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1 identifying and evaluating Historic Properties of religious or cultural  
2 significance to them.

Commented [MJR46]: Excellent! Now, let's be explicit how BLM will involve this "specialized expertise."

3  
4 B. Professional Standards:

5 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
6 ensure that all work conducted as a result of this PA not otherwise done by  
7 BLM or FWS professional staff is performed in accordance with the SOI  
8 Standards for Archeology and Historic Preservation (Standards and  
9 Guidelines) (48 Fed. Reg. 44716-44742).

Commented [WF47]: So, if the BLM and FWS do work, they don't need to meet these standards?

10  
11 2. BLM shall require that persons supervising and conducting work on the behalf  
12 of lessees hold the appropriate BLM permits and/or authorizations as  
13 appropriate for inventory, monitoring, and other investigations, and meet the  
14 Standards and Guidelines, as well as the SOI Professional Qualification  
15 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
16 that persons supervising and conducting work on the behalf of lessees  
17 comply with the NAGPRA POA.

Commented [HM(N48R47)]: BLM and FWS are responsible for meeting OPM professional standards for archeology

18  
19 3. Investigations associated with Program activities will be conducted in  
20 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
21 the standards presented in BLM Manual 8110 [Identifying And Evaluating](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
22 [Cultural Resources](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
23 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
24 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)) and BLM Manual 1780 *Tribal Relations*  
25 (<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>).

Commented [MJR49]: Manual 8110 is more focused on archaeological sites and old buildings while giving cursory mention to ethnographic resources. Manual 1780 goes into more detail on ethnographic research with tribes.

26  
27 4. Reports regarding Historic Properties shall meet the standards outlined in the  
28 SOI Standards for Archeology and Historic Preservation (Standards and  
29 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
30 guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History  
31 and Archaeology guidelines.

Commented [HM(N50R49)]: accepted

32 **VIII. Unanticipated Discoveries**

33 A. During the entire implementation of this Undertaking, BLM will ensure that the  
34 Signatories and Consulting Parties are informed of unanticipated discoveries  
35 within the Undertaking's APE during lessees or their contractor related activities  
36 associated with the BLM's oil and gas leasing program.

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37  
38 B. Lessees or their contactors will not take any actions that would adversely affect  
39 the discovery which may be eligible for listing in the NRHP without written  
40 approval from BLM.

41  
42 C. Upon the unanticipated discovery, the following steps listed below will be  
43 undertaken. If the unanticipated discovery includes human remains, burials, or  
44 funerary items, the additional steps listed in Stipulation IX shall be followed.  
45

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1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further discoveries can be reasonably expected to occur, to be no less than fifty (50) feet, and will notify the BLM within one business day;
2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two business days of the discovery;
3. The BLM or a SOI-qualified archaeologist approved by them will inspect the property as soon as possible and collect enough information to determine (if possible):
  - a. The extent of cultural materials associated with the unanticipated discovery or effect;
  - b. The degree of integrity; and
  - c. The cultural affiliation of the materials (if possible).
4. Within five (5) business days, BLM shall provide a summary of the information collected at the place of discovery to Signatories and Consulting Parties, which will include BLM's preliminary assessment of the NRHP eligibility of the discovery.
5. Within 14 days of the BLM's distribution of the information regarding the unanticipated discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.
  - a. If the BLM determines that the discovery is ineligible for listing in the NRHP and SHPO concurs, BLM shall authorize the lessee to continue activities in the area of the discovery.
  - b. If the BLM determines the discovery is eligible for listing in the NRHP and SHPO concurs, BLM will direct the lessee to prepare a plan for its avoidance, protection, or recovery of information in consultation with BLM, Signatories and Consulting Parties, as appropriate.
    - i. Within five (5) business days of receipt, BLM shall distribute copies of the proposed plan to Signatories and Consulting Parties for review and comment.
    - ii. Signatories and Consulting Parties shall have seven (7) business days to review the proposed plan and provide comments to BLM.
    - iii. BLM shall take into consideration timely comments received on the proposed plan and make a determination to either approve or request revisions to the proposed plan.
      - A. In the event that BLM requests revisions to the plan, BLM shall redistribute the revised plan under the same timelines as above, and Signatories and Consulting Parties shall have the same period of review.

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Commented [MJR52]: 50' is way too small of buffer. Even SAExploration places a 500' buffer around properties to avoid impacts. This PA should use 500' at minimum.

Commented [HM(N53R52): SIGNATORIES: Should this be different than 50-feet?

Commented [BM54R52]: Concur with 100 feet as suggested by SHO

Commented [MJR55]: Changed for sake of consistency.

Deleted: inadvertent

Commented [MJR56]: Excellent! You were already thinking of combining discoveries and effects!

Commented [HM(N57R56): SIGNATORIES: Should we use language from 800.13 for this section?

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- 6. Work in the established buffer will not proceed until either:
  - a. BLM approves plan and requires its implementation; or
  - b. The BLM determines that the discovery is not eligible for the NRHP, and the SHPO concurs with this determination.

- D. BLM will address any disputes over the evaluation or treatment of unanticipated discoveries as provided in Stipulation XIII of this PA.

**IX. Unanticipated Effects**

- A. If BLM, in consultation with Signatories and Consulting Parties, determines that unanticipated effect(s), including cumulative effects, have occurred to a Historic Property, BLM, in consultation with Signatories and Consulting Parties, will assess the effect(s), develop a plan to address the unanticipated effect(s), and avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to complete this process within 180 days of the recognition of the unanticipated effect(s).
- B. BLM will address any disputes over the resolution of unanticipated effects as provided in Stipulation XIII of this PA.

**X. Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

- A. The APE exists entirely on federally-managed lands, and the BLM shall ensure that any Native American burials, human remains, and/or related items discovered on federal lands during implementation of the terms of this PA will be treated with dignity and respect, and that all procedures guiding the treatment of human remains, funerary objects, sacred objects, or objects of cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).
- B. As surface manager of the APE, FWS is the managing agency for any and all human remains and NAGPRA materials.
- C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable state laws six (6) months after the execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be incorporated into this PA as Appendix D. At minimum, the POA shall contain:
  - 1. Notification Procedures and Protocols;
  - 2. Chain of Custody Procedures; and,
  - 3. Contact information for Law Enforcement, Tribal Representatives, and Agency personnel.
- D. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall

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Commented [MJR58]: See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

Commented [HM(N59R58)]: As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

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1 immediately cease, the area shall be secured from further disturbance, and the  
2 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
3 1. Upon notification, the BLM shall follow the procedures described in the  
4 NAGPRA POA (*Appendix D*).

5 **XI. Curation**

- 6 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
7 during any activities associated with the Undertaking are property of FWS as  
8 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
9 *Curation of Federally-Owned and Administered Archaeological Collections* under  
10 FWS's existing agreement with the University of Alaska Museum of the North  
11 (UAMN).  
12
- 13 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
14 submitting all materials recovered from federal lands to the UAMN within six  
15 months following approval of a final report, within one year following completion  
16 of the fieldwork that generated the collection, or other period of time as specified  
17 in the ARPA permit. All collections will be curation-ready, as determined by the  
18 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
19 behalf, will safeguard all materials from theft or damage by providing adequate  
20 interim storage facilities and conservation actions, consistent with the  
21 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
22 Permittee will provide BLM with all accession records and documentation  
23 associated with the transfer and curation of materials. BLM will share the  
24 documentation with the FWS. Information will be shared with the other  
25 Signatories and Consulting Parties as appropriate.  
26
- 27 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
28 the curation of any materials that are collected during the implementation this PA,  
29 in perpetuity. Curation costs may include, but are not limited to, curation fees  
30 charged by approved institutions, acquisition of archival materials, shipping,  
31 cleaning, rehousing, and any other conservation action.  
32
- 33 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
34 described above in Stipulation IX and in the NAGPRA POA (*Appendix D*).  
35
- 36 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
37 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
38 other transfers of artifacts recovered from the APE to local communities or  
39 facilities to support and enhance cultural ties to the APE.

40 **XII. Annual PA Meeting and Reports**

- 41 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
42 day annual meeting concerning this PA within one (1) year of the PA execution,  
43 and each succeeding year by that approximate same date, thereafter. The

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1 meeting will consist of: an initial day where Consulting Parties and Signatories  
2 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
3 for the upcoming year, (3) verify/update contact information for Consulting  
4 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
5 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
6 functioning to all parties benefit. The second day of meetings shall be held by the  
7 Signatories to consider the input received by Consulting Parties, discuss the PA's  
8 implementation, required amendments (as necessary), and other business  
9 related to the application of the PA terms.

- 10 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
11 Archaeology, or at another location by consensus of the Signatories. The  
12 parties may participate by telephone if they so desire.
- 13 2. The BLM will distribute meeting minutes to the meeting participants within  
14 thirty (30) days of the meeting, and meeting participants will provide  
15 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
16 amend the minutes as a result of comments and distribute finalized minutes  
17 within another fifteen (15) days.
- 18 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
19 BLM that a meeting is necessary outside of the regularly scheduled annual  
20 meeting, the Signatories and Consulting Parties will consider their request.  
21 BLM, taking into consideration the results of consultation, shall decide  
22 whether to convene additional meetings.

23  
24 B. Annual PA Report:

- 25 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
26 and Consulting Parties with a draft copy of that year's annual report that  
27 describes the completed and upcoming activities associated with the  
28 stipulations of this agreement. The report will include the following  
29 information, as appropriate:
  - 30 a. Number of leases issued;
  - 31 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 32 c. Consultation activities undertaken;
  - 33 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 34 e. Upcoming/Planned activities.
- 35 2. Signatories and Consulting Parties may provide comments to BLM at or  
36 before the Annual meeting regarding the content of the Annual Report.
- 37 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
38 and submit a Final Annual Report to Signatories and Consulting Parties.

Commented [HM(N60)]: Request to have in Fairbanks was rejected. BLM, FWS, SHPO are in Anchorage. If consulting parties request an alternate location it will be considered. Also, parties may participate by teleconference.

39  
40 **XIII. Dispute Resolution**

- 41 A. Should any of the Signatories or Consulting Parties who have become  
42 Concurring Parties to this PA have insight, improvements, or objections  
43 regarding the manner in which the terms of this PA are implemented, the BLM  
44 will consult with such party to determine if the inclusion, suggestion,



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1 recommendation, or objection may be addressed to the satisfaction of the party,  
2 which may include presenting a proposed amendment to this PA in accordance  
3 with Stipulation XV.  
4

- 5 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
6 notify the Signatories of the dispute, and seek input from Signatories to resolve  
7 the dispute.  
8
- 9 B. If the Signatories determine that an objection cannot be resolved, the BLM will:  
10 1. Forward all documentation relevant to the dispute, including the BLM's  
11 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
12 advice on the resolution of the objection within thirty (30) calendar days of  
13 receiving adequate documentation. Prior to reaching a final decision on the  
14 dispute, BLM will prepare a written response that takes into account any  
15 timely advice or comments regarding the dispute from the ACHP, Signatories,  
16 and Consulting Parties, and provide them with a copy of this written response.  
17 BLM will then proceed according to its final decision.  
18
- 19 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
20 (30) calendar-day time period, BLM may make a final decision on the dispute  
21 and proceed accordingly. Prior to reaching such a final decision, BLM will  
22 prepare a written response that takes into account any timely comments  
23 regarding the dispute from the Signatories and Consulting Parties to the PA  
24 and provide them and the ACHP with a copy of such written response.  
25
- 26 3. Regardless of the results of the dispute resolution measures described  
27 above, the BLM's responsibility is to carry out all other actions subject to the  
28 terms of this PA that are not the subject of the dispute.

29 **XIV. Duration**

- 30 A. The date the ACHP signs this PA is the ratification date, which officially executes  
31 the PA.  
32
- 33 B. This PA will remain in effect for ten (10) years after its execution.  
34
- 35 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
36 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
37 below no later than six (6) months prior to expiration of the agreement. If  
38 appropriate, the Signatories may execute a new agreement or amend to extend  
39 the duration of the current agreement.

40 **XV. Amendments**

- 41 A. The Signatories may amend this PA at any time when such amendment is  
42 agreed to in writing by all Signatories. The amendment will be effective on the  
43 date a copy signed by all of the Signatories is filed with the ACHP.

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- 1  
2 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
3 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
4  
5 C. In the event that another federal agency not initially a party to or subject to this  
6 PA receives an application for funding/licensing/or permitting an Undertaking in  
7 the 1002 area as described in this PA, that agency may fulfill its Section 106  
8 responsibilities by stating in writing it concurs with the terms of this PA and  
9 notifying the Signatories and Consulting Parties that it intends to do so. Such  
10 agreement shall be evidenced by execution of a signature page signed by an  
11 authorized individual for that agency, distribution of said page to all Signatories  
12 and Consulting Parties, filing this page with the ACHP, and implementation of the  
13 terms of this PA.  
14  
15 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
16 to reflect changes in personnel or contact information without requiring the PA to  
17 be amended in accordance with the procedures described above.

18 **xvi. Termination**

- 19 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
20 carried out, that party shall immediately consult with the other Signatories to  
21 attempt to develop an amendment or agreement on other actions that would  
22 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
23 such consultation (or another time period agreed to by all Signatories) an  
24 amendment or agreement on other actions that would avoid termination cannot  
25 be reached, any Signatory may terminate the Agreement upon written notification  
26 to the other Signatories.  
27  
28 B. In the event that a Signatory terminates this PA, and prior to further Program  
29 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
30 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
31 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
32 as to the course of action it will pursue.

33 **xvii. Emergency Situations**

- 34 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
35 Consulting Parties of an emergency situation, which represents an imminent  
36 threat to public health or safety or creates a hazardous condition, that also has  
37 potential to harm Historic Properties or the subsequent response has potential to  
38 harm Historic Properties and the measures taken to respond to the emergency or  
39 hazardous condition. Should the Signatories or Consulting Parties desire to  
40 provide technical assistance to the BLM, they shall submit comments to BLM  
41 within seven (7) calendar days from notification, if the nature of the emergency or  
42 hazardous condition allows for such coordination.  
43

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- 1 B. If the APE of the emergency situation has been surveyed for Historic Properties  
2 and none is within the APE, then BLM will request concurrence on a  
3 determination of “no Historic Properties affected” from the SHPO within five (5)  
4 calendar days from the initial notification.  
5
- 6 C. If the APE has not been surveyed for potential Historic Properties, then  
7 emergency actions will be monitored by a SOI qualified professional or the APE  
8 will be inventoried by a SOI-qualified professional no later than one (1) year after  
9 the emergency action is completed. BLM will require that a monitoring report or  
10 inventory report will be submitted to Signatories and Consulting Parties within  
11 thirty (30) days of the end of fieldwork.  
12
- 13 D. If a previously known or unknown Historic Property is adversely affected by  
14 emergency actions the BLM will consult with Signatories and Consulting Parties  
15 to resolve the adverse effect pursuant 36 CFR § 800.6.

Commented [MJR61]: Make sentence active. Who is doing this?

Commented [HM(N62R61)]: BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice.

Commented [MJR63]: Make sentence active. Who is doing this?

Commented [HM(N64R63)]: BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice.

16 **XVIII. Anti-Deficiency Provision**

- 17 A. Any obligation of the federal agencies set forth in this PA is subject to and  
18 dependent on appropriations by Congress and allocation of sufficient funds for  
19 that purpose. The federal agencies shall make reasonable and good faith efforts  
20 to secure the necessary funds to implement this PA in its entirety. If compliance  
21 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
22 implement the stipulations of this agreement, the federal agencies shall consult in  
23 accordance with the amendment and termination procedures found at  
24 Stipulations XV and XVI of this agreement.

25 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
26 that the BLM and FWS have taken into account the effects of the Undertaking on  
27 Historic Properties and have afforded the ACHP an opportunity to comment.  
28

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

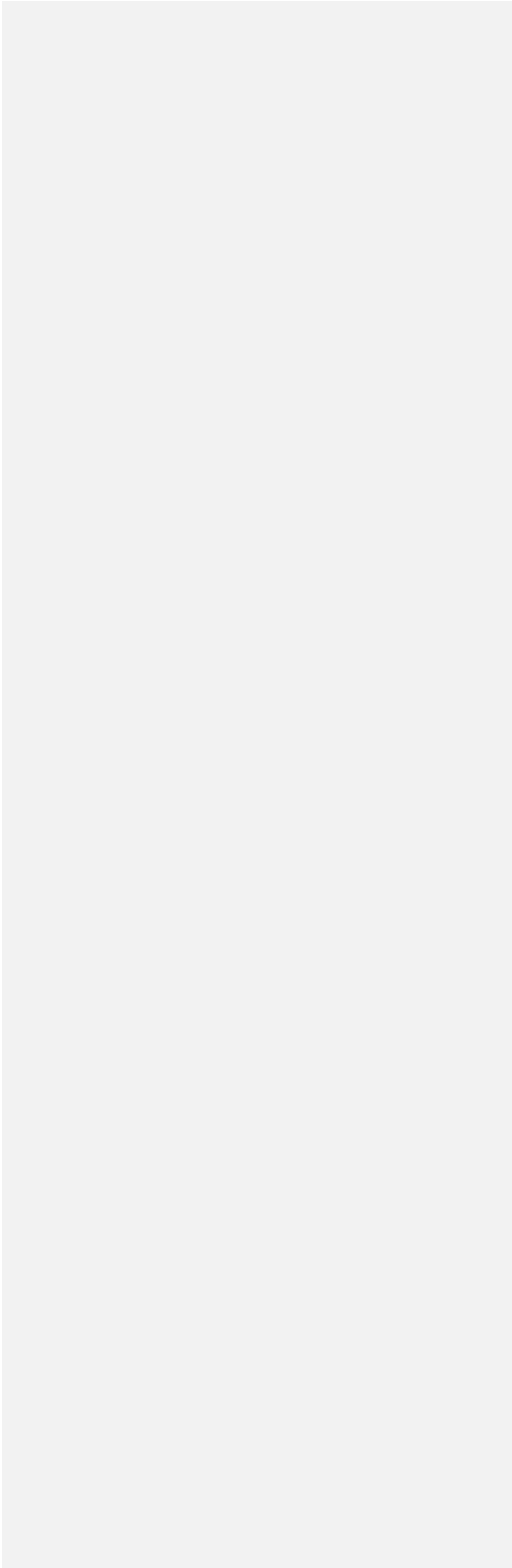
**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

DRAFT

DRAFT



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

DRAFT



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONCURRING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

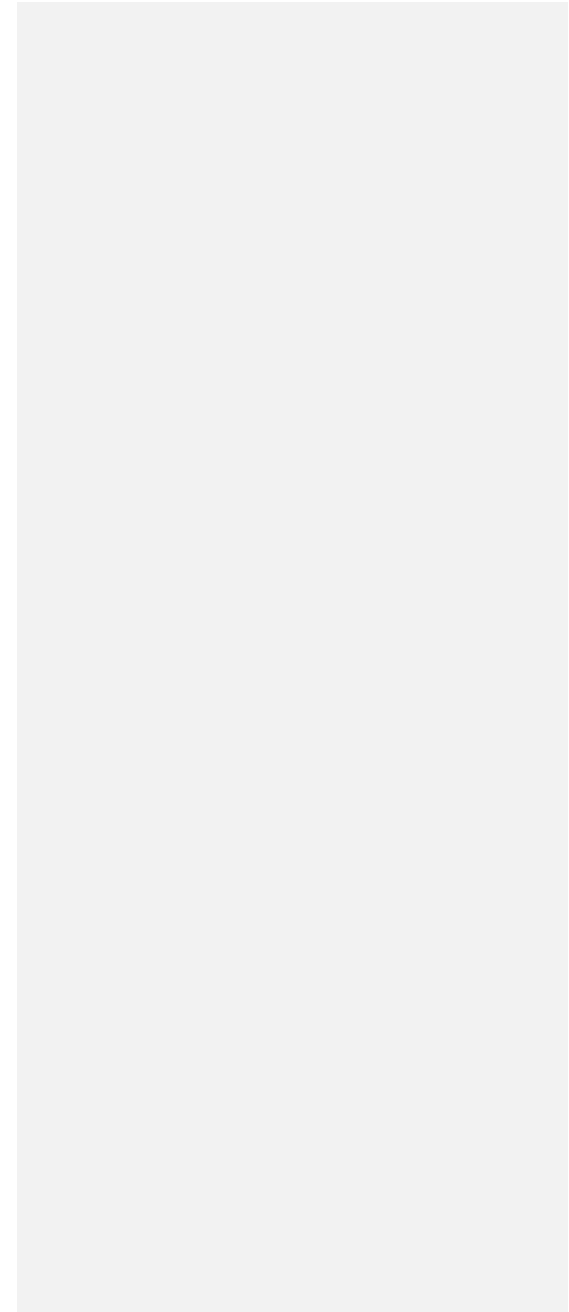
By: \_\_\_\_\_  
Date: \_\_\_\_\_

Deleted: CONSULTING

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1 **Appendix A: Area of Potential Effects**  
2

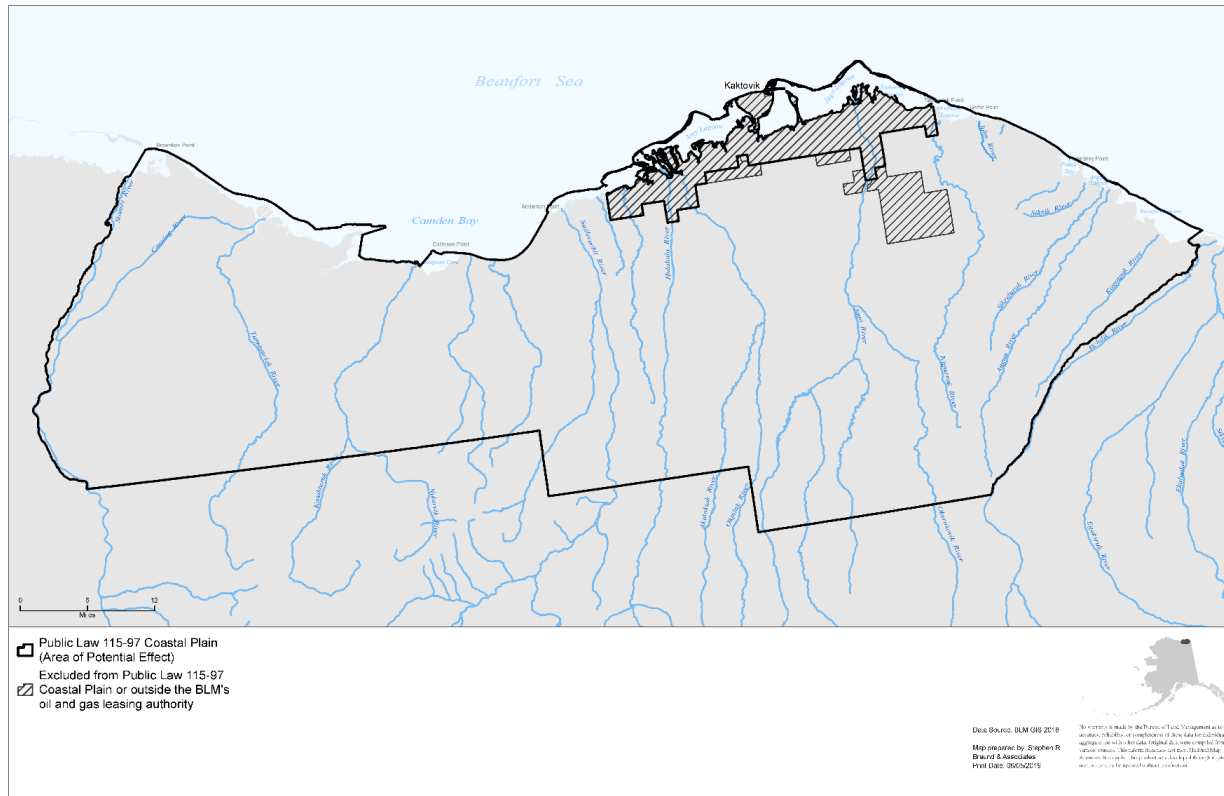
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



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A-2

NVVTG, AVC, VVC Comments on Draft PA\_07.11.19\_2.docx

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix B: Consulting Parties**

2  
3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
4 governments invited or requested to participate in consultation (\*indicates a response that they will  
5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

**Commented [WF65]:** This table should list every entity that was invited or requested to become a consulting party, including federal agencies and the state. It should also include the dates that those entities were invited/requested and the dates those invitations/requests were accepted. It should also more clearly show which parties did not participate. The PA also says this table will provide the POC, that should include the names of the POCs and their titles.

**Commented [HM(N66R65):** Revised PA to say "Contact information for consulting parties"

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

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1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

**Commented [MJR67]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

**Commented [HM(N68R67):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

**Commented [MJR69]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

**Commented [HM(N70R69):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

1 **Appendix E: PA Amendments (reserved)**

2 [PLACEHOLDER]

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix F: DRAFT PA Tracking Sheet**  
2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

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**Commented [WF71]:** Have there been no subsequent revisions or drafts since 3/25/19?  
**Commented [HM(N72R71):** Table will be updated



**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Decleva, Edward J](#); [Bittner, Judith E \(DNR\)](#); [Meitl, Sarah J \(DNR\)](#); [Bill Marzella](#); [Tom McCulloch](#)  
**Cc:** [King, Robert \(Bob\)](#); [Loya, Wendy M](#)  
**Subject:** Definitions Appendix  
**Date:** Friday, August 16, 2019 4:39:23 PM  
**Attachments:** [CP NHPA PA Definitions 8 15 19 SRBA.docx](#)

---

Attached is the definitions appendix that will be part of the CP PA. Please let me know by COB Tuesday 8/20 if you have any comments.

Thank you!

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

## APPENDIX F: DEFINITIONS

**Administrative Action:** Actions or decisions made by BLM or other federal agencies that relate to the internal administration of their agency, personnel, or jurisdiction, which do not authorize activities that will alter the physical environment or character of a place.

**Adverse Effect:** When an Undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the Undertaking that may occur later in time, be farther removed in distance or be cumulative.

**Area of Potential Effect (APE):** The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking [as noted in 36 C.F.R. § 800.16(d)].

**Concurring Parties:** The signatory parties may agree to invite others (concurring parties) to concur in the PA. The refusal of any party invited to concur in the PA does not invalidate the PA, (as noted in 36 C.F.R. § 800.6(c)(3)). Concurring Parties may not terminate the PA. Signing this PA as a Concurring Party does not imply endorsement or approval of the Project itself, or limit or restrict in any way the Concurring Party's right to object to, petition against, litigate against or in any other way express or advance critical or negative comments toward, the Project or its proponent.

**Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary of the Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation (36 C.F.R. § 800.16(f)).

**Consulting Parties:** Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c). These include the SHPO, Indian Tribes (which include native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), representatives of local governments, individuals and organizations with a demonstrated interest in the undertaking, and the public.

**Cultural Resource:** Locations of human activity, occupation, or usage that contain materials, structures, or landscapes that were used, built, or modified by people.

**Curation:** The disposition of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and

associated records that are prepared or assembled in connection with the survey, excavation or other study.

Data Recovery: The gathering of archaeological information from a historic property subject to an adverse effect. The associated procedures generally include, but are not limited to, excavation of subsurface archaeological deposits and documentation in the form of maps, photographs, feature drawings, field notes, and technical reports. The data recovered during these procedures can be utilized for future research.

Days: Days refer to calendar days unless otherwise noted.

Determination of Eligibility (DOE): A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of Consulting Indian Tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 60 and 36 CFR § 800.16(l)(2).

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Eligible for Inclusion in the National Register: This term includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Environmental Impact Statement (EIS): An analysis of a major federal action's environmental impacts conducted under the auspices of NEPA.

Federal Agency: Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an Undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the Undertaking and can commit the Federal agency to take appropriate action for a specific Undertaking as a result of Section 106 compliance.

Finding of Effect: A finding made by a Federal agency in coordination with the SHPO and other Consulting Parties in regards to a Project's effect upon a historic property consistent with 36 CFR. Part 800.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior pursuant to the criteria for evaluation set forth in 36 C.F.R. § 60.4.

Historic Property Management Plan (HPMP): HPMPs are developed to help meet the requirements under Section 106 of the NHPA. These plans provide detailed procedures and requirements to be implemented to resolve adverse effects to historic properties. HPMPs are often developed in conjunction with agreement documents (i.e. Memorandum of Agreement or PA).

Indian Tribe: An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

Invited Signatory: The agency official may invite additional parties to be signatories to a PA; any such party that signs the PA shall have the same rights with regard to seeking amendment or termination of the agreement as other Signatories. The refusal of any party invited to become a Signatory pursuant to paragraph (c)(2) does not invalidate the PA.

**Deleted:** The BLM has invited the State to be a Signatory to this PA pursuant to 36 C.F.R. § 800.6(c)(2).

National Environmental Policy Act (NEPA): NEPA is a federal law that requires federal agencies to disclose to the public the effects that major federal actions would have on environmental quality. These disclosures are reported as environmental assessments or environmental impact statements and quantify the potential environmental effects of proposed actions.

National Historic Preservation Act (NHPA): The NHPA is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Among other things, the act requires federal agencies to evaluate the impact of all federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

National Register of Historic Places (NRHP): The NRHP is the official list of the Nation's historic places worthy of preservation. Authorized by the NHPA and maintained by the Secretary of the Interior, it is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Native American Graves Protection and Repatriation Act (NAGPRA): (25 U.S.C. 3001 et. seq.). The Act requires federal agencies and institutions that receive federal funding to return Native American cultural items to lineal descendants and culturally affiliated Indian Tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties on museums that fail to comply. NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discoveries or excavations on private or state lands, the collection provisions of the Act may apply to Native American cultural items if they come under the control of an institution that receives federal funding.

Programmatic Agreement (PA): A Programmatic Agreement is a document that spells out the terms of a formal, legally binding agreement between state and/or federal agencies. A PA establishes a process for consultation, review, and compliance with one or more federal laws, most often with those federal laws concerning historic preservation.

Qualified Archaeologist: An archaeologist that meets the Secretary of the Interior's Standards and Guidelines for archeology (36 C.F.R. Part 61), which consist of, at a minimum, a graduate degree in archeology, anthropology, or closely related field plus, at least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management; at least four

months of supervised field and analytic experience in general North American archeology, demonstrated ability to carry research to completion, and at least one year of full-time professional experience at a supervisory level in the study of prehistoric or historic period archeology.

Signatories: In accordance with 36 C.F.R. § 800.6(c)(1), signatories have the sole authority to execute, amend, or terminate the agreement.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both"(Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

State Historic Preservation Officer (SHPO): The SHPO is responsible for administering the State Historic Preservation Program which includes providing assistance to Federal and State agencies and local governments in carrying out their historic preservation responsibilities.

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

**Deleted:** State: In this document the term is used to specifically identify the Alaska Department of Natural Resources.¶

**Deleted:** Traditional Cultural Property (TCP): A property that is eligible for inclusion in the NRHP based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of the community. See <https://www.nps.gov/history/tribes/Documents/TCP.pdf>

**Deleted:** .

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Monty Rogers](#); [janet.cadzow@fortyukon.org](#); [Loya, Wendy M](#); [amy lewis](#); [Tiffany Yatlin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](#); [gordon.brower@north-slope.org](#); [City of Kaktovik - City Clerk](#); [Martineau, Faith C \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tomlohman2@aol.com](#); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keenev, Joseph W](#); [Jake Anders](#); [Bittner, Judith E \(DNR\)](#); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](#); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [Arlene Pitka <apitka@beavercouncil.org>](#); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Soplu](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [ida.angasan@ilisagvik.edu](#); [Kevin S. Fisher](#); [Donna Thomas](#); [Tyler Janowski](#); [Decieva, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](#); [Bill Marzella](#); [dale.hardy@fortyukon.org](#); [Wesley Furlong](#); [Meitl, Sarah J \(DNR\)](#); [coastalplainAR](#); [Sweet, Serena E](#); [Arctic Village Council](#)  
**Subject:** Draft Final Programmatic Agreement- COMMENTS DUE 7/12/19  
**Date:** Thursday, June 13, 2019 9:18:18 AM  
**Attachments:** [EMP18\\_Draft\\_PA\\_6\\_12\\_19\\_clean.docx](#)  
**Importance:** High

---

Good afternoon,

Attached is the DRAFT Final Programmatic Agreement (PA) based on the comments received on the March 25, 2019 draft.

In addition to content changes, you will see structural changes were made to the PA to:

- 1) Ensure the PA is in conformance with the 36 CFR Part 800 regulations written by the Advisory Council on Historic Preservation (ACHP);
- 2) Take into account the ACHP's written guidance on how to appropriately write PAs and what their contents should be, etc. (e.g., coordination processes between FWS and BLM were taken out of the PA);
- 3) Create a PA that does not include stipulations that were inappropriate per the ACHP's regulations and guidance;
- 4) Improve wording, eliminate redundancies, and bring better focus to the PA, thus making it more understandable to everyone; and
- 5) Ensure the document is reflective of the PA objective: Trying to plan for events and corresponding actions to be taken in the future, yet recognizing the lack of total certainty of what may happen in the future requires the need for the PA to be reasonable, workable, and provide adequate flexibility.

The attached version (dated June 12), thoroughly considers all of the comments received to date. If you would like to see the response to comments and/or set up an individual meeting to discuss the response to your comments prior to the next consulting parties meeting, please let me know.

Comments on the attached draft final PA are **due by close of business July 11th**. Our next consulting parties meeting will be **July 16th**. Will send out meeting invite in the next couple of weeks.

Please feel free to contact me directly anytime to discuss further.

Thank you,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

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1  
2 **DRAFT PROGRAMMATIC AGREEMENT**

3 Among the  
4 United States Department of the Interior, Bureau of Land Management  
5 United States Department of the Interior, Fish and Wildlife Service  
6 Alaska State Historic Preservation Officer  
7 and  
8 Advisory Council on Historic Preservation  
9 Regarding the  
10 Coastal Plain Oil and Gas Leasing Program  
11

12 **PREAMBLE**  
13

14 **WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land  
15 Management (BLM) has been directed to implement an oil and gas leasing program  
16 (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)  
17 pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December  
18 22, 2017]); and

19 **WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires  
20 each federal agency, prior to any federal or federally sponsored, assisted, or  
21 authorized Undertaking, to take into account the effects of the proposed Undertaking  
22 on Historic Properties, which are properties listed on or eligible for listing in the  
23 National Register of Historic Places (NRHP), and to afford the Advisory Council on  
24 Historic Preservation (ACHP) a reasonable opportunity to comment regarding such  
25 Undertaking; and

26 **WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing  
27 program, and therefore the BLM is the lead federal agency for purposes of  
28 complying with Section 106 of the NHPA; and

29 **WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation  
30 IV, including the development of an Environmental Impact Statement and selection of a  
31 preferred alternative that will guide the sale of leases for oil and gas activities pursuant  
32 to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an  
33 Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the  
34 NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

35 **WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation  
36 Officer (SHPO) and the ACHP, has determined that the area of potential effects  
37 (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5  
38 million acres, and is defined in Section 20001 of Public Law 115-97, and is further  
39 described in *Appendix A: Area of Potential Effects*; and

40 **WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined  
41 that compliance with Section 106 may best be achieved through the development of a  
42 PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRS) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRS database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)   
5 agree that the Undertaking shall be implemented in accordance with the following   
6 stipulations in order to take into account the effects of the Undertaking on Historic   
7 Properties

## 8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

### 10 **I. Administrative**

11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
13 ensure that all lessees are aware that they must comply with the terms of this PA  
14 during activities on their lease(s).

15  
16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.

22  
23 C. BLM shall require that any type of archaeological work associated with BLM’s  
24 Program proposed within the APE not performed by BLM or FWS professional  
25 staff will be conducted only under terms of a federally issued Permit For  
26 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
27 application to the BLM or otherwise coordinated by BLM.

28  
29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.

31  
32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.

35  
36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41 (5) business days. Contact information for Signatories and Consulting Parties is  
42 included below in *Appendix B: Consulting Parties*.

- 1  
2 G. At any time, Signatories to this PA may request additional time for reviews of  
3 documentation, preparation of guidance documents, or any other time-sensitive  
4 materials outlined in this PA by providing a written request to all Signatories.  
5  
6 H. The Signatories may execute this PA in counterparts, with a separate page for  
7 each Signatory.

8 **II. Scope of the PA**

- 9 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and  
10 other federal laws that may be affected by the BLM’s Undertaking within the  
11 APE.  
12  
13 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
14 under Section 106 of NHPA, including consultation with Indian Tribes, for  
15 Program decisions that may be implemented in accordance with the decisions  
16 supported by the Program EIS and BLM policy.  
17  
18 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
19 involving reimbursement or contribution of funds between the parties to this PA  
20 will be handled in accordance with applicable laws, regulations, and procedures  
21 including those for Federal Government procurement and printing. Separate  
22 agreements will outline such endeavors and will be made in writing by  
23 representatives of the parties and will be independently authorized by  
24 appropriate statutory authority. This PA does not provide such authority.

25 **III. Agency Coordination Procedures**

26 A. Agency Roles and Coordination

27 1. BLM

- 28 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
29 106 compliance, is responsible for the following actions:  
30 i. Conducting Section 106 reviews of Projects the PA addresses;  
31 ii. Receiving permit applications and issuing permits that may be needed  
32 for Section 106 compliance work for oil and gas-related projects in the  
33 APE. Such permits needed may include various types of land use  
34 authorizations as well as Permits for Archaeological Investigations  
35 (“ARPA” Permits).  
36

37 2. FWS

- 38 a. FWS, as surface manager of the APE, is responsible for the following  
39 actions:  
40 i. Receiving, reviewing, commenting on, and evaluating applications for  
41 ARPA permits;  
42 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
43 determinations and findings made by BLM;

- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

#### 6   **IV. Section 106 Consultation Plan and Procedures**

- 7    A. BLM anticipates that the Program will include several Project types and that each
- 8    type will require consultation with Signatories and Consulting Parties. Project
- 9    types include:
- 10   1. Leasing;
- 11   2. Inventory, Research, and Monitoring Activities;
- 12   3. Geophysical Exploration;
- 13   4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14   5. Marine and Intertidal Activities and Operations;
- 15   6. Operations and Production;
- 16   7. Inspections and Enforcement; and
- 17   8. Reclamation
- 18
- 19   B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as
- 20   necessary” basis throughout the life of this PA on the above Project types to
- 21   include, but not limited to the following:
- 22   1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23   selection of alternatives;
- 24   2. Develop appropriate research designs and investigative methods for potential
- 25   Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26   studies;
- 27   3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28   BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29   Historic Properties within the Project-specific APE;
- 30   4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31   interested Consulting Parties) site visits within the Project-specific APE(s).
- 32   5. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 33   avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 34   may result from Program activities. These plans may include:
- 35   a. Monitoring lessee activities and effects on Historic Properties within the
- 36   Project-specific APE(s);
- 37   b. Periodic Historic Property condition assessments;
- 38   c. Documentation review to ensure lessees have fulfilled commitments
- 39   stipulated by BLM, and have complied with the terms of this PA.
- 40
- 41   C. The implementing regulations of Section 106 of the NHPA (36 CFR §
- 42   800.2[c][2][ii][A-C]) require BLM to:
- 43   1. Consult with any Indian Tribe that attaches religious and cultural significance
- 44   to Historic Properties that may be affected by an Undertaking,

- 1           2. Provide Indian Tribes with a reasonable opportunity to identify their concerns
- 2           about Historic Properties, to advise on the identification and evaluation of
- 3           Historic Properties, including those of traditional religious and cultural
- 4           importance, to articulate their views on the Undertaking's effects on such
- 5           properties, and to participate in the resolution of adverse effects,
- 6           3. Consult with Indian Tribes in a sensitive manner respectful of tribal
- 7           sovereignty, and in a manner sensitive to the concerns and needs of the
- 8           Indian Tribe.
- 9           4. In addition to those items listed above concerning BLM's consultation
- 10          obligations to Indian Tribes under the NHPA, BLM shall consult with Indian
- 11          Tribes as appropriate and needed, to:
- 12          a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see
- 13          *Appendix D*); and
- 14          b. Consider including Tribal representatives to participate in fieldwork,
- 15          monitoring, post-field analyses, and reporting activities.
- 16
- 17          D. At any time throughout the life of the PA, Consulting Parties may contact the
- 18          BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of
- 19          concern to the Signatories and other Consulting Parties at the Annual PA
- 20          Meeting.
- 21
- 22          E. At any time throughout the life of the PA, any outside entity not initially part of this
- 23          PA, including any Indian Tribes, may contact the BLM and request to become a
- 24          Consulting Party. BLM will consider any such request and notify the Signatories
- 25          and other Consulting Parties of the request and BLM's decision.

26          **V. Section 106 Procedures**

- 27          A. BLM's Undertaking involves a number of activities associated with oil and gas
- 28          leasing and associated activities within the APE that have varying potentials to
- 29          cause effects to Historic Properties, all of which are covered by this PA. The
- 30          steps below outline an alternate process for BLM to comply with NHPA for the
- 31          Undertaking, which will be carried out by BLM or FWS professional staff or non-
- 32          federal professionals who meet the Secretary of the Interior's (SOI) Professional
- 33          Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- 34
- 35          B. BLM shall make a good faith effort to identify and evaluate historic properties but
- 36          anticipates that in certain cases a 100 percent identification of a Project APE may
- 37          not be necessary, and NHRP evaluations may be conducted on all or some of
- 38          identified properties. BLM will collect, or direct lessees and/or their contractors to
- 39          collect, the amount of information necessary for the BLM to make decisions
- 40          regarding the potential of the Project Type(s) to affect Historic Properties.
- 41
- 42          C. At its discretion, BLM may submit documentation requesting SHPO concurrence
- 43          on determinations of eligibility and findings of effect concurrently in a combined
- 44          submission for Project Types described below.
- 45

1 D. Nothing shall prevent the BLM from seeking informal consultation with the  
2 Signatories or Consulting Parties regarding the preparation of determinations of  
3 eligibility or findings of effect.  
4

5 **F. Step 1: Oil and Gas Program Project Types Addressed under this PA**

6 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
7 that this PA will address the following Project types associated with the BLM's  
8 Oil and Gas Program within the APE:

- 9 a. Lease Sales
- 10 b. Inventory, Research, and Monitoring Activities
- 11 c. Geophysical Exploration
- 12 d. APD
- 13 e. Marine and Intertidal Activities and Operations
- 14 f. Operations and Production
- 15 g. Inspection and Enforcement
- 16 h. Reclamation

17  
18 **G. Step 2: Assess Project Potential to Cause Effects**

19 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
20 under review has potential to cause effects on Historic Properties. BLM shall  
21 determine that a Project type does not have the potential to cause effects if it  
22 meets one or more of the following conditions:

- 23 a. No new ground disturbance;
- 24 b. Lease Sale or other Administrative Action; or
- 25 c. Standard maintenance, repairs, or replacement of existing facilities or  
26 equipment.

27 2. If the Project type meets one or more of the above conditions, BLM shall  
28 make a determination that the Project type has “no potential to cause effects”  
29 and attach letter to the Project file [36 CFR 800.3(a)(1) determination].

30 3. If the Project type does not meet the above conditions, and the Project type  
31 consists of Inventory, Research, and Monitoring Activities, Geophysical  
32 Exploration, Marine and Intertidal Activities and Operations, Operations and  
33 Production, or Inspection and Enforcement, proceed to Step 3.

34 4. If the Project type does not meet the above conditions, and the Project type is  
35 an APD or Reclamation, BLM will consult with Signatories and Consulting  
36 Parties, and BLM will determine if the Project should be addressed under this  
37 PA, or if a separate Section 106 process and agreement document (“kick-  
38 out”) must occur in accordance with Step 8 below.  
39

40 **H. Step 3: APE**

41 1. Has BLM, in consultation with the SHPO, defined the APE?

- 42 a. If yes, proceed to Step 4.
- 43 b. If no, BLM defines the APE in consultation with SHPO.

44  
45 **I. Step 4: Identification**

- 1 1. Has BLM determined that adequate efforts to identify Historic Properties  
2 consistent with the procedures described in *Appendix C: Methods to*  
3 *Inventory the APE* have been completed within the APE?
  - 4 a. If yes, proceed to Step 5.
  - 5 b. If no, BLM will implement or direct the implementation of methods detailed  
6 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
7 level of effort to identify Historic Properties within the APE of the Project.  
8

9 **J. Step 5: Preliminary APE Assessment**

- 10 1. Has BLM determined that identification efforts have resulted in the  
11 identification of potential Historic Properties within the APE?
  - 12 a. If yes, proceed to Step 6.
  - 13 b. If no, proceed to Step 7.  
14

15 **K. Step 6: Evaluation**

- 16 1. Has BLM determined that potential Historic Properties identified within the  
17 APE have been evaluated for NRHP eligibility?
  - 18 a. If yes, proceed to Step 7.
  - 19 b. If no, the BLM will evaluate potential Historic Properties in the APE of the  
20 Project for NRHP eligibility (NRHP Bulletin 15).
    - 21 i. BLM will concurrently consult with FWS on all determinations of  
22 eligibility (DOEs), and with Indian Tribes on DOEs concerning potential  
23 Historic Properties of religious and cultural significance prior to  
24 submitting them to SHPO for concurrence.
      - 25 1. FWS will have thirty (30) days to review and respond to  
26 determinations submitted by BLM. If FWS does not offer comment  
27 within the review period, then BLM will presume agreement with the  
28 DOE(s).
      - 29 2. Indian Tribes will have thirty (30) days to review and respond to  
30 determinations submitted by BLM. If an Indian Tribe(s) does not  
31 offer comment within the review period, then BLM will presume  
32 agreement with the DOE(s).
    - 33 ii. Additional time to review a BLM submittal of a DOE(s) may be  
34 requested by FWS and/or Indian Tribes, up to thirty (30) days per  
35 submittal.
    - 36 iii. After the review period for FWS and Indian Tribes has elapsed,  
37 including any extensions requested, BLM will submit the DOE to  
38 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
39 does not offer comment within the review period, then BLM will  
40 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
41 Step 7.
      - 42 1. BLM may combine the DOE submittal to SHPO with a finding of  
43 effect determination and request for concurrence as outlined below  
44 in Step 7.



- 1 iv. Additional time to review a BLM submittal of a DOE(s) may be
- 2 requested by SHPO, up to thirty (30) days per submittal.
- 3 v. If agreement cannot be reached on a DOE between BLM and SHPO,
- 4 then the BLM shall follow the procedures outlined at 36 CFR §
- 5 800.4(c)(2).
- 6 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe
- 7 disagrees with BLM’s DOE regarding a property of religious and
- 8 cultural significance, it may ask the Council to request that the BLM
- 9 obtain a determination from the Secretary of the Interior, as
- 10 delegated to the Keeper of the NRHP.
- 11 vi. Once BLM completes the required NRHP evaluations in the APE, BLM
- 12 may then proceed to Step 7.
- 13

14 **L. Step 7: Assess Effects**

- 15 1. Has BLM determined there are Historic Properties in the APE?
- 16 a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]),
- 17 which shall include consultation with Signatories and Consulting Parties.
- 18 i. If BLM makes a finding of “no adverse effect” (36 CFR 800.5[b]), BLM
- 19 shall notify Signatories and Consulting Parties of the finding and
- 20 provide them with documentation supporting this finding.
- 21 1. If SHPO concurs with the BLM’s determination, BLM shall
- 22 document SHPO concurrence to the Project file.
- 23 2. If SHPO does not concur, and resolution cannot be reached
- 24 through consultation, BLM shall follow the procedures outlined at
- 25 36 CFR 800.5(c)(2-3).
- 26 ii. If BLM makes a finding of “adverse effect” (36 CFR 800.5[d][2]) then
- 27 BLM shall request the lessee or applicant propose methods to avoid,
- 28 minimize, and/or mitigate adverse effects.
- 29 1. Upon receipt of the applicant’s proposed methods to avoid,
- 30 minimize, and/or mitigate adverse effects, BLM shall reapply the
- 31 criteria of adverse effect in consultation with Signatories and
- 32 Consulting Parties, and if necessary, revise their finding of effect.
- 33 iii. If BLM, in consultation with Signatories and Consulting Parties
- 34 determines that an applicant’s proposed methods to avoid, minimize,
- 35 and/or mitigate adverse effects will still result in adverse effects to
- 36 Historic Properties, the process shall revert to the standard Section
- 37 106 procedures at 36 CFR 800.6.
- 38
- 39 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR
- 40 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty
- 41 (30) days to review the BLM’s determination. BLM shall also provide
- 42 notice to the Signatories and Consulting Parties of this finding in
- 43 accordance with 36 CFR 800.4(d)(1).

- 1 i. If SHPO concurs with the BLM’s determination, BLM shall document
- 2 SHPO concurrence to the Project file.
- 3 ii. If SHPO does not concur, and resolution cannot be reached through
- 4 consultation between SHPO and BLM, BLM shall follow the
- 5 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

6 **M. Step 8: Decision regarding Undertaking**

- 7 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as
- 8 applicable, and BLM has documented the appropriate finding of effect and
- 9 resolution efforts, as required, to the Project file.
- 10
- 11 2. Alternatively, if BLM has determined that a separate Section 106 process and
- 12 agreement document (“kick-out”) is required for an APD or Reclamation
- 13 Project (see Step 2), BLM may authorize an APD or Reclamation Project
- 14 subject to this PA only after the separate Section 106 review has been
- 15 completed, and if necessary, the appropriate agreement document (e.g.,
- 16 Memorandum of Agreement or Programmatic Agreement) has been executed
- 17 for the Project.
- 18

19 **N. Step 9: Reporting**

- 20 1. BLM will include a summary of all Projects reviewed under this PA in the
- 21 previous year in the annual PA report [Stipulation XII]. The summary will
- 22 include a synopsis for each project, including at minimum:
- 23 a. A description of the Project;
- 24 b. Delineation of the APE;
- 25 c. Identification efforts within the APE;
- 26 d. NRHP eligibility of known properties within the APE;
- 27 e. BLM’s finding of effect for the Project; and,
- 28 f. The Qualifications of the Individual who conducted the PA Compliance
- 29 Review.
- 30
- 31 2. BLM will submit reports associated with identification, evaluation, and
- 32 assessments of effect that were used to support BLM findings of effect to the
- 33 SHPO.
- 34

35 BLM may append reports associated with identification, evaluation, and

36 assessments of effect that were used to support BLM finding to the annual PA

37 report, provided they do not contain sensitive information regarding Historic

38 Properties.

39 **VI. Methods to Inventory APE**

- 40 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*
- 41 within six (6) months of execution of the PA. BLM may request additional time to

1 complete this draft; however, BLM must submit this request in writing to the  
2 Signatories for concurrence.  
3

4 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
5 comment.  
6

7 C. BLM will consider timely comments received and revise the draft accordingly.  
8 Multiple drafts may be required, and a final draft will be sent out for review no  
9 later than one year from the execution of the PA.  
10

11 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
12 the first draft and the final draft concurrent with Signatory review.  
13

14 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*  
15 *Inventory the APE* before it is considered final.  
16

17 F. Drafts cannot be used as interim guidance. If a project needs to move through  
18 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*  
19 *APE*, then the appropriate level of effort and methods will be determined through  
20 consultation among BLM, FWS, and SHPO on a case-by-case basis.

## 21 VII. Standards

22 A. Professional Qualifications:

23 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
24 shall ensure that all work carried out pursuant to this Agreement shall be  
25 done by or under the direct supervision of a qualified historic preservation  
26 professionals who meet the (SOI) Professional Qualifications Standards (48  
27 Federal Register 44716-44742). The BLM and FWS, through review of permit  
28 applications or other means, shall ensure that consultants retained for  
29 services pursuant to the Agreement meet these standards.  
30

31 2. A “qualified historic preservation professional” is a person who meets the  
32 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
33 Standards and Guidelines [As Amended and Annotated]  
34 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised  
35 equivalent.  
36

37 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
38 identifying and assessing the eligibility of Historic Properties that may  
39 possess religious or cultural significance to Indian Tribes (36 CFR  
40 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
41 identifying and evaluating Historic Properties of religious or cultural  
42 significance to them.  
43

44 B. Professional Standards:

- 1 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
2 ensure that all work conducted as a result of this PA not otherwise done by  
3 BLM or FWS professional staff is performed in accordance with the SOI  
4 Standards for Archeology and Historic Preservation (Standards and  
5 Guidelines) (48 Fed. Reg. 44716-44742).  
6
- 7 2. BLM shall require that persons supervising and conducting work on the behalf  
8 of lessees hold the appropriate BLM permits and/or authorizations as  
9 appropriate for inventory, monitoring, and other investigations, and meet the  
10 Standards and Guidelines, as well as the SOI Professional Qualification  
11 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
12 that persons supervising and conducting work on the behalf of lessees  
13 comply with the NAGPRA POA.  
14
- 15 3. Investigations associated with Program activities will be conducted in  
16 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
17 the standards presented in BLM Manual 8110  
18 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
19 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)).  
20
- 21 4. Reports regarding Historic Properties shall meet the standards outlined in the  
22 SOI Standards for Archeology and Historic Preservation (Standards and  
23 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
24 guidance (i.e., BLM Manual 8110), and Alaska Office of History and  
25 Archaeology guidelines.

## 26 **VIII. Unanticipated Discoveries**

- 27 A. During the entire implementation of this Undertaking, BLM will ensure that the  
28 Signatories and Consulting Parties are informed of unanticipated discoveries  
29 within the Undertaking's APE during lessees or their contractor related activities  
30 associated with the BLM's oil and gas leasing program.  
31
- 32 B. Lessees or their contactors will not take any actions that would adversely affect  
33 the discovery which may be eligible for listing in the NRHP without written  
34 approval from BLM.  
35
- 36 C. Upon the unanticipated discovery , the following steps listed below will be  
37 undertaken. If the unanticipated discovery includes human remains, burials, or  
38 funerary items, the additional steps listed in Stipulation IX shall be followed.  
39
- 40 1. The lessee will ensure that their operator or contractor will halt all activity in  
41 the area of the find and an appropriate buffer surrounding the area where  
42 further subsurface finds can be reasonably expected to occur, to be no less  
43 than fifty (50) feet, and will notify the BLM within one business day;  
44

- 1           2. The BLM shall require the suspension of activity within the established buffer,  
2           and shall notify the Signatories and Consulting Parties within two business  
3           days of the discovery;  
4
- 5           3. The BLM or a SOI-qualified archaeologist approved by them will inspect the  
6           property as soon as possible and collect enough information to determine (if  
7           possible):  
8           a. The extent of cultural materials associated with the inadvertent discovery  
9           or effect;  
10           b. The degree of integrity; and  
11           c. The cultural affiliation of the materials (if possible).  
12
- 13           4. Within five (5) business days, BLM shall provide a summary of the information  
14           collected at the discovery to Signatories and Consulting Parties, which will  
15           include BLM's preliminary assessment of the NRHP eligibility of the  
16           discovery.  
17
- 18           5. Within 14 days of the BLM's distribution of the information regarding the  
19           discovery, the BLM, in consultation with the Signatories and Consulting  
20           Parties, will determine whether the discovery encountered is eligible for listing  
21           in the NRHP.  
22           a. If the BLM determines that the discovery is ineligible for listing in the  
23           NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
24           activities in the area of the discovery.  
25           b. If the BLM determines the discovery is eligible for listing in the NRHP and  
26           SHPO concurs, BLM will direct the lessee to prepare a plan for its  
27           avoidance, protection, or recovery of information in consultation with BLM,  
28           Signatories and Consulting Parties, as appropriate.  
29           i. Within five (5) business days of receipt, BLM shall distribute copies of  
30           the proposed plan to Signatories and Consulting Parties for review and  
31           comment.  
32           ii. Signatories and Consulting Parties shall have seven (7) days to review  
33           the proposed plan and provide comments to BLM.  
34           iii. BLM shall take into consideration timely comments received on the  
35           proposed plan and make a determination to either approve or request  
36           revisions to the proposed plan.  
37           A. In the event that BLM requests revisions to the plan, BLM shall  
38           redistribute the revised plan under the same timelines as above,  
39           and Signatories and Consulting Parties shall have the same period  
40           of review.  
41
- 42           6. Work in the established buffer will not proceed until either:  
43           a. BLM approves plan and requires its implementation; or  
44           b. The BLM determines that the discovery is not eligible for the NRHP, and  
45           the SHPO concurs with this determination.  
46

- 1 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
2 discoveries as provided in Stipulation XIII of this PA.

3 **IX. Unanticipated Effects**

- 4 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
5 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
6 Property, BLM, in consultation with Signatories and Consulting Parties, will  
7 assess the effect(s), develop a plan to address the unanticipated effect(s), and  
8 avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to  
9 complete this process within 180 days of the recognition of the unanticipated  
10 effect(s).  
11  
12 B. BLM will address any disputes over the resolution of unanticipated effects as  
13 provided in Stipulation XIII of this PA.

14 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
15 **Objects, and Objects of Cultural Patrimony**

- 16 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
17 that any Native American burials, human remains, and/or related items  
18 discovered on federal lands during implementation of the terms of the Agreement  
19 will be treated with dignity and respect, and that all procedures guiding the  
20 treatment of human remains, funerary objects, sacred objects, or objects of  
21 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
22  
23 B. As surface manager of the APE, FWS is the managing agency for any and all  
24 human remains and NAGPRA materials.  
25  
26 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
27 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
28 state laws six (6) months after the execution of this PA. Upon completion, the  
29 Human Remains and NAGPRA POA shall be incorporated into this PA as  
30 *Appendix D*. At minimum, the POA shall contain:  
31 1. Notification Procedures and Protocols;  
32 2. Chain of Custody Procedures; and,  
33 3. Contact information for Law Enforcement, Tribal Representatives, and  
34 Agency personnel.  
35  
36 D. In the event that any Native American burials, human remains, or funerary items  
37 are inadvertently encountered during any Program activity, the activity shall  
38 immediately cease, the area shall be secured from further disturbance, and the  
39 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
40 1. Upon notification, the BLM shall follow the procedures described in the  
41 NAGPRA POA (*Appendix D*).

42 **XI. Curation**

- 1 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
2 during any activities associated with the Undertaking are property of FWS as  
3 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
4 *Curation of Federally-Owned and Administered Archaeological Collections* under  
5 FWS' existing agreement with the University of Alaska Museum of the North  
6 (UAMN).  
7
- 8 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
9 submitting all materials recovered from federal lands to the UAMN within six  
10 months following approval of a final report, within one year following completion  
11 of the fieldwork that generated the collection, or other period of time as specified  
12 in the ARPA permit. All collections will be curation-ready, as determined by the  
13 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
14 behalf, will safeguard all materials from theft or damage by providing adequate  
15 interim storage facilities and conservation actions, consistent with the  
16 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
17 Permittee will provide BLM with all accession records and documentation  
18 associated with the transfer and curation of materials. BLM will share the  
19 documentation with the FWS. Information will be shared with the other  
20 Signatories and Consulting Parties as appropriate.  
21
- 22 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
23 the curation of any materials that are collected during the implementation this PA,  
24 in perpetuity. Curation costs may include, but are not limited to, curation fees  
25 charged by approved institutions, acquisition of archival materials, shipping,  
26 cleaning, rehousing, and any other conservation action.  
27
- 28 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
29 described above in Stipulation IX and in the NAGPRA POA (Appendix D).  
30
- 31 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
32 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
33 other transfers of artifacts recovered from the APE to local communities or  
34 facilities to support and enhance cultural ties to the APE.

35 **XII. Annual PA Meeting and Reports**

- 36 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
37 day annual meeting concerning this PA within one (1) year of the PA execution,  
38 and each succeeding year by that approximate same date, thereafter. The  
39 meeting will consist of: an initial day where Consulting Parties and Signatories  
40 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
41 for the upcoming year, (3) verify/update contact information for Consulting  
42 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
43 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
44 functioning to all parties benefit. The second day of meetings shall be held by the  
45 Signatories to consider the input received by Consulting Parties, discuss the PA's

1 implementation, required amendments (as necessary), and other business  
2 related to the application of the PA terms.

- 3 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
4 Archaeology, or at another location by consensus of the Signatories. The  
5 parties may participate by telephone if they so desire.
- 6 2. The BLM will distribute meeting minutes to the meeting participants within  
7 thirty (30) days of the meeting, and meeting participants will provide  
8 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
9 amend the minutes as a result of comments and distribute finalized minutes  
10 within another fifteen (15) days.
- 11 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
12 BLM that a meeting is necessary outside of the regularly scheduled annual  
13 meeting, the Signatories and Consulting Parties will consider their request.  
14 BLM, taking into consideration the results of consultation, shall decide  
15 whether to convene additional meetings.

16  
17 B. Annual PA Report:

- 18 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
19 and Consulting Parties with a draft copy of that year's annual report that  
20 describes the completed and upcoming activities associated with the  
21 stipulations of this agreement. The report will include the following  
22 information, as appropriate:
  - 23 a. Number of leases issued;
  - 24 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 25 c. Consultation activities undertaken;
  - 26 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 27 e. Upcoming/Planned activities.
- 28 2. Signatories and Consulting Parties may provide comments to BLM at or  
29 before the Annual meeting regarding the content of the Annual Report.
- 30 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
31 and submit a Final Annual Report to Signatories and Consulting Parties.

32  
33 **XIII. Dispute Resolution**

- 34 A. Should any of the Signatories or Consulting Parties who have become  
35 Concurring Parties to this PA have insight, improvements, or objections  
36 regarding the manner in which the terms of this PA are implemented, the BLM  
37 will consult with such party to determine if the inclusion, suggestion,  
38 recommendation, or objection may be addressed to the satisfaction of the party,  
39 which may include presenting a proposed amendment to this PA in accordance  
40 with Stipulation XV.
- 41  
42 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
43 notify the Signatories of the dispute, and seek input from Signatories to resolve



1 the dispute.

- 2
- 3 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 4 1. Forward all documentation relevant to the dispute, including the BLM's
- 5 proposed resolution, to the ACHP. The ACHP will provide the BLM with its
- 6 advice on the resolution of the objection within thirty (30) calendar days of
- 7 receiving adequate documentation. Prior to reaching a final decision on the
- 8 dispute, BLM will prepare a written response that takes into account any
- 9 timely advice or comments regarding the dispute from the ACHP, Signatories,
- 10 and Consulting Parties, and provide them with a copy of this written response.
- 11 BLM will then proceed according to its final decision.
- 12
- 13 2. If the ACHP does not provide its advice regarding the dispute within the thirty
- 14 (30) calendar-day time period, BLM may make a final decision on the dispute
- 15 and proceed accordingly. Prior to reaching such a final decision, BLM will
- 16 prepare a written response that takes into account any timely comments
- 17 regarding the dispute from the Signatories and Consulting Parties to the PA
- 18 and provide them and the ACHP with a copy of such written response.
- 19
- 20 3. Regardless of the results of the dispute resolution measures described
- 21 above, the BLM's responsibility is to carry out all other actions subject to the
- 22 terms of this PA that are not the subject of the dispute.

23 **XIV. Duration**

- 24 A. The date the ACHP signs this PA is the ratification date, which officially executes
- 25 the PA.
- 26
- 27 B. This PA will remain in effect for ten (10) years after its execution.
- 28
- 29 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to
- 30 reconsider the terms of the PA and amend it in accordance with Stipulation XV
- 31 below no later than six (6) months prior to expiration of the agreement. If
- 32 appropriate, the Signatories may execute a new agreement or amend to extend
- 33 the duration of the current agreement.

34 **XV. Amendments**

- 35 A. The Signatories may amend this PA at any time when such amendment is
- 36 agreed to in writing by all Signatories. The amendment will be effective on the
- 37 date a copy signed by all of the Signatories is filed with the ACHP.
- 38
- 39 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All
- 40 amendments will be attached to the PA in *Appendix E: PA Amendments*.
- 41
- 42 C. In the event that another federal agency not initially a party to or subject to this
- 43 PA receives an application for funding/licensing/or permitting an Undertaking in

1 the 1002 area as described in this PA, that agency may fulfill its Section 106  
2 responsibilities by stating in writing it concurs with the terms of this PA and  
3 notifying the Signatories and Consulting Parties that it intends to do so. Such  
4 agreement shall be evidenced by execution of a signature page signed by an  
5 authorized individual for that agency, distribution of said page to all Signatories  
6 and Consulting Parties, filing this page with the ACHP, and implementation of the  
7 terms of this PA.  
8

- 9 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
10 to reflect changes in personnel or contact information without requiring the PA to  
11 be amended in accordance with the procedures described above.

12 **XVI. Termination**

- 13 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
14 carried out, that party shall immediately consult with the other Signatories to  
15 attempt to develop an amendment or agreement on other actions that would  
16 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
17 such consultation (or another time period agreed to by all Signatories) an  
18 amendment or agreement on other actions that would avoid termination cannot  
19 be reached, any Signatory may terminate the Agreement upon written notification  
20 to the other Signatories.  
21

- 22 B. In the event that a Signatory terminates this PA, and prior to further Program  
23 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
24 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
25 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
26 as to the course of action it will pursue.

27 **XVII. Emergency Situations**

- 28 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
29 Consulting Parties of an emergency situation, which represents an imminent  
30 threat to public health or safety or creates a hazardous condition, that also has  
31 potential to harm Historic Properties or the subsequent response has potential to  
32 harm Historic Properties and the measures taken to respond to the emergency or  
33 hazardous condition. Should the Signatories or Consulting Parties desire to  
34 provide technical assistance to the BLM, they shall submit comments to BLM  
35 within seven (7) calendar days from notification, if the nature of the emergency or  
36 hazardous condition allows for such coordination.  
37

- 38 B. If the APE of the emergency situation has been surveyed for Historic Properties  
39 and none is within the APE, then BLM will request concurrence on a  
40 determination of “no Historic Properties affected” from the SHPO within five (5)  
41 calendar days from the initial notification.  
42

- 1 C. If the APE has not been surveyed for potential Historic Properties, then  
2 emergency actions will be monitored by a SOI qualified professional or the APE  
3 will be inventoried by a SOI-qualified professional no later than one (1) year after  
4 the emergency action is completed. BLM will require that a monitoring report or  
5 inventory report will be submitted to Signatories and Consulting Parties within  
6 thirty (30) days of the end of fieldwork.  
7
- 8 D. If a previously known or unknown Historic Property is adversely affected by  
9 emergency actions the BLM will consult with Signatories and Consulting Parties  
10 to resolve the adverse effect pursuant 36 CFR § 800.6.

11 **XVIII. Anti-Deficiency Provision**

- 12 A. Any obligation of the federal agencies set forth in this PA is subject to and  
13 dependent on appropriations by Congress and allocation of sufficient funds for  
14 that purpose. The federal agencies shall make reasonable and good faith efforts  
15 to secure the necessary funds to implement this PA in its entirety. If compliance  
16 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
17 implement the stipulations of this agreement, the federal agencies shall consult in  
18 accordance with the amendment and termination procedures found at  
19 Stipulations XV and XVI of this agreement.

20 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
21 that the BLM and FWS have taken into account the effects of the Undertaking on  
22 Historic Properties and have afforded the ACHP an opportunity to comment.

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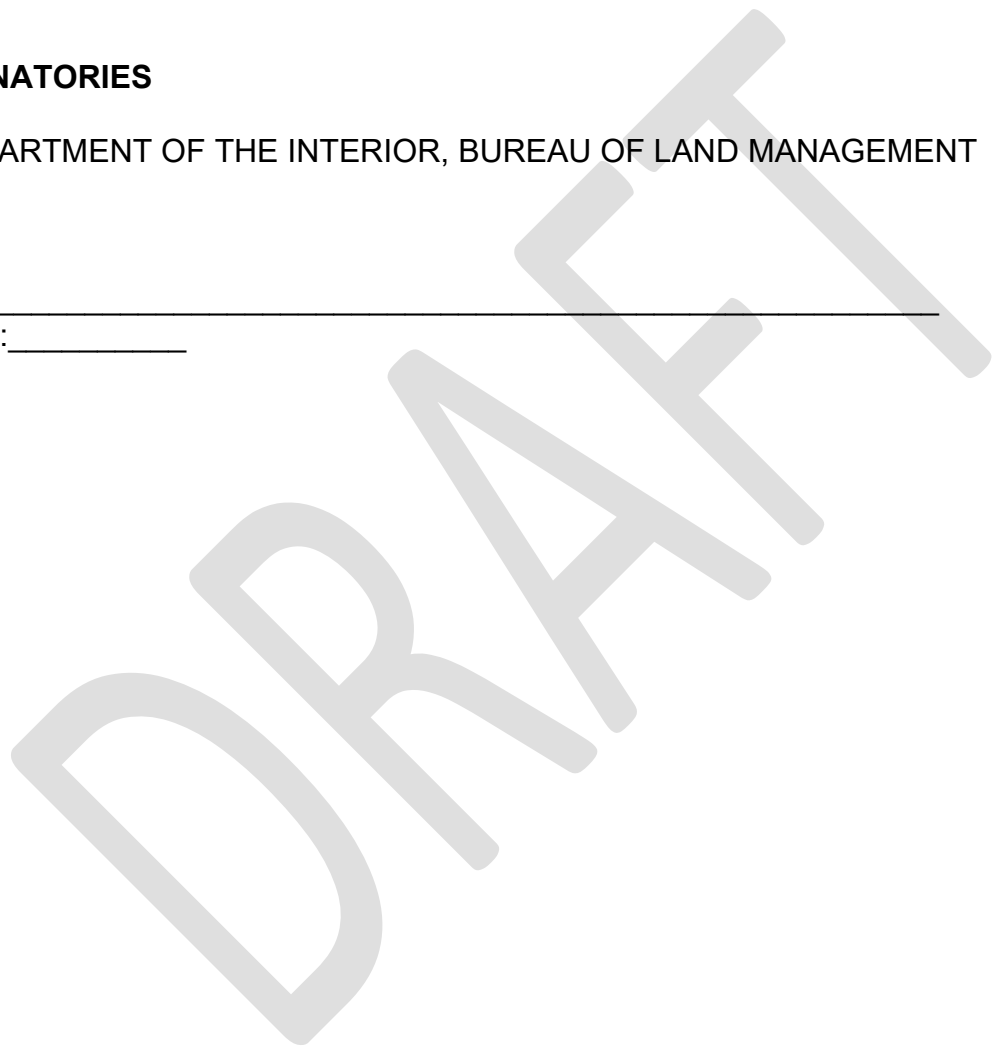
**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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



DRAFT

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

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

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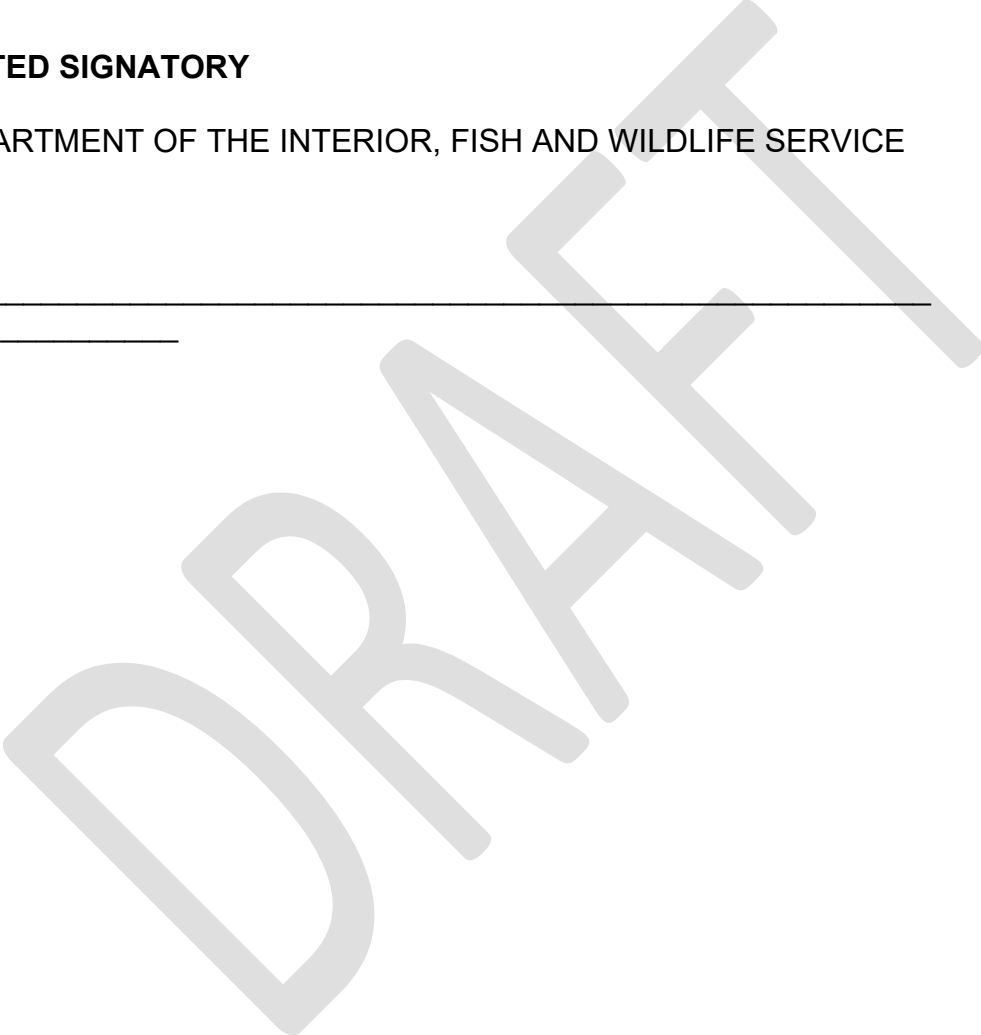
**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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





**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

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

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

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1 **Appendix A: Area of Potential Effects**

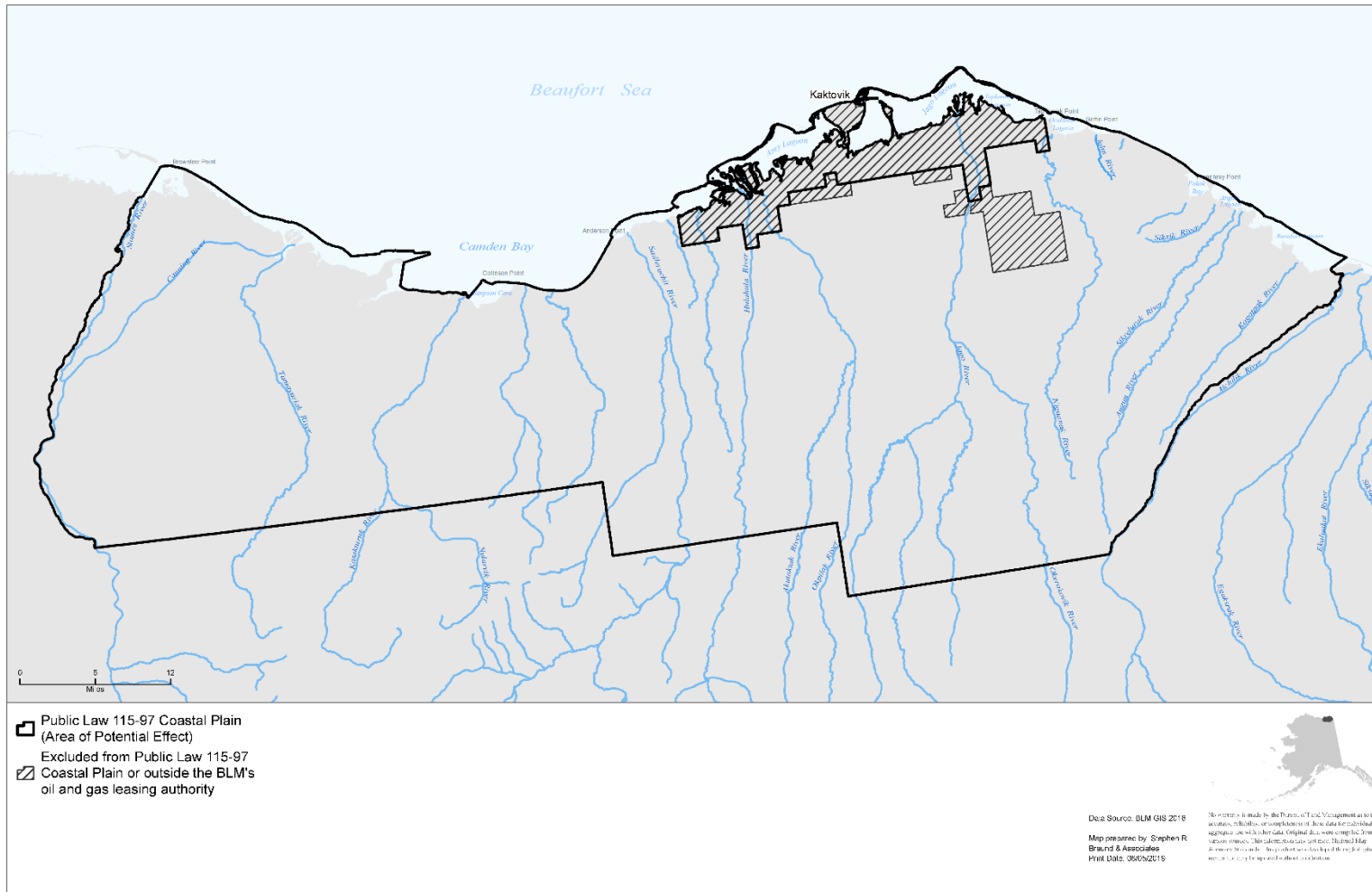
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

## Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
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1 **Appendix B: Consulting Parties**  
 2

3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsragsmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

6

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:

- 10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14

15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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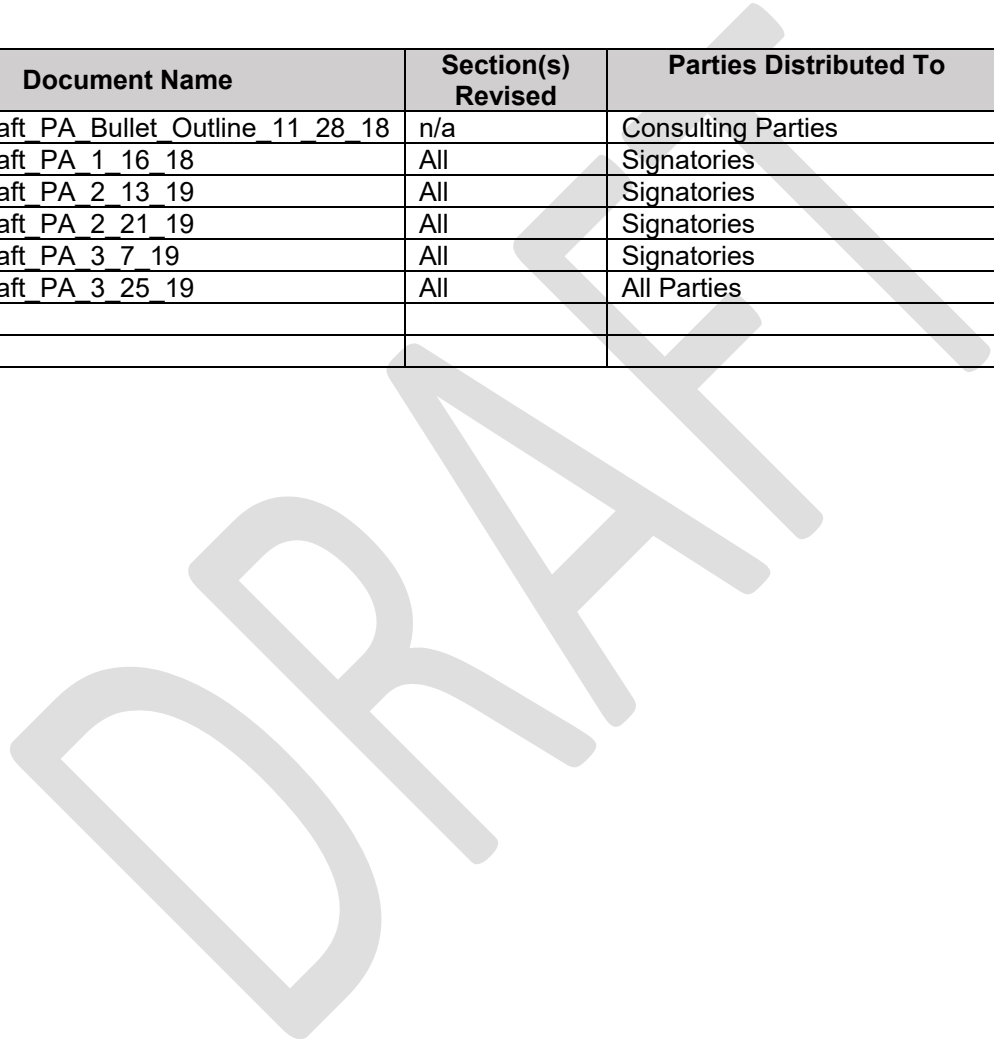
1 **Appendix F: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

3

4





**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Wesley Furlong](#)  
**Cc:** [Tiffany Yattin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](mailto:imatt@achp.gov); [Gordon Brower](#); [City of Kaktovik - City Clerk](#); [Faith C Martineau \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tom Lohman](#); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keeney, Joseph W](#); [Jake Anders](#); [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](mailto:fenton.rexford@north-slope.org); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [arlene.pitka@beavercouncil.org](mailto:arlene.pitka@beavercouncil.org); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Sopl](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [ida.angasan@ilisagvik.edu](mailto:ida.angasan@ilisagvik.edu); [Kevin S. Fisher](#); [Meitl, Sarah J \(DNR\)](#); [Donna Thomas](#); [Tyler Janowski](#); [Declava, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org); [Bill Marzella](#); [amy lewis](#); [janet.cadzow@fortyukon.org](mailto:janet.cadzow@fortyukon.org); [dale.hardy@fortyukon.org](mailto:dale.hardy@fortyukon.org); [Loya, Wendy M](#); [Monty Rogers](#)  
**Subject:** DRAFT MEETING NOTES FROM March 27 Section 106 Programmatic Agreement Consulting Parties Meeting  
**Date:** Friday, March 29, 2019 3:43:19 PM  
**Attachments:** [3 27 19 Consulting Parties Meeting Notes.docx](#)

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All,

Thank you for your participation in the meeting this week and thank you to SRBA for such thorough notes (see attached). Please look closely at the attendance list and let me know if there was anyone I may have missed, or if there are any other additions/edits/corrections to the notes. Any comments should be sent directly to me **by close of business 4/3/19**.

I will send out the table of comments received by consulting parties on the bulleted PA and the table of consulting parties, with the final meeting notes, by the end of next week.

Have a nice weekend.

Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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# BLM Coastal Plain PA

## Consulting Parties Meeting Notes

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5), Passcode: (b) (5)  
Date: March 27, 2019  
Time: 10:00am-12:00pm AKST/2:00pm-4:00pm EST

---

### Signatories:

BLM – Nicole Hayes, Bob King, Joseph Keeney, Robin Mills, and Shelly Jacobs  
ACHP – Bill Marzella  
SHPO – Sarah Meitl, Judy Bittner  
FWS- Wendy Loya, Ed DeCleva

### Consulting Parties

North Slope Borough– Dorothy Edwardson, Kevin Fisher, Tommy Nageak, Price Leavitt  
Native Village of Kaktovik – N/A  
Native Village of Venetie Tribal Government, Arctic Village Council, and Venetie Village Council – Wes Furlong (NARF), Monty Rogers (NARF)  
Arctic Slope Regional Corporation – Tyler Janowski, Erik Kenning  
Kaktovik Inupiat Corporation – N/A  
City of Kaktovik – N/A  
Doyon Limited – Sarah Obed  
Inupiat Community of the Arctic Slope – N/A  
Native Village of Barrow – N/A  
Beaver Tribal Council – N/A  
Gwichyaa Zhee Gwich'in Tribal Government – N/A  
Council of Athabaskan Tribal Governments – Charleen Fischer

### BLM Contractors

Stephen R. Braund and Associates – Stephen Braund, Paul Lawrence, Jake Anders

## Draft PA Overview

### Preamble

- Monty Rogers (NARF) – is APE definition for both direct and indirect APE?
- Shelly Jones– page 4 line 13 should list the number of historic properties identified by Tribes. Also page 4 line 16, will the stipulations be attached to various operations like exploration and not just lease sales?
- Sarah Meitl – Requests that Appendix B include a list of invited consulting parties. Include parties that were “Invited but not participating.”

### Stipulations

#### Administrative:

- Wes Furlong (NARF) asked for clarification regarding who has non-cultural responsibilities for the program. Shelly Jones (BLM) responded that NPR-A oil and gas staff are in Anchorage but NEPA and Cultural Resource staff for actions are in Fairbanks.

- Sarah Meitl (SHPO/OHA) – Move broad level concepts to front of PA and then incorporate into steps of process in the rest of the document as appropriate for improvement of flow

#### Agency Coordination Procedures

- Monty Rogers (NARF/Cultural Alaska)– What is the role of the tribes in the ARPA review process, including review of field methods? Request tribes review ARPA. Need to make tribal roles clearer.
- Jake Anders (SRB&A) - Tribal review of research designs is listed in Section V Section 106 Consultation Plan and Procedures.
- Sarah Meitl (SHPO/OHA) – BLM needs to distill agency coordination concepts in this section and move the actual procedures to Section IV Section 106 Procedures section. Do not need to include the minute agency details of coordination.
- Joe Keeney (BLM) – requested more detail in coordination with tribes. Which things do they want to be notified on and which do they wish to have more detailed consultation?
- Tommy Nageak (NSB) – Artifact collection coordination needs to be made with the tribal governments
- Joe Keeney (BLM) – discussing that NSB repositories are not federally approved/accredited
- Ed DeCleva (FWS) – FWS can try to work what will be acceptable to tribes and do long term loan agreements. Add bullet under IX Curation identifying this as a possible option for curation.
- Wes Furlong (NARF) – Revise bullet III.2.a.iii that FWS is agency with responsibilities for artifacts and not “controlling”

#### Stipulations – Section 106 Procedures

- Wes Furlong (NARF) – Section IV.D. and IV.E and associated Table 1 need rewording. They indicate there is flexibility in determining if a project type will cause effects, but the table does not provide the flexibility.
- Shelly Jones (BLM) – A project type that should be added is “Inventory, Research, and Monitoring Studies.” Examples would be base camps, access routes, landing zones.
- NSB Individual – Look at NSB list of operations and production activities.
- Sarah Meitl (SHPO/OHA) – if BLM has authority it should be covered under this PA. Need to add more language regarding project types with no potential to cause effects that they only have no potential if they meet certain criteria and if other activities are included (e.g., ground disturbing) then it become a project with potential to cause effects.
- Nicole Hayes (BLM) – BLM will clarify scope of phase as the intent was it to be for all activities pertaining to an oil and leasing program, but not before lease sales.

#### Stipulations – Section 106 Consultation Plan and Procedures

- Wes Furlong (NARF) – Tribes concern is that they are not being invited signatories. They cannot enforce tribal responsibilities for consultation if they are not signatories. Requesting tribes be added as signatories.
- Sarah Meitl (SHPO/OHA) – **Section XI Dispute Resolution** provides dispute resolution avenue for consulting parties. SHPO takes role seriously that PA needs to be working for all parties. Also requests that bullets regarding timing of consultation be added where appropriate.
- Wes Furlong (NARF) – put the actual steps/procedures of consultation in **Section IV Section 106 Procedures**

- Sarah Meitl (SHPO/OHA) – move **Section V Section 106 Consultation Plan and Procedures** to come before **Section IV Section 106 Procedures**
- Shelly Jones (BLM) – in the preamble, BLM can add bullet about ability to conduct additional G2G consultation.

Stipulations – Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

- Wes Furlong (NARF) – who fulfills NAGPRA?
- Sarah Meitl (SHPO/OHA) – add SHPO to be consulted for NAGPRA
- Shelly Jones (BLM) – add bullet about process for BLM to suspend permit activity if remains encountered. BLM main POC and then will notify FWS.
- Jake Anders (SRB&A) - move **Section VIII Late Discoveries** to come before **Section VII Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

Stipulations – Late Discoveries

- Monty Rogers (NARF/Cultural Alaska) – Change to “Unanticipated Discoveries” and add “and Unanticipated Effects” to the Heading
- Wes Furlong (NARF) – need to clarify if NAGPRA POA is appendix or attached to the lease.
- Wes Furlong (NARF) – include invited signatories and concurring party signature pages.
- Monty Rogers (Cultural Alaska) – request a 30 day review period for PA

## Wrap-Up

- Comments are currently due on April **26**, 2019
- If any consulting party wishes to talk individually please contact Nicole Hayes (BLM) via phone at 907-271-4354 or via email at mnhayes@blm.gov

## Action Items for BLM

- Monty Rogers (NARF) requested a month for review of the PA as opposed to 3 weeks. Nicole Hayes (BLM) to provide response to request –COMPLETE – DUE DATE 4/26/19.
- Wes Furlong (NARF) requested copies of all consulting parties comments on the initial bulleted PA. Nicole Hayes (BLM) to provide response to request.

## Action Items for Consulting Parties

- Provide BLM with two Points-of-Contact for the PA
- Review Draft PA and provide comments to BLM by **4/26/19**

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Faith C Martineau \(DNR\)](#); [sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov); [Loya, Wendy M](#); [Tom McCulloch](#); [Decleva, Edward J](#); [Keeney, Joseph W](#); [LaMarr, Sarah L](#); [King, Robert \(Bob\)](#); [Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com); [Stephen Braund](#)  
**Subject:** DRAFT NOTES from yesterday  
**Date:** Friday, October 26, 2018 9:43:55 AM  
**Attachments:** [10 25 18 Consulting Parties Meeting notes.docx](#)

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Please feel free to add/edit. I know I didn't capture everyone accurately so please add if you have those names.

Comments back TODAY would be great so I can distribute to the consulting parties!

Thank you,

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

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# BLM Coastal Plain PA

## Consulting Parties Meeting Agenda

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5), Passcode: (b) (5)  
Date: October 25, 2018  
Time: 10:30am-1:30pm AKST/2:30pm-5:30pm EST

---

### **I. Introductions**

#### **a. Federal and State Agencies**

BLM - Nicole Hayes, Bob King, Joe Keeney (Arctic District Office), Sarah LaMarr  
ACHP - Tom McCulloch, Ira Matt (Office of Native American Affairs)  
FWS – Wendy Loya, Ed DeCleva, Eugene Marino  
State of Alaska – Faith Martinneau, Sarah Meitl (SHPO)

#### **b. Tribal Governments**

Native Village of Kaktovik – Matthew Rexford, President Edward Rexford, Burt, Ida Agneson, Ms. Solomon  
Native Village of Venetie Tribal Government, Arctic Village Council, Venetie Village Council – Tonya Garnett, Charlene Stern

#### **c. Regional and Village Corporations**

Arctic Slope Regional Corporation – Tyler Janowski  
Kaktovik Inupiat Corporation – Glen Solomon, Fannie Sopl

#### **d. Local Governments**

City of Kaktovik – Left voicemail – attempted to call but line had reached capacity  
North Slope Borough – Tommy Nageak, John Dunham, Kevin Fischer, Fenton Rexford, Kathy Ahgeak (Inupiat History and Language Department)

#### **e. Consultants and others**

Stephen R. Braund & Associates (SRBA)– Stephen Braund, Jake Anders  
Native American Rights Fund (representing NVVTG, AVC, VVC)- Matt Newman , Monty Rogers, Wes Furlong, Rob Rosenfeld

Kathy with IHLD noted it was really important to loop Frederick Brower, ICAS Executive Director, Tommy Nageak and Fenton Rexford (tribal liaison) into the process. Fenton had been instrumental in developing the TLUI with the SHPO for the AHRS. She also noted that there was a draft report available with a lot of good information by Ed Hall and Associates. 41 sites were identified in the Kaktovik TLUI and it is important that work is conducted sensitive to these areas and considerate of the information out there.

### **II. Background Overview of Available Cultural Resource Information**

- a. Coastal Archaeology
- b. Riverine Archaeological Survey
- c. Ethnographic Resources

Jake Anders with SRB&A discussed the limited information available for the area and acknowledged there is limited documentation and much to be learned.

Ida Agneson requested notes of the meeting. Nicole stated she would send out.

### **III. Objective and Scope of Coastal Leasing Programmatic Agreement (PA)**

The objectives of the PA are:

- To provide clarity and consistency to Section 106 Consulting Parties throughout the Bureau of Land Management's (BLM) leasing program in the Coastal Plain for Oil and Gas activities;
- To ensure BLM's compliance with the National Historic Preservation Act through the execution of a legally-binding agreement that defines the process; and
- Ensure BLM and lessees of federal lands within the Coastal Plain will follow and consider the effects of the Program on historic properties.

The scope of the PA covers two primary facets which are the Leasing Program and Subsequent Actions:

- For the Leasing Program the PA will define:
  - how, when, and who the BLM will consult with to identify, evaluate, and assess the effects of leasing on historic properties within the Program Area.
- For Subsequent Actions (individual lease development actions) the PA will:
  - Define how post-lease activities will comply with Section 106 by presenting standardized stipulations/mitigation measures for common/reasonably foreseeable activities
  - establish consultation protocols
  - provide timelines and schedules related to Section 106 compliance
  - outline administrative procedures
  - define a process for establishing future areas of potential effect, identification efforts, evaluations, assessment of effects and minimization and mitigation measures.

### **IV. Consulting Roles in PA Development**

Signatories to the PA are the entities required by regulation (36 CFR Part 800): The agency with the federal undertaking (BLM for the Leasing EIS); the Advisory Council on Historic Preservation; and the State Historic Preservation Officer. The U.S. Fish and Wildlife Service were invited as the surface manager of the Arctic Refuge.

Consulting Parties – are those parties instrumental in seeking input from for development of the PA. They include local governments and any tribes that might attach religious or cultural significance to historic properties in the area of potential effect (the Coastal Plain).

### **V. Consultation Plan and Timeline**

- Working backwards from April 2019 when the EIS is tentatively scheduled to be complete:

Initial step is reaching out to all the consulting parties to discuss how they wish to consult and participate in the PA development process. Nicole and/or Joe Keeney will be contacting consulting parties individually in the coming days.

- Expectations-
  - There are multiple opportunities to consult individually or as a group
  - Critical to understand the scope of the PA is based on the leasing program and any future on the ground actions will require a separate and additional environmental review and Section 106 process
- Milestones
  - Besides individual meetings, the next major milestones will be to distribute a draft PA based off of the individual consultations for the larger group to review. The timeline sent out via email is a tentative schedule of the goal dates for planning purposes.

## **VI. Upcoming Actions**

BLM scheduling forthcoming consultation meetings with individual consulting parties



**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Fannie Sopl](#); [Matthew Rexford](#)  
**Cc:** [Keeney, Joseph W](#); [King, Robert \(Bob\)](#); [coastalplainAR@empsi.com](mailto:coastalplainAR@empsi.com); [Paul Lawrence](#); [Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com); [Stephen Braund](#); [Tom McCulloch](#); [Loya, Wendy M](#); [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov); [Decleva, Edward J](#); [Faith C Martineau \(DNR\)](#); [Miraglia, Rita A](#); [sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov); [Jones, Nichelle \(Shelly\) W](#)  
**Subject:** Draft questions for tomorrow  
**Date:** Wednesday, November 7, 2018 7:12:04 AM

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Good morning, below are draft questions pertaining to our 106 Consultation for KIC to consider. We look forward to discussing them with you all tomorrow at 10:30 a.m.

1. Who are the one or two people that BLM should coordinate with for discussions pertaining to Section 106 of the NHPA?
2. What is the method that you wish to be contacted regarding the Programmatic Agreement in the future (e.g., phone, email, formal letter)?
3. If we scheduled annual meetings pertaining to the Programmatic Agreement, what is the best way to coordinate with KIC recognizing staff and/or leadership may change over a year period.
4. What are the best ways improve our understanding of the program area/community/culture?
5. Who is the most knowledgeable person or people that know about
  - a) the archaeological and historic sites in the Coastal Plain?
  - b) how people use the Coastal Plain today?
  - c) the Coastal Plain whom we may not know about?
  - d) information we need to consider about the Coastal Plain that you think we might not know about?
6. Which existing repositories for historical information do you think would best help to inform about historic use in the program area?
7. What are some common features of historical or culturally significant areas we should consider including in the Programmatic Agreement for consideration of future surveys?
8. Are there mitigation measures we should consider including in the Programmatic Agreement at the leasing stage to avoid or minimize potential impacts to historic properties or cultural resources?
9. Are there other questions we should be asking to help inform development of a Programmatic Agreement at the leasing stage?

Respectfully,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Rob Rosenfeld](#); [Tiffany Yatlin](#); [City of Kaktovik - City Clerk](#); [Gordon.Brower@north-slope.org](#); [Ray Atos](#); [Kathy Ahgeak](#); [patrick hanson](#); [imatt@achp.gov](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Rhonda Pitka](#); [Jake Anders](#); [Charlene Stern](#); [Arlene Pitka <apitka@beaverCouncil.org>](#); [Matthew Newman](#); [Tom Lohman](#); [Keeney, Joseph W](#); [Bittner, Judith E \(DNR\)](#); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](#); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Myra Thumma](#); [LaMarr, Sarah L](#); [Marino, Eugene](#); [Roy Varner](#); [Matthew Rexford](#); [Sarah Obed](#); [Fannie Sopluj](#); [Tommy Nageak](#); [Kevin S. Fisher](#); [ida.angasan@iilisagvik.edu](#); [Stephen Braund](#); [Teresa Imm](#); [dale.hardy@fortyukon.org](#); [janet.cadzow@fortyukon.org](#); [Bill Marzella](#); [norajane.burns@north-slope.org](#); [Tom McCulloch](#); [Donna Thomas](#); [Meiti, Sarah J \(DNR\)](#); [Tonya Garnett](#); [Loya, Wendy M](#); [Monty Rogers](#); [Wesley Furlong](#)  
**Subject:** Final Programmatic Agreement Regarding the Coastal Plain Oil and Gas Leasing Program  
**Date:** Wednesday, March 11, 2020 6:36:05 AM  
**Attachments:** [ak.blm.oil and gas development in anwr coastal plain.at.4oct19.pdf](#)  
[ak.blm.oil and gas development in anwr coastal plain.pa.4oct19.pdf](#)

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Good morning,

On October 4, 2019, we received the fully executed Programmatic Agreement (PA) from the Advisory Council on Historic Preservation. The transmittal letter and agreement is attached for your reference.

To date, the BLM does not have a signed Record of Decision for the Coastal Plain Oil and Gas Leasing Program, therefore, have not implemented the measures of the PA. The BLM has been actively working on drafting Appendix D (Methods to Inventory the APE); and coordinating with USFWS on development of Appendix E (NAGPRA Plan of Action).

I apologize for the delay in distribution; we intend to follow-up with consulting parties to provide the opportunity to sign the PA as concurring parties in the immediate future. Per the administrative stipulation in the PA (Section I.E.), e-mail will serve as the official correspondence method for communications so please advise if an alternative method is preferred.

Please contact me directly if you have any questions.

Sincerely,  
Nicole

**Nicole Hayes**

Chief, Renewable Resources  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
907.271.4354 - desk  
907.290.0179 - cell



Preserving America's Heritage

October 4, 2019

Chad Padgett  
State Director  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, AK 99513

Ref: *Programmatic Agreement for the Alaska Coastal Plain Oil and Gas Leasing Program*  
*ACHPConnect Log Number: 012915*

Dear Director Padgett:

Enclosed is your copy of the fully executed Programmatic Agreement for the referenced project. By carrying out the terms of the Agreement, BLM will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). We have retained a copy of the executed agreement. Please remember to forward copies of the fully executed agreement to the appropriate signatories and consulting parties. We appreciate the efforts the BLM staff put into developing this agreement.

If we may be of further assistance as the agreement is implemented, please contact Bill Marzella, ACHP Liaison to the BLM, at (202) 517-0209, or via email at [bmarzella@achp.gov](mailto:bmarzella@achp.gov).

Sincerely,

Tom McCulloch PhD, RPA  
Assistant Director  
Office of Federal Agency Programs

Enclosures

**FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

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**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management,  
Alaska State Historic Preservation Officer,  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP or Council) a reasonable opportunity to comment regarding such Undertaking; and

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the Program, and therefore the BLM is the federal agency for purposes of complying with Section 106 of the NHPA; and

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking");

**WHEREAS**, the BLM's development of an Environmental Impact Statement (EIS) and selection of a preferred alternative that will guide the sale of leases for oil and gas activities is pursuant to the National Environmental Policy Act (NEPA) (Public Law 91-190 [January 1, 1970]); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is presented in *Appendix B: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Programmatic Agreement (PA) as the BLM cannot fully determine effects on Historic Properties within the APE prior to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) § 800.14(b)(1)(ii); and

**WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.14(b)(2) and is a Signatory to this PA; and

**WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of the APE, has jurisdictional roles concerning certain aspects of the BLM's Undertaking, including, but not limited to, actions involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95 [October 31, 1979]), and the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an Invited Signatory to this PA; and

**WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal control; and Executive Orders 13007 and 13175; and

**WHEREAS**, the BLM has invited federally recognized Indian Tribes as defined in 36 CFR § 800.16(m), and listed in *Appendix C: Consulting Parties*, of this PA to participate in consultation as Consulting Parties, consistent with 54 USC § 302706(b) and 36 CFR 800.2(c)(2); and

**WHEREAS**, the BLM has invited regional and village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR § 800.16(m), and listed in *Appendix C: Consulting Parties*, to participate in consultation; and

**WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA corporations the opportunity to provide information about Historic Properties within the APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so in implementing this PA; and

**WHEREAS**, the BLM has invited local governments to participate as Consulting Parties, consistent with 36 CFR § 800.2(c)(3); and

**WHEREAS**, previous investigations and documentation of Historic Properties within the APE are limited in scope and extent; and

**WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRS) in March 2019 listed 90 properties including sod house ruins, historic military features, graves, archaeological sites, ice cellars, and material sources; five (5) are eligible for the NRHP, two (2) are not eligible for the NRHP, two (2) are pending reevaluation for their eligibility, and 81 have not had formal evaluations for their NRHP eligibility; and

**WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory (TLUI) in July 2019 listed 54 properties of traditional and/or cultural importance, some of which may be included in the AHRS database, including village sites, subsistence use

locations, sod house ruins, graves, and reindeer herding areas. None of the 54 properties have been evaluated for their eligibility for listing in the NRHP; and

**WHEREAS**, the PA will serve to outline the program-level stipulations applicable at the leasing stage and the process BLM shall follow for compliance with Section 106 for post-lease activities; and

**NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on Historic Properties and afford the ACHP an opportunity to comment.

## **STIPULATIONS**

The BLM shall ensure that the following measures are carried out:

### **I. Administrative**

- A. BLM shall ensure that this PA is attached and incorporated into any lease BLM issues for the Program and will ensure that all lessees are aware that they must comply with the terms of this PA during activities on their lease(s).
- B. BLM shall ensure that all lessees provide a copy of the PA to all operators and contractors engaged in exploration, development, production, or reclamation work associated with an issued Program lease prior to their arrival within the APE. Prior to the arrival of any contractor within the APE, lessees will make sure all contractors are made aware of the PA and that BLM requires compliance with its terms.
- C. BLM shall require that any type of archaeological work associated with the Program within the APE not performed by BLM or FWS professional staff will be conducted only under terms of a federally issued Permit for Archaeological Investigations (“ARPA permit”). Such permits are obtained upon application to the BLM or otherwise coordinated by BLM.
- D. If ownership of a lease is transferred, BLM will include as a condition of the transfer that the new lessee must adhere to the terms of this PA.
- E. Electronic mail (e-mail) shall serve as the official correspondence method for all communications regarding this PA and its provisions, with an alternative method of postal mail delivery if the contacts do not have reliable e-mail.
- F. Consulting Parties and Signatories shall provide contact information for this PA. It is the responsibility of each Signatory and Consulting Party to immediately inform BLM of any change in name, mailing address, e-mail address, or phone number for any Consulting Party. Once received, the BLM will forward this information to all Signatories and Consulting Parties by e-mail or mail within five (5) business



## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

days, and will update the contact information for Consulting Parties, which is included below in *Appendix C: Consulting Parties*, and provide an updated version to all Consulting Parties at the Annual Meeting in accordance with Stipulation XII.B.1.i. In accordance with Stipulation XV.D, updates to *Appendix C: Consulting Parties* do not require formal amendments to this PA.

- G. At any time, Signatories to this PA may request additional time for reviews of documentation, preparation of guidance documents, or any other time-sensitive materials outlined in this PA by providing a written request to the BLM.
- H. The Signatories may execute this PA in counterparts, with a separate page for each Signatory.

### II. **Scope of the PA**

- A. This PA only addresses potential effects on Historic Properties, consistent with 36 CFR Part 800 and other federal laws that may be affected by the BLM's Undertaking within the APE.
- B. This PA establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of NHPA, including consultation with Indian Tribes, for the Undertaking that may be implemented in accordance with the decisions supported by the Program EIS and BLM policy.
- C. BLM will make a reasonable and good faith effort to implement this PA in its entirety. This PA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this PA will be handled in accordance with applicable laws, regulations, and procedures including those for Federal Government procurement and printing. Separate agreements will outline such endeavors and will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority. If any commitment made in this PA cannot be fulfilled as stated, prior to continuing work on the Undertaking, the BLM shall either execute an amendment to this PA in accordance with Stipulation XV or terminate this PA in accordance with Stipulation XVI.

### III. **Agency Coordination Procedures**

- A. Agency Roles and Coordination
  - 1. BLM
    - a. BLM, as the lead federal agency for the purposes of Section 106 compliance, is responsible for the following actions:
      - i. Conducting Section 106 reviews of Project types in Stipulation IV.A., in accordance with the terms of this PA;
      - ii. Receiving permit applications and considering the issuance of permits that may be needed for Section 106 compliance work for oil and gas-

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

related projects in the APE. Such permits may include various types of land use authorizations as well as ARPA permits.

2. FWS
  - a. FWS, as surface manager of the APE, is responsible for the following actions:
    - i. Receiving, reviewing, commenting on, and evaluating applications for ARPA permits provided by BLM;
    - ii. Receiving, reviewing, commenting on, and evaluating Section 106 determinations and findings made by BLM;
    - iii. Managing artifact collections originating from studies conducted within the APE;
    - iv. Managing and conducting appropriate actions associated with NAGPRA materials and Human Remains, including development of the Plan of Action (POA) *Appendix E: NAGPRA Plan of Action*.

### **IV. Section 106 Consultation Plan and Procedures**

- A. BLM anticipates that the Program will include several Project types and that each type will require consultation with Signatories and Consulting Parties. Project types include, but may not be limited to:
  1. Leasing;
  2. Inventory, Research, and Monitoring Activities;
  3. Geophysical Exploration;
  4. Applications for Permit to Drill (APD) (drilling exploration and development);
  5. Marine and Intertidal Activities and Operations;
  6. Operations and Production;
  7. Inspections and Enforcement; and
  8. Reclamation
- B. As appropriate and needed, BLM shall consult with Signatories and Consulting Parties throughout the life of this PA on the above Project types to include, but not limited to the following:
  1. Collecting information to inform permitting, NEPA reviews, and if appropriate, selection of alternatives;
  2. Developing appropriate research designs and investigative methods for potential Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural) studies;
  3. Determining whether incorporating Project-specific conditions and/or stipulations into BLM-permitted activities can avoid, minimize, and/or mitigate effects to Historic Properties within the Project-specific APE;
  4. Considering conducting periodic joint (i.e., BLM and representatives from interested Signatories and Consulting Parties) site visits within the Project-specific APE(s);
  5. Developing project-specific Memorandum of Agreement (MOA) or PAs; and
  6. Developing Project-specific Historic Properties Management Plans (HPMPs) to avoid, minimize, and/or mitigate adverse effects to Historic Properties that

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- may result from Program activities. These plans may include, but are not limited to:
- a. Monitoring lessee activities and effects on Historic Properties within the Project-specific APE(s);
  - b. Periodic Historic Property condition assessments;
  - c. Documentation review to ensure lessees have fulfilled commitments stipulated by BLM, and have complied with the terms of this PA.
- C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c) and Section 304 of the NHPA, and in consultation with the National Park Service, the BLM shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.
- D. The implementing regulations of Section 106 of the NHPA (36 CFR § 800.2[c][2][ii][A-C]) require BLM to:
1. Consult with any Indian Tribe that attaches religious and cultural significance to Historic Properties that may be affected by an Undertaking;
  2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects;
  3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe; and
  4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
    - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see *Appendix E: NAGPRA Plan of Action*); and
    - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.
- E. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.
- F. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

- A. The Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying levels of potential to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- B. BLM shall make a good faith effort to identify and evaluate Historic Properties but anticipates that in certain cases a 100-percent identification may not be necessary, and NRHP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect the amount of information necessary for the BLM to make decisions regarding the potential of the Project type(s) to affect Historic Properties in accordance with the terms of the PA below.
- C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility (DOEs) and findings of effect concurrently in a combined submission for Project types described below.
- D. Nothing shall prevent the BLM from seeking informal consultation with the Signatories or Consulting Parties regarding the preparation of DOEs or findings of effect under the terms of this PA.
- E. **Step 1: Oil and Gas Program Project Types Addressed under this PA**
  - 1. BLM, in consultation with Signatories and Consulting Parties, has determined that this PA will address the following Project types associated with the Program within the APE:
    - a. Lease Sales;
    - b. Inventory, Research, and Monitoring Activities;
    - c. Geophysical Exploration;
    - d. APDs;
    - e. Marine and Intertidal Activities and Operations;
    - f. Operations and Production;
    - g. Inspection and Enforcement; and,
    - h. Reclamation.
- F. **Step 2: Assess Project Potential to Cause Effects**
  - 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type has the potential to cause effects on Historic Properties. BLM has determined that the following undertakings pose little potential to affect historic properties and are therefore exempt from further review under this PA:
    - a. Lease Sale or other Administrative Action; or

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- b. Standard maintenance, repairs, or replacement of existing facilities or equipment that do not exceed the original disturbance footprint.
2. If the Project type meets one or more of the above conditions (Section V.F.1.a-b), BLM shall make a determination that the Project type requires no further review under this PA and attach letter to the Project file.
3. If the Project type does not meet the above conditions, and the Project type consists of Inventory, Research, and Monitoring Activities, Geophysical Exploration, Marine and Intertidal Activities and Operations, Operations and Production, or Inspection and Enforcement, the BLM will proceed to Step 3.
4. If the Project type does not meet the above conditions, and the Project type is an APD or Reclamation, BLM will consult with Signatories and Consulting Parties, and BLM will determine if the Project should be addressed under this PA, or if a separate Section 106 process and agreement document (“kick-out”) must occur in accordance with Step 8 below. BLM will notify the Signatories and Consulting Parties as to how it will comply with Section 106 for each of these Projects.

### G. **Step 3: APE**

1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.
  - b. If no, BLM defines the APE in consultation with SHPO and other Signatories.

### H. **Step 4: Identification**

1. Has BLM determined that efforts to identify Historic Properties consistent with the procedures described in *Appendix D: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix D: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project.

### I. **Step 5: Preliminary APE Assessment**

1. Has BLM determined that identification efforts documented properties that have not been previously evaluated for NRHP eligibility within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no or if all known properties have been evaluated for NRHP eligibility, proceed to Step 7.

### J. **Step 6: Evaluation**

1. The BLM will evaluate potential Historic Properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15) consistent with guidance found in *Appendix D: Methods to Inventory the APE* concerning level of effort.

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- a. BLM will concurrently consult with FWS on all DOEs, and with Indian Tribes on DOEs concerning unevaluated properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
  - i. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will move forward with its proposed DOE(s).
  - ii. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will move forward with its proposed DOE(s).
- b. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal. BLM has discretion in deciding whether and/or how much extended time to grant.
- c. Within approximately five days of the end of the FWS' and Indian Tribes' review period, including any granted extensions, BLM will submit the DOE to SHPO, who will have thirty (30) days to review the DOE(s). If SHPO does not offer comment within the review period, then BLM may proceed to Step 7.
  - i. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
- d. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
- e. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
  - i. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination of eligibility from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
- f. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

### **K. Step 7: Assess Effects**

1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), and shall notify all Signatories and Consulting Parties of the finding and provide them with the documentation specified in Section 800.11(e). The SHPO shall have 30 days from receipt to review the finding and provide comments.
  - i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM shall notify Signatories and Consulting Parties of the finding and provide them with documentation supporting this finding.

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1. If SHPO concurs with the BLM's determination, BLM shall document the concurrence to the Project file.
2. If the SHPO or any consulting party notifies the BLM in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
- ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
  1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the criteria of adverse effect in consultation with Signatories and Consulting Parties, and if historic properties can be avoided, revise their finding of effect pursuant to 36 CFR 800.6.
- iii. If BLM, in consultation with Signatories and Consulting Parties determines that an applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects will still result in adverse effects to Historic Properties, the process shall revert to the standard Section 106 procedures at 36 CFR 800.6 and conclude with an executed MOA under 36 CFR 800.6 or a Council comment under 36 CFR 800.7.
- b. If no, BLM will make a finding of "no Historic Properties affected" (36 CFR 800.4[d][1]) and submit to SHPO for concurrence with appropriate supporting documentation. SHPO shall have thirty (30) days to review the BLM's determination. BLM shall also provide notice to the Signatories and Consulting Parties of this finding in accordance with 36 CFR 800.4(d)(1).
  - i. If SHPO concurs with the BLM's determination, BLM shall document SHPO concurrence to the Project file.
  - ii. If SHPO does not concur, and resolution cannot be reached through consultation among SHPO, ACHP, and BLM, BLM shall follow the procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

### L. **Step 8: Decision regarding Undertaking**

1. BLM will not authorize a Project until BLM has completed Steps 1-7, as applicable, and BLM has documented the appropriate finding of effect and resolution efforts, as required, to the Project file.
2. Alternatively, if BLM has determined that a separate Section 106 process and agreement document ("kick-out") is required for an APD or Reclamation Project (see Step 2), BLM may authorize an APD or Reclamation Project subject to this PA only after the separate Section 106 review has been completed, and if necessary, the appropriate agreement document (e.g., MOA or PA) has been executed for the Project.

**M. Step 9: Reporting**

1. BLM will include a summary of all Projects reviewed under this PA in the previous year in the annual PA report [Stipulation XII]. The summary will include a synopsis for each project, including at minimum:
  - a. A description of the Project;
  - b. Delineation of the APE;
  - c. Identification efforts within the APE;
  - d. NRHP eligibility of known properties within the APE;
  - e. BLM's finding of effect for the Project; and,
  - f. The Qualifications of the Individual who conducted the PA Compliance Review.
2. BLM will submit to the SHPO reports associated with identification, evaluation, and assessments of effect that were used to support BLM findings of effect to the SHPO.
3. BLM may append reports associated with identification, evaluation, and assessments of effect that were used to support BLM finding to the annual PA report, provided they do not contain sensitive information regarding Historic Properties pursuant to Stipulation IV.C.

**VI. Methods to Inventory APE**

- A. The BLM shall produce a draft of *Appendix D: Methods to Inventory the APE* within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.
- B. *Appendix D: Methods to Inventory the APE* will include parameters on when an unevaluated property within the APE will not be evaluated for the NRHP, guidance on intensity of fieldwork based on proposed actions/activity, guidance on when and at what level archaeological, ethnographic, historical, and archival research should be conducted, and the role of geographic information systems (GIS)-based modeling for the identification of Historic Properties.
- C. BLM shall distribute the first and final drafts of *Appendix D: Methods to Inventory the APE* to Signatories and Consulting Parties for 60-day comment periods. BLM shall distribute interim drafts to Signatories for 30-day comment periods.
- D. BLM will consider timely comments received and revise the draft *Appendix D: Methods to Inventory the APE* accordingly. Multiple drafts may be required, and a final draft will be sent out for review no later than one (1) year from the execution of the PA.
- E. BLM, FWS, and SHPO must approve the draft *Appendix D: Methods to Inventory the APE* before it is considered final.



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- F. Drafts cannot be used as interim guidance. If a project needs to move through Step 4 of this PA prior to finalization of *Appendix D: Methods to Inventory the APE*, then the appropriate level of effort and methods will be determined through consultation among BLM, FWS, and SHPO on a case-by-case basis.

### VII. **Standards**

#### A. Professional Qualifications:

1. For work not performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of qualified historic preservation professionals who meet the Secretary of Interior (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742). The BLM and FWS, through review of permit applications or other means, shall ensure that consultants retained for services pursuant to the Agreement meet these standards.
2. A “qualified historic preservation professional” is a person who meets the relevant standards outlined in the Archeology and Historic Preservation: SOI Standards and Guidelines [as Amended and Annotated] ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) or revised equivalent.
3. BLM acknowledges that Indian Tribes possess specialized expertise in identifying and assessing the eligibility of Historic Properties that may possess religious and cultural significance to them (36 CFR 800.4(c)(1)), and as such, do not need to meet the SOI standards regarding identifying and evaluating Historic Properties of religious and cultural significance to them.

#### B. Professional Standards:

1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall ensure that all work conducted as a result of this PA is performed in accordance with the SOI Standards for Archeology and Historic Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
2. BLM shall require that persons supervising and conducting work on the behalf of lessees hold the appropriate BLM permits and/or authorizations as appropriate for inventory, monitoring, and other investigations, and meet the Standards and Guidelines, as well as the SOI Professional Qualification Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure that persons supervising and conducting work on the behalf of lessees comply with the NAGPRA POA.
3. Investigations associated with Program activities will be conducted in accordance with *Appendix D: Methods to Inventory the APE*, and will meet the standards presented in BLM Manual 8110 Identifying and Evaluating Cultural Resources ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)) and BLM Manual 1780 Tribal Relations (<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>).
4. Reports regarding Historic Properties shall meet the standards outlined in the SOI Standards for Archeology and Historic Preservation (Standards and

Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History and Archaeology guidelines.

### **VIII. Unanticipated Discoveries**

- A. During the entire implementation of this Undertaking, BLM will ensure that the Signatories and Consulting Parties are informed of unanticipated discoveries within the Undertaking's APE during lessees or their contractor related activities associated with the BLM's oil and gas leasing program.
- B. Lessees or their contactors will not take any actions that would adversely affect the discovery (which may be eligible for listing in the NRHP) without written approval from BLM.
- C. Upon the unanticipated discovery, the following steps listed below will be undertaken. If the unanticipated discovery includes human remains, burials, or funerary items, then the additional steps listed in Stipulation X shall be followed.
  - 1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further discoveries can be reasonably expected to occur, to be no less than one hundred (100) feet, and will notify the BLM within one (1) business day;
  - 2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two (2) business days of the discovery;
  - 3. The BLM or a SOI-qualified archaeologist approved by the Signatories will inspect the property as soon as possible and collect enough information to determine (if possible):
    - a. The extent of cultural materials associated with the unanticipated discovery;
    - b. The degree of integrity; and
    - c. The cultural affiliation of the materials (if possible).
  - 4. Within five (5) business days of collection, BLM shall provide a summary of the information collected at the place of discovery to Signatories and Consulting Parties, which will include BLM's preliminary assessment of the NRHP eligibility of the discovery;
  - 5. Within fourteen (14) days of the BLM's distribution of the information regarding the unanticipated discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.
    - a. If the BLM determines that the discovery is ineligible for listing in the NRHP and SHPO concurs, BLM shall authorize the lessee to continue activities in the area of the discovery.
    - b. If the BLM determines the discovery is eligible for listing in the NRHP and SHPO concurs, BLM will direct the lessee to prepare a plan for its

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avoidance, protection, or recovery of information in consultation with BLM, Signatories and Consulting Parties, as appropriate.

- i. Within five (5) business days of receipt of the lessee's plan, BLM shall distribute copies of the proposed plan to Signatories and Consulting Parties for review and comment.
  - ii. Signatories and Consulting Parties shall have seven (7) business days to review the proposed plan and provide comments to BLM.
  - iii. BLM shall take into consideration timely comments received on the proposed plan and make a determination to either approve or request revisions to the proposed plan.
    - A. In the event that BLM requests revisions to the plan, BLM shall redistribute the revised plan under the same timelines as above, and Signatories and Consulting Parties shall have the same period of review. BLM may request revisions to the plan two times or until the plan adequately responds to comments. BLM will finalize the plan and provide the final plan to Signatories and Consulting Parties for their information.
6. Work in the established buffer will not proceed until either:
- a. BLM approves the plan and requires its implementation; or
  - b. The BLM determines that the discovery is not eligible for the NRHP, and the SHPO concurs with this determination.

D. BLM will address any disputes over the evaluation or treatment of unanticipated discoveries as provided in Stipulation XIII of this PA.

### **IX. Unanticipated Effects**

- A. If BLM, in consultation with Signatories and Consulting Parties, determines that unanticipated effect(s), including cumulative effects, have occurred to a Historic Property, BLM, in consultation with Signatories and Consulting Parties, will assess the effect(s), develop a plan to address the unanticipated adverse effect(s), and avoid, minimize, and/or mitigate the unanticipated adverse effect(s).
- B. BLM will notify Signatories and Consulting Parties of unanticipated effects within approximately two (2) business days of the determination in IX.A. if caused by a current action (i.e., construction) or other situation requiring expedited review. Within approximately seven (7) days of discovery of an unanticipated effect, BLM will submit to Signatories and Consulting Parties, for a seven (7) day comment period, a finding on whether the unanticipated effect was adverse.
- C. If the unanticipated effect is the result of cumulative or past actions, then BLM will notify Signatories and Consulting Parties within approximately thirty (30) days of discovery of the unanticipated effect, which will include a finding on whether the effect was adverse.

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- D. If BLM, in consultation with Signatories and Consulting Parties, determines that the unanticipated effect was adverse, then the process shall revert to the standard Section 106 procedures at 36 CFR 800.6 and conclude with an executed MOA or Council comment under 36 CFR 800.7.
- E. BLM will attempt to complete this process within 180 days of the recognition of the unanticipated effect(s).
- F. BLM will address any disputes over the resolution of unanticipated effects as provided in Stipulation XIII of this PA.

### **X. Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

- A. The APE exists entirely on federally-managed lands, and the BLM shall ensure that any Native American burials, human remains, and/or related items discovered on federal lands during implementation of the terms of this PA will be treated with dignity and respect, and that all procedures guiding the treatment of human remains, funerary objects, sacred objects, or objects of cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).
- B. As surface manager of the APE, FWS is the managing agency for any and all human remains and NAGPRA materials.
- C. FWS shall develop, in consultation with BLM, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA to comply with 43 CFR 10.5 and applicable state laws within six (6) months after execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be attached to this PA for reference as *Appendix E: NAGPRA Plan of Action*.
- D. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall immediately cease, the area shall be secured from further disturbance, and the permittee, lessee or agency shall immediately notify the BLM of the discovery.
  - 1. Upon notification, the BLM shall follow the procedures described in the NAGPRA POA (*Appendix E: NAGPRA Plan of Action*).

### **XI. Curation**

- A. Archaeological materials not falling under jurisdiction of NAGPRA and recovered during any activities associated with the Undertaking are the property of FWS as surface manager of the APE and will be curated in accordance with 36 CFR 79, *Curation of Federally-Owned and Administered Archaeological Collections* under FWS' existing agreement with the University of Alaska Museum of the North (UAMN).

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- B. The Permittee, and any contractors hired on their behalf, will be responsible for submitting all materials recovered from federal lands to the UAMN within six (6) months following approval of a final report, within one (1) year following completion of the fieldwork that generated the collection, or other period of time as specified in the ARPA permit. All collections will be curation-ready, as determined by the UAMN. Prior to disposition, the Permittee, and any contractors hired on its behalf, will safeguard all materials from theft or damage by providing adequate interim storage facilities and conservation actions, consistent with the requirements in 36 CFR 79. Within thirty (30) days following disposition, the Permittee will provide BLM with all accession records and documentation associated with the transfer and curation of materials. BLM will share the documentation with the FWS. Information will be shared with the other Signatories and Consulting Parties as appropriate.
- C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with the curation of any materials that are collected during the implementation of this PA, in perpetuity. Curation costs may include, but are not limited to, curation fees charged by approved institutions, acquisition of archival materials, shipping, cleaning, rehousing, and any other conservation action.
- D. BLM and FWS shall manage materials determined to be subject to NAGPRA as described above in Stipulation X and in the NAGPRA POA (*Appendix E: NAGPRA Plan of Action*).
- E. Nothing in this PA shall prevent the FWS, as surface manager of the APE, from consulting with Indian Tribes or other Consulting Parties to arrange for long-term loans or other transfers of artifacts recovered from the APE to local communities or facilities to support and enhance cultural ties to the APE.

## **XII. Annual PA Meeting and Reports**

- A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to an annual meeting concerning this PA within one (1) year of the PA execution, and at that approximate date in each succeeding year. A subsequent Signatories meeting will be held by the Signatories to consider the input received by Consulting Parties, discuss the PA's implementation, required amendments (as necessary), other changes to the Program that may necessitate an amendment to the PA, and other business related to the application of the PA terms.
  - 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories. The parties may participate by telephone if they so desire.
  - 2. The BLM will distribute meeting minutes to the meeting participants within thirty (30) days of the meeting, and meeting participants will provide comments on the minutes to BLM within fifteen (15) days of receipt. The BLM shall amend the minutes as a result of comments and distribute finalized minutes within approximately sixty (60) days of the meeting to Signatories and Consulting Parties.

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3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to BLM that a meeting is necessary outside the regularly scheduled annual meeting, the Signatories will consider their request. BLM, taking into consideration the results of consultation, shall decide whether to convene additional meetings.

### B. Annual PA Report:

1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories and Consulting Parties with a draft copy of that year's annual report that describes the completed activities pursuant to this PA and upcoming activities associated with the stipulations of this agreement. The report will include the following information, as appropriate:
  - a. Number of leases issued;
  - b. All Project types considered under Stipulation V.A;
  - c. Consultation activities undertaken;
  - d. A summary of the past year's and anticipated upcoming efforts related to cultural resource management, which may include but not be limited to:
    1. Efforts to identify, evaluate, and protect historic properties;
    2. Measures drafted or implemented to resolve adverse effects;
    3. A summary of materials submitted to an approved repository for curation; and
    4. References for cultural resources reports produced in the past year.
  - e. A summary of historic properties adversely affected;
  - f. Maps of areas leased, surveyed, or otherwise investigated;
  - g. Upcoming/Planned activities for the Program;
  - h. An evaluation of this PA and recommendations for any amendments or changes; and
  - i. An updated *Appendix C: Consulting Parties* if points of contact for Consulting Parties have changed.
2. Signatories and Consulting Parties may provide comments to BLM at or before the Annual meeting regarding the content of the Annual Report.
3. BLM will prepare and submit a Final Annual Report to Signatories and Consulting Parties within thirty (30) days after the annual meetings have concluded.

### C. Other Reports:

1. Cultural resource activities, such as archaeological surveys, site evaluations, excavations, data recovery for mitigation, and monitoring, will be documented in reports subject to review by Signatories and Consulting Parties, as allowed by Stipulation IV.C, to allow timely and meaningful comment on findings and determinations made during implementation of Stipulation V Section 106 Procedures. Review and comment periods will follow the process outlined in Stipulation V. If a report is not accompanied by a determination or finding, then Signatories and Consulting Parties shall have 30 days to review and provide comment.

2. Full attachment of reports that have not been submitted to SHPO as part of a project review shall be attached to the Annual Report sent to SHPO.

### **XIII. Dispute Resolution**

- A. Should any of the Signatories or Consulting Parties who have become Concurring Parties to this PA have insight, improvements, or objections regarding the manner in which the terms of this PA are implemented, the BLM will consult with such party to determine if the inclusion, suggestion, recommendation, or objection may be addressed to the satisfaction of the party, which may include presenting a proposed amendment to this PA in accordance with Stipulation XV.
- B. If BLM cannot resolve the conflict with the individual party or parties, BLM shall notify the Signatories of the dispute, and seek input from Signatories to resolve the dispute.
- C. If the Signatories determine that an objection cannot be resolved, the BLM will:
  1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP will provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Consulting Parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar-day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties to the PA and provide them and the ACHP with a copy of such written response.
  3. The BLM remains responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.

### **XIV. Duration**

- A. This PA shall take effect when executed by the ACHP, the BLM, and the SHPO.
- B. This PA will remain in effect for ten (10) years after its execution, unless extended by the Signatories through the process outlined in XV.
- C. Prior to such time, and no later than six (6) months prior to the expiration of this agreement the BLM will consult with the Signatories and Consulting Parties to

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reconsider the terms of the PA and whether it should be amended in accordance with Stipulation XV below.

### **XV. Amendments**

- A. The Signatories may amend this PA at any time when such amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.
- B. The BLM will distribute any PA amendments to all Consulting Parties. All amendments will be attached to the PA in *Appendix F: PA Amendments (reserved)*.
- C. In the event that another federal agency not initially a party to or subject to this PA receives an application for funding/licensing/or permitting an Undertaking in the 1002 area as described in this PA, that agency may fulfill its Section 106 responsibilities by stating in writing that it concurs with the terms of this PA and notifying the Signatories and Consulting Parties that it intends to do so. Such agreement shall be evidenced by execution of a signature page signed by an authorized individual for that agency, distribution of said page to all Signatories and Consulting Parties, filing this page with the ACHP, and implementation of the terms of this PA.
- D. The Signatories agree that *Appendix C: Consulting Parties* may be updated as necessary to reflect changes in personnel or contact information without requiring the PA to be amended in accordance with the procedures described above.

### **XVI. Termination**

- A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment or agreement on other actions that would avoid termination of the PA. If after thirty (30) days from the initiation of such consultation (or another time period agreed to by all Signatories) an amendment or agreement on other actions that would avoid termination cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.
- B. In the event that a Signatory terminates this PA, and prior to undertaking further Program actions, the BLM must either (a) develop and execute a new Programmatic Agreement pursuant to 36 CFR 800.14(b) for the Program, or (b) comply with 36 CFR Part 800 for each undertaking subject to the Program. The BLM shall notify the Signatories as to the course of action it will pursue.



**XVII. Emergency Situations**

- A. The BLM shall attempt to notify within one (1) business day the Signatories and Consulting Parties of an emergency situation, which represents an imminent threat to public health or safety or creates a hazardous condition that requires a response action that has potential to harm Historic Properties. Should the Signatories or Consulting Parties desire to provide technical assistance to the BLM on how the response action could avoid or minimize adverse effects to historic properties, they shall submit comments to the BLM within seven (7) days from notification, if the nature of the emergency or hazardous condition allows for such coordination.
- B. If the APE of the emergency situation has been surveyed for Historic Properties and none are within the APE, then the BLM will request concurrence on a determination of “no Historic Properties affected” from the SHPO within five (5) days from the initial notification.
- C. If the APE has not been surveyed for potential Historic Properties, then emergency actions will be monitored by a SOI-qualified professional or the APE will be inventoried by a SOI-qualified professional no later than one (1) year after the emergency action is completed. BLM will require that a monitoring report or inventory report be submitted to Signatories and Consulting Parties within thirty (30) days following fieldwork completion.
- D. If a previous known or unknown Historic Property is adversely affected by emergency actions, refer to Section IX. Unanticipated Effects.

**XVIII. Anti-Deficiency Provision**

- A. Any obligation of the BLM set forth in this PA is subject to and dependent on appropriations by Congress and allocation of sufficient funds for that purpose. The BLM shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the BLM’s ability to implement the stipulations of this agreement, the BLM shall consult in accordance with the amendment and termination procedures found at Stipulations XV and XVI of this agreement.

**EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences that the BLM has taken into account the effects of the Undertaking on Historic Properties and has afforded the ACHP an opportunity to comment.


FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

United States Department of the Interior, Bureau of Land Management

By:  \_\_\_\_\_ Date: 9/20/19  
Chad B. Padgett, State Director, Alaska

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

Alaska State Historic Preservation Office

By:  Date: 9/23/2019  
Judith Bittner, State Historic Preservation Officer

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

Advisory Council on Historic Preservation

By: Aimee Jorjani Date: 10/4/19  
Aimee Jorjani, Chairman

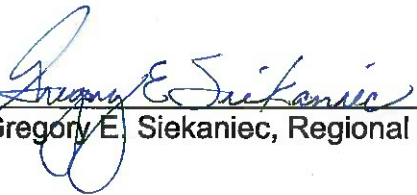
FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

United States Department of the Interior, Fish and Wildlife Service

By:  Date: 30 September 2019  
Gregory E. Siekaniec, Regional Director, Alaska

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONCURRING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

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

## **Appendix A: List of Acronyms and Definitions**

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**ACRONYMS**

ACHP .....	Advisory Council on Historic Preservation
ADNR .....	Alaska Department of Natural Resources
AHRS .....	Alaska Heritage Resource Survey
ANCSA.....	Alaska Native Claims Settlement Act
ANWR .....	Arctic National Wildlife Refuge
APD.....	Application for Permit to Drill
APE.....	Area of Potential Effects
ARPA .....	Archaeological Resources Protection Act
BLM.....	Bureau of Land Management
CFR.....	Code of Federal Regulations
DOE .....	Determination of Eligibility
DOI.....	United States Department of the Interior
EIS .....	Environmental Impact Statement
FWS .....	Fish and Wildlife Service
GIS .....	Geographic Information Systems
HPMP .....	Historic Properties Management Plan
MOA .....	Memorandum of Agreement
NAGPRA .....	Native American Graves Protections and Repatriation Act
NEPA .....	National Environmental Policy Act
NHPA .....	National Historic Preservation Act
NRHP .....	National Register of Historic Places
PA .....	Programmatic Agreement
POA.....	Plan of Action
SHPO .....	State Historic Preservation Office
SOI.....	Secretary of the Interior
TLUI .....	Traditional Land Use Inventory
UAMN.....	University of Alaska Museum of the North
USC.....	United States Code



## DEFINITIONS

Administrative Action: Actions or decisions made by BLM or other federal agencies that relate to the internal administration of their agency, personnel, or jurisdiction, which do not authorize activities that will alter the physical environment or character of a place.

Adverse Effect: When an Undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the Undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effects (APE): The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking [as noted in 36 C.F.R. § 800.16(d)].

Concurring Parties: The signatory parties may agree to invite others (concurring parties) to concur in the PA. The refusal of any party invited to concur in the PA does not invalidate the PA, (as noted in 36 C.F.R. § 800.6(c)(3)). Concurring Parties may not terminate the PA. Signing this PA as a Concurring Party does not imply endorsement or approval of the Project itself, or limit or restrict in any way the Concurring Party's right to object to, petition against, litigate against or in any other way express or advance critical or negative comments toward, the Project or its proponent.

Consultation: The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary of the Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation (36 C.F.R. § 800.16(f)).

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c). These include the SHPO, Indian Tribes (which include native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), representatives of local governments, individuals and organizations with a demonstrated interest in the undertaking, and the public.

Cultural Resource: Locations of human activity, occupation, or usage that contain materials, structures, or landscapes that were used, built, or modified by people.

Curation: The disposition of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Data Recovery: The gathering of archaeological information from a historic property subject to an adverse effect. The associated procedures generally include, but are not limited to, excavation of subsurface archaeological deposits and documentation in the

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

form of maps, photographs, feature drawings, field notes, and technical reports. The data recovered during these procedures can be utilized for future research.

Days: Days refer to calendar days unless otherwise noted.

Determination of Eligibility (DOE): A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of Consulting Indian Tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 63 and 36 CFR § 800.16(l)(2).

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Eligible for Inclusion in the National Register: Properties that have been determined by the Keeper or through consultation with the appropriate SHPO/THPO to meet the criteria (36 CFR 60.4) and have sufficient integrity to convey their significance.

Environmental Impact Statement (EIS): An analysis of a major federal action's environmental impacts conducted under the auspices of NEPA.

Federal Agency: Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an Undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the Undertaking and can commit the Federal agency to take appropriate action for a specific Undertaking as a result of Section 106 compliance.

Finding of Effect: A finding made by a Federal agency in consultation with the SHPO and other Consulting Parties in regards to a Project's effect upon a historic property consistent with 36 CFR Part 800.

Historic Property: Any historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior pursuant to the criteria for evaluation set forth in 36 C.F.R. § 60.4.

Historic Property Management Plan (HPMP): HPMPs are developed to help meet the requirements under Section 106 of the NHPA. These plans provide detailed procedures and requirements to be implemented to resolve adverse effects to historic properties. HPMPs are often developed in conjunction with agreement documents (i.e. Memorandum of Agreement or PA).

Indian Tribe: An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Invited Signatory: The agency official may invite additional parties to be signatories to a PA; any such party that signs the PA shall have the same rights with regard to seeking amendment or termination of the agreement as other Signatories. The refusal of any party invited to become a Signatory pursuant to paragraph (c)(2) does not invalidate the PA.

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

National Environmental Policy Act (NEPA): NEPA is a federal law that requires federal agencies to disclose to the public the effects that major federal actions would have on environmental quality. These disclosures are reported as environmental assessments or environmental impact statements and quantify the potential environmental effects of proposed actions.

National Historic Preservation Act (NHPA): The NHPA is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Among other things, the act requires federal agencies to evaluate the impact of all federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

National Register of Historic Places (NRHP): The NRHP is the official list of the Nation's historic places worthy of preservation. Authorized by the NHPA and maintained by the Secretary of the Interior, it is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Native American Graves Protection and Repatriation Act (NAGPRA): (25 U.S.C. 3001 et. seq.). The Act requires federal agencies and institutions that receive federal funding to return Native American cultural items to lineal descendants and culturally affiliated Indian Tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties on museums that fail to comply. NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discoveries or excavations on private or state lands, the collection provisions of the Act may apply to Native American cultural items if they come under the control of an institution that receives federal funding.

Programmatic Agreement (PA): A Programmatic Agreement is a document that spells out the terms of a formal, legally binding agreement between federal agencies and other consulting parties. A PA establishes a process for consultation, review, and compliance with one or more federal laws, most often with those federal laws concerning historic preservation.

Qualified Archaeologist: An archaeologist that meets the Secretary of the Interior's Standards and Guidelines for archeology (36 C.F.R. Part 61), which consist of, at a minimum, a graduate degree in archeology, anthropology, or closely related field plus, at least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American archeology, demonstrated ability to carry research to completion, and at least one year of full-time professional experience at a supervisory level in the study of prehistoric or historic period archeology.

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Signatories: In accordance with 36 C.F.R. § 800.6(c)(1), signatories have the authority to execute, amend, or terminate the agreement.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both"(Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

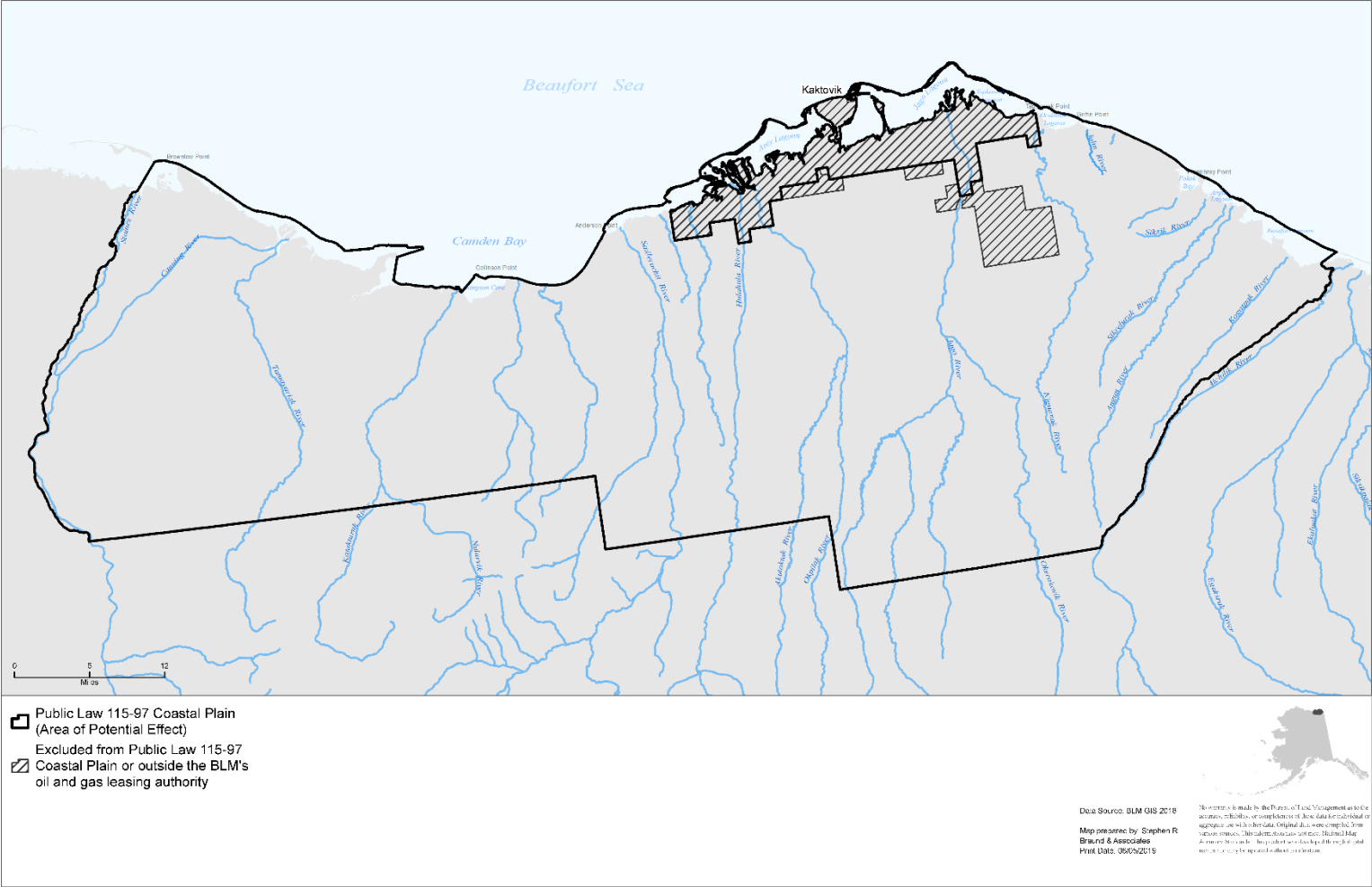
State Historic Preservation Officer (SHPO): The SHPO is responsible for administering the State Historic Preservation Program which includes providing assistance to Federal and State agencies and local governments in carrying out their historic preservation responsibilities.

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

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix B: Area of Potential Effects

Appendix A: Area of Potential Effect  
 U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



## Appendix C: Consulting Parties

List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local governments invited or requested to participate in consultation (\*indicates a response that they will participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information. Without a specific point of contact, communications will be directed to the leadership of the organization (e.g., President, Chairperson, Executive Director, etc.).

Organization	E-mail or phone
Arctic Village Council*	AV_Council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	nadine@birchcreektribe.org
Chalkyitsik Village Council	907-848-8117
Circle Tribal Council	angela@circletribal.com
Gwichyaa Zhee (Native Village of Fort Yukon)	michael.peter@fortyukon.org
Iñupiat Community of the Arctic Slope (ICAS)*	frederick.brower@inupiatgov.com
Native Village of Barrow Iñupiat Traditional Government*	doreen.leavitt@nvbarrow.net
Native Village of Eagle	eagle.village@yahoo.com
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	907-480-3010
Native Village of Stevens	907-478-7228
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyon.com
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	kevin.fisher@north-slope.org
Council of Athabascan Tribal Governments	donna.thomas@catg.org

## **Appendix D: Methods to Inventory the APE**

### **Excerpt from Stipulation VI: Methods to Inventory APE above**

A. The BLM shall produce a draft of *Appendix D: Methods to Inventory the APE* within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.

## **Appendix E: NAGPRA Plan of Action**

### **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects, Sacred Object, and Objects of Cultural Patrimony above:**

- A. FWS shall develop, in consultation with BLM, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable state laws six (6) months after the execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be incorporated into this PA as Appendix E. At minimum, the POA shall contain:
  - 1. Notification Procedures and Protocols;
  - 2. Chain of Custody Procedures; and,
  - 3. Contact information for Law Enforcement, Tribal Representatives, and Agency personnel.
  
- B. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall immediately cease, the area shall be secured from further disturbance, and the permittee, lessee or agency shall immediately notify the BLM of the discovery.

Upon notification, the BLM shall follow the procedures described in the NAGPRA POA (Appendix E).



**Appendix F: PA Amendments (reserved)**

ACHP Amendment Template:

[https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

**From:** [Loya, Wendy M](#)  
**To:** [Marino, Eugene](#)  
**Subject:** Fwd: Draft Oct. 25 Meeting Agenda, PA Objectives and Scope, and Consultation Plan  
**Date:** Tuesday, October 23, 2018 12:14:00 PM  
**Attachments:** [10\\_25\\_18\\_Consulting\\_Parties\\_Meeting\\_Agenda\\_10-22-18.docx](#)  
[ATT00001.htm](#)  
[Coastal PA Objectives Scope and Consultation Plan 10\\_23\\_18.docx](#)  
[ATT00002.htm](#)

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More info for Thursday :)

Wendy

Dr. Wendy M. Loya  
Arctic Program Coordinator  
US Fish and Wildlife Service, Office of Science Applications  
Anchorage, Alaska  
[907.786.3532](tel:907.786.3532) (office)  
[907.227.2942](tel:907.227.2942) (mobile)

Begin forwarded message:

**From:** "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Date:** October 23, 2018 at 07:32:23 AKDT  
**To:** Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>, [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov),  
[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov), "Faith C Martineau (DNR)"  
<[faith.martineau@alaska.gov](mailto:faith.martineau@alaska.gov)>, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, Edward  
Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>, Joseph Keeney <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)>,  
"Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>  
**Cc:** [Jake.Anders@srbak.com](mailto:jake.anders@srbak.com), Stephen Braund <[stephen.braund@srbak.com](mailto:stephen.braund@srbak.com)>,  
Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>  
**Subject: Draft Oct. 25 Meeting Agenda, PA Objectives and Scope, and  
Consultation Plan**

Good morning,

Attached is a draft agenda for the meeting on Thursday and a draft PA objective and scope, as well as timeline. Please provide any comments you may have by NOON TOMORROW (October 24th) so that I may get the attachments out to the consulting parties before the meeting on Thursday.

Thank you,  
Nicole

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# BLM Coastal Plain PA

## Consulting Parties Meeting Agenda

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5) Passcode: (b) (5)  
Date: October 25, 2018  
Time: 10:30am-1:30pm AKST/2:30pm-5:30pm EST

---

### **I. Introductions**

- a. Federal and State Agencies
- b. Tribal Governments
- c. Regional and Village Corporations
- d. Local Governments
- e. Consultants

### **II. Background Overview of Available Cultural Resource Information**

- a. Coastal Archaeology
- b. Riverine Archaeological Survey
- c. Ethnographic Resources

### **III. Objective and Scope of Coastal Leasing Programmatic Agreement (PA)**

- a. Objectives
- b. Scope

### **IV. Consulting Roles in PA Development**

- a. Signatories
- b. Consulting Parties

### **V. Consultation Plan and Timeline**

- a. Working backwards from April 2019
- b. Expectations
- c. Milestones

### **VI. Upcoming Actions**

- a. BLM scheduling forthcoming consultation meetings

## **Coastal Leasing Programmatic Agreement Objective and Scope**

The objectives of the Coastal Leasing Programmatic Agreement (PA) are to provide clarity and consistency to Section 106 Consulting Parties throughout the Bureau of Land Management's (BLM) leasing program in the Coastal Plain for Oil and Gas activities and to ensure BLM's compliance with the National Historic Preservation Act through the execution of a legally-binding agreement that defines the process BLM and lessees of federal lands within the Coastal Plain will follow to consider the effects of the Program on historic properties.

The scope of the Coastal Leasing PA will cover two primary facets.

1. Leasing Program (Coastal Plain): The PA will define how, when, and who the BLM will consult with to identify, evaluate, and assess the effects of leasing on historic properties within the Program Area.
2. Subsequent Actions (individual lease development actions): The PA will define how post-lease activities will comply with Section 106 by presenting standardized stipulations/mitigation measures for common/reasonably foreseeable activities, establishing consultation protocols, providing timelines and schedules related to Section 106 compliance, outlining administrative procedures, and defining a process for establishing future APEs, identification efforts, evaluations, assessment of effects and minimization and mitigation measures.

### **Coastal Plain Leasing Consultation Plan and Timeline**

- October 25, 2018: First Consulting Parties Meeting
  - PA Overview, Consulting Parties, Consultation Plan, Overview of Known cultural resources in Program Area, identify large issues
- Within 10 days, BLM will coordinate with each consulting party to schedule Section 106 PA meetings to receive preliminary input on cultural resources in the Program Area (November 4, 2018)
  - Coordinate with each consulting party regarding consultation protocol and scheduling
  - In-person meetings as scheduled by consulting parties to follow
- November-December 2018: BLM conducts Consultation Meetings with Parties
  - Preliminary identification of historic properties, their characteristics and boundaries, and potential effects on them from Leasing to guide development of PA stipulations
- January 7, 2019: Second Consulting Parties Meeting
  - BLM presents synopsis of results of consultation meetings
  - Group discusses potential avoidance, minimization, and mitigation scenarios
- January 21, 2019: BLM prepares first draft of PA based on results of second Consulting Parties meeting and distributes to Consulting Parties for review and comment
- Within 21 days (February 11, 2019), Consulting Parties provide BLM with written comments and suggested edits to the Draft PA
  - BLM will address consulting parties' comments and incorporate into revised Draft PA
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- Third Consulting Parties Meeting 14 days after BLM receives consulting parties' comments (February 25, 2019)
  - BLM will provide overview of comments received
  - BLM will identify large or outstanding issues in need of resolution
  - BLM will provide Consulting Parties with a revised Draft PA for review and comment
- Consulting Parties provide written comments on the revised Draft PA to BLM within 21 days (March 18, 2019)
  - BLM will address consulting parties' comments and incorporate into a Draft FINAL PA
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- Fourth Consulting Parties Meeting 14 days after BLM receives consulting parties' comments (Monday April 1, 2019)
  - BLM will provide overview of comments received
  - BLM will provide Consulting Parties with a Draft FINAL PA for review
- Within 7 days, Consulting Parties notify BLM if any outstanding issues remain to be addressed in the PA (Monday April 8, 2019)
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- Fifth Consulting Parties Meeting 14 days after Consulting Parties receive Draft Final PA
  - BLM will provide overview of comments received

- BLM distributes Final PA to consulting parties for signatures (signatories and concurring parties) (April 15, 2019)
- Consulting Parties provide Signature Pages to BLM 7 days after receipt of Final PA (April 22, 2019)

DRAFT

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Loya, Wendy M](#)  
**Subject:** Fwd: March 26: Section 106 Programmatic Agreement Consulting Parties Meeting tomorrow  
**Date:** Tuesday, March 26, 2019 12:55:24 PM  
**Attachments:** [3 27 19 Consulting Parties Meeting Agenda.docx](#)  
[EMP18 Draft PA 3 25 19 clean.docx](#)

---

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

----- Forwarded message -----

**From:** **Hayes, Miriam (Nicole)** <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Date:** Tue, Mar 26, 2019 at 12:51 PM  
**Subject:** March 26: Section 106 Programmatic Agreement Consulting Parties Meeting tomorrow  
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All,

Please see the attached agenda for tomorrow's meeting as well as the Draft Programmatic Agreement (PA) to ensure compliance with the Section 106 National Historic Preservation Act for the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge. Consulting Parties will have 3 weeks to review and provide comments on the Draft PA and are not asked to provide feedback on it tomorrow.

Thank you,  
Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
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# BLM Coastal Plain PA Consulting Parties Meeting Agenda

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5), Passcode: (b) (5)  
Date: March 27, 2019  
Time: 10:00am-12:00pm AKST/2:00pm-4:00pm EST

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## **I. Introductions**

- a. Signatories
- b. Consulting Parties

## **II. Background/Overview of Programmatic Agreement (PA) Process to Date**

- a. Initiation 10/2018
- b. Bulleted PA Draft
- c. Consulting Party Comments

## **III. Roles in PA Review Process**

- a. Signatories
- b. Consulting Parties

## **IV. Draft PA Overview**

- a. Preamble
- b. Stipulations
- c. Appendices

## **V. Consultation Plan and Timeline**

- a. Consulting Parties Review of Draft PA (3 weeks)

## **VI. Action Items for Consulting Parties**

- a. Provide BLM with two Points-of-Contact for the PA
- b. Review Draft PA and provide comments to BLM by 4/17/19

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**FIRST PROGRAMMATIC AGREEMENT  
AMONG  
THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

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26

27

1  
2 **DRAFT PROGRAMMATIC AGREEMENT**

3 Among the  
4 United States Department of the Interior, Bureau of Land Management  
5 United States Department of the Interior, Fish and Wildlife Service  
6 Alaska State Historic Preservation Officer  
7 and  
8 Advisory Council on Historic Preservation  
9 Regarding the  
10 Coastal Plain Oil and Gas Leasing Program  
11

12 **PREAMBLE**  
13

14 **WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land  
15 Management (BLM) has been directed to implement an oil and gas leasing program  
16 (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)  
17 pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December  
18 22, 2017]); and

19 **WHEREAS**, the BLM's implementation of the Program, including the development of an  
20 Environmental Impact Statement and selection of a preferred alternative that will guide  
21 the sale of leases for oil and gas activities pursuant to the National Environmental Policy  
22 Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54  
23 United States Code [USC] § 306108) of the National Historic Preservation Act (NHPA)  
24 (Public Law 89-665 [October 15, 1966]) (“the Undertaking”); and

25 **WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing  
26 program, and therefore the BLM is the lead federal agency for purposes of  
27 complying with Section 106 of the NHPA; and

28 **WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation  
29 Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), has  
30 determined that the area of potential effects (APE) for the Undertaking consists of  
31 the “1002” area defined in Section 20001 of Public Law 115-97, and as described in  
32 Appendix A: Area of Potential Effects; and

33 **WHEREAS**, Section 106 of the NHPA requires each federal agency, prior to any  
34 federal or federally sponsored, assisted, or authorized Undertaking, to take into  
35 account the effects of the proposed Undertaking on Historic Properties, which are  
36 properties that are listed on or eligible for listing in the National Register of Historic  
37 Places (NRHP), and to afford the ACHP a reasonable opportunity to comment  
38 regarding such Undertaking; and

39 **WHEREAS**, the BLM has afforded the ACHP with an opportunity to comment regarding  
40 the Undertaking and to consult in the development of this Programmatic Agreement  
41 (PA), and the ACHP has chosen to participate in the consultation pursuant to 36 CFR §  
42 800.6(a)(1)(iii) and is a Signatory to this PA; and

1 **WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined  
2 that compliance with Section 106 may best be achieved through the development of a  
3 PA as the BLM cannot fully determine effects on Historic Properties within the APE prior  
4 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
5 800.14(b)(1)(ii); and

6 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
7 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
8 Undertaking, including, but not limited to activities related to the NHPA, the  
9 Archaeological Resources Protection Act (ARPA) (Public Law 96-95 [October 31,  
10 1979]), and the Native American Graves Protection and Repatriation Act (NAGPRA)  
11 (Public Law 101-601 [November 16, 1990]), and therefore is a Signatory to this PA;  
12 and

13 **WHEREAS**, the NHPA requires the BLM to consult with federally recognized Indian  
14 Tribes regarding Historic Properties of traditional religious and cultural significance  
15 that may be affected by the Undertaking; and

16 **WHEREAS**, the BLM must provide Indian Tribes a reasonable opportunity to identify  
17 their concerns about Historic Properties, advise on the identification of Historic  
18 Properties, including those of traditional religious and cultural significance, articulate  
19 their views on the Undertaking's effects on such properties, and participate in the  
20 resolution of adverse effects (36 CFR § 800.2[c][2][ii][A]); and

21 **WHEREAS**, such consultation must be conducted in a manner sensitive to tribal  
22 sovereignty, recognizing the government-to-government relationship between the  
23 BLM and the Indian Tribes, and sensitive to the concerns and needs of the Indian  
24 Tribes (36 CFR § 800.2[c][2][ii][B]-[C]); and

25 **WHEREAS**, the BLM must comply with the American Indian Religious Freedom Act  
26 (Public Law 95-341 [August 11, 1978]), NAGPRA, as it applies to lands under federal  
27 control, and Executive Orders 13007 and 13175; and

28 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
29 as defined in 36 CFR § 800.16(m) and listed in Appendix B: Consulting Parties of this  
30 PA to participate in consultation and become Consulting Parties, consistent with 36  
31 CFR 800.2(c)(2); and

32 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
33 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602), and listed in  
34 Appendix B: Consulting Parties, to participate in consultation and become Consulting  
35 Parties; and

36 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
37 corporations the opportunity to provide information about Historic Properties within the  
38 APE consistent with 36 CFR § 800.2(c)(2); and

39 **WHEREAS**, the BLM invited local governments to participate as Consulting Parties,  
40 consistent with 36 CFR § 800.2(c)(3); and

1 **WHEREAS**, previous cultural resource investigations and documentation of Historic  
2 Properties within the APE have been limited in scope and extent; and

3 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) currently  
4 lists 90 cultural resource sites including sod house ruins, historic military features,  
5 graves, archaeological sites, ice cellars, and material sources. Of these 90, five have  
6 been determined eligible for the NRHP, two have been determined not eligible for the  
7 NRHP, two are pending reevaluation for their eligibility, and 81 have not been formally  
8 evaluated for their NRHP eligibility; and

9 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
10 (TLUI) lists 34 sites of traditional and/or cultural importance, including village sites,  
11 subsistence use locations, sod house ruins, graves, and reindeer herding areas, none  
12 of which have been evaluated for their eligibility for listing in the NRHP; and

13 **WHEREAS**, BLM's Section 106 consultation with Indian Tribes has resulted in the  
14 identification of Historic Properties of religious and cultural significance within the  
15 APE; and

16 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
17 the leasing stage and the process which shall be followed for compliance with  
18 Section 106 for post-lease activities; and

19 **NOW THEREFORE**, execution of this PA by the BLM, ACHP, SHPO, and FWS  
20 (collectively the "Signatories), and Consulting Parties and the implementation of its  
21 terms evidence that BLM has taken into account the effects of the Undertaking on  
22 Historic Properties and afforded the ACHP an opportunity to comment.

## 23 **STIPULATIONS**

24 The BLM shall ensure that the following measures are carried out:

### 25 **I. Administrative**

26 A. BLM shall ensure that this PA is attached and incorporated into any lease issued  
27 for the Coastal Plain Oil and Gas Leasing Program (Program) and will ensure  
28 that all lessees are aware that they must comply with the terms of this PA during  
29 activities on their lease(s).  
30

31 B. BLM shall ensure that all lessees provide a copy of the PA to all contractors  
32 engaged in exploration, development, production, or reclamation work associated  
33 with an issued Program lease. Lessees will make sure all contractors are made  
34 aware of the PA and that they will be required to comply with its terms.  
35

36 C. In the event that ownership of a lease is transferred, the new lessee will be  
37 required to adhere to the terms of this PA.  
38

1 D. Electronic mail (email) shall serve as the official correspondence method for all  
2 communications regarding this PA and its provisions, with an alternative method  
3 of postal mail delivery if the contacts do not have reliable e-mail.  
4

5 E. Consulting Parties and Signatories shall provide two points of contact for this PA.  
6 It is the responsibility of each Signatory and Consulting Party to immediately  
7 inform BLM of any change in name, address, email address, or phone number of  
8 any point-of-contact. Once received, the BLM will forward this information to all  
9 Signatories and Consulting Parties by e-mail or mail. Contact information for  
10 Signatories and Consulting Parties is included below in Appendix B: Consulting  
11 Parties.  
12

13 F. This PA may be executed in counterparts, with a separate page for each  
14 Signatory.

## 15 II. Scope of the PA

16 A. This PA is limited in scope to the consideration of Historic Properties, consistent  
17 with 36 CFR 800 and other federal laws that may be affected by the BLM's  
18 Undertaking within the APE.  
19

20 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
21 under Section 106 of NHPA, including consultation with federally recognized  
22 Indian Tribes, for Program decisions that may be implemented in accordance  
23 with the decisions supported by the Program EIS and BLM policy.  
24

25 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
26 involving reimbursement or contribution of funds between the parties to this PA  
27 will be handled in accordance with applicable laws, regulations, and procedures  
28 including those for Federal Government procurement and printing. Such  
29 endeavors will be outlined in separate agreements that will be made in writing by  
30 representatives of the parties and will be independently authorized by  
31 appropriate statutory authority. This PA does not provide such authority.

## 32 III. Agency Coordination Procedures

33 A. Agency Roles, Coordination, and Points of Contact

### 34 1. BLM

35 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
36 106 compliance, is responsible for the following actions:

- 37 i. Receiving, distributing, reviewing, issuing, and enforcing the  
38 stipulations of Archaeological Resources Protection Act (ARPA) permit  
39 applications submitted to conduct cultural resources investigations  
40 associated with BLM's Program;

41 ii. Conducting Section 106 reviews of Projects addressed under this PA.  
42

43 b. BLM's Points of Contact (POCs) for these PA responsibilities are:

- 1 i. ARPA Permitting:
  - 2 a. Arctic District Manager
- 3 ii. Section 106 Consultation:
  - 4 a. Arctic District Manager
- 5
- 6 2. FWS
  - 7 a. FWS, as a Signatory to this PA and surface manager of the APE, is
  - 8 responsible for the following actions:
    - 9 i. Receiving, reviewing, commenting on, and evaluating applications for
    - 10 ARPA permits;
    - 11 ii. Receiving, reviewing, commenting on, and evaluating Section 106
    - 12 determinations and findings made by BLM;
    - 13 iii. Controlling artifact collections originating from studies conducted within
    - 14 the APE;
    - 15 iv. Controlling and conducting appropriate actions associated with
    - 16 NAGPRA materials and Human Remains.
  - 17
  - 18 b. FWS' POCs for these PA responsibilities are:
    - 19 i. ARPA Permitting:
      - 20 a. Refuge Manager, Arctic National Wildlife Refuge
    - 21 ii. Section 106 Determinations and Findings:
      - 22 a. Regional Historic Preservation Officer (RHPO)
    - 23 iii. NAGPRA Compliance:
      - 24 a. Refuge Manager, Arctic National Wildlife Refuge
- 25
- 26 B. Section 106 Review Process:
  - 27 1. BLM, as the lead federal agency, shall coordinate with the FWS on all Section
  - 28 106 determinations of eligibility (DOEs) and findings of effect prior to BLM's
  - 29 submittal to SHPO for concurrence.
  - 30
  - 31 2. FWS shall be allotted 30 calendar days to review and respond to BLM DOEs
  - 32 and findings of effect.
  - 33
  - 34 3. Nothing shall prevent the BLM and FWS from engaging in informal
  - 35 consultation regarding the development of DOEs or findings of effect.
  - 36
  - 37 4. BLM shall provide courtesy copies of all DOEs and/or findings of effect to the
  - 38 FWS.
  - 39
  - 40 5. BLM shall also provide to FWS copies of any comments and/or responses
  - 41 received from Consulting Parties to this PA.
  - 42
- 43 C. ARPA Permitting Process:
  - 44 1. Upon receipt of an ARPA Permit application, BLM shall conduct a cursory
  - 45 review to ensure that the application is complete and contains the required



- 1 attachments, including an executed Provisional Curation Request (PCR) from  
2 the University of Alaska Museum of the North.  
3 a. If necessary, BLM may coordinate with the applicant to resolve incomplete  
4 applications prior to distributing the application to FWS.  
5  
6 2. When BLM determines that the ARPA permit application is complete, BLM  
7 shall concurrently:  
8 a. Identify, contact, and initiate government to government consultation with  
9 appropriate Indian Tribes;  
10 b. Notify FWS' POC that a completed ARPA permit application has been  
11 received and provide the FWS POC with a copy of the permit application  
12 and request FWS comments on the permit application.  
13  
14 3. FWS POC will coordinate with the FWS RHPO to review the permit  
15 application and PCR and will provide the BLM with comments and any  
16 applicable FWS conditions within 30 calendar days of receipt of the permit  
17 application.  
18  
19 4. Upon receipt of FWS' comments, BLM shall make a decision regarding the  
20 ARPA permit application and provide a copy of this decision to FWS.  
21  
22 5. If the application is approved and the investigation is authorized, BLM shall  
23 provide to FWS any and all field summaries, interim reports, draft and final  
24 reports, artifact inventories, geospatial data, maps, figures, or other  
25 deliverables generated by an authorized investigation, and offer the FWS an  
26 opportunity to review and comment.  
27 a. FWS will immediately notify BLM of any action or actions it believes  
28 constitute a violation of the ARPA permit conditions.  
29 b. FWS will notify BLM within 30 calendar days after receipt of reports  
30 associated with the permit if they have any comments or edits to the  
31 reports.  
32  
33 6. At any time, BLM shall immediately notify FWS of any administrative actions  
34 taken on an authorized ARPA permit, including but not limited to permit  
35 extension, notice of violation, any corrective or enforcement action, revocation  
36 of permit, acceptance of required reporting standards, and permit closure.

37 **IV. Section 106 Procedures**

- 38 A. BLM's Undertaking involves a number of activities associated with oil and gas  
39 leasing within the APE that have varying potentials to cause effects to Historic  
40 Properties, all of which are covered by this PA . The process below outlines an  
41 alternate process for BLM to comply with NHPA for the Undertaking, which will  
42 be carried out by cultural resource professionals who meet the Secretary of the  
43 Interior's (SOI) Professional Qualifications Standards (48 Federal Register  
44 44716-44742) in consultation with Signatories and other Consulting Parties.  
45

- 1 B. At its discretion, BLM may submit documentation requesting SHPO concurrence  
 2 on determinations of eligibility and findings of effect concurrently in a combined  
 3 submission for Project Types described below.  
 4
- 5 C. Nothing shall prevent the BLM from seeking informal consultation with the SHPO  
 6 regarding the preparation of determinations of eligibility, integrity analysis, or  
 7 assessments of effect.  
 8
- 9 **D. Step 1: Oil and Gas Program Project Types Addressed under this PA**  
 10 1. BLM has determined that the following six Project types associated with the  
 11 Oil and Gas Program may be reviewed under this PA:  
 12 a. Lease Sales  
 13 b. Geophysical Exploration (pre and post lease)  
 14 c. Applications for Permit to Drill (APD)  
 15 i. Drilling Exploration  
 16 ii. Development  
 17 d. Operations and Production  
 18 e. Inspection and Enforcement  
 19 f. Reclamation  
 20
- 21 **E. Step 2: Assess Project Potential to Cause Effects**  
 22 1. BLM will determine if a Project or phase of the Project under review has  
 23 potential to cause effects (Table 1).  
 24 a. If no, attach letter to the Project file [36 CFR 800.3(a)(1) determination].  
 25 b. If yes, and the Project type consists of Geophysical Exploration, proceed  
 26 to Step 3.  
 27 c. If yes, and the Project type is an APD or Reclamation, a separate Section  
 28 106 process and agreement document (“kick-out”) must occur in  
 29 accordance with Step 8 below.  
 30

31 **Table 1: Oil and Gas Program Project Types with Potential to Cause Effects**

Categories	Project Type
Project Types with Potential to Cause Effects	<ul style="list-style-type: none"> <li>• Geophysical Exploration (pre and post lease)</li> <li>• Applications for Permit to Drill (APD)                             <ul style="list-style-type: none"> <li>○ Drilling Exploration</li> <li>○ Development</li> </ul> </li> <li>• Reclamation</li> </ul>
Project Types with No Potential to Cause Effects	<ul style="list-style-type: none"> <li>• Lease Sale</li> <li>• Inspection and Enforcement</li> <li>• Operations and Production</li> </ul>

32

- 33 **F. Step 3: APE**  
 34 1. Has the APE been defined?

- 1 a. If no, BLM defines the APE in consultation with SHPO.
- 2 b. If yes, proceed to Step 4.

3  
4 **G. Step 4: Identification**

- 5 1. Have adequate efforts to identify historic properties consistent with the  
6 procedures described in Appendix C: Methods to Inventory APE been  
7 completed within the APE?
  - 8 a. If no, implement Appendix C: Methods to Inventory APE to conduct the  
9 appropriate level of effort to identify historic properties within the APE of  
10 the Project.
  - 11 b. If yes, proceed to Step 5.

12  
13 **H. Step 5: Preliminary APE Assessment**

- 14 1. Have identification efforts resulted in the identification of cultural resources  
15 within the APE?
  - 16 a. If no, proceed to Step 7.
  - 17 b. If yes, proceed to Step 6.

18  
19 **I. Step 6: Evaluation**

- 20 1. Have identified cultural resources within the APE been evaluated for NRHP  
21 eligibility?
  - 22 a. If no, the BLM will evaluate all cultural resources in the APE of the Project  
23 for NRHP eligibility (NRHP Bulletin 15).
    - 24 i. As described above in Stipulation III, BLM will consult with FWS on all  
25 DOEs prior to submitting them to SHPO for concurrence. FWS will  
26 have 30 days to review and respond to determinations submitted by  
27 BLM. If FWS does not offer comment within the review period, then  
28 BLM will presume agreement with the DOE(s).
    - 29 ii. BLM will consult with Indian Tribes on NRHP eligibility for cultural  
30 resources with religious and cultural significance to them. Indian Tribes  
31 will have 30 days to review and respond to determinations submitted  
32 by BLM. If an Indian Tribe(s) does not offer comment within the review  
33 period, then BLM will presume agreement with the DOE(s).
    - 34 iii. SHPO will have 30 days to review a DOE(s) submitted by BLM. If  
35 SHPO does not offer comment within the review period, then BLM will  
36 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
37 Step 7.
    - 38 iv. Additional time to review a BLM submittal of a DOE(s) may be  
39 requested by FWS, Indian Tribes, and SHPO, up to 30 days per  
40 submittal.
    - 41 v. If agreement cannot be reached on a DOE, then the BLM shall follow  
42 the procedures outlined at 36 CFR 800.4(c)(2).
    - 43 vi. Once NRHP evaluation has been completed in the APE, BLM may  
44 then proceed to Step 7.

1           b. If yes, and found eligible, proceed to Step 7.  
2

3 **J. Step 7: Assess Effects**

4       1. Are there historic properties in the APE?

5           a. If no, then BLM makes finding of “no historic properties affected” [36 CFR  
6           800.4(d)(1)] and submits to SHPO for concurrence.

7           i. If SHPO concurs with the BLM’s determination, BLM shall document  
8           SHPO concurrence to the Project file.

9           ii. If SHPO does not concur, and resolution cannot be reached through  
10           consultation, BLM shall follow the procedures outlined at 36 CFR  
11           800.4(d)(1)(ii-iv).

12       b. If yes, then BLM will apply the criteria of adverse effect [36 CFR 800.5(a)].

13           i. If BLM makes a finding of “no adverse effect” [36 CFR 800.5(d)(1)],  
14           BLM shall seek SHPO concurrence on this determination.

15           1. If SHPO concurs with the BLM’s determination, BLM shall  
16           document SHPO concurrence to the Project file.

17           2. If SHPO does not concur, and resolution cannot be reached  
18           through consultation, BLM shall follow the procedures outlined at  
19           36 CFR 800.5(c)(2-3).

20           ii. If BLM makes a finding of “adverse effect” [36 CFR 800.5(d)(2)] then  
21           the process reverts to the standard Section 106 procedures, in  
22           consultation with Signatories and Consulting Parties, to avoid,  
23           minimize, or mitigate adverse effects following 36 CFR 800.6.  
24

25 **K. Step 8: Decision regarding Undertaking**

26       1. BLM will not authorize a Project until Steps 1-7 have been completed and the  
27       appropriate finding of effect has been documented to the Project file.

28       2. Alternatively, an APD or Reclamation Project subject to this PA may be  
29       authorized by BLM only after a separate Section 106 review has been  
30       completed, and if necessary the appropriate agreement document (e.g.,  
31       Memorandum of Agreement of Programmatic Agreement, as appropriate) has  
32       been executed for the Project.  
33

34  
35 **L. Step 9: Reporting**

36       1. BLM will include summary of all Projects reviewed under this PA in the  
37       previous year in the annual PA report [Stipulation X(B)]. The summary will  
38       include a synopsis for each project, including at minimum:

39           a. A description of the Project;

40           b. Delineation of the APE;

41           c. Identification Efforts conducted within the APE;

42           d. NRHP Eligibility of know cultural resources within the APE;

1 e. BLM’s finding of effect for the Project.

2  
3 2. BLM will append all reports associated with cultural resource identification,  
4 evaluation, and assessment of effects that were used to support BLM findings  
5 of effect to the annual PA report.

6 **V. Section 106 Consultation Plan and Procedures**

7 A. The BLM is required to consult with federally recognized Indian Tribes regarding  
8 Historic Properties of traditional religious and cultural significance that may be  
9 affected by the Undertaking, and to consult with federally recognized Indian  
10 Tribes in a manner that is sensitive to tribal sovereignty and takes into account  
11 the specific concerns and needs of the Indian Tribes.

12  
13 B. At any time throughout the life of the PA, Consulting Parties may contact the  
14 BLM regarding the PA’s effectiveness, and if requested, BLM will raise issues of  
15 concern to the Signatories and other Consulting Parties at the Annual PA  
16 Meeting.

17  
18 C. BLM anticipates that projects will develop in phases and that each phase will  
19 require consultation with Signatories and Consulting Parties. Phases include:  
20 Leasing, Geophysical Exploration, Applications for Permit to Drill (APD) (drilling  
21 exploration and development), and Reclamation. BLM will consult on an “as  
22 necessary” basis to include, but not limited to the following:

23  
24 1. In consultation with Indian Tribes, BLM shall:

- 25 a. Develop NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5);  
26 b. Seek resolution of concerns regarding Historic Properties of traditional  
27 religious and cultural significance within the Program APE;  
28 c. Consider including Tribal Monitors during activities within the Project-  
29 specific APE(s).

30  
31 2. In consultation with Consulting Parties, BLM shall:

- 32 a. Collect information to guide permitting, including NEPA reviews, and if  
33 appropriate, selection of alternatives;  
34 b. Develop appropriate research designs for cultural resources (i.e.,  
35 archaeological, ethnographic, historic, socio-cultural) studies;  
36 c. Determine if Project-specific conditions and/or stipulations may be  
37 incorporated into BLM-permitted activities to avoid, minimize, and/or  
38 mitigate effects to Historic Properties within the Project-specific APE;  
39 d. Consider conducting periodic joint (i.e., BLM and representatives from  
40 interested Consulting Parties) site visits within the Project-specific APE(s).  
41 e. Develop Project-specific Historic Properties Management Plans (HPMPs)  
42 to avoid, minimize, and/or mitigate adverse effects to Historic Properties  
43 that may result from Program activities. These plans may include:  
44 i. Monitoring lessee activities and effects on Historic Properties within the  
45 Project-specific APE(s);

- 1           ii.    Periodic historic property condition assessments;
- 2           iii.    Ensure lessees have fulfilled commitments stipulated by BLM, and
- 3                have complied with the terms of this PA.

4   **VI.   Standards**

5    A. Professional Qualifications:

- 6      1. BLM and FWS shall ensure that all work carried out pursuant to this
- 7         Agreement shall be done by or under the direct supervision of a qualified
- 8         historic preservation professionals who meet the (SOI) Professional
- 9         Qualifications Standards (48 Federal Register 44716-44742). The BLM and
- 10        FWS, through review of permit applications or other means, shall ensure that
- 11        consultants retained for services pursuant to the Agreement meet these
- 12        standards.
- 13
- 14      2. Qualified Historic Preservation Professional: A “qualified historic preservation
- 15         professional” is a person who meets the relevant standards outlined in the
- 16         Archeology and Historic Preservation: (SOI)Standards and Guidelines [As
- 17         Amended and Annotated] ([http://www.nps.gov/history/local-](http://www.nps.gov/history/local-law/arch_stnds_9.htm)
- 18         [law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ).
- 19

20    B. Professional Standards:

- 21      1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall
- 22         ensure that all work conducted as a result of this PA will be performed in
- 23         accordance with the (SOI)Standards for Archeology and Historic Preservation
- 24         (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
- 25
- 26      2. BLM shall require that persons supervising and conducting cultural resources
- 27         work on the behalf of lessees hold the appropriate BLM permits and/or
- 28         authorizations as appropriate for cultural resources inventory, monitoring, and
- 29         other cultural resources investigations, and meet the Standards and
- 30         Guidelines, as well as the (SOI)Professional Qualification Standards (36 CFR
- 31         61) for the applicable discipline. BLM shall also ensure that persons
- 32         supervising and conducting cultural resources work on the behalf of lessees
- 33         comply with the NAGPRA POA.
- 34
- 35      3. Cultural resources investigations associated with Program activities will be
- 36         conducted in accordance with Appendix C: Methods to Inventory APE, and
- 37         will meet the standards presented in BLM Manual 8110.
- 38         a. The BLM Class of survey will depend on the type of activity being
- 39             proposed (i.e., biological investigations, seismic survey, exploratory
- 40             drilling).
- 41
- 42      4. Reports regarding cultural resources or Historic Properties shall meet the
- 43         standards outlined in the (SOI)Standards for Archeology and Historic

1 Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742) and  
2 BLM permit stipulations and guidance (i.e., BLM Manual 8110).  
3

4 **VII. Treatment of Human Remains, Funerary Objects, Sacred**  
5 **Objects, and Objects of Cultural Patrimony**

- 6 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
7 that any Native American burials, human remains, and/or related items  
8 discovered on federal lands during implementation of the terms of the Agreement  
9 will be treated respectfully and in accordance with NAGPRA.  
10  
11 B. Procedures guiding the treatment of human remains, funerary objects, sacred  
12 objects, or objects of cultural patrimony must comply with Section 3 of NAGPRA  
13 (43 CFR 10.4).  
14  
15 C. As surface manager of the APE, FWS is the controlling agency for any and all  
16 human remains and NAGPRA materials.  
17  
18 D. BLM shall develop, in consultation with FWS and Indian Tribes, a NAGPRA POA  
19 that complies with 43 CFR 10.5 no later than 180 days after the execution of this  
20 PA, which shall contain:  
21 1. Notification Procedures and Protocols  
22 2. Chain of Custody Procedures

23 **VIII. Late Discoveries**

- 24 A. During the entire implementation of this Undertaking, BLM will ensure that the  
25 FWS, SHPO, and Indian Tribes are informed of unanticipated discoveries within  
26 the Undertaking's APE during activities associated with the BLM's oil and gas  
27 leasing program.  
28  
29 B. Lessees or their contactors will not take any actions that would adversely affect  
30 newly discovered, unanticipated cultural resources that may be eligible for listing  
31 in the NRHP without written approval from BLM.  
32  
33 C. Upon the unanticipated discovery of a potential cultural resource, the following  
34 steps will be undertaken:  
35 1. The lessee or their contractor will immediately notify the BLM and halt all  
36 construction work involving subsurface disturbance in the area of the find and  
37 an appropriate buffer surrounding the area where further subsurface finds can  
38 be reasonably expected to occur;  
39  
40 2. The BLM shall notify the FWS, SHPO, and other Consulting Parties within 48  
41 hours of the discovery;  
42

- 1 3. The BLM or a SOI-qualified archaeologist approved by them will immediately  
2 inspect the site and collect enough information to determine (if possible):  
3 a. The extent of cultural materials associated with the inadvertent discovery  
4 b. The degree of integrity  
5 c. The cultural affiliation of the materials  
6
- 7 4. Within five (5) working days of the original notification, the BLM, in  
8 consultation with the FWS, SHPO, and Consulting Parties, will determine  
9 whether the discovery encountered is eligible for listing in the NRHP.  
10 a. If the discovery is determined eligible for listing in the NRHP and all  
11 parties concur, BLM will direct the lessee to prepare a plan for its  
12 avoidance, protection, or recovery of information in consultation with BLM,  
13 SHPO, and Indian Tribes, as appropriate.  
14
- 15 5. Work in the affected area will not proceed until either:  
16 a. An approved plan is implemented; or  
17 b. The BLM determines that the discovery is not eligible for the NRHP, and  
18 the SHPO concurs with this determination.  
19
- 20 D. Any disputes over the evaluation or treatment of unanticipated discoveries will be  
21 resolved as provided in Stipulation XI of this PA.

## 22 IX. Curation

- 23 A. Archaeological Materials not falling under jurisdiction of NAGPRA recovered  
24 during any activities associated with the Undertaking are property of FWS as  
25 surface manager of the APE and will be curated under FWS' existing agreement  
26 with the University of Alaska Museum of the North (UAMN).  
27
- 28 B. Materials determined to be subject to NAGPRA will be managed as described  
29 above in Stipulation VII and in the NAGPRA POA.

## 30 X. Annual PA Meeting and Reports

- 31 A. Annual Meeting: BLM shall hold a meeting of the Signatories, as well as the  
32 Consulting Parties if they so wish, within one year of the PA execution, and each  
33 year by that same date, thereafter, to discuss the previous year's activities, and  
34 activities scheduled for the upcoming year. The meeting shall be held in  
35 Anchorage at the Alaska Office of History and Archaeology, or at another  
36 location by consensus of the Signatories. The parties may participate by  
37 telephone if they so desire. The BLM will distribute meeting minutes to the  
38 meeting participants within 30 days of the meeting, and meeting participants will  
39 provide comments to the BLM within 15 days of receipt. The BLM shall amend  
40 the minutes as a result of comments and distribute finalized minutes within 15  
41 days.  
42



- 1 1. Additional Meetings: If a Signatory deems a meeting necessary outside of the  
2 regularly schedule annual meeting, their request shall be considered in  
3 consultation with the other Signatories. BLM, taking into consideration the  
4 results of consultation, shall decide whether to convene additional meetings.  
5 A Consulting Party may contact the BLM to request an additional meeting,  
6 which the BLM will consider and, if determined to be appropriate, will consult  
7 with the Signatories to determine if a meeting may be convened.  
8

9 B. Annual PA Report:

- 10 1. Prior to the annual meeting, BLM will provide the Signatories and Consulting  
11 Parties with an annual report that describes the completed and upcoming  
12 activities associated with the stipulations of this agreement. The report will  
13 include the following information:  
14 a. Number of leases issued  
15 b. Activities reviewed under this PA in accordance with Stipulation IV  
16 c. Consultation activities undertaken  
17 d. Maps of areas leased, surveyed, or otherwise investigated  
18 e. Upcoming/Planned activities

19 **XI. Dispute Resolution**

- 20 A. Should any of the Signatories or Consulting Parties to this PA object at any time  
21 to any actions proposed or the manner in which the terms of this PA are  
22 implemented, the BLM will consult with such party to determine if it is possible to  
23 resolve the objection. If the BLM determines that such objection cannot be  
24 resolved, the BLM will:  
25  
26 1. Forward all documentation relevant to the dispute, including the BLM's  
27 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
28 advice on the resolution of the objection within 30 calendar days of receiving  
29 adequate documentation. Prior to reaching a final decision on the dispute,  
30 BLM will prepare a written response that takes into account any timely advice  
31 or comments regarding the dispute from the ACHP, Signatories, and  
32 Consulting Parties, and provide them with a copy of this written response.  
33 BLM will then proceed according to its final decision.  
34  
35 2. If the ACHP does not provide its advice regarding the dispute within the 30  
36 calendar-day time period, BLM may make a final decision on the dispute and  
37 proceed accordingly. Prior to reaching such a final decision, BLM will prepare  
38 a written response that takes into account any timely comments regarding the  
39 dispute from the Signatories and Consulting Parties to the PA and provide  
40 them and the ACHP with a copy of such written response.  
41  
42 3. Regardless of the results of the dispute resolution measures described  
43 above, the BLM's responsibility is to carry out all other actions subject to the  
44 terms of this PA that are not the subject of the dispute.

1 **XII. Duration**

- 2 A. This PA will remain in effect for 10 years after its execution.  
3  
4 B. Prior to such time, BLM may/will consult with the other Signatories to reconsider  
5 the terms of the PA and amend it in accordance with Stipulation XIII below no  
6 later than 6 months prior to expiration of the agreement. If appropriate, the  
7 Signatories may execute a new agreement or amend to extend the duration of  
8 the current agreement.

9 **XIII. Amendments**

- 10 A. This PA may be amended at any time when such amendment is agreed to in  
11 writing by all Signatories. The amendment will be effective on the date a copy  
12 signed by all of the Signatories is filed with the ACHP.  
13  
14 B. Any amendments made to the PA will be distributed to all Consulting Parties and  
15 attached to the PA in Appendix D: PA Amendments (reserved).  
16  
17 C. In the event that another federal agency not initially a party to or subject to this  
18 PA receives an application for funding/license/permit for the Undertaking as  
19 described in this PA, that agency may fulfill its Section 106 responsibilities by  
20 stating in writing it concurs with the terms of this PA and notifying the Signatories  
21 that it intends to do so. Such agreement shall be evidenced by execution of a  
22 signature page signed by an authorized individual for that agency and filing this  
23 page with the ACHP, and implementation of the terms of this PA.

24 **XIV. Termination**

- 25 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
26 carried out, that party shall immediately consult with the other Signatories to  
27 attempt to develop an amendment or agreement on other actions that would  
28 avoid termination of the PA. If after 30 calendar days from the initiation of such  
29 consultation (or another time period agreed to by all Signatories) an amendment  
30 or agreement on other actions that would avoid termination cannot be reached,  
31 any Signatory may terminate the Agreement upon written notification to the other  
32 Signatories.  
33  
34 B. In the event that the PA is terminated, and prior to further Program actions, the  
35 BLM must either (a) execute a Memorandum of Agreement (MOA) pursuant 36  
36 CFR § 800.6 or (b) request, take into account, and respond to the comments of  
37 the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories as to the  
38 course of action it will pursue.

39 **XV. Emergency Situations**

- 1 A. The BLM shall notify within one (1) business day the SHPO and the ACHP of an  
2 emergency situation, which represents an imminent threat to public health or  
3 safety or creates a hazardous condition that also has potential to harm Historic  
4 Properties or the subsequent response has potential to harm Historic Properties  
5 and the measures taken to respond to the emergency or hazardous condition.  
6 Should the SHPO or the ACHP desire to provide technical assistance to the  
7 BLM, they shall submit comments within seven (7) calendar days from  
8 notification, if the nature of the emergency or hazardous condition allows for such  
9 coordination.  
10  
11 B. If the APE has been surveyed for Historic Properties and none are within the  
12 APE, then BLM will request concurrence on a determination of “no Historic  
13 Properties affected” within five (5) calendar days from the initial notification.  
14  
15 C. If the APE has not been surveyed for potential Historic Properties, then  
16 emergency actions will be monitored by a SOI qualified professional or the APE  
17 will be surveyed by a SOI-qualified professional no later than one (1) year after  
18 the emergency action is completed. A monitoring report or survey report will be  
19 submitted to Signatories within 30 days of the end of fieldwork.  
20  
21 D. If a previously known or unknown historic property is adversely affected by  
22 emergency actions the BLM will consult to resolve the adverse effect pursuant 36  
23 CFR § 800.6

24 **XVI. Anti-Deficiency Provision**

- 25 A. Any obligation of the federal agencies set forth in this PA is subject to and  
26 dependent on appropriations by Congress and allocation of sufficient funds for  
27 that purpose. The federal agencies shall make reasonable and good faith efforts  
28 to secure the necessary funds to implement this PA in its entirety. If compliance  
29 with the Anti-Deficiency Act alters or impairs the federal agencies’ ability to  
30 implement the stipulations of this agreement, the federal agencies shall consult in  
31 accordance with the amendment and termination procedures found at  
32 Stipulations XIII and XIV of this agreement.

33 **EXECUTION** of this PA by the Signatories, and implementation of its terms,  
34 evidences that the BLM and FWS have taken into account the effects of the  
35 Undertaking on Historic Properties and have afforded the ACHP an opportunity to  
36 comment.

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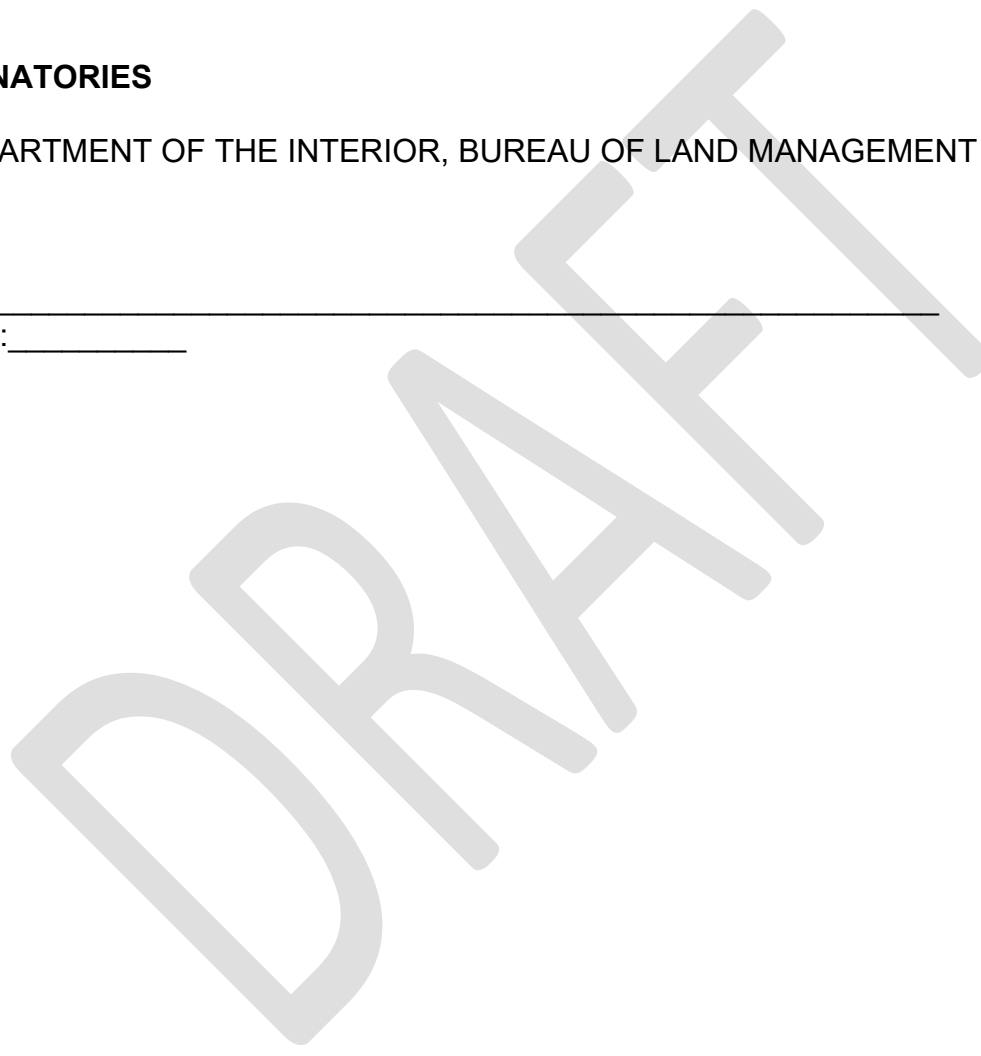
**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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



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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

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

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

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

DRAFT

1 **Appendix A: Area of Potential Effects**

2 (Map and legal descriptive information (i.e., MTRs) of the APEs for the PA)

3

4 PLACEHOLDER

DRAFT



1 **Appendix B: Consulting Parties**

2 (List of Signatories and Consulting Parties with Contact Information)

Name & Title	Organization	PA Role	Phone	Email
Nicole Hayes, Project Manager	USDOI, BLM	Signatory	907.271.4354	<a href="mailto:mnhayes@blm.gov">mnhayes@blm.gov</a>
Judy Bittner, SHPO	ADNR, OHA	Signatory	907.269.8715	<a href="mailto:Judy.bittner@alaska.gov">Judy.bittner@alaska.gov</a>
Tom McCulloch, Assistant Director	ACHP	Signatory	202.517.0222	<a href="mailto:tmcculloch@achp.gov">tmcculloch@achp.gov</a>
Ed deCleva, Regional Historic Preservation Officer	USDOI, FWS	Signatory	907.786.3399	<a href="mailto:edward_decleva@fws.gov">edward_decleva@fws.gov</a>
Kevin Fisher	North Slope Borough	Consulting Party		<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Mayor Amanda Kaleak	City of Kaktovik	Consulting Party		<a href="mailto:office@cityofkaktovik.org">office@cityofkaktovik.org</a>
Tonya Garnett, Executive Director	Native Village of Venetie Tribal Government	Consulting Party		<a href="mailto:tonyagarnett@hotmail.com">tonyagarnett@hotmail.com</a>
Galen Gilbert, First Chief	Arctic Village Council	Consulting Party		
Timothy Roberts, First Chief	Venetie Village Council	Consulting Party		
President Edward Rexford, Sr	Native Village of Kaktovik	Consulting Party		
Teresa Imm	Arctic Slope Regional Corportation	Consulting Party		<a href="mailto:timm@asrc.com">timm@asrc.com</a>
Mathew Rexford	Kaktovik Inupiat Corporation	Consulting Party		<a href="mailto:nvkaktovik@gmail.com">nvkaktovik@gmail.com</a>
Sarah Obed	Doyon Limited	Consulting Party		<a href="mailto:obeds@doyoncom">obeds@doyoncom</a>
Frederick Brower	Inupiat Community of the Arctic Slope (ICAS)	Consulting Party		<a href="mailto:Frederick.brower@inupiat.gov.com">Frederick.brower@inupiat.gov.com</a>
Doreen Leavitt	Native Village of Barrow	Consulting Party		<a href="mailto:Doreen.leavitt@nvbarrow.net">Doreen.leavitt@nvbarrow.net</a>
Rhonda Pitka	Beaver Tribal Council	Consulting Party		<a href="mailto:rpitka@beavercouncil.org">rpitka@beavercouncil.org</a>
Nancy James	Gwichyaa Zhee (Native Village of Fort Yukon)	Consulting Party		
Charleen Fisher	Council of Athabaskan Tribal Governments (CATG)	Consulting Party		<a href="mailto:Charleen.fisher@catg.org">Charleen.fisher@catg.org</a>

3

4

1 **Appendix C: Methods to Inventory APE**

2 **PLACEHOLDER**

- 3
- References to BLM Policy Manual 8110

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1 **Appendix D: PA Amendments (reserved)**

2 PLACEHOLDER

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

DRAFT

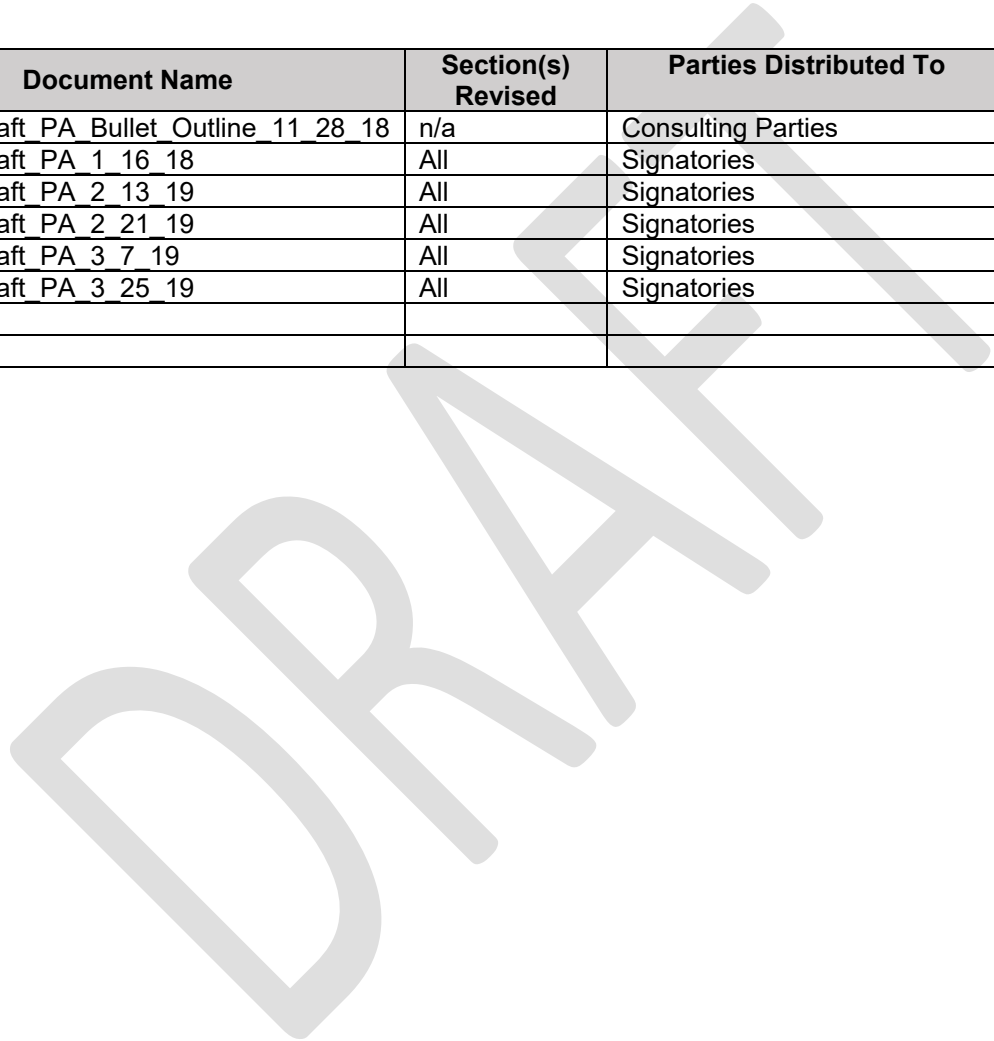
1 **Appendix E: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	Signatories	Revised Draft PA based on Sig Cmts

3

4



**From:** [Loya, Wendy M](#)  
**To:** [Marino, Eugene](#)  
**Subject:** Fwd: Meeting agenda and attachment for 10/25 meeting  
**Date:** Thursday, October 25, 2018 7:50:00 AM  
**Attachments:** [10\\_25\\_18\\_Consulting\\_Parties\\_Meeting\\_Agenda.pdf](#)  
[ATT00001.htm](#)  
[Coastal PA Objectives Scope and Consultation Plan 10\\_25\\_18.pdf](#)  
[ATT00002.htm](#)

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Hi Eugene,

My rent info for today's call.

Thank you,  
Wendy

Dr. Wendy M. Loya  
Arctic Program Coordinator  
US Fish and Wildlife Service, Office of Science Applications  
Anchorage, Alaska  
[907.786.3532](tel:907.786.3532) (office)  
[907.227.2942](tel:907.227.2942) (mobile)

Begin forwarded message:

**From:** "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Date:** October 25, 2018 at 07:05:54 AKDT  
**To:** Tiffany Yatlin <[tiffany\\_tritt\\_99722@hotmail.com](mailto:tiffany_tritt_99722@hotmail.com)>, "Jake.Anders@srbak.com" <[jake.anders@srbak.com](mailto:jake.anders@srbak.com)>, [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov), [sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov), Matthew Rexford <[nvkaktovik@gmail.com](mailto:nvkaktovik@gmail.com)>, City of Kaktovik - City Clerk <[office@cityofkaktovik.org](mailto:office@cityofkaktovik.org)>, "Imm, Teresa" <[timm@asrc.com](mailto:timm@asrc.com)>, "Faith C Martineau (DNR)" <[faith.martineau@alaska.gov](mailto:faith.martineau@alaska.gov)>, Stephen Braund <[stephen.braund@srbak.com](mailto:stephen.braund@srbak.com)>, Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>, Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>, Tonya Garnett <[tonyagarnett@hotmail.com](mailto:tonyagarnett@hotmail.com)>, patrick hanson <[p\\_jhanson@hotmail.com](mailto:p_jhanson@hotmail.com)>, "Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>, [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org), Tom Lohman <[tomlohman2@aol.com](mailto:tomlohman2@aol.com)>, Chad Ricklefs <[chad.ricklefs@emp.si.com](mailto:chad.ricklefs@emp.si.com)>, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, "Kevin S. Fisher" <[kevin.fisher@north-slope.org](mailto:kevin.fisher@north-slope.org)>, Joseph Keeney <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)>, Edward Declava <[edward\\_declava@fws.gov](mailto:edward_declava@fws.gov)>, Fannie Sopluf <[sopluf82@gmail.com](mailto:sopluf82@gmail.com)>, Eugene Marino <[eugene\\_marino@fws.gov](mailto:eugene_marino@fws.gov)>, "Janowski, Tyler" <[tjanowski@asrc.com](mailto:tjanowski@asrc.com)>, "Fischer, Mackenzie" <[MFischer@inupiatvoice.org](mailto:MFischer@inupiatvoice.org)>  
**Subject:** Meeting agenda and attachment for 10/25 meeting

Good morning,

Attached is the meeting agenda and a draft document regarding the Coastal Plain Section 106 PA objectives and scope that we will be discussing today. We look forward to your participation.

Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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# BLM Coastal Plain PA Consulting Parties Meeting Agenda

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5) Passcode: (b) (5)  
Date: October 25, 2018  
Time: 10:30am-1:30pm AKST/2:30pm-5:30pm EST

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## **I. Introductions**

- a. Federal and State Agencies
- b. Tribal Governments
- c. Regional and Village Corporations
- d. Local Governments
- e. Consultants

## **II. Background Overview of Available Cultural Resource Information**

- a. Coastal Archaeology
- b. Riverine Archaeological Survey
- c. Ethnographic Resources

## **III. Objective and Scope of Coastal Leasing Programmatic Agreement (PA)**

- a. Objectives
- b. Scope

## **IV. Consulting Roles in PA Development**

- a. Signatories
- b. Consulting Parties

## **V. Consultation Plan and Timeline**

- a. Working backwards from April 2019
- b. Expectations
- c. Milestones

## **VI. Upcoming Actions**

- a. BLM scheduling forthcoming consultation meetings

## **Coastal Leasing Programmatic Agreement Objective and Scope**

The objectives of the Coastal Leasing Programmatic Agreement (PA) are to provide clarity and consistency to Section 106 Consulting Parties throughout the Bureau of Land Management's (BLM) leasing program in the Coastal Plain for Oil and Gas activities and to ensure BLM's compliance with the National Historic Preservation Act through the execution of a legally-binding agreement that defines the process BLM and lessees of federal lands within the Coastal Plain will follow to consider the effects of the Program on historic properties.

The scope of the Coastal Leasing PA will cover two primary facets.

1. Leasing Program (Coastal Plain): The PA will define how, when, and who the BLM will consult with to identify, evaluate, and assess the effects of leasing on historic properties within the Program Area.
2. Subsequent Actions (individual lease development actions): The PA will define how post-lease activities will comply with Section 106 by presenting standardized stipulations/mitigation measures for common/reasonably foreseeable activities, establishing consultation protocols, providing timelines and schedules related to Section 106 compliance, outlining administrative procedures, and defining a process for establishing future APEs, identification efforts, evaluations, assessment of effects and minimization and mitigation measures.



## Coastal Plain Leasing Consultation Plan and Timeline

- **October 25, 2018:** First Consulting Parties Meeting
  - PA Overview, Consulting Parties, Consultation Plan, Overview of Known cultural resources in Program Area, identify large issues
- **By November 4, 2018:** Within 10 days, BLM will coordinate with each consulting party to schedule Section 106 PA meetings to receive preliminary input on cultural resources in the Program Area
  - Coordinate with each consulting party regarding consultation protocol and scheduling
  - In-person meetings as scheduled by consulting parties to follow
- **November-December 2018:** BLM conducts Consultation Meetings with Parties
  - Preliminary identification of historic properties, their characteristics and boundaries, and potential effects on them from Leasing to guide development of PA stipulations (potential avoidance, minimization and mitigation scenarios)
- **January 8, 2019:** Second Consulting Parties Meeting – DISTRIBUTE DRAFT PA
  - BLM presents first draft of PA based on previous meetings, representing synopsis of results of consultation meetings
  - Consulting Parties have 21-day comment/review period
  - Group discussion of potential avoidance, minimization, and mitigation scenarios
- **January 29, 2019:** Consulting Parties provide BLM with written comments and suggested edits to the Draft PA
  - BLM will address consulting parties' comments and incorporate into revised Draft PA
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- **February 12, 2019:** Third Consulting Parties Meeting 14 days after BLM receives consulting parties' comments - DISTRIBUTE REVISED DRAFT PA
  - BLM will provide overview of comments received
  - BLM will identify large or outstanding issues in need of resolution
  - BLM will provide Consulting Parties with a revised Draft PA for review and comment
- **February 26, 2019:** Consulting Parties provide written comments on the revised Draft PA to BLM
  - BLM will address consulting parties' comments and incorporate into a Draft FINAL PA
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- **March 12, 2019:** Fourth Consulting Parties Meeting – DISTRIBUTE DRAFT FINAL PA
  - BLM will provide overview of comments received
  - BLM will provide Consulting Parties with a Draft FINAL PA for review
- **March 19, 2019:** Within 7 days, Consulting Parties notify BLM if any outstanding issues remain to be addressed in the PA
  - BLM will consult with individual parties to clarify comments and seek further information, if required.
- **April 2, 2019:** Fifth Consulting Parties Meeting – DISTRIBUTE FINAL PA
  - BLM will provide overview of comments received
  - BLM distributes Final PA to consulting parties for signatures
- **April 9, 2018:** Consulting Parties provide Signature Pages to BLM 7 days after receipt of Final PA

**From:** [Steen, Debbie DS](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Loya, Wendy M](#)  
**Subject:** Fwd: SIGNATURE REQUESTED Final Programmatic Agreement  
**Date:** Monday, September 30, 2019 3:23:36 PM  
**Attachments:** [FWS Signed PA 093019.pdf](#)  
**Importance:** High

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Nicole,  
Attached is the FWS signature page for the Coastal Plain Programmatic Agreement. I am putting together the acceptance letter for signature and will mail that, as well as the original signature page to you ASAP.

Debbie Steen  
FWS- Alaska  
786-3665

----- Forwarded message -----

**From:** **Steen, Debbie** <[debbie\\_steen@fws.gov](mailto:debbie_steen@fws.gov)>  
**Date:** Mon, Sep 30, 2019 at 7:53 AM  
**Subject:** Re: SIGNATURE REQUESTED Final Programmatic Agreement  
**To:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>

I just got back in the office and saw your request to have the document signed by COB October 1. I will be running the PA through the FWS surnaming process today. I have a note from Eugene Marino in our Washington Office that he reviewed and is okay with the PA as written. I hope to get back to you quickly.

Debbie Steen  
USFWS-Alaska  
907-786-3665

On Fri, Sep 20, 2019 at 10:02 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Dear Signatories,  
The final programmatic agreement for the Coastal Plain Oil and Gas Leasing Program is attached. The only changes since the last version were made through the technical editing/formatting process and did not result in any substantive changes.

BLM requests that you review and obtain the appropriate signature for your agency **by close of business October 1st**. In order to maintain quality of the original, please only scan in your agency signature page and email it back. It would be appreciated if you could also send the original signature page to the mailing address below. Once I have received all of the signature pages I will send out a compiled document to everyone.

Thank you all for your work into development of this PA. We look forward to working with you in the future as it is implemented.

Please let me know if you have any questions.

Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

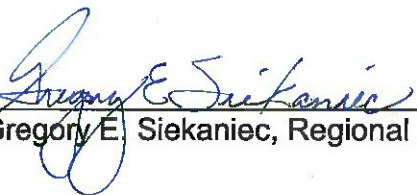
FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

United States Department of the Interior, Fish and Wildlife Service

By:  Date: 30 September 2019  
Gregory E. Siekaniec, Regional Director, Alaska

**From:** [Loya, Wendy M](#)  
**To:** [Marino, Eugene](#)  
**Subject:** Fwd: Signed Consultation letters for your records  
**Date:** Tuesday, October 23, 2018 12:17:00 PM  
**Attachments:** [Signed 106 ltr VVC.pdf](#)  
[ATT00001.htm](#)  
[Signed 106 ltr AVC.pdf](#)  
[ATT00002.htm](#)  
[Signed 106 ltr NVK.pdf](#)  
[ATT00003.htm](#)  
[Signed 106 ltr NVVTG.pdf](#)  
[ATT00004.htm](#)  
[Signed 106 ltr KIC.pdf](#)  
[ATT00005.htm](#)  
[Signed 106 ltr NSB.pdf](#)  
[ATT00006.htm](#)  
[Signed 106 ltr City of Kaktovik.pdf](#)  
[ATT00007.htm](#)  
[Signed 106 ltr ASRC.pdf](#)  
[ATT00008.htm](#)



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Not sure if these are helpful, but want to make sure you have everything we do.

Wendy

Dr. Wendy M. Loya  
Arctic Program Coordinator  
US Fish and Wildlife Service, Office of Science Applications  
Anchorage, Alaska  
[907.786.3532](tel:907.786.3532) (office)  
[907.227.2942](tel:907.227.2942) (mobile)

Begin forwarded message:

**From:** "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Date:** October 23, 2018 at 07:52:28 AKDT  
**To:** Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>, [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov), "Faith C Martineau (DNR)" <[faith.martineau@alaska.gov](mailto:faith.martineau@alaska.gov)>, [sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov), Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>  
**Cc:** "Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>, Joseph Keeney <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)>, [coastalplainAR@empesi.com](mailto:coastalplainAR@empesi.com), "Nichelle (Shelly) Jones" <[njones@blm.gov](mailto:njones@blm.gov)>  
**Subject:** Signed Consultation letters for your records

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
[www.blm.gov/alaska](http://www.blm.gov/alaska)

In Reply Refer To:  
8140 (930)

October 22, 2018

First Chief Timothy Roberts  
Venetie Village Council  
Post Office Box 119  
Venetie, Alaska 99781

Dear First Chief Roberts,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

## **Regulatory Discussion of BLM's Leasing Program**

The Leasing Program is being undertaken in response to recent legislation and guided by orders issued by the Secretary of the Interior (Table 1). This section provides a brief overview of the legal processes that has led to BLM's Leasing Program, and informs the later discussion of how BLM can best comply with Section 106 of the National Historic Preservation Act (NHPA) for the Leasing Program.

The Alaska National Interest Lands and Conservation Act (ANILCA) of 1980 (Public Law 96-487) contains provisions to conduct studies of potential oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) (16 U.S.C. § 3142), but that no leasing or development of any oil and gas resources could occur within the Arctic Refuge until authorized by an act of Congress (*ibid.* § 3143). The Coastal Plain study area is often referred to as the "1002" area, referencing the section of ANILCA that describes the resource assessment and study program (ANILCA Title X, § 1002).

In December 2017, the Tax Cuts and Jobs Act (Public Law 115-97) was signed into law, which contains a provision that requires BLM hold not fewer than 2 lease sales within the Coastal Plain or “1002” area of the Arctic Refuge (Program Area) by 2021 and 2024, respectively (Title II § 20001, 16 U.S.C. § 3143). BLM has been further mandated by Secretary of the Interior Memorandum 3355 to complete the necessary National Environmental Policy Act (NEPA) review process for this Program within one year from the Notice of Intent (NOI) to prepare an EIS. The NOI was published by the BLM in the Federal Register on April 20, 2018 (Vol. 83 Federal Register, No. 77).

**Table 1: BLM Program Legal Background and Timeline**

<b>Federal Law or Executive/Secretary Order</b>	<b>Description</b>	<b>Timing/Schedule</b>
Alaska National Interest Lands and Conservation Act (Public Law 96-487; 16 U.S.C. § 3143)	Prohibited Oil and Gas Leases and Development within Coastal Plain unless authorized by Congress	Becomes law in 1980
Tax Cuts and Jobs Act (Public Law 115-97)	Required implementation of an Oil and Gas Leasing Program in Coastal Plain	Becomes law in 2017; Lease sales by 2021 and 2024, respectively
Secretary of the Interior Order 3355: “Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807”	Sets page limits of EISs, and instructs bureaus to complete EIS within one year from the Notice of Intent (NOI) to prepare an EIS	Signed August 31, 2017; BLM Program must be completed within one year of NOI (April 20, 2019)

In accordance with the timelines outlined above, BLM is currently drafting an EIS for the Leasing Program. BLM’s draft EIS alternatives currently under consideration are based on different development stipulations (i.e., seasonal restrictions, environmental setbacks, limiting areas for leasing).

### **BLM Program Compliance with Section 106**

BLM’s development of the Leasing Program under NEPA is a federal undertaking, and as such must comply with Section 106 of the NHPA (54 U.S.C. 306108) and the Council’s regulations at 36 Code of Federal Regulations (CFR) 800. The BLM, in consultation with the Council, has determined the development and implementation of a “Program” PA is appropriate for this undertaking, as it is specifically for the leasing of areas for potential future oil and gas development. Any future site-specific proposals beyond the leasing phase would require separate Section 106 and NEPA processes.

Furthermore, the development of a PA is warranted as the Leasing Program meets many of the requirements outlined by the Council, specifically when effects on historic properties cannot be

fully determined prior to approval of an undertaking, which as described above must occur by April 2019 (*ibid* § 800.14[b][1][ii]).

The development and implementation of a PA will result in a process by which BLM's Leasing Program can comply with Section 106 of the NHPA through means other than the Council's regulations laid out in Part B of 36 CFR 800. The PA will take the place of the standard Section 106 process and will only be bound to portions of those regulations when/if incorporated by reference in the PA. The PA will be negotiated by the BLM and the Signatories, who will consult with the Parties and the public.

### Section 106 Consulting Parties

Under the Council's regulations, BLM's consultation should be appropriate to the scope of federal involvement and the scale of the undertaking (*ibid* § 800.2[a][4]), and consists of the process of seeking, discussing, and considering the views of Parties when considering the effects of a federal undertaking on historic properties (*ibid* § 800.16[f]). Furthermore, BLM's Tribal consultation policy is guided by numerous sources, including at 36 CFR 800.2(c)(2)(ii) and § 800.14(f), in addition to Executive Order 13175, a 2009 Presidential Memorandum on Tribal Consultation, and existing Department of the Interior (DOI) and BLM guidance documents and policies, including the DOI's Departmental Manual, BLM's Nationwide Programmatic Agreement with the Council, BLM's Tribal Consultation Policy, Section 1780 of BLM's Manual, and the Alaska BLM's Cultural Resources Protocol.

BLM has sought the participation of a number of potential consulting parties for Section 106 consultation for the Leasing Program, including the Council, other federal agencies, Federally-recognized Alaska Native Tribal Governments, and Regional and Village Alaska Native Corporations. Based on the responses received to date, BLM proposes that the entities outlined below in Table 2 comprise the initial Section 106 working group for the BLM's PA.

**Table 2: List of Entities for BLM's PA**

Entity	PA Role
BLM	Signatory
Council	Signatory
USFWS	Signatory
SHPO	Signatory
North Slope Borough	Consulting Party
City of Kaktovik	Consulting Party
Native Village of Kaktovik	Consulting Party
Arctic Village Council	Consulting Party
Venetie Village Council	Consulting Party
Native Village of Venetie Tribal Government	Consulting Party
Kaktovik Iñupiat Corporation	Consulting Party
Arctic Slope Regional Corporation	Consulting Party



**Section 106 Consultation**

Due to the schedule of the BLM's Program described above, I respectfully request your attendance as a consulting party to the PA at a meeting on October 25, 2018 at 10:30 a.m. Alaska Time. Participation may be via teleconference and a teleconference number will be forthcoming. This meeting will ensure that all Parties understand the BLM's Section 106 compliance responsibilities for the Leasing Program, understand how BLM intends to meet these obligations through the execution of a PA. The meeting will also provide an opportunity for BLM to receive input from the Parties to better understand how Parties would like to be included in Section 106 consultation, and for BLM to understand what each Party considers appropriate government-to-government consultation regarding historic properties of religious and/or cultural significance that may be affected by the BLM's Leasing Program.


In addition, the BLM would like to better understand and receive input from the Parties regarding what content the Parties would like to see incorporated into the PA, including:

- Are there important historic properties to the Parties in the Program Area?
- Does the BLM's Leasing Program have the potential to cause effects to historic properties that may be present?
- Can these potential effects be avoided, minimized, or mitigated? If so, how?

I appreciate your participation in the Section 106 compliance process. I, and my staff, look forward to working with your organization and the other Parties to the PA to develop a mutually-agreeable approach to ensuring that any effects on important historic properties are taken into account in BLM's Leasing Program.

If you have any questions or need further information on any of the items discussed above, please contact the BLM Project Manager, Nicole Hayes, at (907) 271-4354 or [mnhayes@blm.gov](mailto:mnhayes@blm.gov), or BLM staff archaeologist Joe Keeney, at (907) 474-2312 or [jkeeney@blm.gov](mailto:jkeeney@blm.gov).

Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
[www.blm.gov/alaska](http://www.blm.gov/alaska)

**OCT 19 2018**

In Reply Refer To:  
8140 (930)

First Chief, James John  
Arctic Village Council  
Post Office Box 22069  
Arctic Village, Alaska 99722

Dear First Chief John,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

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The Leasing Program is being undertaken in response to recent legislation and guided by orders issued by the Secretary of the Interior (Table 1). This section provides a brief overview of the legal processes that has led to BLM's Leasing Program, and informs the later discussion of how BLM can best comply with Section 106 of the National Historic Preservation Act (NHPA) for the Leasing Program.

The Alaska National Interest Lands and Conservation Act (ANILCA) of 1980 (Public Law 96-487) contains provisions to conduct studies of potential oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) (16 U.S.C. § 3142), but that no leasing or development of any oil and gas resources could occur within the Arctic Refuge until authorized by an act of Congress (*ibid.* § 3143). The Coastal Plain study area is often referred to as the "1002" area, referencing the section of ANILCA that describes the resource assessment and study program (ANILCA Title X, § 1002).

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Furthermore, the development of a PA is warranted as the Leasing Program meets many of the requirements outlined by the Council, specifically when effects on historic properties cannot be

fully determined prior to approval of an undertaking, which as described above must occur by April 2019 (*ibid* § 800.14[b][1][ii]).

The development and implementation of a PA will result in a process by which BLM's Leasing Program can comply with Section 106 of the NHPA through means other than the Council's regulations laid out in Part B of 36 CFR 800. The PA will take the place of the standard Section 106 process and will only be bound to portions of those regulations when/if incorporated by reference in the PA. The PA will be negotiated by the BLM and the Signatories, who will consult with the Parties and the public.

### Section 106 Consulting Parties

Under the Council's regulations, BLM's consultation should be appropriate to the scope of federal involvement and the scale of the undertaking (*ibid* § 800.2[a][4]), and consists of the process of seeking, discussing, and considering the views of Parties when considering the effects of a federal undertaking on historic properties (*ibid* § 800.16[f]). Furthermore, BLM's Tribal consultation policy is guided by numerous sources, including at 36 CFR 800.2(c)(2)(ii) and § 800.14(f), in addition to Executive Order 13175, a 2009 Presidential Memorandum on Tribal Consultation, and existing Department of the Interior (DOI) and BLM guidance documents and policies, including the DOI's Departmental Manual, BLM's Nationwide Programmatic Agreement with the Council, BLM's Tribal Consultation Policy, Section 1780 of BLM's Manual, and the Alaska BLM's Cultural Resources Protocol.

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Arctic Village Council	Consulting Party
Venetie Village Council	Consulting Party
Native Village of Venetie Tribal Government	Consulting Party
Kaktovik Iñupiat Corporation	Consulting Party
Arctic Slope Regional Corporation	Consulting Party

### Section 106 Consultation

Due to the schedule of the BLM's Program described above, I respectfully request your attendance as a consulting party to the PA at a meeting on October 25, 2018 at 10:30 a.m. Alaska Time. Participation may be via teleconference and a teleconference number will be forthcoming. This meeting will ensure that all Parties understand the BLM's Section 106 compliance responsibilities for the Leasing Program, understand how BLM intends to meet these obligations through the execution of a PA. The meeting will also provide an opportunity for BLM to receive input from the Parties to better understand how Parties would like to be included in Section 106 consultation, and for BLM to understand what each Party considers appropriate government-to-government consultation regarding historic properties of religious and/or cultural significance that may be affected by the BLM's Leasing Program.


In addition, the BLM would like to better understand and receive input from the Parties regarding what content the Parties would like to see incorporated into the PA, including:

- Are there important historic properties to the Parties in the Program Area?
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- Can these potential effects be avoided, minimized, or mitigated? If so, how?

I appreciate your participation in the Section 106 compliance process. I, and my staff, look forward to working with your organization and the other Parties to the PA to develop a mutually-agreeable approach to ensuring that any effects on important historic properties are taken into account in BLM's Leasing Program.

If you have any questions or need further information on any of the items discussed above, please contact the BLM Project Manager, Nicole Hayes, at (907) 271-4354 or [mnhayes@blm.gov](mailto:mnhayes@blm.gov), or BLM staff archaeologist Joe Keeney, at (907) 474-2312 or [jkeeney@blm.gov](mailto:jkeeney@blm.gov).

Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
[www.blm.gov/alaska](http://www.blm.gov/alaska)

OCT 19 2018

In Reply Refer To:  
8140 (930)

President Edward Rexford, Sr.  
Native Village of Kaktovik  
Post Office Box 8  
Kaktovik, Alaska 99747

Dear President Rexford,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

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The Leasing Program is being undertaken in response to recent legislation and guided by orders issued by the Secretary of the Interior (Table 1). This section provides a brief overview of the legal processes that has led to BLM's Leasing Program, and informs the later discussion of how BLM can best comply with Section 106 of the National Historic Preservation Act (NHPA) for the Leasing Program.

The Alaska National Interest Lands and Conservation Act (ANILCA) of 1980 (Public Law 96-487) contains provisions to conduct studies of potential oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) (16 U.S.C. § 3142), but that no leasing or development of any oil and gas resources could occur within the Arctic Refuge until authorized by an act of Congress (*ibid.* § 3143). The Coastal Plain study area is often referred to as the "1002" area, referencing the section of ANILCA that describes the resource assessment and study program (ANILCA Title X, § 1002).

In December 2017, the Tax Cuts and Jobs Act (Public Law 115-97) was signed into law, which contains a provision that requires BLM hold not fewer than 2 lease sales within the Coastal Plain or “1002” area of the Arctic Refuge (Program Area) by 2021 and 2024, respectively (Title II § 20001, 16 U.S.C. § 3143). BLM has been further mandated by Secretary of the Interior Memorandum 3355 to complete the necessary National Environmental Policy Act (NEPA) review process for this Program within one year from the Notice of Intent (NOI) to prepare an EIS. The NOI was published by the BLM in the Federal Register on April 20, 2018 (Vol. 83 Federal Register, No. 77).

**Table 1: BLM Program Legal Background and Timeline**

<b>Federal Law or Executive/Secretary Order</b>	<b>Description</b>	<b>Timing/Schedule</b>
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In accordance with the timelines outlined above, BLM is currently drafting an EIS for the Leasing Program. BLM’s draft EIS alternatives currently under consideration are based on different development stipulations (i.e., seasonal restrictions, environmental setbacks, limiting areas for leasing).

### **BLM Program Compliance with Section 106**

BLM’s development of the Leasing Program under NEPA is a federal undertaking, and as such must comply with Section 106 of the NHPA (54 U.S.C. 306108) and the Council’s regulations at 36 Code of Federal Regulations (CFR) 800. The BLM, in consultation with the Council, has determined the development and implementation of a “Program” PA is appropriate for this undertaking, as it is specifically for the leasing of areas for potential future oil and gas development. Any future site-specific proposals beyond the leasing phase would require separate Section 106 and NEPA processes.

Furthermore, the development of a PA is warranted as the Leasing Program meets many of the requirements outlined by the Council, specifically when effects on historic properties cannot be

fully determined prior to approval of an undertaking, which as described above must occur by April 2019 (*ibid* § 800.14[b][1][ii]).

The development and implementation of a PA will result in a process by which BLM's Leasing Program can comply with Section 106 of the NHPA through means other than the Council's regulations laid out in Part B of 36 CFR 800. The PA will take the place of the standard Section 106 process and will only be bound to portions of those regulations when/if incorporated by reference in the PA. The PA will be negotiated by the BLM and the Signatories, who will consult with the Parties and the public.

### **Section 106 Consulting Parties**

Under the Council's regulations, BLM's consultation should be appropriate to the scope of federal involvement and the scale of the undertaking (*ibid* § 800.2[a][4]), and consists of the process of seeking, discussing, and considering the views of Parties when considering the effects of a federal undertaking on historic properties (*ibid* § 800.16[f]). Furthermore, BLM's Tribal consultation policy is guided by numerous sources, including at 36 CFR 800.2(c)(2)(ii) and § 800.14(f), in addition to Executive Order 13175, a 2009 Presidential Memorandum on Tribal Consultation, and existing Department of the Interior (DOI) and BLM guidance documents and policies, including the DOI's Departmental Manual, BLM's Nationwide Programmatic Agreement with the Council, BLM's Tribal Consultation Policy, Section 1780 of BLM's Manual, and the Alaska BLM's Cultural Resources Protocol.

BLM has sought the participation of a number of potential consulting parties for Section 106 consultation for the Leasing Program, including the Council, other federal agencies, Federally-recognized Alaska Native Tribal Governments, and Regional and Village Alaska Native Corporations. Based on the responses received to date, BLM proposes that the entities outlined below in Table 2 comprise the initial Section 106 working group for the BLM's PA.

**Table 2: List of Entities for BLM's PA**

<b>Entity</b>	<b>PA Role</b>
BLM	Signatory
Council	Signatory
USFWS	Signatory
SHPO	Signatory
North Slope Borough	Consulting Party
City of Kaktovik	Consulting Party
Native Village of Kaktovik	Consulting Party
Arctic Village Council	Consulting Party
Venetie Village Council	Consulting Party
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Kaktovik Iñupiat Corporation	Consulting Party
Arctic Slope Regional Corporation	Consulting Party



### Section 106 Consultation

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I appreciate your participation in the Section 106 compliance process. I, and my staff, look forward to working with your organization and the other Parties to the PA to develop a mutually-agreeable approach to ensuring that any effects on important historic properties are taken into account in BLM's Leasing Program.

If you have any questions or need further information on any of the items discussed above, please contact the BLM Project Manager, Nicole Hayes, at (907) 271-4354 or [mnhayes@blm.gov](mailto:mnhayes@blm.gov), or BLM staff archaeologist Joe Keeney, at (907) 474-2312 or [jkeeney@blm.gov](mailto:jkeeney@blm.gov).

Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



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**OCT 19 2018**

In Reply Refer To:  
8140 (930)

Steve Frank, First Chief  
Native Village of Venetie Tribal Government  
Post Office Box 81080  
Venetie, Alaska 99781

Dear First Chief Frank,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

### **Regulatory Discussion of BLM's Leasing Program**

The Leasing Program is being undertaken in response to recent legislation and guided by orders issued by the Secretary of the Interior (Table 1). This section provides a brief overview of the legal processes that has led to BLM's Leasing Program, and informs the later discussion of how BLM can best comply with Section 106 of the National Historic Preservation Act (NHPA) for the Leasing Program.

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In accordance with the timelines outlined above, BLM is currently drafting an EIS for the Leasing Program. BLM’s draft EIS alternatives currently under consideration are based on different development stipulations (i.e., seasonal restrictions, environmental setbacks, limiting areas for leasing).

### **BLM Program Compliance with Section 106**

BLM’s development of the Leasing Program under NEPA is a federal undertaking, and as such must comply with Section 106 of the NHPA (54 U.S.C. 306108) and the Council’s regulations at 36 Code of Federal Regulations (CFR) 800. The BLM, in consultation with the Council, has determined the development and implementation of a “Program” PA is appropriate for this undertaking, as it is specifically for the leasing of areas for potential future oil and gas development. Any future site-specific proposals beyond the leasing phase would require separate Section 106 and NEPA processes.

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### Section 106 Consultation

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Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



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In Reply Refer To:  
8140 (930)

OCT 19 2018

President Matthew Rexford  
Kaktovik Iñupiat Corporation  
Post Office Box 73  
Kaktovik, Alaska 99747

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This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

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### Section 106 Consultation

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Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



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OCT 19 2018

In Reply Refer To:  
8140 (930)

Mayor Harry K. Brower, Jr.  
North Slope Borough  
Post Office Box 63  
Barrow, Alaska 99723

Dear Mayor Brower,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

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Furthermore, the development of a PA is warranted as the Leasing Program meets many of the requirements outlined by the Council, specifically when effects on historic properties cannot be

fully determined prior to approval of an undertaking, which as described above must occur by April 2019 (*ibid* § 800.14[b][1][ii]).

The development and implementation of a PA will result in a process by which BLM's Leasing Program can comply with Section 106 of the NHPA through means other than the Council's regulations laid out in Part B of 36 CFR 800. The PA will take the place of the standard Section 106 process and will only be bound to portions of those regulations when/if incorporated by reference in the PA. The PA will be negotiated by the BLM and the Signatories, who will consult with the Parties and the public.

### Section 106 Consulting Parties

Under the Council's regulations, BLM's consultation should be appropriate to the scope of federal involvement and the scale of the undertaking (*ibid* § 800.2[a][4]), and consists of the process of seeking, discussing, and considering the views of Parties when considering the effects of a federal undertaking on historic properties (*ibid* § 800.16[f]). Furthermore, BLM's Tribal consultation policy is guided by numerous sources, including at 36 CFR 800.2(c)(2)(ii) and § 800.14(f), in addition to Executive Order 13175, a 2009 Presidential Memorandum on Tribal Consultation, and existing Department of the Interior (DOI) and BLM guidance documents and policies, including the DOI's Departmental Manual, BLM's Nationwide Programmatic Agreement with the Council, BLM's Tribal Consultation Policy, Section 1780 of BLM's Manual, and the Alaska BLM's Cultural Resources Protocol.

BLM has sought the participation of a number of potential consulting parties for Section 106 consultation for the Leasing Program, including the Council, other federal agencies, Federally-recognized Alaska Native Tribal Governments, and Regional and Village Alaska Native Corporations. Based on the responses received to date, BLM proposes that the entities outlined below in Table 2 comprise the initial Section 106 working group for the BLM's PA.

**Table 2: List of Entities for BLM's PA**

Entity	PA Role
BLM	Signatory
Council	Signatory
USFWS	Signatory
SHPO	Signatory
North Slope Borough	Consulting Party
City of Kaktovik	Consulting Party
Native Village of Kaktovik	Consulting Party
Arctic Village Council	Consulting Party
Venetie Village Council	Consulting Party
Native Village of Venetie Tribal Government	Consulting Party
Kaktovik Iñupiat Corporation	Consulting Party
Arctic Slope Regional Corporation	Consulting Party

**Section 106 Consultation**

Due to the schedule of the BLM's Program described above, I respectfully request your attendance as a consulting party to the PA at a meeting on October 25, 2018 at 10:30 a.m. Alaska Time. Participation may be via teleconference and a teleconference number will be forthcoming. This meeting will ensure that all Parties understand the BLM's Section 106 compliance responsibilities for the Leasing Program, understand how BLM intends to meet these obligations through the execution of a PA. The meeting will also provide an opportunity for BLM to receive input from the Parties to better understand how Parties would like to be included in Section 106 consultation, and for BLM to understand what each Party considers appropriate government-to-government consultation regarding historic properties of religious and/or cultural significance that may be affected by the BLM's Leasing Program.

In addition, the BLM would like to better understand and receive input from the Parties regarding what content the Parties would like to see incorporated into the PA, including:

- Are there important historic properties to the Parties in the Program Area?
- Does the BLM's Leasing Program have the potential to cause effects to historic properties that may be present?
- Can these potential effects be avoided, minimized, or mitigated? If so, how?

I appreciate your participation in the Section 106 compliance process. I, and my staff, look forward to working with your organization and the other Parties to the PA to develop a mutually-agreeable approach to ensuring that any effects on important historic properties are taken into account in BLM's Leasing Program.

If you have any questions or need further information on any of the items discussed above, please contact the BLM Project Manager, Nicole Hayes, at (907) 271-4354 or [mnhayes@blm.gov](mailto:mnhayes@blm.gov), or BLM staff archaeologist Joe Keeney, at (907) 474-2312 or [jkeeney@blm.gov](mailto:jkeeney@blm.gov).

Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
[www.blm.gov/alaska](http://www.blm.gov/alaska)

OCT 19 2018

In Reply Refer To:  
8140 (930)

Mayor Nora Burns  
City of Kaktovik  
Post Office Box 27  
Kaktovik, Alaska 99747

Dear Mayor Burns,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

### **Regulatory Discussion of BLM's Leasing Program**

The Leasing Program is being undertaken in response to recent legislation and guided by orders issued by the Secretary of the Interior (Table 1). This section provides a brief overview of the legal processes that has led to BLM's Leasing Program, and informs the later discussion of how BLM can best comply with Section 106 of the National Historic Preservation Act (NHPA) for the Leasing Program.

The Alaska National Interest Lands and Conservation Act (ANILCA) of 1980 (Public Law 96-487) contains provisions to conduct studies of potential oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) (16 U.S.C. § 3142), but that no leasing or development of any oil and gas resources could occur within the Arctic Refuge until authorized by an act of Congress (*ibid.* § 3143). The Coastal Plain study area is often referred to as the "1002" area, referencing the section of ANILCA that describes the resource assessment and study program (ANILCA Title X, § 1002).

In December 2017, the Tax Cuts and Jobs Act (Public Law 115-97) was signed into law, which contains a provision that requires BLM hold not fewer than 2 lease sales within the Coastal Plain or “1002” area of the Arctic Refuge (Program Area) by 2021 and 2024, respectively (Title II § 20001, 16 U.S.C. § 3143). BLM has been further mandated by Secretary of the Interior Memorandum 3355 to complete the necessary National Environmental Policy Act (NEPA) review process for this Program within one year from the Notice of Intent (NOI) to prepare an EIS. The NOI was published by the BLM in the Federal Register on April 20, 2018 (Vol. 83 Federal Register, No. 77).

**Table 1: BLM Program Legal Background and Timeline**

<b>Federal Law or Executive/Secretary Order</b>	<b>Description</b>	<b>Timing/Schedule</b>
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In accordance with the timelines outlined above, BLM is currently drafting an EIS for the Leasing Program. BLM’s draft EIS alternatives currently under consideration are based on different development stipulations (i.e., seasonal restrictions, environmental setbacks, limiting areas for leasing).

### **BLM Program Compliance with Section 106**

BLM’s development of the Leasing Program under NEPA is a federal undertaking, and as such must comply with Section 106 of the NHPA (54 U.S.C. 306108) and the Council’s regulations at 36 Code of Federal Regulations (CFR) 800. The BLM, in consultation with the Council, has determined the development and implementation of a “Program” PA is appropriate for this undertaking, as it is specifically for the leasing of areas for potential future oil and gas development. Any future site-specific proposals beyond the leasing phase would require separate Section 106 and NEPA processes.

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### **Section 106 Consulting Parties**

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BLM has sought the participation of a number of potential consulting parties for Section 106 consultation for the Leasing Program, including the Council, other federal agencies, Federally-recognized Alaska Native Tribal Governments, and Regional and Village Alaska Native Corporations. Based on the responses received to date, BLM proposes that the entities outlined below in Table 2 comprise the initial Section 106 working group for the BLM's PA.

**Table 2: List of Entities for BLM's PA**

<b>Entity</b>	<b>PA Role</b>
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### Section 106 Consultation

Due to the schedule of the BLM's Program described above, I respectfully request your attendance as a consulting party to the PA at a meeting on October 25, 2018 at 10:30 a.m. Alaska Time. Participation may be via teleconference and a teleconference number will be forthcoming. This meeting will ensure that all Parties understand the BLM's Section 106 compliance responsibilities for the Leasing Program, understand how BLM intends to meet these obligations through the execution of a PA. The meeting will also provide an opportunity for BLM to receive input from the Parties to better understand how Parties would like to be included in Section 106 consultation, and for BLM to understand what each Party considers appropriate government-to-government consultation regarding historic properties of religious and/or cultural significance that may be affected by the BLM's Leasing Program.


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I appreciate your participation in the Section 106 compliance process. I, and my staff, look forward to working with your organization and the other Parties to the PA to develop a mutually-agreeable approach to ensuring that any effects on important historic properties are taken into account in BLM's Leasing Program.

If you have any questions or need further information on any of the items discussed above, please contact the BLM Project Manager, Nicole Hayes, at (907) 271-4354 or [mnhayes@blm.gov](mailto:mnhayes@blm.gov), or BLM staff archaeologist Joe Keeney, at (907) 474-2312 or [jkeeney@blm.gov](mailto:jkeeney@blm.gov).

Sincerely,



Ted A. Murphy  
Acting State Director



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
[www.blm.gov/alaska](http://www.blm.gov/alaska)

In Reply Refer To:  
8140 (930)

OCT 19 2018

Teresa Imm  
Senior Vice President, Resource Development  
Arctic Slope Regional Corporation  
3900 C Street, Suite 801  
Anchorage, Alaska 99503-5963

Dear Ms. Imm,

Thank you for your interest in participating in the Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement (EIS) Section 106 consultation.

This letter provides Consulting Parties (Parties) with an overview of the regulatory and legal mechanisms guiding the Bureau of Land Management's (BLM) Coastal Plain Oil and Gas Leasing Program (Leasing Program) and Section 106 compliance timeline; describes BLM's approach for achieving Section 106 compliance through the negotiation of a Programmatic Agreement (PA) with the Signatories (Advisory Council on Historic Preservation (Council), the U.S. Fish and Wildlife Service (USFWS), and the State Historic Preservation Officer (SHPO)) based on input received from the Parties; provides BLM's preliminary list of Section 106 Parties; notifies the Parties of upcoming PA meetings; and reiterates the BLM's request for input on historic properties of significance to the Parties that may be affected by an oil and gas leasing program.

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Sincerely,



Ted A. Murphy  
Acting State Director

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Keeney, Joseph W](#); [King, Robert \(Bob\)](#); [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov); [sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov); [Tom McCulloch](#); [Loya, Wendy M](#); [Decleva, Edward J](#); [Miraglia, Rita A](#)  
**Cc:** [Jones, Nichelle \(Shelly\) W](#); [LaMarr, Sarah L](#)  
**Subject:** Initial Questions - please provide feedback by COB today  
**Date:** Tuesday, November 6, 2018 11:45:27 AM

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These questions are what we had discussed asking in our initial individual consultations with the consulting parties. Please provide feedback ASAP - I apologize for the short notice.

Questions:

1. Who are the one or two people that BLM should coordinate with for discussions pertaining to Section 106 of the NHPA?
2. What is the method that you wish to be contacted regarding the Programmatic Agreement in the future?
3. If we scheduled annual meetings pertaining to the Programmatic Agreement, what is the best way to coordinate with your [organization] recognizing staff may change over a year period.
4. What are the best ways improve our understanding of the program area/community/culture?
5. Are there administrative things we could do, such as ????, which could enhance the existing culture and community?
6. What are existing repositories of historical information we should look to for information about the program area?
7. What are some common features of historical or culturally significant areas we should consider including in the Programmatic Agreement for consideration of future surveys?
8. Are there mitigation measures we should consider including in the Programmatic Agreement at the leasing stage to avoid or minimize potential impacts to historic properties or cultural resources?
9. Are there other questions we should be asking to help inform development of a Programmatic Agreement at the leasing stage?

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Matthew Rexford](#); [City of Kaktovik - City Clerk](#); [Imm, Teresa](#); [Tonya Garnett](#); [Tiffany Yatlin](#); [patrick hanson](#); [norajane.burns@north-slope.org](#); [Tom Lohman](#); [Kevin S. Fisher](#); [Fannie Sopl](#); [Tyler Janowski](#); [Kathy Ahgeak](#); [Tommy Nageak](#); [fenton.rexford@north-slope.org](#)  
**Cc:** [Keeney, Joseph W](#); [LaMarr, Sarah L](#); [Jones, Nichelle \(Shelly\) W](#); [Decleva, Edward J](#); [Faith C Martineau \(DNR\)](#); [Marino, Eugene](#); [Jake.Anders@srbak.com](#); [Paul Lawrence](#); [judy.bittner@alaska.gov](#); [Loya, Wendy M](#); [Chad Ricklefs](#); [sarah.meitl@alaska.gov](#); [King, Robert \(Bob\)](#); [Tom McCulloch](#); [Stephen Braund](#)  
**Subject:** Notes from 10.25.18 Coastal Plain PA meeting  
**Date:** Friday, October 26, 2018 4:23:55 PM  
**Attachments:** [10\\_25\\_18 Consulting Parties Meeting notes.pdf](#)

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Hi,

Thank you all for your participation in the meeting yesterday. I am attaching the draft notes but please let me know if there are any errors or additions. I may have missed a few names.

Also, I apologize to those who may have had trouble calling in due to the bridge line reaching capacity. I will work to ensure this doesn't happen again.

I will be reaching out to you all individually in the very near future.

Respectfully,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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# BLM Coastal Plain PA

## Consulting Parties Meeting Agenda

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5), Passcode: (b) (5)  
Date: October 25, 2018  
Time: 10:30am-1:30pm AKST/2:30pm-5:30pm EST

---

### **I. Introductions**

#### **a. Federal and State Agencies**

BLM - Nicole Hayes, Bob King, Joe Keeney (Arctic District Office), Sarah LaMarr

AChP - Tom McCulloch, Ira Matt (Office of Native American Affairs)

FWS – Wendy Loya, Ed DeCleva, Eugene Marino

State of Alaska – Faith Martinneau, Sarah Meitl (SHPO)

#### **b. Tribal Governments**

Native Village of Kaktovik – Matthew Rexford, President Edward Rexford, Burt, Ida Angasan, Ms. Solomon

Native Village of Venetie Tribal Government, Arctic Village Council, Venetie Village Council – Tonya Garnett, Charlene Stern

#### **c. Regional and Village Corporations**

Arctic Slope Regional Corporation – Tyler Janowski

Kaktovik Inupiat Corporation – Glen Solomon, Fannie Sopl

#### **d. Local Governments**

City of Kaktovik – Left voicemail – attempted to call but line had reached capacity

North Slope Borough – Tommy Nageak, John Dunham, Kevin Fischer, Fenton Rexford, Kathy Ahgeak (Inupiat History and Language Department)

#### **e. Consultants and others**

Stephen R. Braund & Associates (SRBA)– Stephen Braund, Jake Anders

Native American Rights Fund (representing NVVTG, AVC, VVC)- Matt Newman , Monty Rogers, Wes Furlong, Rob Rosenfeld

Kathy with IHLD noted it was really important to loop Frederick Brower, ICAS Executive Director, Tommy Nageak and Fenton Rexford (tribal liaison) into the process. Fenton had been instrumental in developing the TLUI with the SHPO for the AHRS. She also noted that there was a draft report available with a lot of good information by Ed Hall and Associates. 41 sites were identified in the Kaktovik TLUI and it is important that work is conducted sensitive to these areas and considerate of the information out there.

### **II. Background Overview of Available Cultural Resource Information**

- a. Coastal Archaeology
- b. Riverine Archaeological Survey
- c. Ethnographic Resources



Jake Anders with SRB&A discussed the limited information available for the area and acknowledged there is limited documentation and much to be learned.

Ida Agneson requested notes of the meeting. Nicole stated she would send out.

### **III. Objective and Scope of Coastal Leasing Programmatic Agreement (PA)**

The objectives of the PA are:

- To provide clarity and consistency to Section 106 Consulting Parties throughout the Bureau of Land Management's (BLM) leasing program in the Coastal Plain for Oil and Gas activities;
- To ensure BLM's compliance with the National Historic Preservation Act through the execution of a legally-binding agreement that defines the process; and
- Ensure BLM and lessees of federal lands within the Coastal Plain will follow and consider the effects of the Program on historic properties.

The scope of the PA covers two primary facets which are the Leasing Program and Subsequent Actions:

- For the Leasing Program the PA will define:
  - how, when, and who the BLM will consult with to identify, evaluate, and assess the effects of leasing on historic properties within the Program Area.
- For Subsequent Actions (individual lease development actions) the PA will:
  - Define how post-lease activities will comply with Section 106 by presenting standardized stipulations/mitigation measures for common/reasonably foreseeable activities
  - establish consultation protocols
  - provide timelines and schedules related to Section 106 compliance
  - outline administrative procedures
  - define a process for establishing future areas of potential effect, identification efforts, evaluations, assessment of effects and minimization and mitigation measures.

### **IV. Consulting Roles in PA Development**

Signatories to the PA are the entities required by regulation (36 CFR Part 800): The agency with the federal undertaking (BLM for the Leasing EIS); the Advisory Council on Historic Preservation; and the State Historic Preservation Officer. The U.S. Fish and Wildlife Service were invited as the surface manager of the Arctic Refuge.

Consulting Parties – are those parties instrumental in seeking input from for development of the PA. They include local governments and any tribes that might attach religious or cultural significance to historic properties in the area of potential effect (the Coastal Plain).

### **V. Consultation Plan and Timeline**

- Working backwards from April 2019 when the EIS is tentatively scheduled to be complete:

Initial step is reaching out to all the consulting parties to discuss how they wish to consult and participate in the PA development process. Nicole and/or Joe Keeney will be contacting consulting parties individually in the coming days.

- Expectations-
  - There are multiple opportunities to consult individually or as a group
  - Critical to understand the scope of the PA is based on the leasing program and any future on the ground actions will require a separate and additional environmental review and Section 106 process
- Milestones
  - Besides individual meetings, the next major milestones will be to distribute a draft PA based off of the individual consultations for the larger group to review. The timeline sent out via email is a tentative schedule of the goal dates for planning purposes.

## **VI. Upcoming Actions**

BLM scheduling forthcoming consultation meetings with individual consulting parties

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Bill Marzella](#); [Meitl, Sarah J \(DNR\)](#); [Judith E. Bittner](#); [Tom McCulloch](#); [Decleva, Edward J](#)  
**Cc:** [Loya, Wendy M](#); [Chad Ricklefs](#); [amy lewis](#); [Jake Anders](#); [Stephen Braund](#); [Paul Lawrence](#); [King, Robert \(Bob\)](#)  
**Subject:** Re: [EXTERNAL] Re: Response to comments on Draft Final PA  
**Date:** Monday, August 5, 2019 1:06:02 PM  
**Attachments:** [EMP18 Draft Final PA 7 23 19\\_mnh.docx](#)  
**Importance:** High

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Thank you, everyone! Attached is the the track change version of the final edits made to the PA. There is a little confusion about the language of the Unanticipated Discoveries stipulation and the 800.13 language, so will discuss next week in our FINAL meeting on 8/13 before producing signature pages so we can ensure we have reached consensus and all on the same page.

Thanks again,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

On Fri, Jul 26, 2019 at 7:51 AM Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)> wrote:

Nicole and all—See attached responses from the ACHP attached. A few additional notes below:

1. I second the SHPO's recommendation of 100' avoidance buffer.
2. Agree generally about the ground disturbance. If this is to be left in, it should be more inclusive to describe other types of direct effects. Suggested language included in the comments, but generally physical alteration, atmospheric changes, etc. At that point it may be too restrictive and just work removing this point entirely.
3. Agreed it would be helpful to see the specific language. It seems this section is serving to differentiate NAGPRA discoveries from other more Section-106 focused discoveries. If so, I would feel more comfortable with more explicit language to that effect, or at least that separates a NAGPRA discovery with the determination of effect under 106.

Thanks,

Bill

---

**From:** "Meitl, Sarah J (DNR)" <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>

**Date:** Friday, July 19, 2019 at 6:29 PM

**To:** Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>, "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>, "Judith E. Bittner" <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>, Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>

**Cc:** Chad Ricklefs <[chad.ricklefs@empsi.com](mailto:chad.ricklefs@empsi.com)>, amy lewis <[amy.lewis@empsi.com](mailto:amy.lewis@empsi.com)>, Jake Anders <[Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com)>, Stephen Braund <[Stephen.Braund@srbak.com](mailto:Stephen.Braund@srbak.com)>, Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>, "Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>

**Subject:** RE: Response to comments on Draft Final PA

Hi Nicole,

Thanks for sending these out. It is really helpful to see the full spread of comments. We are looking forward to seeing a clean document that has taken into account the various comments and responses.

Comments on BLM's response to SHPO comments:

I.F comment – BLM's response seems inconsistent with the process in the Amendments section (XV.D), which allows us to update Appendix B as necessary without the amendment process. I recommend clarifying that the step in I.F updates Appendix B or revise the amendments section to follow the process presented in the response.

V.B.1.a comment – How will the existing project footprint be defined? Even with this qualifier, the continued use of the 'no ground disturbance' condition is problematic, as it is a legacy condition that in the past has led to unfortunate outcomes for historic properties and we are encouraging agencies to think beyond ground disturbance for possible effects. Another not-so-great example of an adverse effect that did not involve ground disturbance would be the cabin that was destroyed with a hydro-ax. Our office still recommends deleting 'a'.

Request for language from SHPO: The blue text currently serving as a placeholder is probably fine as is or could include reference to Stipulation IV.C.

Inadvertent discovery stop work zone – The five hundred feet avoidance zone used on the North Slope is for known properties and is so large to account for potential GPS error and personnel getting lost, as well as to provide some buffer for the anticipated error margin on known site locations. One hundred feet seems to be the consensus distance used in agreements our office has on file for inadvertent discovery situations, including agreements for projects on the North

Slope. One document included one hundred feet from the known extent of the property, which I think would be a good addition for this situation.

Question about using 800.13 language in the inadvertent discovery section – Which language would you like to use? At present this section of the PA is providing an alternative to the process outlined in 800.13 with different timelines or other details such as the stop work zone distance.

Best,

**Sarah Meitl**

Review and Compliance Coordinator

Alaska State Historic Preservation Office / Office of History and Archaeology

550 West 7<sup>th</sup> Avenue, Suite 1310

Anchorage, AK 99501-3510

[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)

907-269-8720

---

**From:** Bill Marzella

**Sent:** Friday, July 19, 2019 12:27 PM

**To:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>; Bittner, Judith E (DNR) <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>; Meitl, Sarah J (DNR) <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>; Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>; Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>; Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>

**Cc:** Chad Ricklefs <[chad.ricklefs@emp.si.com](mailto:chad.ricklefs@emp.si.com)>; amy lewis <[amy.lewis@emp.si.com](mailto:amy.lewis@emp.si.com)>; Jake Anders <[jake.anders@srbak.com](mailto:jake.anders@srbak.com)>; Stephen Braund <[stephen.braund@srbak.com](mailto:stephen.braund@srbak.com)>; Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>; Robert (Bob) King <[r2king@blm.gov](mailto:r2king@blm.gov)>

**Subject:** RE: Response to comments on Draft Final PA

Nicole—Thanks for sending, I'm sure it was no small task to reconcile all of these comments. Responses to the ACHP version look good to me. Next week I will take a closer look at the other responses and the additional feedback requested on the NVVTG, AVC, VVC comments. Signing for the ACHP will be: John M. Fowler, Executive Director.

Thanks,

**Bill Marzella**

Program Analyst/BLM Liaison

(202) 517-0209

Register TODAY for the [Section 106 Practitioners Workshop](#) on August 6-7 or the [Agreements Seminar](#) on August 8 in Cheyenne, WY!

**From:** Hayes, Miriam (Nicole) [<mailto:mnhayes@blm.gov>]

**Sent:** Friday, July 19, 2019 2:18 PM

**To:** Judith E. Bittner; Meitl, Sarah J (DNR); Bill Marzella; Edward Decleva; Wendy Loya; Tom McCulloch

**Cc:** Chad Ricklefs; amy lewis; Jake Anders; Stephen Braund; Paul Lawrence; Robert (Bob) King

**Subject:** Response to comments on Draft Final PA

Dear Signatories,

Attached are BLM's response to comments on the Draft Final PA, consistent with previous responses to comments and conversations we have had on the various topics.

A few things we still need to finalize this PA are:

1. SIGNATORY INPUT on a couple of responses on the NVVTG, AVC, VVC comments (you can see the request for input in the comment bubbles that start with "SIGNATORIES:...").

2. Judy/Sarah, there is one comment on the SHPO comments I need recommended language (comment bubble starts with "SHPO:...")

3. Review of all the responses to comments. If there is any concern with how the BLM responded please advise ASAP (**but NLT July 26th**) as SRBA will be proceeding with changes.

4. Identify person with your agency that will be signing PA and correct title so we can prepare signature pages accordingly.

Attached are comments with BLM responses from:

ACHP

SHPO

NSB

NVVTG, AVC, VVC (also attached w/o comment response so you can see all edits made in track changes since several inserts and deletions were rejected)

Schedule of next steps:

**JULY 26-DUE** from signatories - requests above

**AUG 5-** FINAL PA will be distributed for review by signatories

**AUG 13-** LAST Signatories meeting before signing to discuss any minor fixes needed

Please let me know if I may have missed anything or there are any questions.

THANK YOU!

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179



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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
~~ALASKA STATE HISTORIC PRESERVATION OFFICER,~~  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

Deleted: UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE,¶

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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28

29

Commented [JJA3]: BLM to provide definitions appendix

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

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**WHEREAS**, the Public Law 115-97 directs the BLM to implement the Program, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

Deleted: leasing p

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a Programmatic Agreement (PA) as the BLM cannot fully determine effects on Historic

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 Properties within the APE prior to approval of the Undertaking as defined in 36 Code of  
2 Federal Regulations (CFR) § 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to, activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in [Appendix B: Consulting Parties](#), of this  
17 PA to participate in consultation [as Consulting Parties](#), consistent with 54 USC §  
18 302706 and 36 CFR 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed [54](#) properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None [of the 54](#)  
39 [properties](#) have been evaluated for their eligibility for listing in the NRHP; and

Commented [JJAS]: Pending BLM/FWS input

Commented [HM(N6R5)]: Resolved – they are invited signatory

Deleted: Appendix B: Consulting Parties

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)  
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties [and have afforded the ACHP an opportunity to comment](#).

## 8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

### 10 **I. Administrative**

11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Program and will ensure that all lessees are aware that they must  
13 comply with the terms of this PA during activities on their lease(s).

Deleted: Coastal Plain Oil and Gas Leasing Program (

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14 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
15 contractors engaged in exploration, development, production, or reclamation  
16 work associated with an issued Program lease prior to their arrival within the  
17 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
18 all contractors are made aware of the PA and that BLM requires compliance with  
19 its terms.

20 C. BLM shall require that any type of archaeological work associated with [the](#)  
21 [Program](#) within the APE not performed by BLM or FWS professional staff will be  
22 conducted only under terms of a federally issued Permit for Archaeological  
23 Investigations (“ARPA permit”). Such permits are obtained upon application to  
24 the BLM or otherwise coordinated by BLM.

Deleted: BLM's

Deleted: proposed

25 D. If ownership of a lease is transferred, BLM will include as a condition of the  
26 transfer that [the new lessee must adhere to the terms of this PA](#).

Deleted:

27 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
28 communications regarding this PA and its provisions, with an alternative method  
29 of postal mail delivery if the contacts do not have reliable e-mail.

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30 F. Consulting Parties and Signatories shall provide [contact information](#) for this PA. It  
31 is the responsibility of each Signatory and Consulting Party to immediately inform  
32 BLM of any change in name, mailing address, e-mail address, or phone number  
33 for any [Consulting Party](#). Once received, the BLM will forward this information to  
34 all Signatories and Consulting Parties by e-mail or mail within five (5) business  
35 days, [and will update the contact information for Consulting Parties is included](#)  
36 below in *Appendix B: Consulting Parties*. [In accordance with Stipulation XV.D,](#)

Commented [JJA7]: SHPO still has concerns on this; does it require an amendment?  
BLM's response seems inconsistent with the process in the Amendments section (XV.D), which allows us to update Appendix B as necessary without the amendment process. I recommend clarifying that the step in I.F updates Appendix B or revise the amendments section to follow the process presented in the response.

Commented [JJA8R7]: SRB&A provided proposed revision.

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 [updates to Appendix B: Consulting Parties do not require formal amendments to](#)  
2 [this PA.](#)

3  
4 G. At any time, Signatories to this PA may request additional time for reviews of  
5 documentation, preparation of guidance documents, or any other time-sensitive  
6 materials outlined in this PA by providing a written request to [the BLM](#).

Deleted: all Signatories

7  
8 H. The Signatories may execute this PA in counterparts, with a separate page for  
9 each Signatory.

10 **II. Scope of the PA**

11 A. This PA only addresses [potential effects on](#) Historic Properties, consistent with  
12 36 CFR § 800 and other federal laws that may be affected by the BLM's  
13 Undertaking within the APE.

14  
15 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
16 under Section 106 of NHPA, including consultation with Indian Tribes, for  
17 Program decisions that may be implemented in accordance with the decisions  
18 supported by the Program EIS and BLM policy.

19  
20 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
21 involving reimbursement or contribution of funds between the parties to this PA  
22 will be handled in accordance with applicable laws, regulations, and procedures  
23 including those for Federal Government procurement and printing. Separate  
24 agreements will outline such endeavors and will be made in writing by  
25 representatives of the parties and will be independently authorized by  
26 appropriate statutory authority. This PA does not provide such authority.

27 **III. Agency Coordination Procedures**

28 A. Agency Roles and Coordination

29 1. BLM

30 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
31 106 compliance, is responsible for the following actions:

- 32 i. Conducting Section 106 reviews of Projects the PA addresses;  
33 ii. Receiving permit applications and issuing permits that may be needed  
34 for Section 106 compliance work for oil and gas-related projects in the  
35 APE. Such permits needed may include various types of land use  
36 authorizations as well as ARPA permits.

37  
38 2. FWS

39 a. FWS, as surface manager of the APE, is responsible for the following  
40 actions:

- 41 i. Receiving, reviewing, commenting on, and evaluating applications for  
42 ARPA permits [provided by BLM](#);

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1           ii. Receiving, reviewing, commenting on, and evaluating Section 106
- 2           determinations and findings made by BLM;
- 3           iii. Managing artifact collections originating from studies conducted within
- 4           the APE;
- 5           iv. Managing and conducting appropriate actions associated with
- 6           NAGPRA materials and Human Remains, including development of
- 7           the Plan of Action (POA).
- 8

9 **IV. Section 106 Consultation Plan and Procedures**

- 10 A. BLM anticipates that the Program will include several Project types and that each
- 11 type will require consultation with Signatories and Consulting Parties. Project
- 12 types include:
- 13     1. Leasing;
- 14     2. Inventory, Research, and Monitoring Activities;
- 15     3. Geophysical Exploration;
- 16     4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 17     5. Marine and Intertidal Activities and Operations;
- 18     6. Operations and Production;
- 19     7. Inspections and Enforcement; and
- 20     8. Reclamation
- 21
- 22 B. As appropriate and needed, BLM shall consult with [Signatories and Consulting](#)
- 23 Parties on an “as necessary” basis throughout the life of this PA on the above
- 24 Project types to include, but not limited to the following:
- 25     1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 26     selection of alternatives;
- 27     2. Develop appropriate research designs and investigative methods for potential
- 28     Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 29     studies;
- 30     3. Determine if incorporating Project-specific conditions and/or stipulations into
- 31     BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 32     Historic Properties within the Project-specific APE;
- 33     4. Consider conducting periodic joint (i.e., BLM and representatives from
- 34     interested [Signatories and Consulting Parties](#)) site visits within the Project-
- 35     specific APE(s);
- 36     5. [Develop project-specific Memorandum of Agreement or Programmatic](#)
- 37     [Agreements](#);
- 38     6. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 39     avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 40     may result from Program activities. These plans may include [but are not](#)
- 41     [limited to](#):
- 42         a. Monitoring lessee activities and effects on Historic Properties within the
- 43         Project-specific APE(s);
- 44         b. Periodic Historic Property condition assessments;

Deleted: .

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 c. Documentation review to ensure lessees have fulfilled commitments  
2 stipulated by BLM, and have complied with the terms of this PA.  
3

4 C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c) and  
5 Section 304 of the NHPA, the BLM shall withhold from public disclosure  
6 information about the location, character, or ownership of a historic property  
7 when disclosure may cause a significant invasion of privacy, risk harm to the  
8 historic property, or impede the use of a traditional religious site by practitioners.  
9

- 10 D. The implementing regulations of Section 106 of the NHPA (36 CFR §  
11 800.2[c][2][ii][A-C]) require BLM to:  
12 1. Consult with any Indian Tribe that attaches religious and cultural significance  
13 to Historic Properties that may be affected by an Undertaking,  
14 2. Provide Indian Tribes with a reasonable opportunity to identify their concerns  
15 about Historic Properties, to advise on the identification and evaluation of  
16 Historic Properties, including those of traditional religious and cultural  
17 importance, to articulate their views on the Undertaking's effects on such  
18 properties, and to participate in the resolution of adverse effects,  
19 3. Consult with Indian Tribes in a sensitive manner respectful of tribal  
20 sovereignty, and in a manner sensitive to the concerns and needs of the  
21 Indian Tribe.  
22 4. In addition to those items listed above concerning BLM's consultation  
23 obligations to Indian Tribes under the NHPA, BLM shall consult with Indian  
24 Tribes as appropriate and needed, to:  
25 a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see  
26 *Appendix D*); and  
27 b. Consider including Tribal representatives to participate in fieldwork,  
28 monitoring, post-field analyses, and reporting activities.  
29  
30 E. At any time throughout the life of the PA, Consulting Parties may contact the  
31 BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of  
32 concern to the Signatories and other Consulting Parties at the Annual PA  
33 Meeting.  
34  
35 F. At any time throughout the life of the PA, any outside entity not initially part of this  
36 PA, including any Indian Tribes, may contact the BLM and request to become a  
37 Consulting Party. BLM will consider any such request and notify the Signatories  
38 and other Consulting Parties of the request and BLM's decision.

39 **V. Section 106 Procedures**

- 40 A. The Undertaking involves a number of activities associated with oil and gas  
41 leasing and associated activities within the APE that have varying potentials to  
42 cause effects to Historic Properties, all of which are covered by this PA. The  
43 steps below outline an alternate process for BLM to comply with NHPA for the  
44 Undertaking, which will be carried out by BLM or FWS professional staff or non-

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1 federal professionals who meet the Secretary of the Interior’s (SOI) Professional  
2 Qualifications Standards (48 Federal Register 44716-44742), as appropriate.

- 3  
4 B. BLM shall make a good faith effort to identify and evaluate Historic Properties but  
5 anticipates that in certain cases a 100 percent identification may not be  
6 necessary, and NRHP evaluations may be conducted on all or some of identified  
7 properties. BLM will collect, or direct lessees and/or their contractors to collect,  
8 the amount of information necessary for the BLM to make decisions regarding  
9 the potential of the Project Type(s) to affect Historic Properties.

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- 10  
11 C. At its discretion, BLM may submit documentation requesting SHPO concurrence  
12 on determinations of eligibility and findings of effect concurrently in a combined  
13 submission for Project Types described below.

- 14  
15 D. Nothing shall prevent the BLM from seeking informal consultation with the  
16 Signatories or Consulting Parties regarding the preparation of determinations of  
17 eligibility or findings of effect.

18  
19 E. **Step 1: Oil and Gas Program Project Types Addressed under this PA**

- 20 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
21 that this PA will address the following Project types associated with the  
22 Program within the APE:

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- 23 a. Lease Sales;  
24 b. Inventory, Research, and Monitoring Activities;  
25 c. Geophysical Exploration;  
26 d. Applications for Permit to Drill (APD);  
27 e. Marine and Intertidal Activities and Operations;  
28 f. Operations and Production;  
29 g. Inspection and Enforcement; and  
30 h. Reclamation.

31  
32 F. **Step 2: Assess Project Potential to Cause Effects**

- 33 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
34 under review has potential to cause effects on Historic Properties. BLM shall  
35 determine that a Project type does not have the potential to cause effects if it  
36 meets one or more of the following conditions:

- 37 a. Lease Sale or other Administrative Action; or  
38 b. Standard maintenance, repairs, or replacement of existing facilities or  
39 equipment that do not exceed the original disturbance footprint.

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- 40 2. If the Project type meets one or more of the above conditions (Section  
41 V.H.1.a-c), BLM shall make a determination that the Project type has “no  
42 potential to cause effects” and attach letter to the Project file [36 CFR  
43 800.3(a)(1) determination].  
44 3. If the Project type does not meet the above conditions, and the Project type  
45 consists of Inventory, Research, and Monitoring Activities, Geophysical

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or audible elements that diminish the integrity of a  
property; physical changes; or ground disturbance  
ground disturbanceoutside existing project footprint;¶

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1 Exploration, Marine and Intertidal Activities and Operations, Operations and  
2 Production, or Inspection and Enforcement, [the BLM will](#) proceed to Step 3.

- 3 4. If the Project type does not meet the above conditions, and the Project type is  
4 an APD or Reclamation, BLM will consult with Signatories and Consulting  
5 Parties, and BLM will determine if the Project should be addressed under this  
6 PA, or if a separate Section 106 process and agreement document (“kick-  
7 out”) must occur in accordance with Step 8 below.

8  
9 **G. Step 3: APE**

- 10 1. Has BLM, in consultation with the SHPO, defined the APE?  
11 a. If yes, proceed to Step 4.  
12 b. If no, BLM defines the APE in consultation with SHPO [and other](#)  
13 [Signatories](#).

14  
15 **H. Step 4: Identification**

- 16 1. Has BLM determined that efforts to identify Historic Properties consistent with  
17 the procedures described in *Appendix C: Methods to Inventory the APE* have  
18 been completed within the APE?  
19 a. If yes, proceed to Step 5.  
20 b. If no, BLM will implement or direct the implementation of methods detailed  
21 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
22 level of effort to identify Historic Properties within the APE of the Project.

23  
24 **I. Step 5: Preliminary APE Assessment**

- 25 1. Has BLM determined that identification efforts [documented properties that](#)  
26 [have not been previously evaluated for NRHP eligibility](#) within the APE?  
27 a. If yes, proceed to Step 6.  
28 b. If no [or if all known properties have been evaluated for NRHP eligibility](#),  
29 proceed to Step 7.

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30  
31 **J. Step 6: Evaluation**

- 32 1. [The BLM](#) will evaluate potential Historic Properties in the APE of the Project  
33 for NRHP eligibility (NRHP Bulletin 15) [consistent with guidance found in](#)  
34 [Appendix C: Methods to Inventory the APE concerning level of effort](#).  
35 a. BLM will concurrently consult with FWS on all determinations of eligibility  
36 (DOEs), and with Indian Tribes on DOEs concerning [unevaluated](#)  
37 [properties of religious and cultural significance prior to submitting them to](#)  
38 SHPO for concurrence.  
39 i. FWS will have thirty (30) days to review and respond to determinations  
40 submitted by BLM. If FWS does not offer comment within the review  
41 period, then BLM will presume agreement with the DOE(s).  
42 ii. Indian Tribes will have thirty (30) days to review and respond to  
43 determinations submitted by BLM. If an Indian Tribe(s) does not offer

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If yes, proceed to Step 7.¶  
If no, the BLM

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- comment within the review period, then BLM will presume agreement with the DOE(s).
- b. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal.
  - c. Within approximately five days of the end of the review period, including any extensions granted, BLM will submit the DOE to SHPO, who will have thirty (30) days to review the DOE(s). If SHPO does not offer comment within the review period, then BLM will presume the SHPO agrees with BLM's DOE(s) and may proceed to Step 7.
    - i. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
  - d. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
  - e. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
    - i. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
  - f. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

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**K. Step 7: Assess Effects**

- 1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), which shall notify all Signatories and Consulting Parties of the finding and provide them with the documentation specified in Section 800.11(e). The SHPO shall have 30 days from receipt to review the finding.
    - i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM shall notify Signatories and Consulting Parties of the finding and provide them with documentation supporting this finding.
      - 1. If SHPO concurs with the BLM's determination, BLM shall document the concurrence to the Project file.
      - 2. If the SHPO or any consulting party notifies the BLM in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
    - ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
      - 1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the

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1 criteria of adverse effect in consultation with Signatories and  
2 Consulting Parties, and if necessary, revise their finding of effect  
3 pursuant to 36 CFR 800.6.

4 iii. If BLM, in consultation with Signatories and Consulting Parties  
5 determines that an applicant's proposed methods to avoid, minimize,  
6 and/or mitigate adverse effects will still result in adverse effects to  
7 Historic Properties, the process shall revert to the standard Section  
8 106 procedures at 36 CFR 800.6.

9  
10 b. If no, BLM will make a finding of "no Historic Properties affected" (36 CFR  
11 800.4[d][1]) and submit to SHPO for concurrence with appropriate  
12 supporting documentation. SHPO shall have thirty (30) days to review the  
13 BLM's determination. BLM shall also provide notice to the Signatories and  
14 Consulting Parties of this finding in accordance with 36 CFR 800.4(d)(1).

15 i. If SHPO concurs with the BLM's determination, BLM shall document  
16 SHPO concurrence to the Project file.

17 ii. If SHPO does not concur, and resolution cannot be reached through  
18 consultation among SHPO, ACHP, and BLM, BLM shall follow the  
19 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

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20  
21 **L. Step 8: Decision regarding Undertaking**

22 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
23 applicable, and BLM has documented the appropriate finding of effect and  
24 resolution efforts, as required, to the Project file.

25  
26 2. Alternatively, if BLM has determined that a separate Section 106 process and  
27 agreement document ("kick-out") is required for an APD or Reclamation  
28 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
29 subject to this PA only after the separate Section 106 review has been  
30 completed, and if necessary, the appropriate agreement document (e.g.,  
31 Memorandum of Agreement or Programmatic Agreement) has been executed  
32 for the Project.

33  
34 **M. Step 9: Reporting**

35 1. BLM will include a summary of all Projects reviewed under this PA in the  
36 previous year in the annual PA report [Stipulation XII]. The summary will  
37 include a synopsis for each project, including at minimum:

- 38 a. A description of the Project;  
39 b. Delineation of the APE;  
40 c. Identification efforts within the APE;  
41 d. NRHP eligibility of known properties within the APE;  
42 e. BLM's finding of effect for the Project; and,

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1 f. The Qualifications of the Individual who conducted the PA Compliance  
2 Review.

3  
4 2. BLM will submit reports associated with identification, evaluation, and  
5 assessments of effect that were used to support BLM findings of effect to the  
6 SHPO.

7  
8 BLM may append reports associated with identification, evaluation, and  
9 assessments of effect that were used to support BLM finding to the annual PA  
10 report, provided they do not contain sensitive information regarding Historic  
11 Properties [pursuant to Stipulation IV.C.](#)

12 **VI. Methods to Inventory APE**

13 A. The BLM shall produce a draft of [Appendix C: Methods to Inventory the APE](#),  
14 within six (6) months of execution of the PA. BLM may request additional time to  
15 complete this draft; however, BLM must submit this request in writing to the  
16 Signatories for concurrence.

Deleted: Appendix C: Methods to Inventory the APE

17  
18 [B. Appendix C will include parameters on when an unevaluated property within the  
19 APE will not be evaluated for the NRHP, guidance on intensity of fieldwork based  
20 on proposed actions/activity, guidance on when and at what level archaeological,  
21 ethnographic, historical, and archival research should be conducted, and the role  
22 of GIS-based modeling for the identification of historic properties.](#)

23  
24 C. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
25 comment.

26  
27 D. BLM will consider timely comments received and revise the draft accordingly.  
28 Multiple drafts may be required, and a final draft will be sent out for review no  
29 later than one year from the execution of the PA.

30  
31 E. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
32 the first draft and the final draft concurrent with Signatory review.

33  
34 F. BLM, FWS, and SHPO must approve of the draft [Appendix C: Methods to  
35 Inventory the APE](#), before it is considered final.

Deleted: Appendix C: Methods to Inventory the APE

36  
37 G. Drafts cannot be used as interim guidance. If a project needs to move through  
38 Step 4 of this PA prior to finalization of [Appendix C: Methods to Inventory the  
39 APE](#), then the appropriate level of effort and methods will be determined through  
40 consultation among BLM, FWS, and SHPO on a case-by-case basis.

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41 **VII. Standards**

42 A. Professional Qualifications:

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1 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
2 shall ensure that all work carried out pursuant to this PA shall be done by or  
3 under the direct supervision of qualified historic preservation professionals  
4 who meet the [Secretary of the Interior's](#) (SOI) Professional Qualifications  
5 Standards (48 Federal Register 44716-44742). The BLM and FWS, through  
6 review of permit applications or other means, shall ensure that consultants  
7 retained for services pursuant to the Agreement meet these standards.  
8

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9 2. A "qualified historic preservation professional" is a person who meets the  
10 relevant standards outlined in the Archeology and Historic Preservation: SOI  
11 Standards and Guidelines [[as Amended and Annotated](#)]  
12 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised  
13 equivalent.  
14

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15 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
16 identifying and assessing the eligibility of Historic Properties that may  
17 possess religious or cultural significance to Indian Tribes (36 CFR  
18 800.4(c)(1)), and as such, do not need to meet the SOI standards regarding  
19 identifying and evaluating Historic Properties of religious or cultural  
20 significance to them.  
21

22 B. Professional Standards:

23 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
24 ensure that all work conducted as a result of this PA not otherwise done by  
25 BLM or FWS professional staff is performed in accordance with the SOI  
26 Standards for Archeology and Historic Preservation (Standards and  
27 Guidelines) (48 Fed. Reg. 44716-44742).  
28

29 2. BLM shall require that persons supervising and conducting work on the behalf  
30 of lessees hold the appropriate BLM permits and/or authorizations as  
31 appropriate for inventory, monitoring, and other investigations, and meet the  
32 Standards and Guidelines, as well as the SOI Professional Qualification  
33 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
34 that persons supervising and conducting work on the behalf of lessees  
35 comply with the NAGPRA POA.  
36

37 3. Investigations associated with Program activities will be conducted in  
38 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
39 the standards presented in BLM Manual 8110 [Identifying and Evaluating](#)  
40 [Cultural Resources](#)  
41 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
42 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf)) and BLM Manual 1780 [Tribal Relations](#)  
43 (<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>).  
44

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45 4. Reports regarding Historic Properties shall meet the standards outlined in the  
46 SOI Standards for Archeology and Historic Preservation (Standards and

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Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History and Archaeology guidelines.

**VIII. Unanticipated Discoveries**

- A. During the entire implementation of this Undertaking, BLM will ensure that the Signatories and Consulting Parties are informed of unanticipated discoveries within the Undertaking’s APE during lessees or their contractor related activities associated with the BLM’s oil and gas leasing program.
- B. Lessees or their contactors will not take any actions that would adversely affect the discovery which may be eligible for listing in the NRHP without written approval from BLM.
- C. Upon the unanticipated discovery, the following steps listed below will be undertaken. If the unanticipated discovery includes human remains, burials, or funerary items, then the additional steps listed in Stipulation IX shall be followed.
  - 1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further discoveries can be reasonably expected to occur, to be no less than one hundred (100) feet, and will notify the BLM within one business day;
  - 2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two business days of the discovery;
  - 3. The BLM or a SOI-qualified archaeologist approved by them will inspect the property as soon as possible and collect enough information to determine (if possible):
    - a. The extent of cultural materials associated with the unanticipated discovery;
    - b. The degree of integrity; and
    - c. The cultural affiliation of the materials (if possible).
  - 4. Within five (5) business days, BLM shall provide a summary of the information collected at the place of discovery to Signatories and Consulting Parties, which will include BLM’s preliminary assessment of the NRHP eligibility of the discovery.
  - 5. Within 14 days of the BLM’s distribution of the information regarding the unanticipated discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.

**Commented [JJA13]:** SHPO comment re: use of 800.13 language in this section:  
Which language would you like to use? At present this section of the PA is providing an alternative to the process outlined in 800.13 with different timelines or other details such as the stop work zone distance.

**Commented [JJA14R13]:** ACHP:  
Agreed it would be helpful to see the specific language. It seems this section is serving to differentiate NAGPRA discoveries from other more Section-106 focused discoveries. If so, I would feel more comfortable with more explicit language to that effect, or at least that separates a NAGPRA discovery with the determination of effect under 106.

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- 1 a. If the BLM determines that the discovery is ineligible for listing in the  
2 NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
3 activities in the area of the discovery.  
4 b. If the BLM determines the discovery is eligible for listing in the NRHP and  
5 SHPO concurs, BLM will direct the lessee to prepare a plan for its  
6 avoidance, protection, or recovery of information in consultation with BLM,  
7 Signatories and Consulting Parties, as appropriate.  
8 i. Within five (5) business days of receipt, BLM shall distribute copies of  
9 the proposed plan to Signatories and Consulting Parties for review and  
10 comment.  
11 ii. Signatories and Consulting Parties shall have seven (7) business days  
12 to review the proposed plan and provide comments to BLM.  
13 iii. BLM shall take into consideration timely comments received on the  
14 proposed plan and make a determination to either approve or request  
15 revisions to the proposed plan.  
16 A. In the event that BLM requests revisions to the plan, BLM shall  
17 redistribute the revised plan under the same timelines as above,  
18 and Signatories and Consulting Parties shall have the same period  
19 of review. BLM may request revisions to the plan two times or until  
20 the plan adequately responds to comments. BLM will finalize the  
21 plan and provide the final plan to Signatories and Consulting  
22 Parties for their information.  
23  
24 6. Work in the established buffer will not proceed until either:  
25 a. BLM approves the plan and requires its implementation; or  
26 b. The BLM determines that the discovery is not eligible for the NRHP, and  
27 the SHPO concurs with this determination.  
28  
29 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
30 discoveries as provided in Stipulation XIII of this PA.

31 **IX. Unanticipated Effects**

- 32 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
33 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
34 Property, BLM, in consultation with Signatories and Consulting Parties, will  
35 assess the effect(s), develop a plan to address the unanticipated adverse  
36 effect(s), and avoid, minimize, and/or mitigate the unanticipated adverse  
37 effect(s).  
38  
39 B. BLM will notify Signatories and Consulting Parties of unanticipated effects within  
40 approximately two business days if caused by a current action (i.e., construction)  
41 or other situation requiring expedited review. Within approximately 7 days of  
42 discovery, BLM will submit to Signatories and Consulting Parties for a 7-day  
43 comment period a finding on whether the unanticipated effect was adverse.  
44



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1 C. If the unanticipated effect is the result of cumulative or past actions, then BLM  
2 will notify Signatories and Consulting Parties within approximately 30 days of  
3 discovery, which will include a finding on whether the effect was adverse.

4  
5 D. If BLM, in consultation with Signatories and Consulting Parties determines that  
6 the unanticipated effect was adverse, then the process shall revert to the  
7 standard Section 106 procedures at 36 CFR 800.6.

8  
9 E. BLM will attempt to complete this process within 180 days of the recognition of  
10 the unanticipated effect(s).

11  
12 F. BLM will address any disputes over the resolution of unanticipated effects as  
13 provided in Stipulation XIII of this PA.

14 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
15 **Objects, and Objects of Cultural Patrimony**

16 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
17 that any Native American burials, human remains, and/or related items  
18 discovered on federal lands during implementation of the terms of this PA will be  
19 treated with dignity and respect, and that all procedures guiding the treatment of  
20 human remains, funerary objects, sacred objects, or objects of cultural patrimony  
21 comply with Section 3 of NAGPRA (43 CFR 10.4).

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22  
23 B. As surface manager of the APE, FWS is the managing agency for any and all  
24 human remains and NAGPRA materials.

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25  
26 C. ~~FWS~~ shall develop, in consultation with ~~BLM~~, SHPO, and Indian Tribes, a Human  
27 Remains and NAGPRA Plan of Action (POA) that complies with 43 CFR 10.5  
28 and applicable state laws 12 months after the execution of this PA. Upon  
29 completion, the Human Remains and NAGPRA POA shall be incorporated into  
30 this PA as *Appendix D*. At minimum, the POA shall contain:

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- 31 1. Notification Procedures and Protocols;
- 32 2. Chain of Custody Procedures; and,
- 33 3. Contact information for Law Enforcement, Tribal Representatives, and  
34 Agency personnel.

35  
36 D. The process for developing this POA will follow the process outlined above for  
37 the development of Appendix C: Methods to Inventory the APE as described in  
38 Stipulation VI as practicable.

39  
40 E. In the event that any Native American burials, human remains, or funerary items  
41 are inadvertently encountered during any Program activity, the activity shall  
42 immediately cease, the area shall be secured from further disturbance, and the  
43 permittee, lessee or agency shall immediately notify the BLM of the discovery.

- 44 1. Upon notification, the BLM shall follow the procedures described in the  
45 NAGPRA POA (*Appendix D*).

1 **XI. Curation**

- 2 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
3 during any activities associated with the Undertaking are property of FWS as  
4 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
5 *Curation of Federally-Owned and Administered Archaeological Collections* under  
6 FWS' existing agreement with the University of Alaska Museum of the North  
7 (UAMN).  
8
- 9 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
10 submitting all materials recovered from federal lands to the UAMN within six  
11 months following approval of a final report, within one year following completion  
12 of the fieldwork that generated the collection, or other period of time as specified  
13 in the ARPA permit. All collections will be curation-ready, as determined by the  
14 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
15 behalf, will safeguard all materials from theft or damage by providing adequate  
16 interim storage facilities and conservation actions, consistent with the  
17 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
18 Permittee will provide BLM with all accession records and documentation  
19 associated with the transfer and curation of materials. BLM will share the  
20 documentation with the FWS. Information will be shared with the other  
21 Signatories and Consulting Parties as appropriate.  
22
- 23 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
24 the curation of any materials that are collected during the implementation this PA,  
25 in perpetuity. Curation costs may include, but are not limited to, curation fees  
26 charged by approved institutions, acquisition of archival materials, shipping,  
27 cleaning, rehousing, and any other conservation action.  
28
- 29 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
30 described above in Stipulation IX and in the NAGPRA POA (Appendix D).  
31
- 32 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
33 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
34 other transfers of artifacts recovered from the APE to local communities or  
35 facilities to support and enhance cultural ties to the APE.

36 **XII. Annual PA Meeting and Reports**

- 37 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to an  
38 annual meeting concerning this PA within one (1) year of the PA execution, and  
39 each succeeding year by that approximate same date, thereafter. A subsequent  
40 Signatories meeting will be held by the Signatories to consider the input received  
41 by Consulting Parties, discuss the PA's implementation, required amendments  
42 (as necessary), or other changes, and other business related to the application of  
43 the PA terms.

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**Deleted:** The meeting will consist of: an initial day where Consulting Parties and Signatories meet to discuss (1) the activities conducted under the PA, (2) activities scheduled for the upcoming year, (3) verify/update contact information for Consulting Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current, (5) cumulative effects, and (6) any other topics necessary to ensure the PA is functioning to all parties benefit.

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories. The parties may participate by telephone if they so desire.
2. The BLM will distribute meeting minutes to the meeting participants within thirty (30) days of the meeting, and meeting participants will provide comments to the BLM within fifteen (15) days of receipt. The BLM shall amend the minutes as a result of comments and distribute finalized minutes within approximately sixty (60) days of the meeting [to Signatories and Consulting Parties](#).
3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to BLM that a meeting is necessary outside of the regularly scheduled annual meeting, the Signatories and Consulting Parties will consider their request. BLM, taking into consideration the results of consultation, shall decide whether to convene additional meetings.

B. Annual PA Report:

1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories and Consulting Parties with a draft copy of that year's annual report that describes the completed and upcoming activities associated with the stipulations of this agreement. The report will include the following information, as appropriate:
  - a. Number of leases issued;
  - b. [All Project Types considered under Stipulation V.A;](#)
  - c. Consultation activities undertaken;
  - d. [A summary of the past year's and anticipated upcoming efforts to related to cultural resource management, which may include but not be limited to:](#)
    1. [Efforts to identify, evaluate, and protect historic properties;](#)
    2. [Measures drafted or implemented to resolve adverse effects;](#)
    3. [A summary of materials submitted to an approved repository for curation; and](#)
    4. [References for cultural resources reports produced in the past year.](#)
  - e. [A summary of historic properties adversely affected, as well as any;](#)
  - f. Maps of areas leased, surveyed, or otherwise investigated;
  - g. [Upcoming/Planned activities for the Program; and](#)
  - h. [An evaluation of this PA and recommendations for any amendments or changes.](#)
2. Signatories and Consulting Parties may provide comments to BLM at or before the Annual meeting regarding the content of the Annual Report.
3. BLM will prepare and submit a Final Annual Report to Signatories and Consulting Parties within thirty (30) days after the annual meetings have concluded.

C. Other Reports:

1. [Cultural resource activities, such as archaeological surveys, site evaluations, excavations, data recovery for mitigation, and monitoring, will be documented](#)

Deleted: ctivities BLM reviewed under this PA in accordance with

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 [in reports subject to review by Signatories and Consulting Parties, as allowed](#)  
2 [by Stipulation IV.C, to allow timely and meaningful comment on findings and](#)  
3 [determinations made during implementation of Stipulation V Section 106](#)  
4 [Procedures. Review and comment periods will follow the process outlined in](#)  
5 [Stipulation V. If a report is not accompanied by a determination or finding,](#)  
6 [then Signatories and Consulting Parties shall have 30 days to review and](#)  
7 [provide comment.](#)  
8 2. [Full attachment of reports that have not been submitted to SHPO as part of a](#)  
9 [project review shall be attached to the Annual Report sent to SHPO.](#)

10 **XIII. Dispute Resolution**

- 11 A. Should any of the Signatories or Consulting Parties who have become  
12 Concurring Parties to this PA have insight, improvements, or objections  
13 regarding the manner in which the terms of this PA are implemented, the BLM  
14 will consult with such party to determine if the inclusion, suggestion,  
15 recommendation, or objection may be addressed to the satisfaction of the party,  
16 which may include presenting a proposed amendment to this PA in accordance  
17 with Stipulation XV.  
18  
19 B. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
20 notify the Signatories of the dispute, and seek input from Signatories to resolve  
21 the dispute.  
22  
23 C. If the Signatories determine that an objection cannot be resolved, the BLM will:  
24 1. Forward all documentation relevant to the dispute, including the BLM's  
25 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
26 advice on the resolution of the objection within thirty (30) calendar days of  
27 receiving adequate documentation. Prior to reaching a final decision on the  
28 dispute, the BLM will prepare a written response that takes into account any  
29 timely advice or comments regarding the dispute from the ACHP, Signatories,  
30 and Consulting Parties, and provide them with a copy of this written response.  
31 The BLM will then proceed according to its final decision.  
32  
33 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
34 (30) calendar-day time period, the BLM may make a final decision on the  
35 dispute and proceed accordingly. Prior to reaching such a final decision, the  
36 BLM will prepare a written response that takes into account any timely  
37 comments regarding the dispute from the Signatories and Consulting Parties  
38 to the PA and provide them and the ACHP with a copy of such written  
39 response.  
40  
41 3. Regardless of the results of the dispute resolution measures described  
42 above, the BLM's responsibility is to carry out all other actions subject to the  
43 terms of this PA that are not the subject of the dispute.

Commented [JJA17]: Add to definition appendix

44 **XIV. Duration**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 A. ~~This Programmatic Agreement shall take effect when executed by the ACHP, the~~  
2 ~~BLM, and the SHPO.~~ ✓  
3  
4 B. This PA will remain in effect for ten (10) years after its execution.  
5  
6 C. Prior to such time, the BLM will consult with the Signatories and Consulting  
7 Parties to reconsider the terms of the PA and amend it in accordance with  
8 Stipulation XV below no later than six (6) months prior to expiration of the  
9 agreement. If appropriate, the Signatories may execute a new agreement or  
10 amend to extend the duration of the current agreement.

**Deleted:** he date the ACHP signs this PA is the ratification date, which officially executes the PA. .

11 **XV. Amendments**

- 12 A. The Signatories may amend this PA at any time when such amendment is  
13 agreed to in writing by all Signatories. The amendment will be effective on the  
14 date a copy signed by all of the Signatories is filed with the ACHP.  
15  
16 B. The BLM will distribute any amendments made to the PA to all Consulting  
17 Parties. All amendments will be attached to the PA in *Appendix E: PA*  
18 *Amendments*.  
19  
20 C. In the event that another federal agency not initially a party to or subject to this  
21 PA receives an application for funding/licensing/or permitting an Undertaking in  
22 the 1002 area as described in this PA, that agency may fulfill its Section 106  
23 responsibilities by stating in writing it concurs with the terms of this PA and  
24 notifying the Signatories and Consulting Parties that it intends to do so. Such  
25 agreement shall be evidenced by execution of a signature page signed by an  
26 authorized individual for that agency, distribution of said page to all Signatories  
27 and Consulting Parties, filing this page with the ACHP, and implementation of the  
28 terms of this PA.  
29  
30 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
31 to reflect changes in personnel or contact information without requiring the PA to  
32 be amended in accordance with the procedures described above.

33 **XVI. Termination**

- 34 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
35 carried out, that party shall immediately consult with the other Signatories to  
36 attempt to develop an amendment or agreement on other actions that would  
37 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
38 such consultation (or another time period agreed to by all Signatories) an  
39 amendment or agreement on other actions that would avoid termination cannot  
40 be reached, any Signatory may terminate the Agreement upon written notification  
41 to the other Signatories.  
42

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 B. In the event that a Signatory terminates this PA, and prior to further Program  
2 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
3 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
4 comments of the ACHP under 36 CFR § 800.7. The BLM shall notify the  
5 Signatories as to the course of action it will pursue.

6 **xvii. Emergency Situations**

- 7 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
8 Consulting Parties of an emergency situation, which represents an imminent  
9 threat to public health or safety or creates a hazardous condition, that also has  
10 potential to harm Historic Properties or the subsequent response has potential to  
11 harm Historic Properties and the measures taken to respond to the emergency or  
12 hazardous condition. Should the Signatories or Consulting Parties desire to  
13 provide technical assistance to the BLM, they shall submit comments to the BLM  
14 within seven (7) calendar days from notification, if the nature of the emergency or  
15 hazardous condition allows for such coordination.  
16

- 17 B. If the APE of the emergency situation has been surveyed for Historic Properties  
18 and none ~~are~~ within the APE, then the BLM will request concurrence on a  
19 determination of “no Historic Properties affected” from the SHPO within five (5)  
20 calendar days from the initial notification.  
21

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- 22 C. If the APE has not been surveyed for potential Historic Properties, then  
23 emergency actions will be monitored by a SOI qualified professional or the APE  
24 will be inventoried by a SOI-qualified professional no later than one (1) year after  
25 the emergency action is completed. BLM will require that a monitoring report or  
26 inventory report will be submitted to Signatories and Consulting Parties within  
27 thirty (30) days of following fieldwork completion.  
28

- 29 D. If a previously known or unknown Historic Property is adversely affected by  
30 emergency actions, then the BLM will consult with Signatories and Consulting  
31 Parties to resolve the adverse effect pursuant 36 CFR § 800.6.

32 **xviii. Anti-Deficiency Provision**

- 33 A. Any obligation of the federal agencies set forth in this PA is subject to and  
34 dependent on appropriations by Congress and allocation of sufficient funds for  
35 that purpose. The federal agencies shall make reasonable and good faith efforts  
36 to secure the necessary funds to implement this PA in its entirety. If compliance  
37 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
38 implement the stipulations of this agreement, the federal agencies shall consult in  
39 accordance with the amendment and termination procedures found at  
40 Stipulations XV and XVI of this agreement.

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
2 that the BLM has taken into account the effects of the Undertaking on Historic  
3 Properties and have afforded the ACHP an opportunity to comment.

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

By: Chad B. Padgett, State Director, Alaska

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

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

By: [Judith Bittner, State Historic Preservation Officer](#)

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [John M. Fowler, Executive Director](#)

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

DRAFT

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

Deleted: United States Department of the Interior, Fish and Wildlife Service

**CONCURRING PARTIES**

[ORGANIZATION NAME PLACEHOLDER]

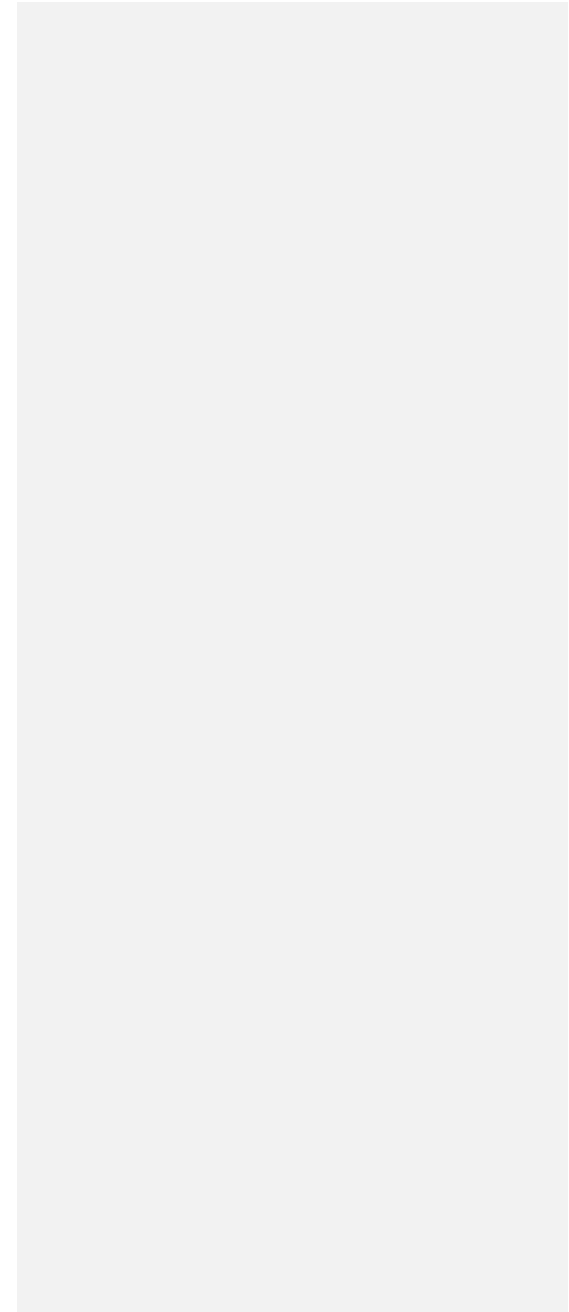
Deleted: CONSULTING

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

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1 **Appendix A: Area of Potential Effects**  
2

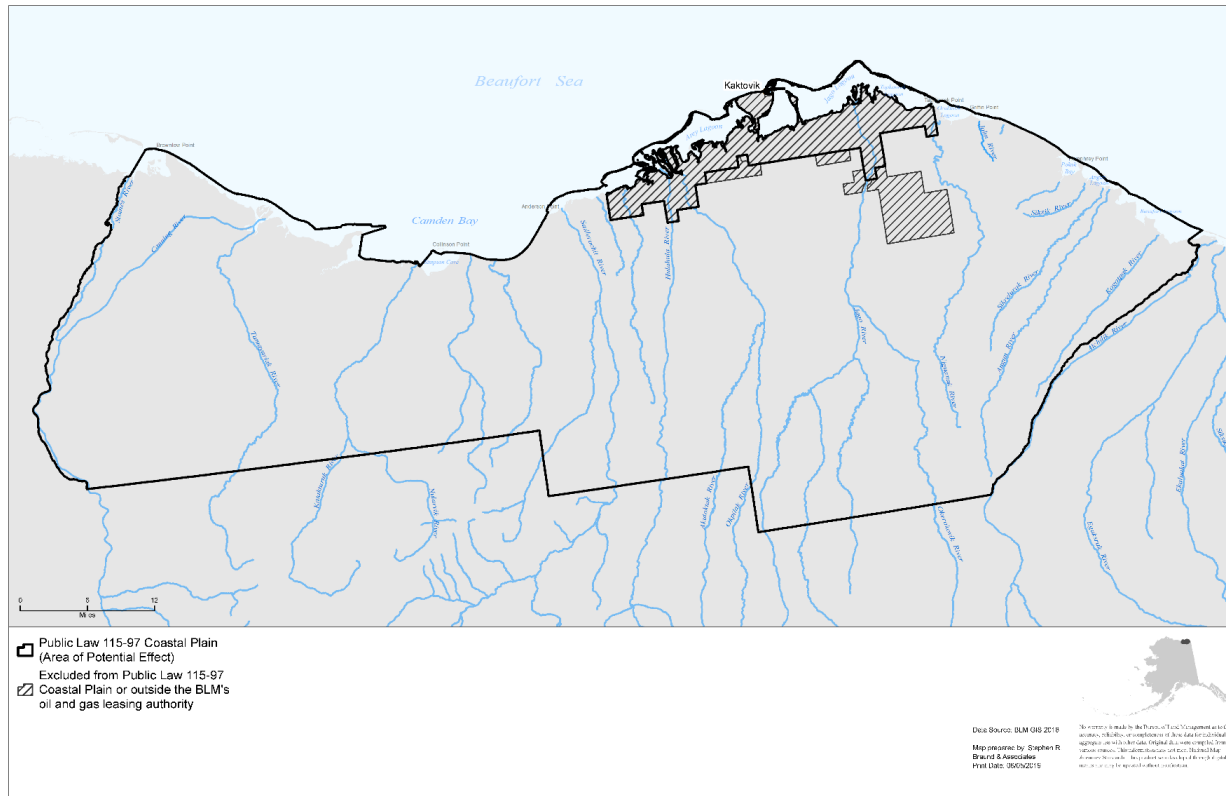
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix B: Consulting Parties**

2  
 3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.  
 6 Without a specific point of contact, communications will be directed to the leadership of the organization  
 7 (e.g., President, Chairperson, Executive Director, etc.).

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsragmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabaskan Tribal Governments	donna.thomas@catg.org

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1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

DRAFT

**From:** [Keeney, Joseph W](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Decleva, Edward J](#); [Loya, Wendy M](#); [King, Robert \(Bob\)](#); [LaMarr, Sarah L](#); [Jones, Nichelle \(Shelly\) W](#)  
**Subject:** Re: Arctic Plain Oil & Gas PA  
**Date:** Wednesday, January 30, 2019 9:42:59 AM  
**Importance:** High

---

Hi Ed,

Now that we are back to work (for now), I'd like to set up a conference call soon to work out some of the details you've brought up before regarding the roles and responsibilities between USF&WS and BLM for oil and gas-related activities in the Coastal Plain, particularly as they pertain to Section 106 and archaeological permitting. Do you have a rough idea of what your schedule, and those of anyone who should be present from USF&WS, is looking like?

Best,  
Joe

On Wed, Jan 30, 2019 at 7:49 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Hi Ed,

I have asked Joe Keeney and Bob King to take the lead on setting up a meeting with you all to discuss roles and responsibilities, and then reviewing the PA so that we can coordinate with signatories and consulting parties. I am unavailable until the 15th to do much with this. I'll touch bases with Joe this morning on next steps so we can get some of this moving.

Thank you,

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

On Wed, Jan 30, 2019 at 7:42 AM Decleva, Edward <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)> wrote:

Hi Nicole,

Do you have any updates on what is or might be happening with the PA?

Edward J. DeCleva

Regional Historic Preservation Officer

U.S. Fish and Wildlife Service, Alaska Region

1011 E Tudor Rd, MS-235

Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)

907-786-3399

--

Joe Keeney  
Archaeologist  
BLM Arctic District Office  
222 University Avenue  
Fairbanks, Alaska 99709  
907-474-2312  
[jkeeney@blm.gov](mailto:jkeeney@blm.gov)

**From:** [Decleva, Edward J](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Keeney, Joseph W](#); [Loya, Wendy M](#); [Miraglia, Rita A](#); [Jones, Nichelle \(Shelly\) W](#); [LaMarr, Sarah L](#); [King, Robert \(Bob\)](#)  
**Subject:** Re: CP PA  
**Date:** Thursday, December 20, 2018 12:50:57 PM

---

In less than an hour from now, I'll be out til Jan 7

Edward J. DeCleva  
Regional Historic Preservation Officer  
U.S. Fish and Wildlife Service, Alaska Region  
1011 E Tudor Rd, MS-235  
Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)  
907-786-3399

On Thu, Dec 20, 2018 at 12:18 PM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

This week has gotten away from me and I will be on leave tomorrow. Is anyone available next week to discuss this?

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

On Fri, Nov 30, 2018 at 6:41 AM Decleva, Edward <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)> wrote:

Thank you for the response Joe.

I agree that we (BLM and USFWS) should sort this out. The funny thing about the argument is that a PA can be executed without the signature of an invited party. While there's no possibility that USFWS wouldn't sign this one, invited status strikes me as odd given USFWS jurisdiction over cultural resources and the likely significant role USFWS would have in ARPA, NAGPRA and museum property management matters. But I am confident that we can find the best way to deal with this, regardless of how the invited signatory matter plays out.

I am currently available most of the December 17th week - the exception being unavailable midday on the 18th and the afternoons of the 20th and 21st.

Best regards,  
Ed

Edward J. DeCleva  
Regional Historic Preservation Officer  
U.S. Fish and Wildlife Service, Alaska Region  
1011 E Tudor Rd, MS-235  
Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)  
907-786-3399

On Thu, Nov 29, 2018 at 2:44 PM Keeney, Joseph <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)> wrote:  
Hi Ed,

I inquired with Sarah Meitl about the invited signatory matter. She responded:

*The distinction between Signatory/Invited Signatory is something that the ACHP is starting to crack down on. The consistent message our office has been receiving is that only the lead federal agency is considered a required signatory and the ACHP is pushing for non-lead agencies to be invited to sign the agreement only if they have been assigned responsibilities to implement an agreement. It is a technical detail that I thought I would bring up since it seems to be important to the ACHP. If BLM and FWS feel it is important to have FWS as a Signatory then it should be fine as the ACHP has been okay with it in other agreements.*

This is something that should be addressed when USF&WS and BLM meet to discuss the other related permitting matters. Nicole is out of town for a couple weeks, but perhaps we can tentatively schedule something the week of the 17th? It looks like relevant BLM personnel might be available that week, or we could try again after the holidays.

Joe

On Wed, Nov 28, 2018 at 7:50 AM Decleva, Edward <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)> wrote:

Hi Nicole,

Thank you to you and the BLM team for coordinating and hosting yesterday's PA meeting. I have a couple of points to make.

First, regarding SHPO's recommendation that USFWS should perhaps be removed as a signatory and identified instead as an invited signatory: USFWS does not agree with the recommendation. USFWS is the jurisdictional land manager, a participating agency, and will be impacted by BLM's Section 106 decisionmaking regarding the identification and treatment of cultural resources within USFWS's jurisdiction, NAGPRA responsibilities, and the long-term preservation (ie, curation) of any cultural resources collections recovered as a result of actions caused by oil and gas leasing, exploration, and operations. USFWS must be retained as a full signatory to the PA.

Second, regarding establishing BLM and USFWS responsibilities for ARPA permitting, NAGPRA, and collections management: USFWS believes these are matters to be decided solely between BLM and USFWS. SHPO and ACHP have no jurisdiction regarding federal stewardship responsibilities. It is suggested that BLM and USFWS meet soon to establish our agency's roles.

Thank you for your attention to this.

Ed

Edward J. DeCleva  
Regional Historic Preservation Officer  
U.S. Fish and Wildlife Service, Alaska Region

1011 E Tudor Rd, MS-235  
Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)  
907-786-3399

--

Joe Keeney  
Archaeologist  
BLM Arctic District Office  
222 University Avenue  
Fairbanks, Alaska 99709  
907-474-2312  
[jkeeney@blm.gov](mailto:jkeeney@blm.gov)



**From:** [Keeney, Joseph W](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [King, Robert \(Bob\)](#); [Bittner, Judith E \(DNR\)](#); [Sarah Meiti](#); [Tom McCulloch](#); [Loya, Wendy M](#); [Decleva, Edward J](#); [Miraglia, Rita A](#); [Jones, Nichelle \(Shelly\) W](#); [LaMarr, Sarah L](#)  
**Subject:** Re: Initial Questions - please provide feedback by COB today  
**Date:** Tuesday, November 6, 2018 2:24:55 PM  
**Importance:** High

---

Hi Nicole,

I think this looks like a good list, with good questions to help stimulate some thinking about the PA. A few minor tweaks I would make are:

2. What is the method that you wish to be contacted regarding the Programmatic Agreement in the future (e.g., phone, email, formal letter)?
6. Which existing repositories for historical information do you think would best help to inform about historic use in the program area?

Joe

On Tue, Nov 6, 2018 at 11:46 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

These questions are what we had discussed asking in our initial individual consultations with the consulting parties. Please provide feedback ASAP - I apologize for the short notice.

Questions:

1. Who are the one or two people that BLM should coordinate with for discussions pertaining to Section 106 of the NHPA?
2. What is the method that you wish to be contacted regarding the Programmatic Agreement in the future?
3. If we scheduled annual meetings pertaining to the Programmatic Agreement, what is the best way to coordinate with your [organization] recognizing staff may change over a year period.
4. What are the best ways improve our understanding of the program area/community/culture?
5. Are there administrative things we could do, such as ????, which could enhance the existing culture and community?
6. What are existing repositories of historical information we should look to for information about the program area?
7. What are some common features of historical or culturally significant areas we should consider including in the Programmatic Agreement for consideration of future surveys?
8. Are there mitigation measures we should consider including in the Programmatic Agreement at the leasing stage to avoid or minimize potential impacts to historic properties or cultural resources?
9. Are there other questions we should be asking to help inform development of a Programmatic Agreement at the leasing stage?

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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Joe Keeney  
Archaeologist  
BLM Arctic District Office  
222 University Avenue  
Fairbanks, Alaska 99709  
907-474-2312  
[jkeeney@blm.gov](mailto:jkeeney@blm.gov)

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Tiffany Yatlin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](mailto:imatt@achp.gov); [Gordon Brower](#); [City of Kaktovik - City Clerk](#); [Faith C Martineau \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tom Lohman](#); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keeney, Joseph W](#); [Wesley Furlong](#); [Jake Anders](#); [judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](mailto:fenton.rexford@north-slope.org); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [arlene.pitka@beavercouncil.org](mailto:arlene.pitka@beavercouncil.org); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Soplu](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [ida.angasan@ilisagvik.edu](mailto:ida.angasan@ilisagvik.edu); [Kevin S. Fisher](#); [Meitl, Sarah J \(DNR\)](#); [Donna Thomas](#); [Tyler Janowski](#); [Decleva, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org); [Bill Marzella](#); [amy lewis](#); [janet.cadzow@fortyukon.org](mailto:janet.cadzow@fortyukon.org); [dale.hardy@fortyukon.org](mailto:dale.hardy@fortyukon.org); [Loya, Wendy M](#)  
**Subject:** Re: March 26: Section 106 Programmatic Agreement Consulting Parties Meeting tomorrow  
**Date:** Wednesday, March 27, 2019 2:21:25 PM  
**Attachments:** [Section 106 GAD Checklist - Content.pdf](#)  
[Section 106 GAD Checklist - Reviewer's Guide.pdf](#)

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Good afternoon,

I have attached a couple of guidance documents on reviewing Programmatic Agreements (PA) produced by the Advisory Council on Historic Preservation that may aid in your review of the draft PA. You are not required to use so feel free to ignore if you do not find them helpful.

Thank you all again for an informative and productive meeting today.

Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

On Tue, Mar 26, 2019 at 12:51 PM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

All,

Please see the attached agenda for tomorrow's meeting as well as the Draft Programmatic Agreement (PA) to ensure compliance with the Section 106 National Historic Preservation Act for the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge. Consulting Parties will have 3 weeks to review and provide comments on the Draft PA and are not asked to provide feedback on it tomorrow.

Thank you,  
Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

## Section 106 Agreement Checklist: Content

*Use this checklist to ensure that the Memorandum of Agreement (MOA) or project Programmatic Agreement (project PA) includes the administrative stipulations and other clauses and information that should be found in every Section 106 agreement document. Also, consider the inclusion of other stipulations to provide contingencies for changes to the undertaking, problems, and other issues that could arise during implementation of the agreement.*

**Project Name:**

**Review Date:**

TITLE			
Memorandum of Agreement or Programmatic Agreement?	See definitions at 36 CFR §800.6(c) and §800.14(b)		
	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Are all the signatories named in the title?	<input type="checkbox"/>	<input type="checkbox"/>	Federal agency(ies), SHPO/THPO, and ACHP if participating
Is the undertaking(s) named in the title?	<input type="checkbox"/>	<input type="checkbox"/>	
PREAMBLE- WHEREAS CLAUSES			
	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Is the entire undertaking and the nature of federal involvement described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does a clause note the agreement was developed pursuant to Section 106 of the National Historic Preservation Act?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the responsible federal agency named?	<input type="checkbox"/>	<input type="checkbox"/>	
If there is a lead federal agency, has it been	<input type="checkbox"/>	<input type="checkbox"/>	If so, also identify the role(s) of other involved federal agencies

named?			[36 CFR §800.2(a)(1)]
Is an applicant for federal permits, licenses, grants, or other assistance involved?	<input type="checkbox"/>	<input type="checkbox"/>	If so, are the applicant's role and responsibilities described?
Is the appropriate SHPO/THPO(s) named?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all other consulting parties listed, including any Indian tribes, Native Hawaiian organizations, and representatives of local governments?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.2(c)
In a Programmatic Agreement, is the reason why a programmatic approach is needed described?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.14(b)(1)
Has the Area of Potential Effects for the undertaking(s) been identified?	<input type="checkbox"/>	<input type="checkbox"/>	
Are historic properties affected by the undertaking listed?	<input type="checkbox"/>	<input type="checkbox"/>	If numerous, consider summarizing and referencing an appendix.
Does a clause acknowledge historic properties would or may be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>	If historic properties would be adversely affected by the undertaking, briefly describe how.
Is a clause stating that the ACHP has been notified of the finding of adverse effect included? If the ACHP is participating in the consultation, is this stated?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a reference included to the agency's public involvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the clause, "Now, therefore, [federal agency, SHPO/THPO....] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties"	<input type="checkbox"/>	<input type="checkbox"/>	

included?			
<b>STIPULATIONS</b>			
	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Are the stipulations preceded by a clear statement that <i>the federal agency shall ensure that these terms are carried out</i> ?	<input type="checkbox"/>	<input type="checkbox"/>	See the ACHP's template MOA
Are procedures for responding to the unanticipated discovery of historic properties or inadvertent adverse effects to identified historic properties included?	<input type="checkbox"/>	<input type="checkbox"/>	Where appropriate; see 36 CFR §800.6(c)(6). See also 36 CFR §800.13
Are procedures for responding to emergency situations included?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.12
Is the need for confidentiality of sensitive information identified where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.11(c)
Has the use of qualified professionals been stipulated where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	See the Secretary of the Interior's professional qualifications standards, and 36 CFR §800.2(a)(1)
If archaeological data recovery is stipulated, is a data recovery plan attached or referenced in the agreement?	<input type="checkbox"/>	<input type="checkbox"/>	See the ACHP's archaeological guidance at <a href="http://www.achp.gov/archguide">www.achp.gov/archguide</a>
Are procedures for public involvement included for any ongoing reviews carried out according to the agreement's terms?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.2(d) and 800.6(a)(4)
Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project?	<input type="checkbox"/>	<input type="checkbox"/>	Where appropriate; see 36 CFR §800.6(c)(4)

If other federal funds, permits, or licenses may be used or required in the future for the undertaking, is an “other federal involvement” stipulation included?	<input type="checkbox"/>	<input type="checkbox"/>	See Sample Stipulations Section
Is a dispute resolution procedure included?	<input type="checkbox"/>	<input type="checkbox"/>	
Are provisions for the amendment and termination of the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §§800.6(c)(7) and 800.6(c)(8)
Is the agreement’s duration specified?	<input type="checkbox"/>	<input type="checkbox"/>	Required by 36 CFR §800.6(c)(5)
Is compliance with the Anti-Deficiency Act recognized where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	
Is compliance with other federal laws, such as the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act, and state and/or tribal laws, including state burial laws, acknowledged where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	While these other laws can be noted in an MOA/PA, Section 106 agreements are solely for documenting an agency’s compliance with Section 106 of the NHPA. As such, Section 106 agreement documents should not provide for an agency’s compliance with other statutes.
Do the stipulations conclude with an affirmation statement consistent with the template MOA?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SIGNATURES</b>			
	<b>Yes</b>	<b>No</b>	<b>Comments</b>
Are the signature blocks for signatories, invited signatories, and concurring parties clearly identified?	<input type="checkbox"/>	<input type="checkbox"/>	

Have all parties that are assigned responsibilities in the agreement been asked to be invited signatories?	<input type="checkbox"/>	<input type="checkbox"/>	
Does each signature line include a printed name, title, agency/organization, and date?	<input type="checkbox"/>	<input type="checkbox"/>	



## Section 106 Agreement Checklist: Reviewer’s Guide

*This checklist serves as a tool for reviewers of Memoranda of Agreement (MOAs) and project Programmatic Agreements (project PAs). It focuses on best drafting practices for writing agreements that are clear and comprehensible and that provide wisely for contingencies. It also offers reminders about important preparation practices that can help agreement document development move forward smoothly.*

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**Project Name:**

**Review Date:**

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<b>EDITING AND MECHANICS</b>			
	Yes	No	Comments
Are all acronyms and abbreviations identified and used consistently?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all of the provisions agreed upon during consultation included?	<input type="checkbox"/>	<input type="checkbox"/>	Make sure stipulations are grouped logically.
Do the stipulations clearly identify who is responsible for carrying out each measure?	<input type="checkbox"/>	<input type="checkbox"/>	
Do all tasks have clear timeframes for initiation and completion?	<input type="checkbox"/>	<input type="checkbox"/>	
Have all terms and references been used correctly and consistent with regulatory definitions?	<input type="checkbox"/>	<input type="checkbox"/>	Avoid terms like “project area” or “cultural resource” that are not used in 36 CFR Part 800.
Are all stipulations written in the active voice?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the process for post-review decision making described in a complete, logical, and organized way?	<input type="checkbox"/>	<input type="checkbox"/>	Who makes the decisions? Who is consulted? When do decisions need to be made? What

			information is needed?
Are all attachments and appendices cited in the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	Confine lengthy lists of historic properties, detailed procedural instructions, maps, address lists, etc. to appendices.
Are spelling, grammar, page numbering, section numbering, etc. accurate and consistent?	<input type="checkbox"/>	<input type="checkbox"/>	
Can a cold reader understand the agreement and what it requires?	<input type="checkbox"/>	<input type="checkbox"/>	A cold reader should not have to refer to consultation meeting minutes or other background documents to understand the agreement's provisions.
Are the signature blocks for signatories, invited signatories, and concurring parties clearly separated or designated on the signature page(s)?	<input type="checkbox"/>	<input type="checkbox"/>	

**PREPARATION**

	Yes	No	Comments
Are all parties assigned responsibilities in the agreement signatories or invited signatories?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the term of the agreement (duration) allow adequate time for project implementation and the completion of all stipulations?	<input type="checkbox"/>	<input type="checkbox"/>	
Does agency leadership support commitments made in the agreement?	<input type="checkbox"/>	<input type="checkbox"/>	
If the agreement is executed in counterparts, does each signature page	<input type="checkbox"/>	<input type="checkbox"/>	The federal agency should compile the individually executed

include the title of the agreement?			counterparts into a single document before forwarding the agreement to the ACHP for signature or filing.
If the ACHP is participating in the consultation, have all the other signatories, and invited signatories with assigned responsibilities, signed the agreement before the agency forwards the document to the ACHP for signature?	<input type="checkbox"/>	<input type="checkbox"/>	
Once fully executed, has the agreement been filed with the ACHP?	<input type="checkbox"/>	<input type="checkbox"/>	
Once fully executed, has a copy of the agreement been provided to all consulting parties?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the executed agreement been made available to the public?	<input type="checkbox"/>	<input type="checkbox"/>	

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Steen, Debbie DS](#)  
**Cc:** [Loya, Wendy M](#)  
**Subject:** Re: SIGNATURE REQUESTED Final Programmatic Agreement  
**Date:** Monday, September 30, 2019 3:25:43 PM  
**Importance:** High

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Thank you, Debbie!

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

On Mon, Sep 30, 2019 at 3:23 PM Steen, Debbie <[debbie\\_steen@fws.gov](mailto:debbie_steen@fws.gov)> wrote:

Nicole,

Attached is the FWS signature page for the Coastal Plain Programmatic Agreement. I am putting together the acceptance letter for signature and will mail that, as well as the original signature page to you ASAP.

Debbie Steen  
FWS- Alaska  
786-3665

----- Forwarded message -----

**From:** **Steen, Debbie** <[debbie\\_steen@fws.gov](mailto:debbie_steen@fws.gov)>  
**Date:** Mon, Sep 30, 2019 at 7:53 AM  
**Subject:** Re: SIGNATURE REQUESTED Final Programmatic Agreement  
**To:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>

I just got back in the office and saw your request to have the document signed by COB October 1. I will be running the PA through the FWS surnaming process today. I have a note from Eugene Marino in our Washington Office that he reviewed and is okay with the PA as written. I hope to get back to you quickly.

Debbie Steen  
USFWS-Alaska  
907-786-3665

On Fri, Sep 20, 2019 at 10:02 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Dear Signatories,

The final programmatic agreement for the Coastal Plain Oil and Gas Leasing Program is attached. The only changes since the last version were made through the technical editing/formatting process and did not result in any substantive changes.

BLM requests that you review and obtain the appropriate signature for your agency **by close of business October 1st**. In order to maintain quality of the original, please only scan in your agency signature page and

email it back. It would be appreciated if you could also send the original signature page to the mailing address below. Once I have received all of the signature pages I will send out a compiled document to everyone.

Thank you all for your work into development of this PA. We look forward to working with you in the future as it is implemented.

Please let me know if you have any questions.

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

**From:** [Marino, Eugene](#)  
**To:** [Loya, Wendy M](#)  
**Subject:** Re: SIGNATURE REQUESTED Final Programmatic Agreement  
**Date:** Monday, September 23, 2019 1:06:37 PM  
**Importance:** High

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Hi  
Yes. I agree it looks good.  
Eugene

Sent from my iPhone

On Sep 23, 2019, at 4:40 PM, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)> wrote:

Eugene,

I believe that all versions of the Sec 106 PA have been reviewed by both you and/or Ed Declava prior to Ed's retirement. Do I have your concurrence that the final PA is acceptable for Greg Siekaniec to sign on behalf of the USFWS?

Thank you,  
Wendy

Dr. Wendy M. Loya  
Arctic Program Coordinator  
US Fish and Wildlife Service, Office of Science Applications  
Anchorage, Alaska  
907.786.3532 (office)  
907.227.2942 (mobile)

**From:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Sent:** Friday, September 20, 2019 10:02 AM  
**To:** Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>; Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>; Bittner, Judith E (DNR) <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>; Meitl, Sarah J (DNR) <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>; Debbie Steen <[debbie\\_steen@fws.gov](mailto:debbie_steen@fws.gov)>; Eugene Marino <[eugene\\_marino@fws.gov](mailto:eugene_marino@fws.gov)>  
**Cc:** Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>; Robert (Bob) King <[r2king@blm.gov](mailto:r2king@blm.gov)>  
**Subject:** SIGNATURE REQUESTED Final Programmatic Agreement

Dear Signatories,  
The final programmatic agreement for the Coastal Plain Oil and Gas Leasing Program is attached. The only changes since the last version were made through the technical editing/formatting process and did not result in any substantive changes.

BLM requests that you review and obtain the appropriate signature for your agency **by close of business October 1st**. In order to maintain quality of the original, please only scan in your agency signature page and email it back. It

would be appreciated if you could also send the original signature page to the mailing address below. Once I have received all of the signature pages I will send out a compiled document to everyone.

Thank you all for your work into development of this PA. We look forward to working with you in the future as it is implemented.

Please let me know if you have any questions.

Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

<Final\_PA\_9\_20\_19.pdf>

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Monty Rogers](#); [janet.cadzow@fortyukon.org](#); [Loya, Wendy M](#); [amy lewis](#); [Tiffany Yatlin](#); [Rob Rosenfeld](#); [Ray Atos](#); [imatt@achp.gov](#); [gordon.brower@north-slope.org](#); [City of Kaktovik - City Clerk](#); [Martineau, Faith C \(DNR\)](#); [Kathy Ahgeak](#); [Charlene Stern](#); [patrick hanson](#); [King, Robert \(Bob\)](#); [Frederick Brower](#); [Tomlohman2@aol.com](#); [Chad Ricklefs](#); [Rhonda Pitka](#); [Keenev, Joseph W](#); [Jake Anders](#); [Bittner, Judith E \(DNR\)](#); [Charleen Fisher](#); [Doreen Leavitt](#); [fenton.rexford@north-slope.org](#); [Jones, Nichelle \(Shelly\) W](#); [Jacqueline Carroll](#); [Matthew Newman](#); [Arlene Pitka <apitka@beavercouncil.org>](#); [LaMarr, Sarah L](#); [Myra Thumma](#); [Marino, Eugene](#); [Fannie Soplu](#); [Roy Varner](#); [Sarah Obed](#); [Matthew Rexford](#); [Tommy Nageak](#); [Teresa Imm](#); [Stephen Braund](#); [ida.angasan@ilisagvik.edu](#); [Kevin S. Fisher](#); [Donna Thomas](#); [Tyler Janowski](#); [Declewa, Edward J](#); [Paul Lawrence](#); [Tom McCulloch](#); [Tonya Garnett](#); [norajane.burns@north-slope.org](#); [Bill Marzella](#); [dale.hardy@fortyukon.org](#); [Wesley Furlong](#); [Meitl, Sarah J \(DNR\)](#); [coastalplainAR](#); [Sweet, Serena E](#); [Arctic Village Council](#)  
**Subject:** Reminder: Comments due this week!  
**Date:** Wednesday, July 10, 2019 10:50:22 AM  
**Importance:** High

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Please call me directly if you have any questions.  
Thank you!

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

On Thu, Jun 13, 2019 at 9:18 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Good afternoon,

Attached is the DRAFT Final Programmatic Agreement (PA) based on the comments received on the March 25, 2019 draft.

In addition to content changes, you will see structural changes were made to the PA to:

- 1) Ensure the PA is in conformance with the 36 CFR Part 800 regulations written by the Advisory Council on Historic Preservation (ACHP);
- 2) Take into account the ACHP's written guidance on how to appropriately write PAs and what their contents should be, etc. (e.g., coordination processes between FWS and BLM were taken out of the PA);
- 3) Create a PA that does not include stipulations that were inappropriate per the ACHP's regulations and guidance;
- 4) Improve wording, eliminate redundancies, and bring better focus to the PA, thus making it more understandable to everyone; and
- 5) Ensure the document is reflective of the PA objective: Trying to plan for events and corresponding actions to be taken in the future, yet recognizing the lack of total certainty of what may happen in the future requires the need for the PA to be reasonable, workable, and provide adequate flexibility.

The attached version (dated June 12), thoroughly considers all of the comments received to date. If you would like to see the response to comments and/or set up an individual meeting to discuss the response to your comments prior to the next consulting parties meeting, please let me know.



Comments on the attached draft final PA are **due by close of business July 11th**. Our next consulting parties meeting will be **July 16th**. Will send out meeting invite in the next couple of weeks.

Please feel free to contact me directly anytime to discuss further.

Thank you,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

**From:** [Hayes, Miriam \(Nicole\) N](#)  
**Bcc:** [Loya, Wendy M](#)  
**Subject:** REMINDER: Comments on the draft PA are due 4/26  
**Date:** Tuesday, April 23, 2019 6:53:51 AM  
**Attachments:** [NVVTG Comment Matrix 2-26-19 responses.pdf](#)  
[PA Consulting Parties Table.pdf](#)  
[3 27 19 Consulting Parties Meeting Notes-FINAL.pdf](#)  
[EMP18 Draft PA 3 25 19 clean.docx](#)

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See below.  
Thank you!

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

----- Forwarded message -----

**From:** **Hayes, Miriam (Nicole)** <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>  
**Date:** Wed, Apr 3, 2019 at 11:17 PM  
**Subject:** FINAL MEETING NOTES from March 27 Section 106 Programmatic Agreement (PA) Consulting Parties Meeting  
**To:**

Dear Consulting Parties,

Please find the following items attached:

- FINAL meeting notes from our March 27th consulting parties meeting;
- Table of consulting parties;
- Consulting parties comments on the bulleted PA (received comments from the Native Village of Venetie Tribal Government only); and
- The draft PA we discussed in the 3/27/19 meeting.

Future edits to the consulting parties table or comments on the Draft PA, will be distributed to all consulting parties.

Please provide your comments to me on the Draft PA (attached) by **APRIL 26, 2019** and of course please contact me if you have any questions or concerns.

Thank you,  
Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513

Desk: (907) 271-4354  
Cell: (907) 290-0179

Comment #	Commenter	Page	Line	Comment	Original Text to Which the Comment Applies	Notes/Response	Edit needed?	Draft Response/Revised Text
1	NVVTG	1	11	This definition is confusing. What preferred alternative? Guide the issuance of leases? Just say what you are doing: developing a leasing plan for oil and gas (and related infrastructure) development in the Coastal Plain of the Arctic National Wildlife Refuge.	WHEREAS, the proposed undertaking consists of the United States Department of the Interior (USDOI), Bureau of Land Management's (BLM) selection of a preferred alternative that will guide the issuance of leases for oil and gas activities within the Coastal Plain of the Arctic National Wildlife Refuge; and	Acknowledged; clause has been revised	Yes	WHEREAS, the United States Department of the Interior (DOI), Bureau of Land Management's (BLM) has been directed to implement an oil and gas leasing program within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and
2	NVVTG	1	13	Insert "the Undertaking" at end of clause	WHEREAS, the proposed undertaking consists of the United States Department of the Interior (USDOI), Bureau of Land Management's (BLM) selection of a preferred alternative that will guide the issuance of leases for oil and gas activities within the Coastal Plain of the Arctic National Wildlife Refuge ("the Undertaking"); and	Addressed in subsequent change	No	n/a
3	NVVTG	1	14	The undertaking? You've now defined the undertaking twice, using two different definitions.	WHEREAS, the area of potential effects (APE) for the Coastal Plain Oil and Gas Leasing Program (Program) consists of the "1002" area defined in Section 20001 of Public Law 115-97 (December 22, 2017); and	Acknowledged; clause has been revised	Yes	WHEREAS, the BLM's selection of a preferred alternative that will guide the issuance of leases for oil and gas exploration activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]) is an Undertaking subject to Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (Public Law 89-665 [October 15, 1966]); and (This was combined with second WHEREAS clause)
4	NVVTG	1	14	How was this determination made? The Tribes were never consulted in this decision? Where is the documentation and rational supporting this determination?	WHEREAS, the area of potential effects (APE) for the Coastal Plain Oil and Gas Leasing Program (Program) consists of the "1002" area defined in Section 20001 of Public Law 115-97 (December 22, 2017); and	The APE is defined by the agency official in consultation with the SHPO, a process which is ongoing. For the current program, the Tax Cuts and Jobs Act defines in clear terms the extent of the leasing program (i.e., the "1002" area). Since the BLM cannot at this time define what specific areas within the program area may be the subject of leasing activity, a conservative approach was taken to capture the widest range of historic properties that may be affected by the program.	Yes	WHEREAS, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area defined in Section 20001 of Public Law 115-97 (December 22, 2017), and as described in Appendix A; and

DRAFT

5	NVVTG	1	22	<p>This is neither a factually nor legally accurate statement. The leasing program itself has potential adverse effects on historic properties, just as any potential future development will. The BLM cannot disregard the potential adverse effects of the actual, overall leasing program at this stage by simply stating that it will address them in future Section 106 processes for future, discrete development projects and lease sales. The Section 106 process is meant to inform the development and selection of alternatives. See 36 C.F.R. § 800.1(c). The BLM is currently considering a number of alternatives for the overall leasing program, which include areas of the Coastal Plain that would be closed to development or would impose certain stipulations on eventual development, based on impacts to other resources (such as impacts to caribou). The BLM cannot develop and consider any of the alternatives without the Section 106 process similarly informing how those alternatives and potential stipulations will incorporate the avoidance, minimization, or mitigation of adverse effects to historic properties. Indeed, effects includes direct, indirect, reasonably foreseeable, and cumulative, meaning that the BLM must consider effects now. As the BLM notes in the first recital, the development of the leasing program is an undertaking; therefore, the BLM must complete the Section 106 process for this undertaking. Future development will have different potential effects and trigger different Section 106 processes. The BLM's refusal to engage in the Section 106 process at this step means that it is refusing to take into account how the entire leasing program, not just future individual lease sales and discrete development, will effect historic properties. Failing to take into account the overall adverse effects of this undertaking now makes any final decision arbitrary and not in accordance with the law. Furthermore, the BLM has already determined: "In summary, impacts to traditional belief systems/religious practices and other ethnographic resources such as TCPs and cultural landscapes, would be adverse, regional, and long term." Prelim Draft EIS at 3-152 (emphasis added). This process can, and must, happen now. The BLM cannot push off its current Section 106 obligations onto future projects.</p>	<p>"...as the effects on historic properties cannot be fully determined prior to approval of the Undertaking; and,"</p>	<p>The BLM is not suggesting that the program does not have the potential to cause effects on historic properties. Rather, the clause is declaring that the full extent of the type and nature of these potential effects cannot be determined within the timeframe that BLM must comply with under the Tax and Job Cuts Act and Secretary of the Interior Order 3355. The development and implementation of a executed Programmatic Agreement may be used to meet the BLM's Section 106 obligations for the leasing program.</p>	Yes	<p>Clause has been revised to read: "WHEREAS, the BLM, as the lead federal agency, has determined in consultation with the SHPO and the ACHP that compliance with Section 106 may best be achieved through the development of a Programmatic Agreement (PA) as the BLM cannot fully determine effects on historic properties prior to approval of the Undertaking as defined in (36 CFR 800.14[b][1][ii]); and"</p>
6	NVVTG	1	24	<p>In the immediately preceding recital, the BLM states that it will not be doing any of this work for the leasing plan.</p>	<p>WHEREAS, Section 106 requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized undertaking, to take into account the effect of the proposed undertaking on historic properties, which are properties that are listed on or eligible for listing on the National Register of Historic Places (NRHP), and to afford the ACHP a reasonable opportunity to comment regarding such undertaking; and"</p>	<p>Incorrect. The preceding clause indicates that the BLM will not be able to fully determine the extent of effects on historic properties resulting from the undertaking. Additionally, the ACHP's regulations allow for flexibility in meeting agencies 106 obligations, such as through the development of program alternatives.</p>	No	n/a
7	NVVTG	1	30 to 35	<p>Insert text</p>	<p>WHEREAS, the NHPA requires the BLM <del>recognizes the government to government obligation to</del> consult with any Indian Tribes that may attach historic properties of traditional religious and cultural significance <del>to historic properties that</del> may be affected by the proposed undertaking (54 U.S.C. § 54 U.S.C. § 302706) and will continue to consult with such potentially affected Tribes regarding their concerns under Section 106 (36 C.F.R. pt. 800); and</p>	<p>Acknowledged. Some grammatical errors, but idea clear.</p>	Yes	<p>WHEREAS, the NHPA requires the BLM to consult with federally recognized Indian Tribes regarding historic properties of traditional religious and cultural significance that may be affected by the proposed undertaking; and</p>

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8	NVVTG	1	37 to 41	Insert new clause	WHEREAS, the BLM must provide Indian Tribes a reasonable opportunity to identify their concerns about historic properties, advise on the identification of historic properties, including those of traditional religious and cultural significance, articulate their views on the undertaking's effects on such properties, and participate in the resolution of adverse effects (36 C.F.R. § 800.2(c)(2)(ii)(A); and	Accurate CFR Reference	Yes	WHEREAS, the BLM must provide Indian Tribes a reasonable opportunity to identify their concerns about historic properties, advise on the identification of historic properties, including those of traditional religious and cultural significance, articulate their views on the undertaking's effects on such properties, and participate in the resolution of adverse effects (36 C.F.R. § 800.2(c)(2)(ii)(A); and
9	NVVTG	1 & 2	43-44, 1-2	Insert new clause	Whereas, such consultation must be conducted in a manner sensitive to tribal sovereignty, recognizing the government-to-government relationship between the BLM and the Indian tribes, and sensitive to the concerns and needs of the Indian Tribes (36 C.F.R. § 800.2(c)(2)(ii)(B)-(C); and	Accurate CFR Reference	Yes	Whereas, such consultation must be conducted in a manner sensitive to tribal sovereignty, recognizing the government-to-government relationship between the BLM and the Indian tribes, and sensitive to the concerns and needs of the Indian Tribes (36 C.F.R. § 800.2(c)(2)(ii)(B)-(C); and
10	NVVTG	2	4	Insert revised clause	WHEREAS, <del>in addition,</del> the BLM will comply with the American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act (NAGPRA) as it applies to lands under federal control, and Executive Orders 13007 and 13175; and	Agree	Yes	WHEREAS, the BLM will comply with the American Indian Religious Freedom Act (Public Law 95-341 [August 11, 1978]), Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601 [November 16, 1990]) as it applies to lands under federal control, and Executive Orders 13007 and 13175; and
11	NVVTG	2	8	Insert Text	the BLM has invited potentially affected federally recognized Indian Tribes	Agree	Yes	WHEREAS, the BLM has invited potentially affected federally recognized Indian Tribes as defined in 36 C.F.R. § 800.16(m) and listed in Appendix B of this PA to participate in consultation and become consulting parties, consistent with 36 C.F.R. § 800.2(c)(2); and
12	NVVTG	2	10	Insert Text	in consultation and become consulting parties, consistent with 54 U.S.C. § 302706 and 36 C.F.R. § 800.2(c)(2); and	Partially agree; USC references Sec 101 of NHPA	Yes	WHEREAS, the BLM has invited potentially affected federally recognized Indian Tribes as defined in 36 C.F.R. § 800.16(m), and listed in Appendix B of this PA, to participate in consultation and become consulting parties, consistent with 36 C.F.R. § 800.2(c)(2); and

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13	NVVTG	2	13	Alaska Native villages are federally recognized tribes. See 36 C.F.R. § 800.16(m); see also 83 Fed. Reg. 34863 (July 23, 2018). It is redundant, inappropriate, and disrespectful to segregate Alaska Native villages from federally recognized tribes in these recitals. They are legally and politically the same, and are treated the same for the purposes of Section 106. It is particularly egregious to categorize Alaska Native villages and ANCSA corporations together in this recital. While for purposes of Section 106, ANCSA corporations are considered “tribes,” they are state-chartered for-profit corporations. The status of Alaska Native villages as tribes does not require this clarification, as the status of ANCSA corporations does.	WHEREAS , the BLM has invited <del>Alaska native villages, regional corporations, and village corporations</del> as defined in Section 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. § 1602), and listed in Appendix B of this PA, to participate in consultation and become consulting parties, consistent with 36 C.F.R. § 800.16(m); and	Agreed; however, as Section 106 does not differentiate between tribes and ANCSA corporations, they may be discussed together.	Yes	WHEREAS , the BLM has invited regional and village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. § 1602), and listed in Appendix B of this PA, to participate in consultation and become consulting parties; and
14	NVVTG	2	18	Providing Tribes “the opportunity to provide information” is not consultation.	WHEREAS, the BLM has provided Indian Tribes, in addition to <del>and including Alaska native villages, regional and village ANCSA corporations and village corporations</del> , the opportunity to provide information about historic properties <del>of concern to Tribes</del> within the Program APE; and	Agree with text edits. BLM is not suggesting that providing this opportunity is the extent to consultation efforts.	Yes	WHEREAS, the BLM has provided Indian Tribes and regional and village ANCSA corporations the opportunity to provide information about historic properties within the APE; and
15	NVVTG	2	23	This is redundant. You stated this exact same preposition two and three recitals up.	WHEREAS , the BLM invited Tribes, as well as <del>Alaska native villages, ANCSA regional corporations, and village corporations</del> to participate as consulting parties, consistent with 36 C.F.R. §§ 800.2(c)(2); and	Acknowledged. Delete clause	Yes	n/a
16	NVVTG	2	30	A CRMP is great, except the Section 106 process deals with historic properties.		Change name to Historic Properties Management Plan (HPMP)? It may be determined that an HRMP is not necessary.	Yes	<i>NOTE: If we have one the name could be changed to a HPMP, however, we may not need one.</i> Potential language: WHEREAS, a Historic Properties Management Plan (HPMP) is being developed in accordance with the Secretary of Interior’s Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716, September 29, 1983) to support the implementation of this PA; and
17	NVVTG	2	38	Inserted new clause	WHEREAS, PLACEHOLDER for description of historic properties identified through consultation with Indian tribes; and	Agree; Place holder text accepted. Alternatively, it could be included in the preceding clause that describes previous CR work.	Yes	WHEREAS, PLACEHOLDER for description of historic properties identified through consultation with Indian tribes; and

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18	NVVTG	3	1	Insert text	NOW THEREFORE, the BLM, ACHP, and SHPO (collectively the "Signatories"), the U.S. Fish and Wildlife Service (FWS) (Invited Signatory ), and Concurring Parties agree that the Program shall be implemented in accordance with the following Stipulations in order to take into account the effects of the Undertaking on historic properties and fulfill the requirements of Section 106 of the NHPA .	Agree	Yes	NOW THEREFORE, execution of this PA by the BLM, ACHP, and SHPO (collectively the "Signatories"), the U.S. Fish and Wildlife Service (FWS) (Invited Signatory), and Consulting Parties and the implementation of its terms evidence that BLM has taken into account the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment.
19	NVVTG	3	3	The Tribes maintain their objections to not being included as Invited Signatories to this PA. The BLM has acknowledge that the leasing program will have adverse, regional, and long term impacts of the Tribes' historic properties, specifically properties of traditional religious and cultural significance. It is unacceptable that in light of this determination, the BLM would deny the Tribes any meaningful role in ensuring that those properties are not protected to the fullest extent possible under the NHPA and this PA. The BLM has also said that this PA will serve as the basis for future Section 106 consultations regarding potential future lease sales and development. By denying the Tribes status as Invited Signatories, the BLM is denying the Tribes a meaningful role in future Section106 processes by developing a consultation protocol within the PA that the Tribes are not parties to and therefore cannot enforce. The execution of this PA without the Tribes as Invited Signatories signals the BLM's intent to develop consultation protocols for future Section 106 processes that minimize the Tribes' statutory consultation rights through a legally binding document that the Tribes cannot enforce because they are not parties to it. The BLM is attempted to contract its way around its future consultation obligations with the Tribes. This is an affront not only to the BLM's statutory obligation to consult with the Tribes pursuant to the NHPA, but also its trust obligation to the Tribes.		The DEIS notes that <i>potential</i> impacts could be adverse, regional, and long term. Due to the undetermined location and nature of potential future development this is not definitive. The ACHP's regulations at 36 CFR 800.14 are clear that in the development and execution of the PA the proper role of the Tribes is that of consulting participants, not signatories. Per 800.14(b)(2)(i): "If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section." In turn, 800.14(f) states: "Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that the development of the program alternative includes appropriate government-to-government consultation with affected Indians tribes and consultation with affected Native Hawaiian organizations." Additionally, 800.14(b)(iii) lists appropriate signatories to a programmatic agreement as including the Council, agency, and SHPOs/THPOs, and potentially tribes but only in cases where the PA would take effect on their tribal lands, as that term is defined at 800.16(x), which is not the case here. In accordance with the ACHP's regulations, BLM intends to continue to develop the PA, including consultation protocols, based on input from the Tribes obtained through government-to-government consultation.	No	n/a
20	NVVTG	3	5	Except that in previous recitals, the BLM states that it will not be taking into account the effects of this undertaking on historic properties, "as the effects on historic properties cannot be fully determined prior to approval of the undertaking." Which is it?	NOW THEREFORE, the BLM, ACHP, and SHPO (collectively the "Signatories"), the U.S. Fish and Wildlife Service (FWS) (Invited Signatory ), and Concurring Parties agree that the Program shall be implemented in accordance with the following Stipulations in order to take into account the effects of the Undertaking on historic properties and fulfill the requirements of Section 106 of the NHPA .	Acknowledged. Recommend text revision.	Yes	NOW THEREFORE, execution of this PA by the BLM, ACHP, and SHPO (collectively the "Signatories"), the U.S. Fish and Wildlife Service (FWS) (Invited Signatory), and Concurring Parties and the implementation of its terms evidence that BLM has taken into account the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment.
21	NVVTG	3	23	As noted above, the Section 106 process deals with historic properties, which are a type of cultural resource.		Acknowledged. Recommend text revision.		Historic Properties Management Plan

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22	NVVTG	3	24	With the Tribes as Concurring Parties instead of Invited Signatories, they will be unable to enforce these “consultation protocols,” thereby rendering their consultation rights obsolete. This is not acceptable. The BLM cannot substitute its statutorily-mandated obligation to consult with the Tribes by executing a PA that changes its consultation obligations but excludes the Tribes from enforcing and protecting those very same rights. The Tribes will not accept as adequate and in fulfillment of the BLM’s statutory mandate any future Section 106 consultations done pursuant to this PA if the Tribes are not Invited Signatories.		BLM does not intend to change its Section 106 consultation obligations, and intends to work with any and all willing consulting parties throughout the PA process. See note above re: Invited Signatories.  The Tribes are not obligated to consult with BLM for this or any other project, and any consulting party may withdraw from consultation at its discretion.		
23	NVVTG	4	22	There are no recitals discussing the FWS’s Section 106 obligations for this undertaking, or indicating that it delegated its Section 106 responsibilities to the BLM pursuant to 36 C.F.R. § 800.2(a)(1). Furthermore, if the FWS has Section 106 obligations that will be “fulfilled’ by the execution of the PA and has not officially designated the BLM as the lead federal agency, then the FWS is a Signatory, not an Invited Signatory, to the PA		USFWS’ 106 obligations and BLM as lead federal agency issue		
24	NVVTG	5	30	Based on the recitals, USFWS is not a “Signatory,” it is an invited signatory. See, however, the above comment.		Acknowledged.	No	

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Coastal Plain Oil and Gas Leasing Program  
 Section 106 of National Historic Preservation Act  
 Consulting Parties Table

Organization	Invited	Requested*
Arctic Slope Regional Corporation	X	
Arctic Village Council	X	
Beaver Village Council	X	
Birch Creek Village Council	X	
Chalkyitsik Village Council	X	
Circle Tribal Council		X**
City of Kaktovik		X
Council of Athabascan Tribal Governments (CATG)	X	
Doyon Limited		X
Gwichyaa Zhee Gwich'in Tribal Government	X	
Iñupiat Community of the Arctic Slope (ICAS)	X	
Kaktovik Iñupiat Corporation	X	
Naqragmiut Tribal Council	X**	
Native Village of Barrow Inupiat Traditional Government	X	
Native Village of Eagle		X**
Native Village of Kaktovik	X	
Native Village of Nuiqsut	X**	
Native Village of Stevens	X**	
Native Village of Venetie Tribal Government	X	
North Slope Borough	X	
Venetie Village Council	X	

\*Requested Government-to-Government or ANCSA Consultation

\*\*Have not engaged to date beyond the invite or request

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# BLM Coastal Plain PA

## Consulting Parties Meeting Notes

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Location: Kodiak Room, BLM State Office, Anchorage, AK  
Call-in: (b) (5), Passcode: (b) (5)  
Date: March 27, 2019  
Time: 10:00am-12:00pm AKST/2:00pm-4:00pm EST

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### Signatories:

BLM – Nicole Hayes, Bob King, Joseph Keeney, Robin Mills, and Shelly Jacobs  
ACHP – Bill Marzella  
SHPO – Sarah Meitl, Judy Bittner  
FWS- Wendy Loya, Ed DeCleva

### Consulting Parties

North Slope Borough– Dorothy Edwardson, Kevin Fisher, Tommy Nageak, Price Leavitt  
Native Village of Kaktovik – N/A  
Native Village of Venetie Tribal Government, Arctic Village Council, and Venetie Village Council – Wes Furlong (NARF), Monty Rogers (NARF)  
Arctic Slope Regional Corporation – Tyler Janowski, Erik Kenning  
Kaktovik Inupiat Corporation – N/A  
City of Kaktovik – N/A  
Doyon Limited – Sarah Obed  
Inupiat Community of the Arctic Slope – N/A  
Native Village of Barrow – N/A  
Beaver Tribal Council – N/A  
Gwichyaa Zhee Gwich'in Tribal Government – N/A  
Council of Athabaskan Tribal Governments – Charleen Fischer

### BLM Contractors

Stephen R. Braund and Associates – Stephen Braund, Paul Lawrence, Jake Anders

### Draft PA Overview

#### Preamble

- Monty Rogers (NARF) – is APE definition for both direct and indirect APE?
- Shelly Jones– page 4 line 13 should list the number of historic properties identified by Tribes. Also page 4 line 16, will the stipulations be attached to various operations like exploration and not just lease sales?
- Sarah Meitl – Requests that Appendix B include a list of invited consulting parties. Include parties that were “Invited but not participating.”

#### Stipulations

#### Administrative:

- Wes Furlong (NARF) asked for clarification regarding who has non-cultural responsibilities for the program. Shelly Jones (BLM) responded that NPR-A oil and gas staff are in Anchorage but NEPA and Cultural Resource staff for actions are in Fairbanks.

- Sarah Meitl (SHPO/OHA) – Move broad level concepts to front of PA and then incorporate into steps of process in the rest of the document as appropriate for improvement of flow

#### Agency Coordination Procedures

- Monty Rogers (NARF/Cultural Alaska)– What is the role of the tribes in the ARPA review process, including review of field methods? Request tribes review ARPA. Need to make tribal roles clearer.
- Jake Anders (SRB&A) - Tribal review of research designs is listed in Section V Section 106 Consultation Plan and Procedures.
- Sarah Meitl (SHPO/OHA) – BLM needs to distill agency coordination concepts in this section and move the actual procedures to Section IV Section 106 Procedures section. Do not need to include the minute agency details of coordination.
- Joe Keeney (BLM) – requested more detail in coordination with tribes. Which things do they want to be notified on and which do they wish to have more detailed consultation?
- Tommy Nageak (NSB) – Artifact collection coordination needs to be made with the tribal governments
- Joe Keeney (BLM) – discussing that NSB repositories are not federally approved/accredited
- Ed DeCleva (FWS) – FWS can try to work what will be acceptable to tribes and do long term loan agreements. Add bullet under IX Curation identifying this as a possible option for curation.
- Wes Furlong (NARF) – Revise bullet III.2.a.iii that FWS is agency with responsibilities for artifacts and not “controlling”

#### Stipulations – Section 106 Procedures

- Wes Furlong (NARF) – Section IV.D. and IV.E and associated Table 1 need rewording. They indicate there is flexibility in determining if a project type will cause effects, but the table does not provide the flexibility.
- Shelly Jones (BLM) – A project type that should be added is “Inventory, Research, and Monitoring Studies.” Examples would be base camps, access routes, landing zones.
- NSB Individual – Look at NSB list of operations and production activities.
- Sarah Meitl (SHPO/OHA) – if BLM has authority it should be covered under this PA. Need to add more language regarding project types with no potential to cause effects that they only have no potential if they meet certain criteria and if other activities are included (e.g., ground disturbing) then it become a project with potential to cause effects.
- Nicole Hayes (BLM) – BLM will clarify scope of phase as the intent was it to be for all activities pertaining to an oil and leasing program, but not before lease sales.

#### Stipulations – Section 106 Consultation Plan and Procedures

- Wes Furlong (NARF) – Tribes concern is that they are not being invited signatories. They cannot enforce tribal responsibilities for consultation if they are not signatories. Requesting tribes be added as signatories.
- Sarah Meitl (SHPO/OHA) – **Section XI Dispute Resolution** provides dispute resolution avenue for consulting parties. SHPO takes role seriously that PA needs to be working for all parties. Also requests that bullets regarding timing of consultation be added where appropriate.
- Wes Furlong (NARF) – put the actual steps/procedures of consultation in **Section IV Section 106 Procedures**

- Sarah Meitl (SHPO/OHA) – move **Section V Section 106 Consultation Plan and Procedures** to come before **Section IV Section 106 Procedures**
- Shelly Jones (BLM) – in the preamble, BLM can add bullet about ability to conduct additional G2G consultation.

#### Stipulations – Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

- Wes Furlong (NARF) – who fulfills NAGPRA?
- Sarah Meitl (SHPO/OHA) – add SHPO to be notified for NAGPRA
- Shelly Jones (BLM) – add bullet about process for BLM to suspend permit activity if remains encountered. BLM main POC and then will notify FWS.
- Jake Anders (SRB&A) - move **Section VIII Late Discoveries** to come before **Section VII Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

#### Stipulations – Late Discoveries

- Monty Rogers (NARF/Cultural Alaska) – Change to “Unanticipated Discoveries” and add “and Unanticipated Effects” to the Heading
- Wes Furlong (NARF) – need to clarify if NAGPRA POA is appendix or attached to the lease.
- Wes Furlong (NARF) – include invited signatories and concurring party signature pages.
- Monty Rogers (Cultural Alaska) – request a 30 day review period for PA

#### Wrap-Up

- Comments are currently due on April **26**, 2019
- If any consulting party wishes to talk individually please contact Nicole Hayes (BLM) via phone at 907-271-4354 or via email at [mnhayes@blm.gov](mailto:mnhayes@blm.gov)

#### Action Items for BLM

- Monty Rogers (NARF) requested a month for review of the PA as opposed to 3 weeks. Nicole Hayes (BLM) to provide response to request –COMPLETE – DUE DATE 4/26/19.
- Wes Furlong (NARF) requested copies of all consulting parties comments on the initial bulleted PA. Nicole Hayes (BLM) to provide response to request.

#### Action Items for Consulting Parties

- Provide BLM with two Points-of-Contact for the PA
- Review Draft PA and provide comments to BLM by **4/26/19**

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**FIRST PROGRAMMATIC AGREEMENT  
AMONG  
THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

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1  
2 **DRAFT PROGRAMMATIC AGREEMENT**

3 Among the  
4 United States Department of the Interior, Bureau of Land Management  
5 United States Department of the Interior, Fish and Wildlife Service  
6 Alaska State Historic Preservation Officer  
7 and  
8 Advisory Council on Historic Preservation  
9 Regarding the  
10 Coastal Plain Oil and Gas Leasing Program  
11

12 **PREAMBLE**  
13

14 **WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land  
15 Management (BLM) has been directed to implement an oil and gas leasing program  
16 (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)  
17 pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December  
18 22, 2017]); and

19 **WHEREAS**, the BLM's implementation of the Program, including the development of an  
20 Environmental Impact Statement and selection of a preferred alternative that will guide  
21 the sale of leases for oil and gas activities pursuant to the National Environmental Policy  
22 Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54  
23 United States Code [USC] § 306108) of the National Historic Preservation Act (NHPA)  
24 (Public Law 89-665 [October 15, 1966]) (“the Undertaking”); and

25 **WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing  
26 program, and therefore the BLM is the lead federal agency for purposes of  
27 complying with Section 106 of the NHPA; and

28 **WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation  
29 Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), has  
30 determined that the area of potential effects (APE) for the Undertaking consists of  
31 the “1002” area defined in Section 20001 of Public Law 115-97, and as described in  
32 Appendix A: Area of Potential Effects; and

33 **WHEREAS**, Section 106 of the NHPA requires each federal agency, prior to any  
34 federal or federally sponsored, assisted, or authorized Undertaking, to take into  
35 account the effects of the proposed Undertaking on Historic Properties, which are  
36 properties that are listed on or eligible for listing in the National Register of Historic  
37 Places (NRHP), and to afford the ACHP a reasonable opportunity to comment  
38 regarding such Undertaking; and

39 **WHEREAS**, the BLM has afforded the ACHP with an opportunity to comment regarding  
40 the Undertaking and to consult in the development of this Programmatic Agreement  
41 (PA), and the ACHP has chosen to participate in the consultation pursuant to 36 CFR §  
42 800.6(a)(1)(iii) and is a Signatory to this PA; and



1 **WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined  
2 that compliance with Section 106 may best be achieved through the development of a  
3 PA as the BLM cannot fully determine effects on Historic Properties within the APE prior  
4 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
5 800.14(b)(1)(ii); and

6 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
7 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
8 Undertaking, including, but not limited to activities related to the NHPA, the  
9 Archaeological Resources Protection Act (ARPA) (Public Law 96-95 [October 31,  
10 1979]), and the Native American Graves Protection and Repatriation Act (NAGPRA)  
11 (Public Law 101-601 [November 16, 1990]), and therefore is a Signatory to this PA;  
12 and

13 **WHEREAS**, the NHPA requires the BLM to consult with federally recognized Indian  
14 Tribes regarding Historic Properties of traditional religious and cultural significance  
15 that may be affected by the Undertaking; and

16 **WHEREAS**, the BLM must provide Indian Tribes a reasonable opportunity to identify  
17 their concerns about Historic Properties, advise on the identification of Historic  
18 Properties, including those of traditional religious and cultural significance, articulate  
19 their views on the Undertaking's effects on such properties, and participate in the  
20 resolution of adverse effects (36 CFR § 800.2[c][2][ii][A]); and

21 **WHEREAS**, such consultation must be conducted in a manner sensitive to tribal  
22 sovereignty, recognizing the government-to-government relationship between the  
23 BLM and the Indian Tribes, and sensitive to the concerns and needs of the Indian  
24 Tribes (36 CFR § 800.2[c][2][ii][B]-[C]); and

25 **WHEREAS**, the BLM must comply with the American Indian Religious Freedom Act  
26 (Public Law 95-341 [August 11, 1978]), NAGPRA, as it applies to lands under federal  
27 control, and Executive Orders 13007 and 13175; and

28 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
29 as defined in 36 CFR § 800.16(m) and listed in Appendix B: Consulting Parties of this  
30 PA to participate in consultation and become Consulting Parties, consistent with 36  
31 CFR 800.2(c)(2); and

32 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
33 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602), and listed in  
34 Appendix B: Consulting Parties, to participate in consultation and become Consulting  
35 Parties; and

36 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
37 corporations the opportunity to provide information about Historic Properties within the  
38 APE consistent with 36 CFR § 800.2(c)(2); and

39 **WHEREAS**, the BLM invited local governments to participate as Consulting Parties,  
40 consistent with 36 CFR § 800.2(c)(3); and

1 **WHEREAS**, previous cultural resource investigations and documentation of Historic  
2 Properties within the APE have been limited in scope and extent; and

3 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) currently  
4 lists 90 cultural resource sites including sod house ruins, historic military features,  
5 graves, archaeological sites, ice cellars, and material sources. Of these 90, five have  
6 been determined eligible for the NRHP, two have been determined not eligible for the  
7 NRHP, two are pending reevaluation for their eligibility, and 81 have not been formally  
8 evaluated for their NRHP eligibility; and

9 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
10 (TLUI) lists 34 sites of traditional and/or cultural importance, including village sites,  
11 subsistence use locations, sod house ruins, graves, and reindeer herding areas, none  
12 of which have been evaluated for their eligibility for listing in the NRHP; and

13 **WHEREAS**, BLM's Section 106 consultation with Indian Tribes has resulted in the  
14 identification of Historic Properties of religious and cultural significance within the  
15 APE; and

16 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
17 the leasing stage and the process which shall be followed for compliance with  
18 Section 106 for post-lease activities; and

19 **NOW THEREFORE**, execution of this PA by the BLM, ACHP, SHPO, and FWS  
20 (collectively the "Signatories), and Consulting Parties and the implementation of its  
21 terms evidence that BLM has taken into account the effects of the Undertaking on  
22 Historic Properties and afforded the ACHP an opportunity to comment.

## 23 **STIPULATIONS**

24 The BLM shall ensure that the following measures are carried out:

### 25 **I. Administrative**

26 A. BLM shall ensure that this PA is attached and incorporated into any lease issued  
27 for the Coastal Plain Oil and Gas Leasing Program (Program) and will ensure  
28 that all lessees are aware that they must comply with the terms of this PA during  
29 activities on their lease(s).  
30

31 B. BLM shall ensure that all lessees provide a copy of the PA to all contractors  
32 engaged in exploration, development, production, or reclamation work associated  
33 with an issued Program lease. Lessees will make sure all contractors are made  
34 aware of the PA and that they will be required to comply with its terms.  
35

36 C. In the event that ownership of a lease is transferred, the new lessee will be  
37 required to adhere to the terms of this PA.  
38

1 D. Electronic mail (email) shall serve as the official correspondence method for all  
2 communications regarding this PA and its provisions, with an alternative method  
3 of postal mail delivery if the contacts do not have reliable e-mail.  
4

5 E. Consulting Parties and Signatories shall provide two points of contact for this PA.  
6 It is the responsibility of each Signatory and Consulting Party to immediately  
7 inform BLM of any change in name, address, email address, or phone number of  
8 any point-of-contact. Once received, the BLM will forward this information to all  
9 Signatories and Consulting Parties by e-mail or mail. Contact information for  
10 Signatories and Consulting Parties is included below in Appendix B: Consulting  
11 Parties.  
12

13 F. This PA may be executed in counterparts, with a separate page for each  
14 Signatory.

## 15 II. Scope of the PA

16 A. This PA is limited in scope to the consideration of Historic Properties, consistent  
17 with 36 CFR 800 and other federal laws that may be affected by the BLM's  
18 Undertaking within the APE.  
19

20 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
21 under Section 106 of NHPA, including consultation with federally recognized  
22 Indian Tribes, for Program decisions that may be implemented in accordance  
23 with the decisions supported by the Program EIS and BLM policy.  
24

25 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
26 involving reimbursement or contribution of funds between the parties to this PA  
27 will be handled in accordance with applicable laws, regulations, and procedures  
28 including those for Federal Government procurement and printing. Such  
29 endeavors will be outlined in separate agreements that will be made in writing by  
30 representatives of the parties and will be independently authorized by  
31 appropriate statutory authority. This PA does not provide such authority.

## 32 III. Agency Coordination Procedures

33 A. Agency Roles, Coordination, and Points of Contact

### 34 1. BLM

35 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
36 106 compliance, is responsible for the following actions:

- 37 i. Receiving, distributing, reviewing, issuing, and enforcing the  
38 stipulations of Archaeological Resources Protection Act (ARPA) permit  
39 applications submitted to conduct cultural resources investigations  
40 associated with BLM's Program;

41 ii. Conducting Section 106 reviews of Projects addressed under this PA.  
42

43 b. BLM's Points of Contact (POCs) for these PA responsibilities are:

- 1 i. ARPA Permitting:
  - 2 a. Arctic District Manager
- 3 ii. Section 106 Consultation:
  - 4 a. Arctic District Manager
- 5
- 6 2. FWS
  - 7 a. FWS, as a Signatory to this PA and surface manager of the APE, is
  - 8 responsible for the following actions:
    - 9 i. Receiving, reviewing, commenting on, and evaluating applications for
    - 10 ARPA permits;
    - 11 ii. Receiving, reviewing, commenting on, and evaluating Section 106
    - 12 determinations and findings made by BLM;
    - 13 iii. Controlling artifact collections originating from studies conducted within
    - 14 the APE;
    - 15 iv. Controlling and conducting appropriate actions associated with
    - 16 NAGPRA materials and Human Remains.
  - 17
  - 18 b. FWS' POCs for these PA responsibilities are:
    - 19 i. ARPA Permitting:
      - 20 a. Refuge Manager, Arctic National Wildlife Refuge
    - 21 ii. Section 106 Determinations and Findings:
      - 22 a. Regional Historic Preservation Officer (RHPO)
    - 23 iii. NAGPRA Compliance:
      - 24 a. Refuge Manager, Arctic National Wildlife Refuge
- 25
- 26 B. Section 106 Review Process:
  - 27 1. BLM, as the lead federal agency, shall coordinate with the FWS on all Section
  - 28 106 determinations of eligibility (DOEs) and findings of effect prior to BLM's
  - 29 submittal to SHPO for concurrence.
  - 30
  - 31 2. FWS shall be allotted 30 calendar days to review and respond to BLM DOEs
  - 32 and findings of effect.
  - 33
  - 34 3. Nothing shall prevent the BLM and FWS from engaging in informal
  - 35 consultation regarding the development of DOEs or findings of effect.
  - 36
  - 37 4. BLM shall provide courtesy copies of all DOEs and/or findings of effect to the
  - 38 FWS.
  - 39
  - 40 5. BLM shall also provide to FWS copies of any comments and/or responses
  - 41 received from Consulting Parties to this PA.
  - 42
- 43 C. ARPA Permitting Process:
  - 44 1. Upon receipt of an ARPA Permit application, BLM shall conduct a cursory
  - 45 review to ensure that the application is complete and contains the required

- 1 attachments, including an executed Provisional Curation Request (PCR) from  
2 the University of Alaska Museum of the North.  
3 a. If necessary, BLM may coordinate with the applicant to resolve incomplete  
4 applications prior to distributing the application to FWS.  
5  
6 2. When BLM determines that the ARPA permit application is complete, BLM  
7 shall concurrently:  
8 a. Identify, contact, and initiate government to government consultation with  
9 appropriate Indian Tribes;  
10 b. Notify FWS' POC that a completed ARPA permit application has been  
11 received and provide the FWS POC with a copy of the permit application  
12 and request FWS comments on the permit application.  
13  
14 3. FWS POC will coordinate with the FWS RHPO to review the permit  
15 application and PCR and will provide the BLM with comments and any  
16 applicable FWS conditions within 30 calendar days of receipt of the permit  
17 application.  
18  
19 4. Upon receipt of FWS' comments, BLM shall make a decision regarding the  
20 ARPA permit application and provide a copy of this decision to FWS.  
21  
22 5. If the application is approved and the investigation is authorized, BLM shall  
23 provide to FWS any and all field summaries, interim reports, draft and final  
24 reports, artifact inventories, geospatial data, maps, figures, or other  
25 deliverables generated by an authorized investigation, and offer the FWS an  
26 opportunity to review and comment.  
27 a. FWS will immediately notify BLM of any action or actions it believes  
28 constitute a violation of the ARPA permit conditions.  
29 b. FWS will notify BLM within 30 calendar days after receipt of reports  
30 associated with the permit if they have any comments or edits to the  
31 reports.  
32  
33 6. At any time, BLM shall immediately notify FWS of any administrative actions  
34 taken on an authorized ARPA permit, including but not limited to permit  
35 extension, notice of violation, any corrective or enforcement action, revocation  
36 of permit, acceptance of required reporting standards, and permit closure.

37 **IV. Section 106 Procedures**

- 38 A. BLM's Undertaking involves a number of activities associated with oil and gas  
39 leasing within the APE that have varying potentials to cause effects to Historic  
40 Properties, all of which are covered by this PA . The process below outlines an  
41 alternate process for BLM to comply with NHPA for the Undertaking, which will  
42 be carried out by cultural resource professionals who meet the Secretary of the  
43 Interior's (SOI) Professional Qualifications Standards (48 Federal Register  
44 44716-44742) in consultation with Signatories and other Consulting Parties.  
45

- 1 B. At its discretion, BLM may submit documentation requesting SHPO concurrence  
 2 on determinations of eligibility and findings of effect concurrently in a combined  
 3 submission for Project Types described below.  
 4
- 5 C. Nothing shall prevent the BLM from seeking informal consultation with the SHPO  
 6 regarding the preparation of determinations of eligibility, integrity analysis, or  
 7 assessments of effect.  
 8
- 9 **D. Step 1: Oil and Gas Program Project Types Addressed under this PA**  
 10 1. BLM has determined that the following six Project types associated with the  
 11 Oil and Gas Program may be reviewed under this PA:  
 12 a. Lease Sales  
 13 b. Geophysical Exploration (pre and post lease)  
 14 c. Applications for Permit to Drill (APD)  
 15 i. Drilling Exploration  
 16 ii. Development  
 17 d. Operations and Production  
 18 e. Inspection and Enforcement  
 19 f. Reclamation  
 20
- 21 **E. Step 2: Assess Project Potential to Cause Effects**  
 22 1. BLM will determine if a Project or phase of the Project under review has  
 23 potential to cause effects (Table 1).  
 24 a. If no, attach letter to the Project file [36 CFR 800.3(a)(1) determination].  
 25 b. If yes, and the Project type consists of Geophysical Exploration, proceed  
 26 to Step 3.  
 27 c. If yes, and the Project type is an APD or Reclamation, a separate Section  
 28 106 process and agreement document (“kick-out”) must occur in  
 29 accordance with Step 8 below.  
 30

31 **Table 1: Oil and Gas Program Project Types with Potential to Cause Effects**

Categories	Project Type
Project Types with Potential to Cause Effects	<ul style="list-style-type: none"> <li>• Geophysical Exploration (pre and post lease)</li> <li>• Applications for Permit to Drill (APD)                             <ul style="list-style-type: none"> <li>○ Drilling Exploration</li> <li>○ Development</li> </ul> </li> <li>• Reclamation</li> </ul>
Project Types with No Potential to Cause Effects	<ul style="list-style-type: none"> <li>• Lease Sale</li> <li>• Inspection and Enforcement</li> <li>• Operations and Production</li> </ul>

- 32
- 33 **F. Step 3: APE**  
 34 1. Has the APE been defined?

- 1 a. If no, BLM defines the APE in consultation with SHPO.
- 2 b. If yes, proceed to Step 4.

3  
4 **G. Step 4: Identification**

- 5 1. Have adequate efforts to identify historic properties consistent with the  
6 procedures described in Appendix C: Methods to Inventory APE been  
7 completed within the APE?
  - 8 a. If no, implement Appendix C: Methods to Inventory APE to conduct the  
9 appropriate level of effort to identify historic properties within the APE of  
10 the Project.
  - 11 b. If yes, proceed to Step 5.

12  
13 **H. Step 5: Preliminary APE Assessment**

- 14 1. Have identification efforts resulted in the identification of cultural resources  
15 within the APE?
  - 16 a. If no, proceed to Step 7.
  - 17 b. If yes, proceed to Step 6.

18  
19 **I. Step 6: Evaluation**

- 20 1. Have identified cultural resources within the APE been evaluated for NRHP  
21 eligibility?
  - 22 a. If no, the BLM will evaluate all cultural resources in the APE of the Project  
23 for NRHP eligibility (NRHP Bulletin 15).
    - 24 i. As described above in Stipulation III, BLM will consult with FWS on all  
25 DOEs prior to submitting them to SHPO for concurrence. FWS will  
26 have 30 days to review and respond to determinations submitted by  
27 BLM. If FWS does not offer comment within the review period, then  
28 BLM will presume agreement with the DOE(s).
    - 29 ii. BLM will consult with Indian Tribes on NRHP eligibility for cultural  
30 resources with religious and cultural significance to them. Indian Tribes  
31 will have 30 days to review and respond to determinations submitted  
32 by BLM. If an Indian Tribe(s) does not offer comment within the review  
33 period, then BLM will presume agreement with the DOE(s).
    - 34 iii. SHPO will have 30 days to review a DOE(s) submitted by BLM. If  
35 SHPO does not offer comment within the review period, then BLM will  
36 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
37 Step 7.
    - 38 iv. Additional time to review a BLM submittal of a DOE(s) may be  
39 requested by FWS, Indian Tribes, and SHPO, up to 30 days per  
40 submittal.
    - 41 v. If agreement cannot be reached on a DOE, then the BLM shall follow  
42 the procedures outlined at 36 CFR 800.4(c)(2).
    - 43 vi. Once NRHP evaluation has been completed in the APE, BLM may  
44 then proceed to Step 7.

1           b. If yes, and found eligible, proceed to Step 7.  
2

3 **J. Step 7: Assess Effects**

4       1. Are there historic properties in the APE?

5           a. If no, then BLM makes finding of “no historic properties affected” [36 CFR  
6           800.4(d)(1)] and submits to SHPO for concurrence.

7           i. If SHPO concurs with the BLM’s determination, BLM shall document  
8           SHPO concurrence to the Project file.

9           ii. If SHPO does not concur, and resolution cannot be reached through  
10           consultation, BLM shall follow the procedures outlined at 36 CFR  
11           800.4(d)(1)(ii-iv).

12       b. If yes, then BLM will apply the criteria of adverse effect [36 CFR 800.5(a)].

13           i. If BLM makes a finding of “no adverse effect” [36 CFR 800.5(d)(1)],  
14           BLM shall seek SHPO concurrence on this determination.

15           1. If SHPO concurs with the BLM’s determination, BLM shall  
16           document SHPO concurrence to the Project file.

17           2. If SHPO does not concur, and resolution cannot be reached  
18           through consultation, BLM shall follow the procedures outlined at  
19           36 CFR 800.5(c)(2-3).

20           ii. If BLM makes a finding of “adverse effect” [36 CFR 800.5(d)(2)] then  
21           the process reverts to the standard Section 106 procedures, in  
22           consultation with Signatories and Consulting Parties, to avoid,  
23           minimize, or mitigate adverse effects following 36 CFR 800.6.  
24

25 **K. Step 8: Decision regarding Undertaking**

26       1. BLM will not authorize a Project until Steps 1-7 have been completed and the  
27       appropriate finding of effect has been documented to the Project file.

28       2. Alternatively, an APD or Reclamation Project subject to this PA may be  
29       authorized by BLM only after a separate Section 106 review has been  
30       completed, and if necessary the appropriate agreement document (e.g.,  
31       Memorandum of Agreement of Programmatic Agreement, as appropriate) has  
32       been executed for the Project.  
33

34  
35 **L. Step 9: Reporting**

36       1. BLM will include summary of all Projects reviewed under this PA in the  
37       previous year in the annual PA report [Stipulation X(B)]. The summary will  
38       include a synopsis for each project, including at minimum:

39           a. A description of the Project;

40           b. Delineation of the APE;

41           c. Identification Efforts conducted within the APE;

42           d. NRHP Eligibility of know cultural resources within the APE;



1 e. BLM’s finding of effect for the Project.

2  
3 2. BLM will append all reports associated with cultural resource identification,  
4 evaluation, and assessment of effects that were used to support BLM findings  
5 of effect to the annual PA report.

6 **V. Section 106 Consultation Plan and Procedures**

7 A. The BLM is required to consult with federally recognized Indian Tribes regarding  
8 Historic Properties of traditional religious and cultural significance that may be  
9 affected by the Undertaking, and to consult with federally recognized Indian  
10 Tribes in a manner that is sensitive to tribal sovereignty and takes into account  
11 the specific concerns and needs of the Indian Tribes.

12  
13 B. At any time throughout the life of the PA, Consulting Parties may contact the  
14 BLM regarding the PA’s effectiveness, and if requested, BLM will raise issues of  
15 concern to the Signatories and other Consulting Parties at the Annual PA  
16 Meeting.

17  
18 C. BLM anticipates that projects will develop in phases and that each phase will  
19 require consultation with Signatories and Consulting Parties. Phases include:  
20 Leasing, Geophysical Exploration, Applications for Permit to Drill (APD) (drilling  
21 exploration and development), and Reclamation. BLM will consult on an “as  
22 necessary” basis to include, but not limited to the following:

23  
24 1. In consultation with Indian Tribes, BLM shall:

- 25 a. Develop NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5);  
26 b. Seek resolution of concerns regarding Historic Properties of traditional  
27 religious and cultural significance within the Program APE;  
28 c. Consider including Tribal Monitors during activities within the Project-  
29 specific APE(s).

30  
31 2. In consultation with Consulting Parties, BLM shall:

- 32 a. Collect information to guide permitting, including NEPA reviews, and if  
33 appropriate, selection of alternatives;  
34 b. Develop appropriate research designs for cultural resources (i.e.,  
35 archaeological, ethnographic, historic, socio-cultural) studies;  
36 c. Determine if Project-specific conditions and/or stipulations may be  
37 incorporated into BLM-permitted activities to avoid, minimize, and/or  
38 mitigate effects to Historic Properties within the Project-specific APE;  
39 d. Consider conducting periodic joint (i.e., BLM and representatives from  
40 interested Consulting Parties) site visits within the Project-specific APE(s).  
41 e. Develop Project-specific Historic Properties Management Plans (HPMPs)  
42 to avoid, minimize, and/or mitigate adverse effects to Historic Properties  
43 that may result from Program activities. These plans may include:  
44 i. Monitoring lessee activities and effects on Historic Properties within the  
45 Project-specific APE(s);

- 1           ii.    Periodic historic property condition assessments;
- 2           iii.    Ensure lessees have fulfilled commitments stipulated by BLM, and
- 3                have complied with the terms of this PA.

4   **VI.   Standards**

5    A. Professional Qualifications:

- 6      1. BLM and FWS shall ensure that all work carried out pursuant to this
- 7         Agreement shall be done by or under the direct supervision of a qualified
- 8         historic preservation professionals who meet the (SOI) Professional
- 9         Qualifications Standards (48 Federal Register 44716-44742). The BLM and
- 10        FWS, through review of permit applications or other means, shall ensure that
- 11        consultants retained for services pursuant to the Agreement meet these
- 12        standards.
- 13
- 14      2. Qualified Historic Preservation Professional: A “qualified historic preservation
- 15         professional” is a person who meets the relevant standards outlined in the
- 16         Archeology and Historic Preservation: (SOI)Standards and Guidelines [As
- 17         Amended and Annotated] ([http://www.nps.gov/history/local-](http://www.nps.gov/history/local-law/arch_stnds_9.htm)
- 18         [law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ).
- 19

20    B. Professional Standards:

- 21      1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall
- 22         ensure that all work conducted as a result of this PA will be performed in
- 23         accordance with the (SOI)Standards for Archeology and Historic Preservation
- 24         (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
- 25
- 26      2. BLM shall require that persons supervising and conducting cultural resources
- 27         work on the behalf of lessees hold the appropriate BLM permits and/or
- 28         authorizations as appropriate for cultural resources inventory, monitoring, and
- 29         other cultural resources investigations, and meet the Standards and
- 30         Guidelines, as well as the (SOI)Professional Qualification Standards (36 CFR
- 31         61) for the applicable discipline. BLM shall also ensure that persons
- 32         supervising and conducting cultural resources work on the behalf of lessees
- 33         comply with the NAGPRA POA.
- 34
- 35      3. Cultural resources investigations associated with Program activities will be
- 36         conducted in accordance with Appendix C: Methods to Inventory APE, and
- 37         will meet the standards presented in BLM Manual 8110.
- 38         a. The BLM Class of survey will depend on the type of activity being
- 39             proposed (i.e., biological investigations, seismic survey, exploratory
- 40             drilling).
- 41
- 42      4. Reports regarding cultural resources or Historic Properties shall meet the
- 43         standards outlined in the (SOI)Standards for Archeology and Historic

1 Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742) and  
2 BLM permit stipulations and guidance (i.e., BLM Manual 8110).  
3

4 **VII. Treatment of Human Remains, Funerary Objects, Sacred**  
5 **Objects, and Objects of Cultural Patrimony**

- 6 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
7 that any Native American burials, human remains, and/or related items  
8 discovered on federal lands during implementation of the terms of the Agreement  
9 will be treated respectfully and in accordance with NAGPRA.  
10  
11 B. Procedures guiding the treatment of human remains, funerary objects, sacred  
12 objects, or objects of cultural patrimony must comply with Section 3 of NAGPRA  
13 (43 CFR 10.4).  
14  
15 C. As surface manager of the APE, FWS is the controlling agency for any and all  
16 human remains and NAGPRA materials.  
17  
18 D. BLM shall develop, in consultation with FWS and Indian Tribes, a NAGPRA POA  
19 that complies with 43 CFR 10.5 no later than 180 days after the execution of this  
20 PA, which shall contain:  
21 1. Notification Procedures and Protocols  
22 2. Chain of Custody Procedures

23 **VIII. Late Discoveries**

- 24 A. During the entire implementation of this Undertaking, BLM will ensure that the  
25 FWS, SHPO, and Indian Tribes are informed of unanticipated discoveries within  
26 the Undertaking's APE during activities associated with the BLM's oil and gas  
27 leasing program.  
28  
29 B. Lessees or their contactors will not take any actions that would adversely affect  
30 newly discovered, unanticipated cultural resources that may be eligible for listing  
31 in the NRHP without written approval from BLM.  
32  
33 C. Upon the unanticipated discovery of a potential cultural resource, the following  
34 steps will be undertaken:  
35 1. The lessee or their contractor will immediately notify the BLM and halt all  
36 construction work involving subsurface disturbance in the area of the find and  
37 an appropriate buffer surrounding the area where further subsurface finds can  
38 be reasonably expected to occur;  
39  
40 2. The BLM shall notify the FWS, SHPO, and other Consulting Parties within 48  
41 hours of the discovery;  
42

- 1 3. The BLM or a SOI-qualified archaeologist approved by them will immediately  
2 inspect the site and collect enough information to determine (if possible):  
3 a. The extent of cultural materials associated with the inadvertent discovery  
4 b. The degree of integrity  
5 c. The cultural affiliation of the materials  
6
- 7 4. Within five (5) working days of the original notification, the BLM, in  
8 consultation with the FWS, SHPO, and Consulting Parties, will determine  
9 whether the discovery encountered is eligible for listing in the NRHP.  
10 a. If the discovery is determined eligible for listing in the NRHP and all  
11 parties concur, BLM will direct the lessee to prepare a plan for its  
12 avoidance, protection, or recovery of information in consultation with BLM,  
13 SHPO, and Indian Tribes, as appropriate.  
14
- 15 5. Work in the affected area will not proceed until either:  
16 a. An approved plan is implemented; or  
17 b. The BLM determines that the discovery is not eligible for the NRHP, and  
18 the SHPO concurs with this determination.  
19
- 20 D. Any disputes over the evaluation or treatment of unanticipated discoveries will be  
21 resolved as provided in Stipulation XI of this PA.

## 22 IX. Curation

- 23 A. Archaeological Materials not falling under jurisdiction of NAGPRA recovered  
24 during any activities associated with the Undertaking are property of FWS as  
25 surface manager of the APE and will be curated under FWS' existing agreement  
26 with the University of Alaska Museum of the North (UAMN).  
27
- 28 B. Materials determined to be subject to NAGPRA will be managed as described  
29 above in Stipulation VII and in the NAGPRA POA.

## 30 X. Annual PA Meeting and Reports

- 31 A. Annual Meeting: BLM shall hold a meeting of the Signatories, as well as the  
32 Consulting Parties if they so wish, within one year of the PA execution, and each  
33 year by that same date, thereafter, to discuss the previous year's activities, and  
34 activities scheduled for the upcoming year. The meeting shall be held in  
35 Anchorage at the Alaska Office of History and Archaeology, or at another  
36 location by consensus of the Signatories. The parties may participate by  
37 telephone if they so desire. The BLM will distribute meeting minutes to the  
38 meeting participants within 30 days of the meeting, and meeting participants will  
39 provide comments to the BLM within 15 days of receipt. The BLM shall amend  
40 the minutes as a result of comments and distribute finalized minutes within 15  
41 days.  
42

- 1 1. Additional Meetings: If a Signatory deems a meeting necessary outside of the  
2 regularly schedule annual meeting, their request shall be considered in  
3 consultation with the other Signatories. BLM, taking into consideration the  
4 results of consultation, shall decide whether to convene additional meetings.  
5 A Consulting Party may contact the BLM to request an additional meeting,  
6 which the BLM will consider and, if determined to be appropriate, will consult  
7 with the Signatories to determine if a meeting may be convened.  
8

9 B. Annual PA Report:

- 10 1. Prior to the annual meeting, BLM will provide the Signatories and Consulting  
11 Parties with an annual report that describes the completed and upcoming  
12 activities associated with the stipulations of this agreement. The report will  
13 include the following information:  
14 a. Number of leases issued  
15 b. Activities reviewed under this PA in accordance with Stipulation IV  
16 c. Consultation activities undertaken  
17 d. Maps of areas leased, surveyed, or otherwise investigated  
18 e. Upcoming/Planned activities

19 **XI. Dispute Resolution**

- 20 A. Should any of the Signatories or Consulting Parties to this PA object at any time  
21 to any actions proposed or the manner in which the terms of this PA are  
22 implemented, the BLM will consult with such party to determine if it is possible to  
23 resolve the objection. If the BLM determines that such objection cannot be  
24 resolved, the BLM will:  
25  
26 1. Forward all documentation relevant to the dispute, including the BLM's  
27 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
28 advice on the resolution of the objection within 30 calendar days of receiving  
29 adequate documentation. Prior to reaching a final decision on the dispute,  
30 BLM will prepare a written response that takes into account any timely advice  
31 or comments regarding the dispute from the ACHP, Signatories, and  
32 Consulting Parties, and provide them with a copy of this written response.  
33 BLM will then proceed according to its final decision.  
34  
35 2. If the ACHP does not provide its advice regarding the dispute within the 30  
36 calendar-day time period, BLM may make a final decision on the dispute and  
37 proceed accordingly. Prior to reaching such a final decision, BLM will prepare  
38 a written response that takes into account any timely comments regarding the  
39 dispute from the Signatories and Consulting Parties to the PA and provide  
40 them and the ACHP with a copy of such written response.  
41  
42 3. Regardless of the results of the dispute resolution measures described  
43 above, the BLM's responsibility is to carry out all other actions subject to the  
44 terms of this PA that are not the subject of the dispute.

1 **XII. Duration**

- 2 A. This PA will remain in effect for 10 years after its execution.  
3  
4 B. Prior to such time, BLM may/will consult with the other Signatories to reconsider  
5 the terms of the PA and amend it in accordance with Stipulation XIII below no  
6 later than 6 months prior to expiration of the agreement. If appropriate, the  
7 Signatories may execute a new agreement or amend to extend the duration of  
8 the current agreement.

9 **XIII. Amendments**

- 10 A. This PA may be amended at any time when such amendment is agreed to in  
11 writing by all Signatories. The amendment will be effective on the date a copy  
12 signed by all of the Signatories is filed with the ACHP.  
13  
14 B. Any amendments made to the PA will be distributed to all Consulting Parties and  
15 attached to the PA in Appendix D: PA Amendments (reserved).  
16  
17 C. In the event that another federal agency not initially a party to or subject to this  
18 PA receives an application for funding/license/permit for the Undertaking as  
19 described in this PA, that agency may fulfill its Section 106 responsibilities by  
20 stating in writing it concurs with the terms of this PA and notifying the Signatories  
21 that it intends to do so. Such agreement shall be evidenced by execution of a  
22 signature page signed by an authorized individual for that agency and filing this  
23 page with the ACHP, and implementation of the terms of this PA.

24 **XIV. Termination**

- 25 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
26 carried out, that party shall immediately consult with the other Signatories to  
27 attempt to develop an amendment or agreement on other actions that would  
28 avoid termination of the PA. If after 30 calendar days from the initiation of such  
29 consultation (or another time period agreed to by all Signatories) an amendment  
30 or agreement on other actions that would avoid termination cannot be reached,  
31 any Signatory may terminate the Agreement upon written notification to the other  
32 Signatories.  
33  
34 B. In the event that the PA is terminated, and prior to further Program actions, the  
35 BLM must either (a) execute a Memorandum of Agreement (MOA) pursuant 36  
36 CFR § 800.6 or (b) request, take into account, and respond to the comments of  
37 the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories as to the  
38 course of action it will pursue.

39 **XV. Emergency Situations**

- 1 A. The BLM shall notify within one (1) business day the SHPO and the ACHP of an  
2 emergency situation, which represents an imminent threat to public health or  
3 safety or creates a hazardous condition that also has potential to harm Historic  
4 Properties or the subsequent response has potential to harm Historic Properties  
5 and the measures taken to respond to the emergency or hazardous condition.  
6 Should the SHPO or the ACHP desire to provide technical assistance to the  
7 BLM, they shall submit comments within seven (7) calendar days from  
8 notification, if the nature of the emergency or hazardous condition allows for such  
9 coordination.  
10  
11 B. If the APE has been surveyed for Historic Properties and none are within the  
12 APE, then BLM will request concurrence on a determination of “no Historic  
13 Properties affected” within five (5) calendar days from the initial notification.  
14  
15 C. If the APE has not been surveyed for potential Historic Properties, then  
16 emergency actions will be monitored by a SOI qualified professional or the APE  
17 will be surveyed by a SOI-qualified professional no later than one (1) year after  
18 the emergency action is completed. A monitoring report or survey report will be  
19 submitted to Signatories within 30 days of the end of fieldwork.  
20  
21 D. If a previously known or unknown historic property is adversely affected by  
22 emergency actions the BLM will consult to resolve the adverse effect pursuant 36  
23 CFR § 800.6

24 **XVI. Anti-Deficiency Provision**

- 25 A. Any obligation of the federal agencies set forth in this PA is subject to and  
26 dependent on appropriations by Congress and allocation of sufficient funds for  
27 that purpose. The federal agencies shall make reasonable and good faith efforts  
28 to secure the necessary funds to implement this PA in its entirety. If compliance  
29 with the Anti-Deficiency Act alters or impairs the federal agencies’ ability to  
30 implement the stipulations of this agreement, the federal agencies shall consult in  
31 accordance with the amendment and termination procedures found at  
32 Stipulations XIII and XIV of this agreement.

33 **EXECUTION** of this PA by the Signatories, and implementation of its terms,  
34 evidences that the BLM and FWS have taken into account the effects of the  
35 Undertaking on Historic Properties and have afforded the ACHP an opportunity to  
36 comment.

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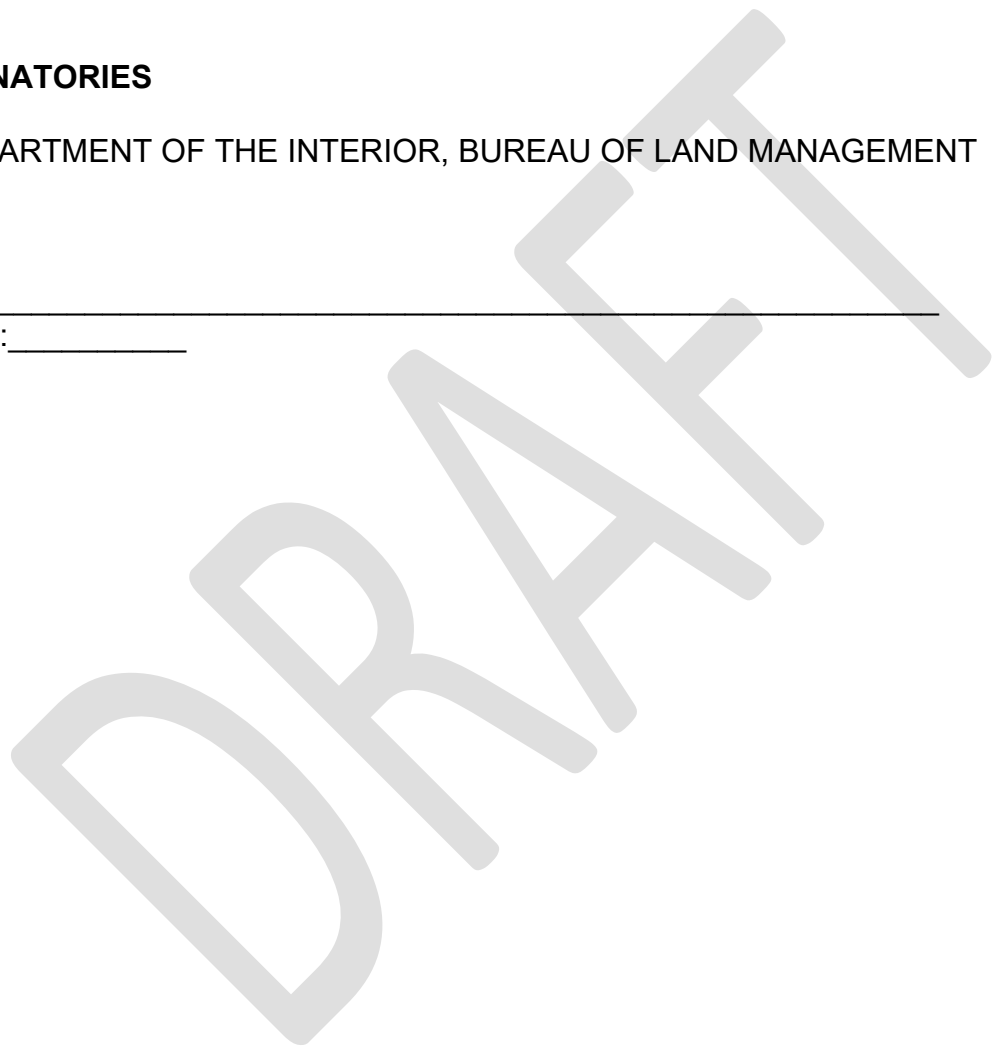
**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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





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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

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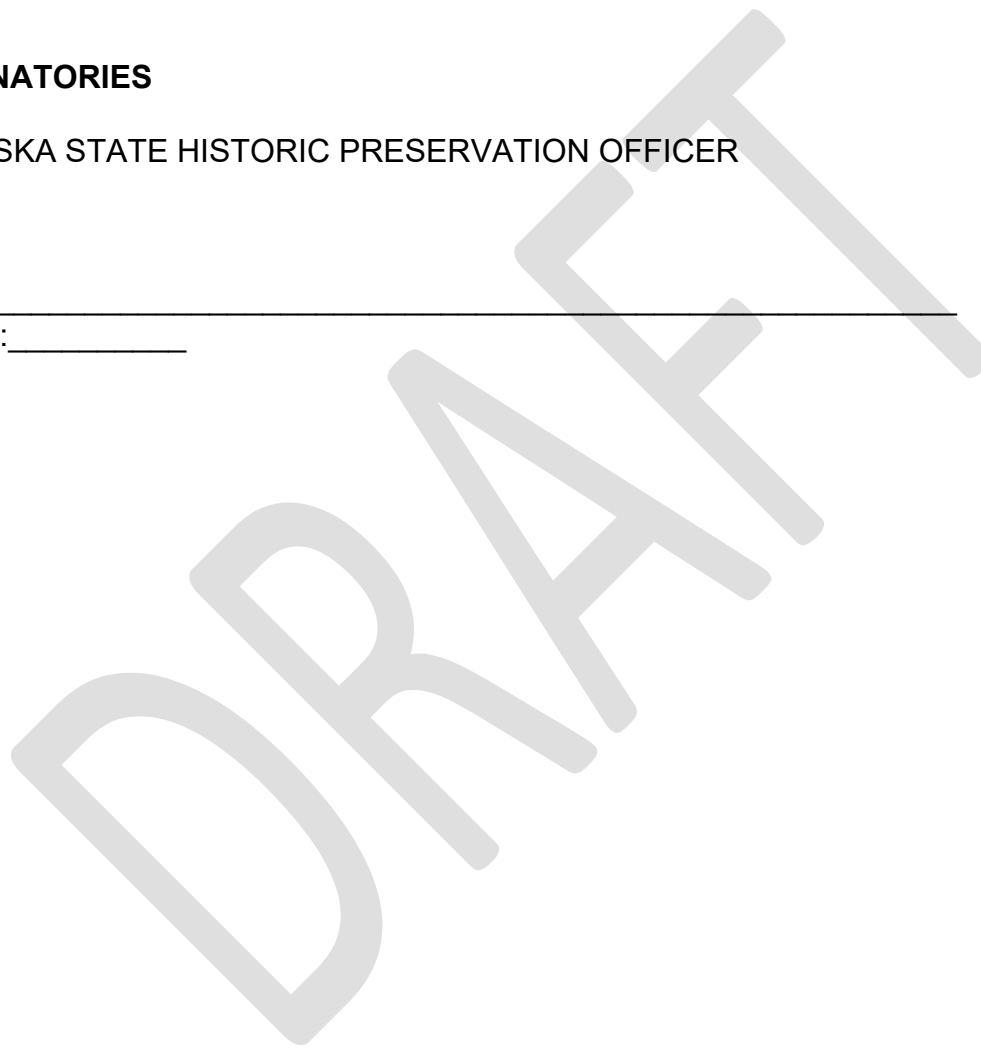
**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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



**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

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

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1 **Appendix A: Area of Potential Effects**

2 (Map and legal descriptive information (i.e., MTRs) of the APEs for the PA)

3

4 PLACEHOLDER

DRAFT

1 **Appendix B: Consulting Parties**

2 (List of Signatories and Consulting Parties with Contact Information)

Name & Title	Organization	PA Role	Phone	Email
Nicole Hayes, Project Manager	USDOI, BLM	Signatory	907.271.4354	<a href="mailto:mnhayes@blm.gov">mnhayes@blm.gov</a>
Judy Bittner, SHPO	ADNR, OHA	Signatory	907.269.8715	<a href="mailto:Judy.bittner@alaska.gov">Judy.bittner@alaska.gov</a>
Tom McCulloch, Assistant Director	ACHP	Signatory	202.517.0222	<a href="mailto:tmcculloch@achp.gov">tmcculloch@achp.gov</a>
Ed deCleva, Regional Historic Preservation Officer	USDOI, FWS	Signatory	907.786.3399	<a href="mailto:edward_decleva@fws.gov">edward_decleva@fws.gov</a>
Kevin Fisher	North Slope Borough	Consulting Party		<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Mayor Amanda Kaleak	City of Kaktovik	Consulting Party		<a href="mailto:office@cityofkaktovik.org">office@cityofkaktovik.org</a>
Tonya Garnett, Executive Director	Native Village of Venetie Tribal Government	Consulting Party		<a href="mailto:tonyagarnett@hotmail.com">tonyagarnett@hotmail.com</a>
Galen Gilbert, First Chief	Arctic Village Council	Consulting Party		
Timothy Roberts, First Chief	Venetie Village Council	Consulting Party		
President Edward Rexford, Sr	Native Village of Kaktovik	Consulting Party		
Teresa Imm	Arctic Slope Regional Corportation	Consulting Party		<a href="mailto:timm@asrc.com">timm@asrc.com</a>
Mathew Rexford	Kaktovik Inupiat Corporation	Consulting Party		<a href="mailto:nvkaktovik@gmail.com">nvkaktovik@gmail.com</a>
Sarah Obed	Doyon Limited	Consulting Party		<a href="mailto:obeds@doyoncom">obeds@doyoncom</a>
Frederick Brower	Inupiat Community of the Arctic Slope (ICAS)	Consulting Party		<a href="mailto:Frederick.brower@inupiat.gov.com">Frederick.brower@inupiat.gov.com</a>
Doreen Leavitt	Native Village of Barrow	Consulting Party		<a href="mailto:Doreen.leavitt@nvbarrow.net">Doreen.leavitt@nvbarrow.net</a>
Rhonda Pitka	Beaver Tribal Council	Consulting Party		<a href="mailto:rpitka@beavercouncil.org">rpitka@beavercouncil.org</a>
Nancy James	Gwichyaa Zhee (Native Village of Fort Yukon)	Consulting Party		
Charleen Fisher	Council of Athabaskan Tribal Governments (CATG)	Consulting Party		<a href="mailto:Charleen.fisher@catg.org">Charleen.fisher@catg.org</a>

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1 **Appendix C: Methods to Inventory APE**

2 **PLACEHOLDER**

- 3
- References to BLM Policy Manual 8110

DRAFT

1 **Appendix D: PA Amendments (reserved)**

2 PLACEHOLDER

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

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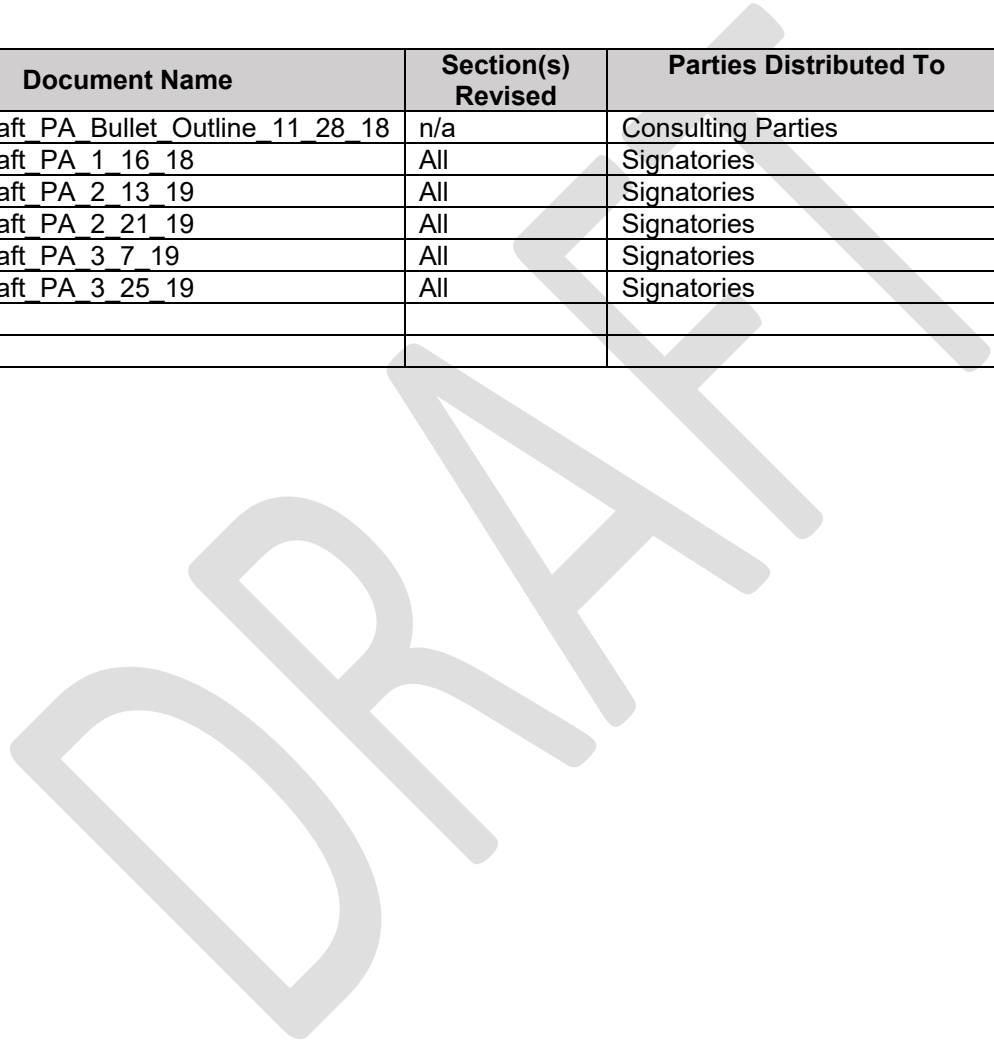
1 **Appendix E: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	Signatories	Revised Draft PA based on Sig Cmts

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**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Bittner, Judith E \(DNR\)](#); [Meitl, Sarah J \(DNR\)](#); [Bill Marzella](#); [Decleva, Edward J](#); [Loya, Wendy M](#); [Tom McCulloch](#)  
**Cc:** [Chad Ricklefs](#); [amy lewis](#); [Jake Anders](#); [Stephen Braund](#); [Paul Lawrence](#); [King, Robert \(Bob\)](#)  
**Subject:** Response to comments on Draft Final PA  
**Date:** Friday, July 19, 2019 10:18:24 AM  
**Attachments:** [NVVTG, AVC, VVC Comments on Draft PA 07.11.19 BLM response.docx](#)  
[Draft ANWR Programmatic Agreement - North Slope Borough Comments BLM response.docx](#)  
[NVVTG, AVC, VVC Comments on Draft PA 07.11.19 \(1\).docx](#)  
[EMP18 Draft PA 6 12 19 clean SHPO BLM resp.docx](#)  
[EMP18 Draft PA 6 12 19 clean ACHP comments BLM response.docx](#)

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Dear Signatories,

Attached are BLM's response to comments on the Draft Final PA, consistent with previous responses to comments and conversations we have had on the various topics.

A few things we still need to finalize this PA are:

1. SIGNATORY INPUT on a couple of responses on the NVVTG, AVC, VVC comments (you can see the request for input in the comment bubbles that start with "SIGNATORIES:...").
2. Judy/Sarah, there is one comment on the SHPO comments I need recommended language (comment bubble starts with "SHPO:...")
3. Review of all the responses to comments. If there is any concern with how the BLM responded please advise ASAP (**but NLT July 26th**) as SRBA will be proceeding with changes.
4. Identify person with your agency that will be signing PA and correct title so we can prepare signature pages accordingly.

Attached are comments with BLM responses from:

ACHP

SHPO

NSB

NVVTG, AVC, VVC (also attached w/o comment response so you can see all edits made in track changes since several inserts and deletions were rejected)

Schedule of next steps:

**JULY 26**-DUE from signatories - requests above

**AUG 5**- FINAL PA will be distributed for review by signatories

**AUG 13**- LAST Signatories meeting before signing to discuss any minor fixes needed

Please let me know if I may have missed anything or there are any questions.

THANK YOU!

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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29

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed on or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing program, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a [Programmatic Agreement \(PA\)](#) as the BLM cannot fully determine effects on Historic

**Commented [MJR2]:** As we requested in the previous PA drat, make sentences active. Who is doing this directing?

The [ACHP, in their guidance on reviewing agreement documents](#), recommends using active voice. The ACHP states:

"Because the stipulations of a Section 106 agreement assign responsibilities for certain measures and commit parties to identified actions, it is important to clearly state those responsibilities and commitments. Avoiding wordy, passive voice sentences (e.g., "the building will be recorded") makes the terms of the agreement easier to understand. Using active voice in an agreement helps answer the above questions and provides a construct to insert timeframes."

**Commented [HM(N3R2):** BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice

**Deleted:** undertaking

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 Properties within the APE prior to approval of the Undertaking as defined in 36 Code of  
2 Federal Regulations (CFR) § 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to, activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation as Consulting Parties, consistent with 54 USC §  
18 302706 and 36 CFR 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None of the 34  
39 properties have been evaluated for their eligibility for listing in the NRHP; and

**Commented [MJR4]:** As we asked in the previous PA draft, when and how? Adding these specifics will aid the cold reader understand this agreement per the [ACHP's Section 106 Agreement Document Guidance](#) they explicitly state that in the Preamble

"This information documents the federal agency's Section 106 compliance effort and should be written to allow a cold reader to understand the context for the stipulations to follow."

**Commented [MJR5]:** When and how?

**Commented [HM(N6R5):** BLM has determined this level of detail is not necessary

**Commented [MJR7]:** When and how?

**Commented [HM(N8R7):** BLM has determined this level of detail is not necessary

**Commented [WF9]:** What does this mean?

**Commented [HM(N10R9):** Inserted to memorialize that previous investigations and documentation are not totally sufficient to provide complete knowledge of the Historic Properties that may be found within the APE

**Commented [WF11]:** The AHRs does not list "properties." "Properties" has a very specific definition under the Part 800 regulations, and what the AHRs covers often do not meet that definition. Indeed, this recital states alter that only 5 "properties" are el

**Commented [HM(N12R11):** "Historic Properties" has a specific definition, not "properties" in general

**Commented [WF13]:** Again, "property" has a very specific meaning in the Part 800 regulations

**Commented [HM(N14R13):** "Historic Properties" has a specific definition, not "properties" in general

**Commented [MJR15]:** This is more of an information request than a comment on the PA. How often does the NSB reconcile their TLUI database with the AHRs and when was the last time this reconciliation occurred?

**Commented [HM(N16R15):** Contact the NSB for further details.

**Deleted:** onene have

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)  
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties

**Commented [WF17]:** Are these stipulations not applicable for post-leasing activities? Because that doesn't make sense.

**Commented [HM(N18R17):** These stipulations are not necessarily all-inclusive for post-lease activities as additional stipulations may be required in accordance with the PA and Section 106 requirements

8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

10 **I. Administrative**

- 11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Program and will ensure that all lessees are aware that they must  
13 comply with the terms of this PA during activities on their lease(s).  
14  
15 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
16 contractors engaged in exploration, development, production, or reclamation  
17 work associated with an issued Program lease prior to their arrival within the  
18 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
19 all contractors are made aware of the PA and that BLM requires compliance with  
20 its terms.  
21  
22 C. BLM shall require that any type of archaeological work associated with the  
23 Program within the APE not performed by BLM or FWS professional staff will be  
24 conducted only under terms of a federally issued Permit For Archaeological  
25 Investigations (“ARPA permit”). Such permits are obtained upon application to  
26 the BLM or otherwise coordinated by BLM.  
27  
28 D. If ownership of a lease is transferred, BLM will include as a condition of the  
29 transfer that the new lessee must adhere to the terms of this PA.  
30  
31 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
32 communications regarding this PA and its provisions, with an alternative method  
33 of postal mail delivery if the contacts do not have reliable e-mail.  
34  
35 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
36 It is the responsibility of each Signatory and Consulting Party to immediately  
37 inform BLM of any change in name, mailing address, e-mail address, or phone  
38 number for any point-of-contact. Once received, the BLM will forward this  
39 information to all Signatories and Consulting Parties by e-mail or mail within five  
40 (5) business days. Contact information for Signatories and Consulting Parties is  
41 included below in *Appendix B: Consulting Parties*.  
42

**Commented [WF19]:** Is this PA not going to be incorporated into any authorizations that the FWS issues pursuant to the Program? What about other federal agencies later on, such as the USACE?

**Commented [HM(N20R19):** Please refer to Amendments Section

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- 1 G. At any time, Signatories to this PA may request additional time for reviews of
- 2 documentation, preparation of guidance documents, or any other time-sensitive
- 3 materials outlined in this PA by providing a written request to the BLM.
- 4
- 5 H. The Signatories may execute this PA in counterparts, with a separate page for
- 6 each Signatory.

**Commented [WF21]:** The BLM is the lead federal agency. It is in charge of ensuring the PA is carried out, thus it should be the only signatory that should sign off on these request.

**Deleted:** all

**Deleted:** Signatories

7 **II. Scope of the PA**

- 8 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and
- 9 other federal laws that may be affected by the BLM's Undertaking within the
- 10 APE.
- 11
- 12 B. This PA establishes the process the BLM will follow to fulfill its responsibilities
- 13 under Section 106 of NHPA, including consultation with Indian Tribes, for
- 14 Program decisions that may be implemented in accordance with the decisions
- 15 supported by the Program EIS and BLM policy.
- 16
- 17 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor
- 18 involving reimbursement or contribution of funds between the parties to this PA
- 19 will be handled in accordance with applicable laws, regulations, and procedures
- 20 including those for Federal Government procurement and printing. Separate
- 21 agreements will outline such endeavors and will be made in writing by
- 22 representatives of the parties and will be independently authorized by
- 23 appropriate statutory authority. This PA does not provide such authority.

24 **III. Agency Coordination Procedures**

25 A. Agency Roles and Coordination

26 1. BLM

- 27 a. BLM, as the lead federal agency for the purposes of NHPA and Section
- 28 106 compliance, is responsible for the following actions:
- 29 i. Conducting Section 106 reviews of Projects the PA addresses;
- 30 ii. Receiving permit applications and issuing permits that may be needed
- 31 for Section 106 compliance work for oil and gas-related projects in the
- 32 APE. Such permits needed may include various types of land use
- 33 authorizations as well as Permits for Archaeological Investigations
- 34 ("ARPA" Permits).

**Deleted:** projects

**Commented [WF22]:** BLM is not the land manager, FWS is. How is this discrepancy reconciled?

**Commented [HM(N23R22)]:** Activities related to the implementation of PL 115-97 are the responsibility of the BLM

**Commented [WF24]:** Why would the FWS "receive" ARPA permit applications, if that is the responsibility of the BLM? I get reviewing, commenting on, and evaluating, as the land manager, but the PA cannot obligate two different agencies to receive the same permit applications.

The PA needs to stipulate how the BLM will provide the FWS the ARPA permit application, how long the FWS has to respond, and how to resolve issues if the FWS and BLM disagree about its issuance or features of the permit/application

**Commented [HM(N25R24)]:** BLM disagrees that the coordination between the two agencies needs to be spelled out in the PA

35 2. FWS

- 36 a. FWS, as surface manager of the APE, is responsible for the following
- 37 actions:
- 38 i. Receiving, reviewing, commenting on, and evaluating applications for
- 39 ARPA permits provided by the BLM;
- 40 ii. Receiving, reviewing, commenting on, and evaluating Section 106
- 41 determinations and findings made by BLM;
- 42

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- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

6 **IV. Section 106 Consultation Plan and Procedures**

7 A. BLM anticipates that the Program will include several Project types and that each  
8 type will require consultation with Signatories and Consulting Parties. Project  
9 types include:

- 10 1. Leasing;
- 11 2. Inventory, Research, and Monitoring Activities;
- 12 3. Geophysical Exploration;
- 13 4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14 5. Marine and Intertidal Activities and Operations;
- 15 6. Operations and Production;
- 16 7. Inspections and Enforcement; and
- 17 8. Reclamation
- 18

19 B. As appropriate and needed, BLM shall consult with [Signatories and Consulting](#)  
20 Parties on an “as necessary” basis throughout the life of this PA on the above  
21 Project types to include, but not limited to, the following:

- 22 1. Collect information to inform permitting, NEPA reviews, and if appropriate,  
23 selection of alternatives;
- 24 2. Develop appropriate research designs and investigative methods for potential  
25 Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)  
26 studies;
- 27 3. Determine if incorporating Project-specific conditions and/or stipulations into  
28 BLM-permitted activities can avoid, minimize, and/or mitigate effects to  
29 Historic Properties within the Project-specific APE;
- 30 4. Consider conducting periodic joint (i.e., BLM and representatives from  
31 interested [Signatories and Consulting Parties](#)) site visits within the Project-  
32 specific APE(s).
- 33 5. Develop Project-specific Historic Properties Management Plans (HPMPs) to  
34 avoid, minimize, and/or mitigate adverse effects to Historic Properties that  
35 may result from Program activities. These plans may include:
  - 36 a. Monitoring lessee activities and effects on Historic Properties within the  
37 Project-specific APE(s);
  - 38 b. Periodic Historic Property condition assessments;
  - 39 c. Documentation review to ensure lessees have fulfilled commitments  
40 stipulated by BLM, and have complied with the terms of this PA.
- 41

42 C. The implementing regulations of Section 106 of the NHPA (36 CFR §  
43 800.2[c][2][ii][A-C]) require BLM to:

- 44 1. Consult with any Indian Tribe that attaches religious and cultural significance  
45 to Historic Properties that may be affected by an Undertaking,

**Commented [WF26]:** We made this comment before, but we'll make it again. It is easier for the BLM to create a list that is exclusive, rather than inclusive. Meaning, projects types are anything but X, Y, and Z.

**Commented [HM(N27R26):** The list reflects all types of activities associated with an oil and gas leasing program.



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2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects,
3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe.
4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
  - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see Appendix D); and
  - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.

Commented [WF28]: When is this happening?

Commented [HM(N29R28)]: Please refer to Appendix D

D. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.

Commented [WF30]: So consulting parties cannot

Commented [HM(N31R30)]: Consulting parties raise their issues to the BLM so that the BLM can bring up, however, the consulting parties are invited to the meeting so may also bring up issues they otherwise do not think have been addressed

E. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

- A. BLM's The Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying potentials to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- B. BLM shall make a good faith effort to identify and evaluate historic properties but anticipates that in certain cases a 100-percent identification of a Project APE may not be necessary, and NHRP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect, the amount of information necessary for the BLM to make decisions regarding the potential of the Project Type(s) to affect Historic Properties.
- C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility and findings of effect concurrently in a combined submission for Project Types described below.

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D. Nothing shall prevent the BLM from seeking informal consultation with the Signatories or Consulting Parties regarding the preparation of determinations of eligibility or findings of effect.

F. Step 1: Oil and Gas Program Project Types Addressed under this PA

1. BLM, in consultation with Signatories and Consulting Parties, has determined that this PA will address the following Project types associated with the Program within the APE:
  - a. Lease Sales;
  - b. Inventory, Research, and Monitoring Activities;
  - c. Geophysical Exploration;
  - d. APD;
  - e. Marine and Intertidal Activities and Operations;
  - f. Operations and Production;
  - g. Inspection and Enforcement; and
  - h. Reclamation.

G. Step 2: Assess Project Potential to Cause Effects

1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type under review has potential to cause effects on Historic Properties. BLM shall determine that a Project type does not have the potential to cause effects if it meets one or more of the following conditions:
  - a. No new visual, auditory, atmospheric, olfactory, and/or ground disturbances;
  - b. Lease Sale or other Administrative Action; or
  - c. Standard maintenance, repairs, or replacement of existing facilities or equipment.
2. If the Project type meets one or more of the above conditions (Section V.G.1.a-c), BLM shall make a determination that the Project type has “no potential to cause effects” and attach letter to the Project file [36 CFR 800.3(a)(1) determination].
3. If the Project type does not meet the above conditions (Section V.G.1.a-c), and the Project type consists of Inventory, Research, and Monitoring Activities, Geophysical Exploration, Marine and Intertidal Activities and Operations, Operations and Production, or Inspection and Enforcement, the BLM will proceed to Step 3.
4. If the Project type does not meet the above conditions, and the Project type is an APD or Reclamation, BLM will consult with Signatories and Consulting Parties, and BLM will determine if the Project should be addressed under this PA, or if a separate Section 106 process and agreement document (“kick-out”) must occur in accordance with Step 8 below.

H. Step 3: APE

1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.

**Commented [WF32]:** What about non-listed project types that may, under certain circumstances rise to the level of needing 106 review? A bright line cut off is not necessarily appropriate

**Commented [HM(N33R32):** The list reflects all types of activities associated with an oil and gas leasing program.

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**Commented [MJR34]:** Archaeological bias just including ground disturbance. Effects are more than physical impacts. In March, the D.C. circuit court issued an opinion clarifying the meaning of the term “directly” for the NHPA. Direct includes visual, auditory, and atmospheric along with physical impacts. Please review court opinion and update this PA accordingly.

**Commented [WF35R34]:** See the ACHP’s discussion of this opinion here:

<https://www.achp.gov/news/court-rules-definitions-informs-agencies-determining-effects>

**Commented [HM(N36R34):** ACHP – PLEASE PROVIDE RESPONSE

**Commented [WF37]:** The Tribes fundamentally disagree with the BLM that lease sales are not an undertaking without potential to effect historic properties. This statement ignores the definition of adverse effects, which includes “reasonably foreseeable adverse effects by the undertaking that may occur later in time, be farther removed in distance of be cumulative.” 36 CFR § 800.5(a)(1). This position makes it impossible for the BLM to ensure that the Section 106 process informs the development of project/leasing alternatives (see 36 C.F.R. §§ 800.1(c), 800.6(a)), such as lease-wide stipulations, avoidance areas, etc. compartmentalizing Section 106 review until the ADP phase is inappropriate, undercuts the very purpose of the Section 106 process, and is unlawful.

Indeed, the ACHP recently published guidance on this issue, stating:

“Planning activities” avoid triggering Section 106 so long as they do not narrow the range of alternatives to avoid, minimize, or mitigate adverse effects to historic properties. For federal property managers, “planning” often includes long-term management of lands or properties under their purview. Such agencies may develop general or site-specific guidelines. Discrete shorter-term projects tend to derive from these overarching guidelines.

“In this context, the federal involvement is usually the agency creating and carrying out the plan itself. The analysis then ...

**Commented [HM(N38R37):** This is stating that under this PA for implementation of PL 115-97, a lease sale itself will not necessitate separate 106 compliance

**Commented [WF39]:** Is there no instance in which such repairs, maintenance, or replacements could affect historic properties? This statement is pretty absolutist and inflexible for larger, unforeseen projects

**Commented [HM(N40R39):** Based on experience with implementation of an oil and gas program there have not been instances or examples where these types of activities may result in an effect on a historic property

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1 b. If no, BLM defines the APE in consultation with SHPO.  
2

3 **I. Step 4: Identification**

- 4 1. Has BLM determined that adequate efforts to identify Historic Properties  
5 consistent with the procedures described in *Appendix C: Methods to*  
6 *Inventory the APE* have been completed within the APE?  
7 a. If yes, proceed to Step 5.  
8 b. If no, BLM will implement or direct the implementation of methods detailed  
9 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
10 level of effort to identify Historic Properties within the APE of the Project.  
11

12 **J. Step 5: Preliminary APE Assessment**

- 13 1. Has BLM determined that identification efforts have resulted in the  
14 identification of potential Historic Properties within the APE?  
15 a. If yes, proceed to Step 6.  
16 b. If no, proceed to Step 7.  
17

18 **K. Step 6: Evaluation**

- 19 1. Has BLM determined that potential Historic Properties identified within the  
20 APE have been evaluated for NRHP eligibility?  
21 a. If yes, proceed to Step 7.  
22 b. If no, the BLM will evaluate potential Historic Properties in the APE of the  
23 Project for NRHP eligibility (NRHP Bulletin 15).  
24 i. BLM will concurrently consult with FWS on all determinations of  
25 eligibility (DOEs), and with Indian Tribes on DOEs concerning potential  
26 Historic Properties of religious and cultural significance prior to  
27 submitting them to SHPO for concurrence.  
28 1. FWS will have thirty (30) days to review and respond to  
29 determinations submitted by BLM. If FWS does not offer comment  
30 within the review period, then BLM will presume agreement with the  
31 DOE(s).  
32 2. Indian Tribes will have thirty (30) days to review and respond to  
33 determinations submitted by BLM. If an Indian Tribe(s) does not  
34 offer comment within the review period, then BLM will presume  
35 agreement with the DOE(s).  
36 ii. Additional time to review a BLM submittal of a DOE(s) may be  
37 requested by FWS and/or Indian Tribes, up to thirty (30) days per  
38 submittal.  
39 iii. After the review period for FWS and Indian Tribes has elapsed,  
40 including any extensions requested, BLM will submit the DOE to  
41 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
42 does not offer comment within the review period, then BLM will  
43 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
44 Step 7.

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- 1. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
- iv. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
- v. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
  - 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
- vi. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

**L. Step 7: Assess Effects**

- 1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), which shall include consultation with Signatories, Indian Tribes, and Consulting Parties.
    - i. If BLM makes a finding of “no adverse effect” (36 CFR 800.5[b]), BLM shall notify Signatories, Indian Tribes, and Consulting Parties of the finding and provide them with documentation supporting this finding.
      - 1. If SHPO concurs with the BLM's determination, BLM shall document the concurrence to the Project file.
      - 2. If SHPO does not concur, and resolution cannot be reached through consultation, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
    - ii. If BLM makes a finding of “adverse effect” (36 CFR 800.5[d][2]), then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
      - 1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the criteria of adverse effect in consultation with Signatories, Indian Tribes, and Consulting Parties, and if necessary, revise their finding of effect.
    - iii. If BLM, in consultation with Signatories, Indian Tribes, and Consulting Parties determines that an applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects will still result in adverse effects to Historic Properties, the process shall revert to the standard Section 106 procedures at 36 CFR 800.6.

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- 1 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR  
2 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty  
3 (30) days to review the BLM’s determination. BLM shall also provide  
4 notice to the Signatories and Consulting Parties of this finding in  
5 accordance with 36 CFR 800.4(d)(1).  
6 i. If SHPO concurs with the BLM’s determination, BLM shall document  
7 SHPO concurrence to the Project file.  
8 ii. If SHPO does not concur, and resolution cannot be reached through  
9 consultation ~~among SHPO, ACHP,~~ and BLM, BLM shall follow the  
10 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

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11 **M. Step 8: Decision regarding Undertaking**

- 12 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
13 applicable, and BLM has documented the appropriate finding of effect and  
14 resolution efforts, as required, to the Project file.  
15  
16 2. Alternatively, if BLM has determined that a separate Section 106 process and  
17 agreement document (“kick-out”) is required for an APD or Reclamation  
18 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
19 subject to this PA only after the separate Section 106 review has been  
20 completed, and if necessary, the appropriate agreement document (e.g.,  
21 Memorandum of Agreement or Programmatic Agreement) has been executed  
22 for the Project.

23  
24 **N. Step 9: Reporting**

- 25 1. BLM will include a summary of all Projects reviewed under this PA in the  
26 previous year in the annual PA report [Stipulation XII]. The summary will  
27 include a synopsis for each project, including at minimum:  
28 a. A description of the Project;  
29 b. Delineation of the APE;  
30 c. Identification efforts within the APE;  
31 d. NRHP eligibility of known properties within the APE;  
32 e. BLM’s finding of effect for the Project; and,  
33 f. The Qualifications of the Individual who conducted the PA Compliance  
34 Review.  
35  
36 2. BLM will submit reports associated with identification, evaluation, and  
37 assessments of effect that were used to support BLM findings of effect to the  
38 SHPO.

39  
40 BLM may append reports associated with identification, evaluation, and  
41 assessments of effect that were used to support BLM finding to the annual PA  
42 report, provided they do not contain sensitive information regarding Historic  
43 Properties.

1 **VI. Methods to Inventory APE**

- 2 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*
- 3 within six (6) months of execution of the PA. BLM may request additional time to
- 4 complete this draft; however, BLM must submit this request in writing to the
- 5 Signatories for concurrence.
- 6
- 7 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day
- 8 comment.
- 9
- 10 C. BLM will consider timely comments received and revise the draft accordingly.
- 11 Multiple drafts may be required, and a final draft will be sent out for review no
- 12 later than one year from the execution of the PA.
- 13
- 14 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,
- 15 the first draft and the final draft concurrent with Signatory review.
- 16
- 17 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*
- 18 *Inventory the APE* before it is considered final.
- 19
- 20 F. Drafts cannot be used as interim guidance. If a project needs to move through
- 21 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*
- 22 *APE*, then the appropriate level of effort and methods will be determined through
- 23 consultation among BLM, FWS, and SHPO on a case-by-case basis.

**Commented [MJR41]:** BLM needs to consult with Tribes, Signatories and Consulting Parties to finalize inventory methods prior to completion of the PA. When reviewing agreement documents, the [ACHP](#) states, "Where the Section 106 agreement cites or references an attachment or appendix, it is imperative that the actual attachment or appendix be appended to the agreement document." Appendices are an integral component of the PA. Without referenced appendices, the PA is incomplete, and Signatories should not sign an incomplete PA. The ACHP asks in their [Section 106 Agreement Checklist: Reviewer's Guide](#), "Are all attachments and appendices cited in the agreement included?" Failing to include Appendix C means the answer is no, which means BLM is not using:

"best drafting practices [according to the [ACHP](#)] for writing agreements that are clear and comprehensible and that provide wisely for contingencies. ... [and failing to consider] ... important preparation practices that can help agreement document development move forward smoothly."

If I am misreading BLM's intent for when they intend to draft Appendix C, please let me know.

**Commented [HM(N42R41):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA

**Commented [MJR43]:** This is a moot point because BLM must complete appendices prior to finalizing the PA.

**Commented [HM(N44R43):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA

24 **VII. Standards**

- 25 A. Professional Qualifications:
- 26 1. For work not performed by BLM or FWS professional staff, BLM and FWS
- 27 shall ensure that all work carried out pursuant to this PA shall be done by or
- 28 under the direct supervision of qualified historic preservation professionals
- 29 who meet the SOI Professional Qualifications Standards (48 Federal Register
- 30 44716-44742). The BLM and FWS, through review of permit applications or
- 31 other means, shall ensure that consultants retained for services pursuant to
- 32 the Agreement meet these standards.
- 33
- 34 2. A "qualified historic preservation professional" is a person who meets the
- 35 relevant standards outlined in the Archeology and Historic Preservation: (SOI)
- 36 Standards and Guidelines [\[as Amended and Annotated\]](#)
- 37 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised
- 38 equivalent.
- 39
- 40 3. BLM acknowledges that Indian Tribes possess specialized expertise in
- 41 identifying and assessing the eligibility of Historic Properties that may
- 42 possess religious or cultural significance to Indian Tribes (36 CFR
- 43 800.4(c)(1)), and as such, do not need to meet the SOI standards regarding

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1 identifying and evaluating Historic Properties of religious or cultural  
2 significance to them.

Commented [MJR45]: Excellent! Now, let's be explicit how BLM will involve this "specialized expertise."

3  
4 B. Professional Standards:

5 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
6 ensure that all work conducted as a result of this PA not otherwise done by  
7 BLM or FWS professional staff is performed in accordance with the SOI  
8 Standards for Archeology and Historic Preservation (Standards and  
9 Guidelines) (48 Fed. Reg. 44716-44742).

Commented [WF46]: So, if the BLM and FWS do work, they don't need to meet these standards?

10  
11 2. BLM shall require that persons supervising and conducting work on the behalf  
12 of lessees hold the appropriate BLM permits and/or authorizations as  
13 appropriate for inventory, monitoring, and other investigations, and meet the  
14 Standards and Guidelines, as well as the SOI Professional Qualification  
15 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
16 that persons supervising and conducting work on the behalf of lessees  
17 comply with the NAGPRA POA.

Commented [HM(N47R46)]: BLM and FWS are responsible for meeting OPM professional standards for archeology

18  
19 3. Investigations associated with Program activities will be conducted in  
20 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
21 the standards presented in BLM Manual 8110 [Identifying And Evaluating](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
22 [Cultural Resources](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
23 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
24 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)) and BLM Manual 1780 *Tribal Relations*  
25 (<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>).

Commented [MJR48]: Manual 8110 is more focused on archaeological sites and old buildings while giving cursory mention to ethnographic resources. Manual 1780 goes into more detail on ethnographic research with tribes.

26  
27 4. Reports regarding Historic Properties shall meet the standards outlined in the  
28 SOI Standards for Archeology and Historic Preservation (Standards and  
29 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
30 guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History  
31 and Archaeology guidelines.

Commented [HM(N49R48)]: accepted

32 **VIII. Unanticipated Discoveries**

33 A. During the entire implementation of this Undertaking, BLM will ensure that the  
34 Signatories and Consulting Parties are informed of unanticipated discoveries  
35 within the Undertaking's APE during lessees or their contractor related activities  
36 associated with the BLM's oil and gas leasing program.

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37  
38 B. Lessees or their contactors will not take any actions that would adversely affect  
39 the discovery which may be eligible for listing in the NRHP without written  
40 approval from BLM.

41  
42 C. Upon the unanticipated discovery, the following steps listed below will be  
43 undertaken. If the unanticipated discovery includes human remains, burials, or  
44 funerary items, the additional steps listed in Stipulation IX shall be followed.  
45

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 1. The lessee will ensure that their operator or contractor will halt all activity in  
2 the area of the find and an appropriate buffer surrounding the area where  
3 further discoveries can be reasonably expected to occur, to be no less than  
4 fifty (50) feet, and will notify the BLM within one business day;  
5  
6 2. The BLM shall require the suspension of activity within the established buffer,  
7 and shall notify the Signatories and Consulting Parties within two business  
8 days of the discovery;  
9  
10 3. The BLM or a SOI-qualified archaeologist approved by them will inspect the  
11 property as soon as possible and collect enough information to determine (if  
12 possible):  
13 a. The extent of cultural materials associated with the unanticipated  
14 ~~discovery or effect~~;  
15 b. The degree of integrity; and  
16 c. The cultural affiliation of the materials (if possible).  
17  
18 4. Within five (5) business days, BLM shall provide a summary of the information  
19 collected at the place of discovery to Signatories and Consulting Parties,  
20 which will include BLM's preliminary assessment of the NRHP eligibility of the  
21 discovery.  
22  
23 5. Within 14 days of the BLM's distribution of the information regarding the  
24 unanticipated discovery, the BLM, in consultation with the Signatories and  
25 Consulting Parties, will determine whether the discovery encountered is  
26 eligible for listing in the NRHP.  
27 a. If the BLM determines that the discovery is ineligible for listing in the  
28 NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
29 activities in the area of the discovery.  
30 b. If the BLM determines the discovery is eligible for listing in the NRHP and  
31 SHPO concurs, BLM will direct the lessee to prepare a plan for its  
32 avoidance, protection, or recovery of information in consultation with BLM,  
33 Signatories and Consulting Parties, as appropriate.  
34 i. Within five (5) business days of receipt, BLM shall distribute copies of  
35 the proposed plan to Signatories and Consulting Parties for review and  
36 comment.  
37 ii. Signatories and Consulting Parties shall have seven (7) business days  
38 to review the proposed plan and provide comments to BLM.  
39 iii. BLM shall take into consideration timely comments received on the  
40 proposed plan and make a determination to either approve or request  
41 revisions to the proposed plan.  
42 A. In the event that BLM requests revisions to the plan, BLM shall  
43 redistribute the revised plan under the same timelines as above,  
44 and Signatories and Consulting Parties shall have the same period  
45 of review.  
46

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Deleted: subsurface findscultural materials/property

Commented [MJR51]: 50' is way too small of buffer. Even SAExploration places a 500' buffer around properties to avoid impacts. This PA should use 500' at minimum.

Commented [HM(N52R51): SIGNATORIES: Should this be different than 50-feet?

Commented [MJR53]: Changed for sake of consistency.

Deleted: inadvertent

Commented [MJR54]: Excellent! You were already thinking of combining discoveries and effects!

Commented [HM(N52R54): SIGNATORIES: Should we use language from 800.13 for this section?

Deleted:



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- 6. Work in the established buffer will not proceed until either:
  - a. BLM approves plan and requires its implementation; or
  - b. The BLM determines that the discovery is not eligible for the NRHP, and the SHPO concurs with this determination.

D. BLM will address any disputes over the evaluation or treatment of unanticipated discoveries as provided in Stipulation XIII of this PA.

**IX. Unanticipated Effects**

A. If BLM, in consultation with Signatories and Consulting Parties, determines that unanticipated effect(s), including cumulative effects, have occurred to a Historic Property, BLM, in consultation with Signatories and Consulting Parties, will assess the effect(s), develop a plan to address the unanticipated effect(s), and avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to complete this process within 180 days of the recognition of the unanticipated effect(s).

B. BLM will address any disputes over the resolution of unanticipated effects as provided in Stipulation XIII of this PA.

**X. Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

A. The APE exists entirely on federally-managed lands, and the BLM shall ensure that any Native American burials, human remains, and/or related items discovered on federal lands during implementation of the terms of this PA will be treated with dignity and respect, and that all procedures guiding the treatment of human remains, funerary objects, sacred objects, or objects of cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).

Deleted: the Agreement

B. As surface manager of the APE, FWS is the managing agency for any and all human remains and NAGPRA materials.

C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable state laws six (6) months after the execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be incorporated into this PA as Appendix D. At minimum, the POA shall contain:

Deleted: 3

- 1. Notification Procedures and Protocols;
- 2. Chain of Custody Procedures; and,
- 3. Contact information for Law Enforcement, Tribal Representatives, and Agency personnel.

Commented [MJR56]: See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

Commented [HM(N57R56)]: As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

D. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall

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1 immediately cease, the area shall be secured from further disturbance, and the  
2 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
3 1. Upon notification, the BLM shall follow the procedures described in the  
4 NAGPRA POA (*Appendix D*).

5 **XI. Curation**

- 6 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
7 during any activities associated with the Undertaking are property of FWS as  
8 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
9 *Curation of Federally-Owned and Administered Archaeological Collections* under  
10 FWS's existing agreement with the University of Alaska Museum of the North  
11 (UAMN).  
12  
13 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
14 submitting all materials recovered from federal lands to the UAMN within six  
15 months following approval of a final report, within one year following completion  
16 of the fieldwork that generated the collection, or other period of time as specified  
17 in the ARPA permit. All collections will be curation-ready, as determined by the  
18 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
19 behalf, will safeguard all materials from theft or damage by providing adequate  
20 interim storage facilities and conservation actions, consistent with the  
21 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
22 Permittee will provide BLM with all accession records and documentation  
23 associated with the transfer and curation of materials. BLM will share the  
24 documentation with the FWS. Information will be shared with the other  
25 Signatories and Consulting Parties as appropriate.  
26  
27 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
28 the curation of any materials that are collected during the implementation this PA,  
29 in perpetuity. Curation costs may include, but are not limited to, curation fees  
30 charged by approved institutions, acquisition of archival materials, shipping,  
31 cleaning, rehousing, and any other conservation action.  
32  
33 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
34 described above in Stipulation IX and in the NAGPRA POA (*Appendix D*).  
35  
36 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
37 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
38 other transfers of artifacts recovered from the APE to local communities or  
39 facilities to support and enhance cultural ties to the APE.

40 **XII. Annual PA Meeting and Reports**

- 41 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
42 day annual meeting concerning this PA within one (1) year of the PA execution,  
43 and each succeeding year by that approximate same date, thereafter. The

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1 meeting will consist of: an initial day where Consulting Parties and Signatories  
2 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
3 for the upcoming year, (3) verify/update contact information for Consulting  
4 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
5 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
6 functioning to all parties benefit. The second day of meetings shall be held by the  
7 Signatories to consider the input received by Consulting Parties, discuss the PA's  
8 implementation, required amendments (as necessary), and other business  
9 related to the application of the PA terms.

- 10 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
11 Archaeology, or at another location by consensus of the Signatories. The  
12 parties may participate by telephone if they so desire.
- 13 2. The BLM will distribute meeting minutes to the meeting participants within  
14 thirty (30) days of the meeting, and meeting participants will provide  
15 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
16 amend the minutes as a result of comments and distribute finalized minutes  
17 within another fifteen (15) days.
- 18 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
19 BLM that a meeting is necessary outside of the regularly scheduled annual  
20 meeting, the Signatories and Consulting Parties will consider their request.  
21 BLM, taking into consideration the results of consultation, shall decide  
22 whether to convene additional meetings.

23  
24 B. Annual PA Report:

- 25 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
26 and Consulting Parties with a draft copy of that year's annual report that  
27 describes the completed and upcoming activities associated with the  
28 stipulations of this agreement. The report will include the following  
29 information, as appropriate:
  - 30 a. Number of leases issued;
  - 31 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 32 c. Consultation activities undertaken;
  - 33 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 34 e. Upcoming/Planned activities.
- 35 2. Signatories and Consulting Parties may provide comments to BLM at or  
36 before the Annual meeting regarding the content of the Annual Report.
- 37 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
38 and submit a Final Annual Report to Signatories and Consulting Parties.

Commented [HM(N58)]: Request to have in Fairbanks was rejected. BLM, FWS, SHPO are in Anchorage. If consulting parties request an alternate location it will be considered. Also, parties may participate by teleconference.

39  
40 **XIII. Dispute Resolution**

- 41 A. Should any of the Signatories or Consulting Parties who have become  
42 Concurring Parties to this PA have insight, improvements, or objections  
43 regarding the manner in which the terms of this PA are implemented, the BLM  
44 will consult with such party to determine if the inclusion, suggestion,

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1 recommendation, or objection may be addressed to the satisfaction of the party,  
2 which may include presenting a proposed amendment to this PA in accordance  
3 with Stipulation XV.  
4

- 5 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
6 notify the Signatories of the dispute, and seek input from Signatories to resolve  
7 the dispute.  
8
- 9 B. If the Signatories determine that an objection cannot be resolved, the BLM will:  
10 1. Forward all documentation relevant to the dispute, including the BLM's  
11 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
12 advice on the resolution of the objection within thirty (30) calendar days of  
13 receiving adequate documentation. Prior to reaching a final decision on the  
14 dispute, BLM will prepare a written response that takes into account any  
15 timely advice or comments regarding the dispute from the ACHP, Signatories,  
16 and Consulting Parties, and provide them with a copy of this written response.  
17 BLM will then proceed according to its final decision.  
18
- 19 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
20 (30) calendar-day time period, BLM may make a final decision on the dispute  
21 and proceed accordingly. Prior to reaching such a final decision, BLM will  
22 prepare a written response that takes into account any timely comments  
23 regarding the dispute from the Signatories and Consulting Parties to the PA  
24 and provide them and the ACHP with a copy of such written response.  
25
- 26 3. Regardless of the results of the dispute resolution measures described  
27 above, the BLM's responsibility is to carry out all other actions subject to the  
28 terms of this PA that are not the subject of the dispute.

29 **XIV. Duration**

- 30 A. The date the ACHP signs this PA is the ratification date, which officially executes  
31 the PA.  
32
- 33 B. This PA will remain in effect for ten (10) years after its execution.  
34
- 35 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
36 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
37 below no later than six (6) months prior to expiration of the agreement. If  
38 appropriate, the Signatories may execute a new agreement or amend to extend  
39 the duration of the current agreement.

40 **XV. Amendments**

- 41 A. The Signatories may amend this PA at any time when such amendment is  
42 agreed to in writing by all Signatories. The amendment will be effective on the  
43 date a copy signed by all of the Signatories is filed with the ACHP.

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- 1  
2 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
3 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
4  
5 C. In the event that another federal agency not initially a party to or subject to this  
6 PA receives an application for funding/licensing/or permitting an Undertaking in  
7 the 1002 area as described in this PA, that agency may fulfill its Section 106  
8 responsibilities by stating in writing it concurs with the terms of this PA and  
9 notifying the Signatories and Consulting Parties that it intends to do so. Such  
10 agreement shall be evidenced by execution of a signature page signed by an  
11 authorized individual for that agency, distribution of said page to all Signatories  
12 and Consulting Parties, filing this page with the ACHP, and implementation of the  
13 terms of this PA.  
14  
15 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
16 to reflect changes in personnel or contact information without requiring the PA to  
17 be amended in accordance with the procedures described above.

18 **xvi. Termination**

- 19 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
20 carried out, that party shall immediately consult with the other Signatories to  
21 attempt to develop an amendment or agreement on other actions that would  
22 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
23 such consultation (or another time period agreed to by all Signatories) an  
24 amendment or agreement on other actions that would avoid termination cannot  
25 be reached, any Signatory may terminate the Agreement upon written notification  
26 to the other Signatories.  
27  
28 B. In the event that a Signatory terminates this PA, and prior to further Program  
29 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
30 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
31 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
32 as to the course of action it will pursue.

33 **xvii. Emergency Situations**

- 34 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
35 Consulting Parties of an emergency situation, which represents an imminent  
36 threat to public health or safety or creates a hazardous condition, that also has  
37 potential to harm Historic Properties or the subsequent response has potential to  
38 harm Historic Properties and the measures taken to respond to the emergency or  
39 hazardous condition. Should the Signatories or Consulting Parties desire to  
40 provide technical assistance to the BLM, they shall submit comments to BLM  
41 within seven (7) calendar days from notification, if the nature of the emergency or  
42 hazardous condition allows for such coordination.  
43

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- 1 B. If the APE of the emergency situation has been surveyed for Historic Properties  
2 and none is within the APE, then BLM will request concurrence on a  
3 determination of “no Historic Properties affected” from the SHPO within five (5)  
4 calendar days from the initial notification.  
5
- 6 C. If the APE has not been surveyed for potential Historic Properties, then  
7 emergency actions will be monitored by a SOI qualified professional or the APE  
8 will be inventoried by a SOI-qualified professional no later than one (1) year after  
9 the emergency action is completed. BLM will require that a monitoring report or  
10 inventory report will be submitted to Signatories and Consulting Parties within  
11 thirty (30) days of the end of fieldwork.  
12
- 13 D. If a previously known or unknown Historic Property is adversely affected by  
14 emergency actions the BLM will consult with Signatories and Consulting Parties  
15 to resolve the adverse effect pursuant 36 CFR § 800.6.

Commented [MJR59]: Make sentence active. Who is doing this?

Commented [HM(N60R59)]: BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice.

Commented [MJR61]: Make sentence active. Who is doing this?

Commented [HM(N62R61)]: BLM has reviewed entire document for passive sentences and revised, where appropriate, to active voice.

16 **XVIII. Anti-Deficiency Provision**

- 17 A. Any obligation of the federal agencies set forth in this PA is subject to and  
18 dependent on appropriations by Congress and allocation of sufficient funds for  
19 that purpose. The federal agencies shall make reasonable and good faith efforts  
20 to secure the necessary funds to implement this PA in its entirety. If compliance  
21 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
22 implement the stipulations of this agreement, the federal agencies shall consult in  
23 accordance with the amendment and termination procedures found at  
24 Stipulations XV and XVI of this agreement.

25 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
26 that the BLM and FWS have taken into account the effects of the Undertaking on  
27 Historic Properties and have afforded the ACHP an opportunity to comment.  
28

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

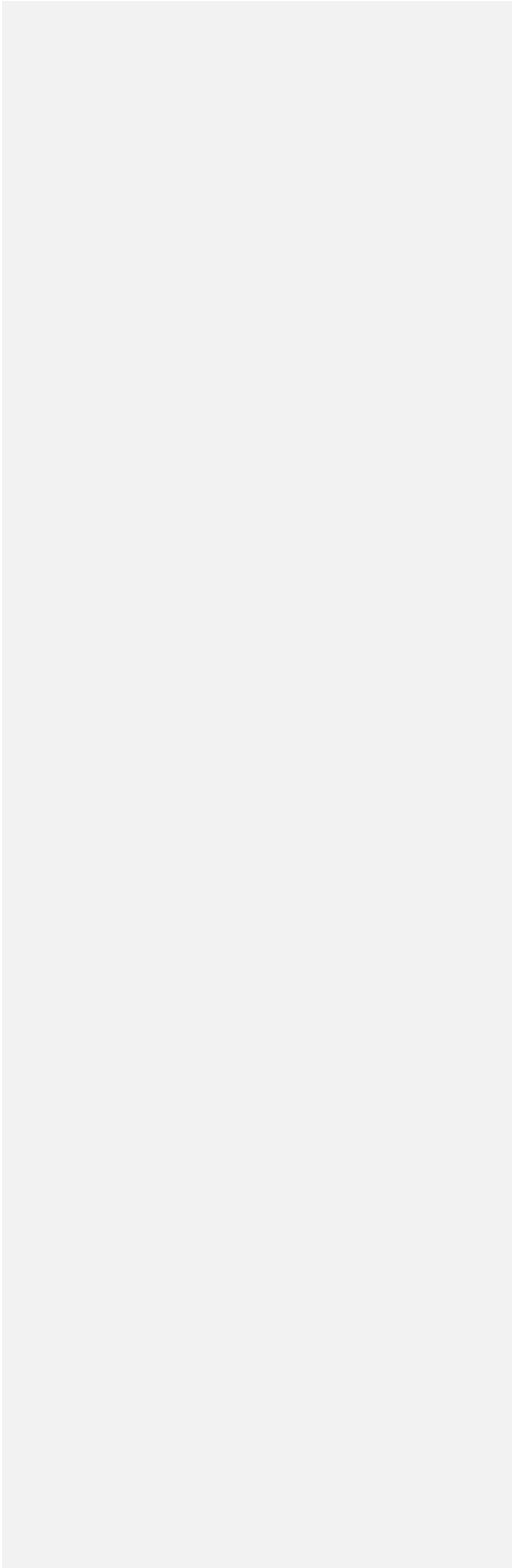
**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

DRAFT

DRAFT





DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONCURRING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

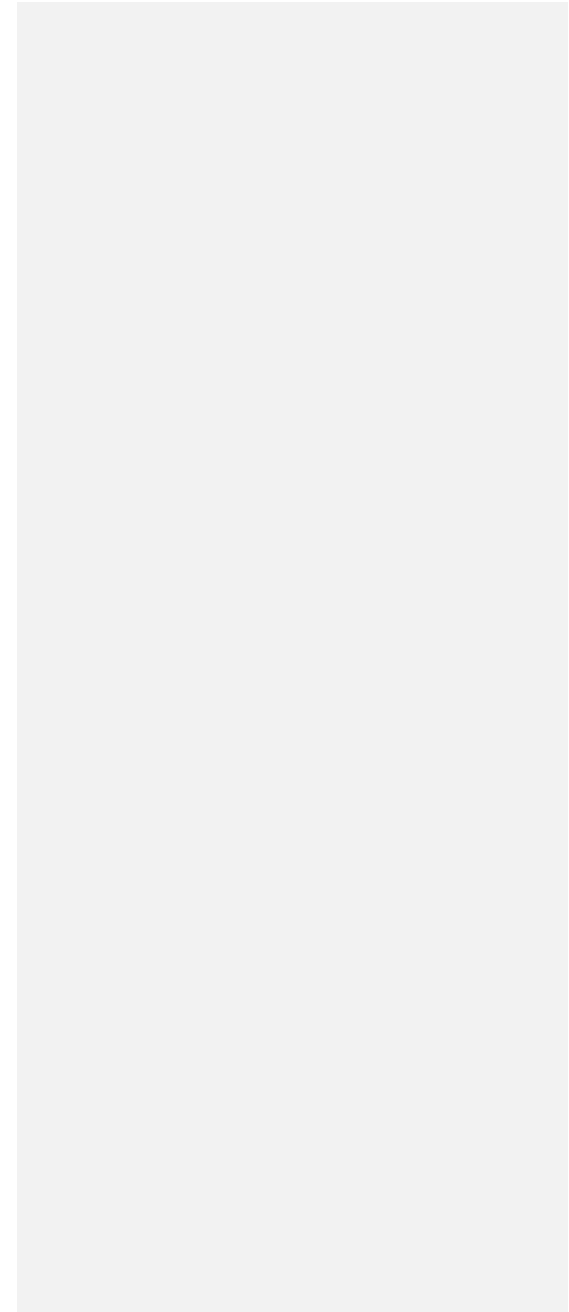
By: \_\_\_\_\_  
Date: \_\_\_\_\_

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1 **Appendix A: Area of Potential Effects**  
2

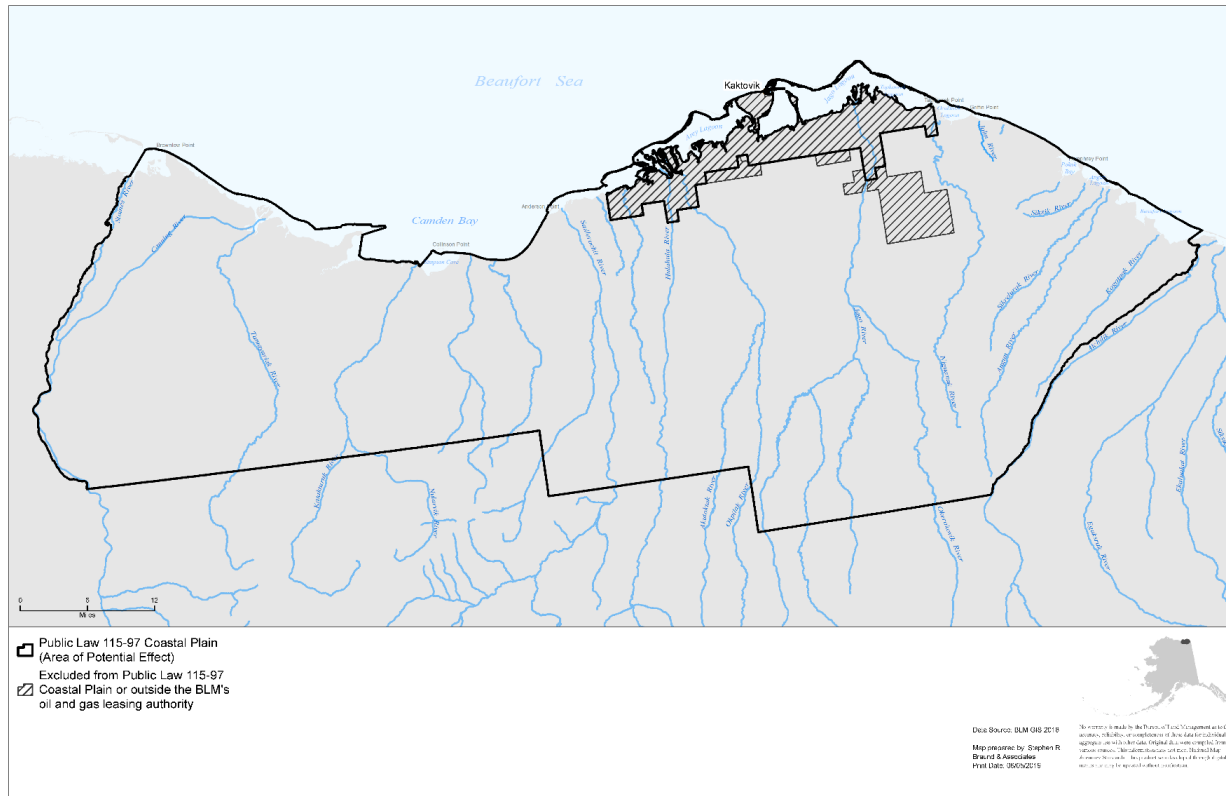
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2

A-2

NVVTG, AVC, VVC Comments on Draft PA\_07.11.19.docx

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1 **Appendix B: Consulting Parties**

2  
3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
4 governments invited or requested to participate in consultation (\*indicates a response that they will  
5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

**Commented [WF63]:** This table should list every entity that was invited or requested to become a consulting party, including federal agencies and the state. It should also include the dates that those entities were invited/requested and the dates those invitations/requests were accepted. It should also more clearly show which parties did not participate. The PA also says this table will provide the POC, that should include the names of the POCs and their titles.

**Commented [HM(N64R63):** Revised PA to say "Contact information for consulting parties"

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

6

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

**Commented [MJR65]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

**Commented [HM(N66R65):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

DRAFT



1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

**Commented [MJR67]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

**Commented [HM(N68R67):** As discussed in 7/16/19 meeting, Appendix C will be completed after execution of PA and does not conflict with ACHP requirements

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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1 **Appendix F: DRAFT PA Tracking Sheet**  
2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

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**Commented [WF69]:** Have there been no subsequent revisions or drafts since 3/25/19?

**Commented [HM(N70R69):** Table will be updated

[NSB Comments on Draft Programmatic Agreement – July 11, 2019](#)

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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28

**Commented [KSF1]:** The Programmatic Agreement would benefit from a definition section and an acronym list. The document uses certain terms without defining those terms (i.e. "Project," "Project Types," "Administrative Action," "Permittee"). Additionally, there is inconsistency in the use of several terms throughout the document. For example, the use of the term "APE" should be clarified to differentiate the "Programmatic Agreement APE" (See whereas clauses) from the "Project APE" (See Section V.H).

**Commented [HM(N2R1):** Add Definition Appendix (will provide draft)

**Deleted: ¶**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed on or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing program, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

Commented [KSF3]: Needs to be updated. There are 54 sites.

Commented [HM(N4R3)]: Update to be consistent with TLUI information provided for EIS

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)   
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties

8 **STIPULATIONS**  
9

10 The BLM shall ensure that the following measures are carried out:

11 **I. Administrative**

- 12 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
13 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
14 ensure that all lessees are aware that they must comply with the terms of this PA  
15 during activities on their lease(s).  
16
- 17 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
18 contractors engaged in exploration, development, production, or reclamation  
19 work associated with an issued Program lease prior to their arrival within the  
20 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
21 all contractors are made aware of the PA and that BLM requires compliance with  
22 its terms.  
23
- 24 C. BLM shall require that any type of archaeological work associated with BLM’s  
25 Program proposed within the APE not performed by BLM or FWS professional  
26 staff will be conducted only under terms of a federally issued Permit For  
27 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
28 application to the BLM or otherwise coordinated by BLM.  
29
- 30 D. “BLM shall ensure any permittees receive appropriate North Slope Borough  
31 traditional land use inventory authorizations before issuing permits for  
32 exploration, development, production, or reclamation work.”  
33
- 34 E. If ownership of a lease is transferred, BLM will include as a condition of the  
35 transfer that the new lessee must adhere to the terms of this PA.  
36
- 37 F. Electronic mail (e-mail) shall serve as the official correspondence method for all  
38 communications regarding this PA and its provisions, with an alternative method  
39 of postal mail delivery if the contacts do not have reliable e-mail.  
40

**Commented [HM(N5):** Insertion not to be included. No BLM authorizations circumvent the requirement for other permits and authorizations. Standard language to this effect is provided as a lease stipulation.  
**Deleted:**



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 G. Consulting Parties and Signatories shall provide two points of contact for this PA.  
2 It is the responsibility of each Signatory and Consulting Party to immediately  
3 inform BLM of any change in name, mailing address, e-mail address, or phone  
4 number for any point-of-contact. Once received, the BLM will forward this  
5 information to all Signatories and Consulting Parties by e-mail or mail within five  
6 (5) business days. Contact information for Signatories and Consulting Parties is  
7 included below in *Appendix B: Consulting Parties*.  
8
- 9 H. At any time, Signatories to this PA may request additional time for reviews of  
10 documentation, preparation of guidance documents, or any other time-sensitive  
11 materials outlined in this PA by providing a written request to all Signatories.  
12
- 13 I. The Signatories may execute this PA in counterparts, with a separate page for  
14 each Signatory.

15 **II. Scope of the PA**

- 16 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and  
17 other federal laws that may be affected by the BLM's Undertaking within the  
18 APE.  
19
- 20 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
21 under Section 106 of NHPA, including consultation with Indian Tribes, for  
22 Program decisions that may be implemented in accordance with the decisions  
23 supported by the Program EIS and BLM policy.  
24
- 25 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
26 involving reimbursement or contribution of funds between the parties to this PA  
27 will be handled in accordance with applicable laws, regulations, and procedures  
28 including those for Federal Government procurement and printing. Separate  
29 agreements will outline such endeavors and will be made in writing by  
30 representatives of the parties and will be independently authorized by  
31 appropriate statutory authority. This PA does not provide such authority.

Commented [KSF6]: Define historic property

Commented [HM(N7R6)]: Will be included in appendix

32 **III. Agency Coordination Procedures**

- 33 A. Agency Roles and Coordination  
34 1. BLM  
35 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
36 106 compliance, is responsible for the following actions:  
37 i. Conducting Section 106 reviews of Projects the PA addresses;  
38 ii. Receiving permit applications and issuing permits that may be needed  
39 for Section 106 compliance work for oil and gas-related projects in the  
40 APE. Such permits needed may include various types of land use  
41 authorizations as well as Permits for Archaeological Investigations  
42 ("ARPA" Permits).  
43

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 2. FWS

- 2 a. FWS, as surface manager of the APE, is responsible for the following  
3 actions:
- 4 i. Receiving, reviewing, commenting on, and evaluating applications for  
5 ARPA permits;
  - 6 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
7 determinations and findings made by BLM;
  - 8 iii. Managing artifact collections originating from studies conducted within  
9 the APE;
  - 10 iv. Managing and conducting appropriate actions associated with  
11 NAGPRA materials and Human Remains.
- 12

13 **IV. Section 106 Consultation Plan and Procedures**

- 14 A. BLM anticipates that the Program will include several Project types and that each  
15 type will require consultation with Signatories and Consulting Parties. Project  
16 types include:
- 17 1. Leasing;
  - 18 2. Inventory, Research, and Monitoring Activities;
  - 19 3. Geophysical Exploration;
  - 20 4. Applications for Permit to Drill (APD) (drilling exploration and development);
  - 21 5. Marine and Intertidal Activities and Operations;
  - 22 6. Operations and Production;
  - 23 7. Inspections and Enforcement; and
  - 24 8. Reclamation
- 25
- 26 B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as  
27 necessary” basis throughout the life of this PA on the above Project types to  
28 include, but not limited to the following:
- 29 1. Collect information to inform permitting, NEPA reviews, and if appropriate,  
30 selection of alternatives;
  - 31 2. Develop appropriate research designs and investigative methods for potential  
32 Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)  
33 studies;
  - 34 3. Determine if incorporating Project-specific conditions and/or stipulations into  
35 BLM-permitted activities can avoid, minimize, and/or mitigate effects to  
36 Historic Properties within the Project-specific APE;
  - 37 4. Consider conducting periodic joint (i.e., BLM and representatives from  
38 interested Consulting Parties) site visits within the Project-specific APE(s).
  - 39 5. Develop Project-specific Historic Properties Management Plans (HPMPs) to  
40 avoid, minimize, and/or mitigate adverse effects to Historic Properties that  
41 may result from Program activities. These plans may include:
    - 42 a. Monitoring lessee activities and effects on Historic Properties within the  
43 Project-specific APE(s);
    - 44 b. Periodic Historic Property condition assessments;

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1 c. Documentation review to ensure lessees have fulfilled commitments  
2 stipulated by BLM, and have complied with the terms of this PA.  
3

4 C. The implementing regulations of Section 106 of the NHPA (36 CFR §  
5 800.2[c][2][ii][A-C]) require BLM to:

- 6 1. Consult with any Indian Tribe that attaches religious and cultural significance  
7 to Historic Properties in areas the tribe historically occupied that may be  
8 affected by an Undertaking,  
9 2. Provide Indian Tribes with a reasonable opportunity to identify their concerns  
10 about Historic Properties, to advise on the identification and evaluation of  
11 Historic Properties, including those of traditional religious and cultural  
12 importance, to articulate their views on the Undertaking's effects on such  
13 properties, and to participate in the resolution of adverse effects,  
14 3. Consult with Indian Tribes in a sensitive manner respectful of tribal  
15 sovereignty, and in a manner sensitive to the concerns and needs of the  
16 Indian Tribe.  
17 4. In addition to those items listed above concerning BLM's consultation  
18 obligations to Indian Tribes under the NHPA, BLM shall consult with Indian  
19 Tribes as appropriate and needed, to:  
20 a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see  
21 *Appendix D*); and  
22 b. Consider including Tribal representatives to participate in fieldwork,  
23 monitoring, post-field analyses, and reporting activities.

24  
25 D. At any time throughout the life of the PA, Consulting Parties may contact the  
26 BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of  
27 concern to the Signatories and other Consulting Parties at the Annual PA  
28 Meeting.  
29

30 E. At any time throughout the life of the PA, any outside entity not initially part of this  
31 PA, including any Indian Tribes, may contact the BLM and request to become a  
32 Consulting Party. BLM will consider any such request and notify the Signatories  
33 and other Consulting Parties of the request and BLM's decision.

34 V. Section 106 Procedures

35 A. BLM's Undertaking involves a number of activities associated with oil and gas  
36 leasing and associated activities within the APE that have varying potentials to  
37 cause effects to Historic Properties, all of which are covered by this PA. The  
38 steps below outline an alternate process for BLM to comply with NHPA for the  
39 Undertaking, which will be carried out by BLM or FWS professional staff or non-  
40 federal professionals who meet the Secretary of the Interior's (SOI) Professional  
41 Qualifications Standards (48 Federal Register 44716-44742), as appropriate.  
42

43 B. BLM shall make a good faith effort to identify and evaluate historic properties but  
44 anticipates that in certain cases a 100 percent identification of a Project APE may  
45 not be necessary, and NHRP evaluations may be conducted on all or some of

Commented [HM(N8)]: Not to be included as it is not consistent with the regulations.

Commented [KSF9]: NSB Comment: Section V defines Section 106 procedures for activities associated with the oil and gas leasing and associated activities within the APE. This section is unclear. It is unclear as to what federal actions implementing the activities will trigger further Section 106 review. Section V provides that the BLM and USFWS are responsible for implementing Section 106 review, but does not specifically identify the BLM and USFWS actions that will trigger this further Section 106 review and when the further Section 106 review will occur.

Commented [HM(N10R9)]: Unclear as to the recommendation.

Commented [KSF11]: Do you mean historic properties? Section V.B statement that "BLM . . . anticipates that in certain cases a 100 percent identification of a Project APE may not be necessary" may be inconsistent with the regulations implementing Section 106. See 36 CFR 800.4(a). Please clarify.

Commented [HM(N12R11)]: Agreed. Delete "of a Project APE"

Commented [KSF13]: I think this is supposed to be NRHP – National Register of Historic Places. An acronym definition table would be helpful.

Commented [HM(N14R13)]: Correct. Please fix

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1 identified properties. BLM will collect, or direct lessees and/or their contractors to  
2 collect, the amount of information necessary for the BLM to make decisions  
3 regarding the potential of the Project Type(s) to affect Historic Properties.  
4

5 C. At its discretion, BLM may submit documentation requesting SHPO concurrence  
6 on determinations of eligibility and findings of effect concurrently in a combined  
7 submission for Project Types described below.  
8

9 D. Nothing shall prevent the BLM from seeking informal consultation with the  
10 Signatories or Consulting Parties regarding the preparation of determinations of  
11 eligibility or findings of effect.  
12

13 F. **Step 1: Oil and Gas Program Project Types Addressed under this PA**

14 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
15 that this PA will address the following Project types associated with the BLM's  
16 Oil and Gas Program within the APE:

- 17 a. Lease Sales
- 18 b. Inventory, Research, and Monitoring Activities
- 19 c. Geophysical Exploration
- 20 d. APD
- 21 e. Marine and Intertidal Activities and Operations
- 22 f. Operations and Production
- 23 g. Inspection and Enforcement
- 24 h. Reclamation

25 G. **Step 2: Assess Project Potential to Cause Effects**

26 1. Prior to providing authorization or approval for a Project, BLM, in accordance  
27 with 36 CFR 800.3[a], will determine if such a Project under review has  
28 potential to cause effects on Historic Properties. BLM shall determine that a  
29 Project type does not have the potential to cause effects if it meets one or  
30 more of the following conditions:

- 31 a. No new ground disturbance;
- 32 b. Lease Sale or other Administrative Action; or
- 33 c. Standard maintenance, repairs, or replacement of existing facilities or  
34 equipment.

35 2. If the Project meets one or more of the above conditions, BLM shall make a  
36 determination that the Project has “no potential to cause effects” and attach  
37 letter to the Project file [36 CFR 800.3(a)(1) determination].

38 3. If the Project does not meet the above conditions, and the Project type  
39 consists of Inventory, Research, and Monitoring Activities, Geophysical  
40 Exploration, Marine and Intertidal Activities and Operations, Operations and  
41 Production, or Inspection and Enforcement, proceed to Step 3.  
42

43 4. If the Project does not meet the above conditions, and the Project is an APD  
44 or Reclamation, BLM will consult with Signatories and Consulting Parties, and  
45 BLM will determine if the Project should be addressed under this PA, or if a

**Commented [KSF15]:** Section V defines Section 106 procedures for activities associated with the oil and gas leasing and associated activities within the APE. This section is unclear. It is unclear as to what federal actions implementing the activities will trigger further Section 106 review. Section V provides that the BLM and USFWS are responsible for implementing Section 106 review, but does not specifically identify the BLM and USFWS actions that will trigger this further Section 106 review and when the further Section 106 review will occur.

**Commented [HM(N16R15):** Unclear as to recommendation

**Commented [KSF17]:** Applications for Permit to Drill

**Commented [HM(N18R17):** Agreed – spell out

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**Commented [KSF19]:** The term “administrative action” is unclear as it relates to project types.

**Commented [HM(N20R19):** Include in definition appendix

**Commented [KSF21]:** Where do these conditions come from? I don't see them in CFR 800.3(a)

**Commented [HM(N22R21):** These conditions were developed in consultation with the signatories and consulting parties as to the type of activities that do not have the potential to cause effects

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 separate Section 106 process and agreement document (“kick-out”) must  
2 occur in accordance with Step 8 below.  
3

4 **H. Step 3: APE**

- 5 1. Has BLM, in consultation with the SHPO, defined the APE?  
6 a. If yes, proceed to Step 4.  
7 b. If no, BLM defines the APE in consultation with SHPO.  
8

9 **I. Step 4: Identification**

- 10 1. Has BLM determined that adequate efforts to identify Historic Properties  
11 consistent with the procedures described in *Appendix C: Methods to*  
12 *Inventory the APE* have been completed within the APE?  
13 a. If yes, proceed to Step 5.  
14 b. If no, BLM will implement or direct the implementation of methods detailed  
15 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
16 level of effort to identify Historic Properties within the APE of the Project.  
17

**Commented [KSF23]:** Please revise to require implementation of the methods detailed in Appendix C, instead of requiring “adequate efforts” to identify Historic Properties.

**Commented [HM(N24R23):** Delete “adequate”

18 **J. Step 5: Preliminary APE Assessment**

- 19 1. Has BLM determined that identification efforts have resulted in the  
20 identification of potential Historic Properties within the APE?  
21 a. If yes, proceed to Step 6.  
22 b. If no, proceed to Step 7.  
23

24 **K. Step 6: Evaluation**

- 25 1. Has BLM determined that potential Historic Properties identified within the  
26 APE have been evaluated for NRHP eligibility?  
27 a. If yes, proceed to Step 7.  
28 b. If no, the BLM will evaluate potential Historic Properties in the APE of the  
29 Project for NRHP eligibility (NRHP Bulletin 15).  
30 i. BLM will concurrently consult with FWS on all determinations of  
31 eligibility (DOEs), and with Indian Tribes on DOEs concerning potential  
32 Historic Properties of religious and cultural significance prior to  
33 submitting them to SHPO for concurrence.  
34 1. FWS will have thirty (30) days to review and respond to  
35 determinations submitted by BLM. If FWS does not offer comment  
36 within the review period, then BLM will presume agreement with the  
37 DOE(s).  
38 2. Indian Tribes will have thirty (30) days to review and respond to  
39 determinations submitted by BLM. If an Indian Tribe(s) does not  
40 offer comment within the review period, then BLM will presume  
41 agreement with the DOE(s).  
42 ii. Additional time to review a BLM submittal of a DOE(s) may be  
43 requested by FWS and/or Indian Tribes, up to thirty (30) days per  
44 submittal.

**Commented [KSF25]:** NSB Comment: Section V.K.1.b.i appears inconsistent with the commitment in Section IV.C.2 (and potentially 36 CFR Section 800.2). Section IV.K appears to limit the consultation obligation to “potential Historic Properties of religious and cultural significance” while Section IV.C appears to apply to all potential Historic Properties. Please address the potential inconsistency.

**Commented [HM(N26R25):** This requirement is consistent with requirements of 800.2(c)(2)(ii)

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1           iii. After the review period for FWS and Indian Tribes has elapsed,  
2 including any extensions requested, BLM will submit the DOE to  
3 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
4 does not offer comment within the review period, then BLM will  
5 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
6 Step 7.  
7           1. BLM may combine the DOE submittal to SHPO with a finding of  
8 effect determination and request for concurrence as outlined below  
9 in Step 7.
- 10          iv. Additional time to review a BLM submittal of a DOE(s) may be  
11 requested by SHPO, up to thirty (30) days per submittal.
- 12          v. If agreement cannot be reached on a DOE between BLM and SHPO,  
13 then the BLM shall follow the procedures outlined at 36 CFR §  
14 800.4(c)(2).  
15           1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe  
16 disagrees with BLM's DOE regarding a property of religious and  
17 cultural significance, it may ask the Council to request that the BLM  
18 obtain a determination from the Secretary of the Interior, as  
19 delegated to the Keeper of the NRHP.
- 20          vi. Once BLM completes the required NRHP evaluations in the APE, BLM  
21 may then proceed to Step 7.

Commented [KSF27]: Historic Property

Commented [HM(N28R27)]: Language is consistent with regs cited

22  
23 **L. Step 7: Assess Effects**

- 24          1. Has BLM determined there are Historic Properties in the APE?  
25           a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]),  
26 which shall include consultation with Signatories and Consulting Parties.  
27           i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM  
28 shall notify Signatories and Consulting Parties of the finding and  
29 provide them with documentation supporting this finding.  
30               1. If SHPO concurs with the BLM's determination, BLM shall  
31 document SHPO concurrence to the Project file.  
32               2. If SHPO does not concur, and resolution cannot be reached  
33 through consultation, BLM shall follow the procedures outlined at  
34 36 CFR 800.5(c)(2-3).  
35           ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then  
36 BLM shall request the lessee or applicant propose methods to avoid,  
37 minimize, and/or mitigate adverse effects.  
38               1. Upon receipt of the applicant's proposed methods to avoid,  
39 minimize, and/or mitigate adverse effects, BLM shall reapply the  
40 criteria of adverse effect in consultation with Signatories and  
41 Consulting Parties, and if necessary, revise their finding of effect.  
42           iii. If BLM, in consultation with Signatories and Consulting Parties  
43 determines that an applicant's proposed methods to avoid, minimize,

Commented [KSF29]: Please specify that consulting parties disagreements must be resolved pursuant to the process identified in 36 CFR 800.5(c)(2).

Commented [HM(N30R29)]: Language changed (see SHPO edits)

1 and/or mitigate adverse effects will still result in adverse effects to  
2 Historic Properties, the process shall revert to the standard Section  
3 106 procedures at 36 CFR 800.6 & 800.7.  
4

- 5 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR  
6 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty  
7 (30) days to review the BLM’s determination. BLM shall also provide  
8 notice to the Signatories and Consulting Parties of this finding in  
9 accordance with 36 CFR 800.4(d)(1).  
10 i. If SHPO concurs with the BLM’s determination, BLM shall document  
11 SHPO concurrence to the Project file.  
12 ii. If SHPO does not concur, and resolution cannot be reached through  
13 consultation between SHPO and BLM, BLM shall follow the  
14 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).  
15

16 **M. Step 8: Decision regarding Undertaking**

- 17 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
18 applicable, and BLM has documented the appropriate finding of effect and  
19 resolution efforts, as required, to the Project file.  
20  
21 2. Alternatively, if BLM has determined that a separate Section 106 process and  
22 agreement document (“kick-out”) is required for an APD or Reclamation  
23 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
24 subject to this PA only after the separate Section 106 review has been  
25 completed, and if necessary, the appropriate agreement document (e.g.,  
26 Memorandum of Agreement or Programmatic Agreement) has been executed  
27 for the Project.  
28

29 **N. Step 9: Reporting**

- 30 1. BLM will include a summary of all Projects reviewed under this PA in the  
31 previous year in the annual PA report [Stipulation XII]. The summary will  
32 include a synopsis for each project, including at minimum:  
33 a. A description of the Project;  
34 b. Delineation of the APE;  
35 c. Identification efforts within the APE;  
36 d. NRHP eligibility of known properties within the APE;  
37 e. BLM’s finding of effect for the Project; and,  
38 f. The Qualifications of the Individual who conducted the PA Compliance  
39 Review.  
40  
41 2. BLM will submit reports associated with identification, evaluation, and  
42 assessments of effect that were used to support BLM findings of effect to the

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1 SHPO.

2  
3 BLM may append reports associated with identification, evaluation, and  
4 assessments of effect that were used to support BLM finding to the annual PA  
5 report, provided they do not contain sensitive information regarding Historic  
6 Properties.

7 **VI. Methods to Inventory APE**

- 8 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*  
9 within six (6) months of execution of the PA. BLM may request additional time to  
10 complete this draft; however, BLM must submit this request in writing to the  
11 Signatories for concurrence.  
12  
13 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
14 comment.  
15  
16 C. BLM will consider timely comments received and revise the draft accordingly.  
17 Multiple drafts may be required, and a final draft will be sent out for review no  
18 later than one year from the execution of the PA.  
19  
20 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
21 the first draft and the final draft concurrent with Signatory review.  
22  
23 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*  
24 *Inventory the APE* before it is considered final.  
25  
26 F. Drafts cannot be used as interim guidance. If a project needs to move through  
27 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*  
28 *APE*, then the appropriate level of effort and methods will be determined through  
29 consultation among BLM, FWS, and SHPO on a case-by-case basis.

30 **VII. Standards**

- 31 A. Professional Qualifications:  
32 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
33 shall ensure that all work carried out pursuant to this Agreement shall be  
34 done by or under the direct supervision of a qualified historic preservation  
35 professionals who meet the [Secretary of Interior's](#) (SOI) Professional  
36 Qualifications Standards (48 Federal Register 44716-44742). The BLM and  
37 FWS, through review of permit applications or other means, shall ensure that  
38 consultants retained for services pursuant to the Agreement meet these  
39 standards.  
40  
41 2. A "qualified historic preservation professional" is a person who meets the  
42 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
43 Standards and Guidelines [As Amended and Annotated]



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1 (http://www.nps.gov/history/local-law/arch\_stnds\_9.htm ) or revised  
2 equivalent.

- 3  
4 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
5 identifying and assessing the eligibility of Historic Properties that may  
6 possess religious or cultural significance to Indian Tribes (36 CFR  
7 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
8 identifying and evaluating Historic Properties of religious or cultural  
9 significance to them.

10  
11 B. Professional Standards:

- 12 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
13 ensure that all work conducted as a result of this PA not otherwise done by  
14 BLM or FWS professional staff is performed in accordance with the SOI  
15 Standards for Archeology and Historic Preservation (Standards and  
16 Guidelines) (48 Fed. Reg. 44716-44742).  
17  
18 2. BLM shall require that persons supervising and conducting work on the behalf  
19 of lessees hold the appropriate BLM permits and/or authorizations as  
20 appropriate for inventory, monitoring, and other investigations, and meet the  
21 Standards and Guidelines, as well as the SOI Professional Qualification  
22 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
23 that persons supervising and conducting work on the behalf of lessees  
24 comply with the NAGPRA POA.  
25  
26 3. Investigations associated with Program activities will be conducted in  
27 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
28 the standards presented in BLM Manual 8110  
29 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
30 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)).  
31  
32 4. Reports regarding Historic Properties shall meet the standards outlined in the  
33 SOI Standards for Archeology and Historic Preservation (Standards and  
34 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
35 guidance (i.e., BLM Manual 8110), and Alaska Office of History and  
36 Archaeology guidelines.

37 **VIII. Unanticipated Discoveries**

- 38 A. During the entire implementation of this Undertaking, BLM will ensure that the  
39 Signatories and Consulting Parties are informed of unanticipated discoveries  
40 within the Undertaking's APE during lessees or their contractor related activities  
41 associated with the BLM's oil and gas leasing program.  
42  
43 B. Lessees or their contactors will not take any actions that would adversely affect  
44 the discovery which may be eligible for listing in the NRHP without written

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1 approval from BLM.

2  
3 C. Upon the unanticipated discovery, the following steps listed below will be  
4 undertaken. If the unanticipated discovery includes human remains, burials, or  
5 funerary items, the additional steps listed in Stipulation IX shall be followed.

6  
7 1. The lessee will ensure that their operator or contractor will halt all activity in  
8 the area of the find and an appropriate buffer surrounding the area where  
9 further subsurface finds can be reasonably expected to occur, to be no less  
10 than fifty (50) feet, and will notify the BLM within one business day;

11  
12 2. The BLM shall require the suspension of activity within the established buffer,  
13 and shall notify the Signatories and Consulting Parties within two business  
14 days of the discovery;

15  
16 3. The BLM or a SOI-qualified archaeologist approved by them will inspect the  
17 property as soon as possible and collect enough information to determine (if  
18 possible):

- 19 a. The extent of cultural materials associated with the inadvertent discovery  
20 or effect;  
21 b. The degree of integrity; and  
22 c. The cultural affiliation of the materials (if possible).

23  
24 4. Within five (5) business days, BLM shall provide a summary of the information  
25 collected at the discovery to Signatories and Consulting Parties, which will  
26 include BLM's preliminary assessment of the NRHP eligibility of the  
27 discovery.

28  
29 5. Within 14 days of the BLM's distribution of the information regarding the  
30 discovery, the BLM, in consultation with the Signatories and Consulting  
31 Parties, will determine whether the discovery encountered is eligible for listing  
32 in the NRHP.

- 33 a. If the BLM determines that the discovery is ineligible for listing in the  
34 NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
35 activities in the area of the discovery.  
36 b. If the BLM determines the discovery is eligible for listing in the NRHP and  
37 SHPO concurs, BLM will direct the lessee to prepare a plan for its  
38 avoidance, protection, or recovery of information in consultation with BLM,  
39 Signatories and Consulting Parties, as appropriate.  
40 i. Within five (5) business days of receipt, BLM shall distribute copies of  
41 the proposed plan to Signatories and Consulting Parties for review and  
42 comment.  
43 ii. Signatories and Consulting Parties shall have seven (7) days to review  
44 the proposed plan and provide comments to BLM.

Deleted:

Commented [KSF31]: Please define "SOI-qualified archaeologist." Please clarify that the BLM representative who inspects the property will be qualified.

Commented [HM(N32R31): Add to definition appendix; BLM professional staff are required to follow OPM hiring standards for archaeologist professional series

Deleted:

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- 1           iii. BLM shall take into consideration timely comments received on the  
2 proposed plan and make a determination to either approve or request  
3 revisions to the proposed plan.  
4           A. In the event that BLM requests revisions to the plan, BLM shall  
5 redistribute the revised plan under the same timelines as above,  
6 and Signatories and Consulting Parties shall have the same period  
7 of review.  
8

- 9           6. Work in the established buffer will not proceed until either:  
10           a. BLM approves plan and requires its implementation; or  
11           b. The BLM determines that the discovery is not eligible for the NRHP, and  
12 the SHPO concurs with this determination.  
13

- 14           D. BLM will address any disputes over the evaluation or treatment of unanticipated  
15 discoveries as provided in Stipulation XIII of this PA.

16 **IX. Unanticipated Effects**

- 17           A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
18 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
19 Property, BLM, in consultation with Signatories and Consulting Parties, will  
20 assess the effect(s), develop a plan to address the unanticipated effect(s), and  
21 avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to  
22 complete this process within 180 days of the recognition of the unanticipated  
23 effect(s).  
24  
25           B. BLM will address any disputes over the resolution of unanticipated effects as  
26 provided in Stipulation XIII of this PA.

27 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
28 **Objects, and Objects of Cultural Patrimony**

- 29           A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
30 that any Native American burials, human remains, and/or related items  
31 discovered on federal lands during implementation of the terms of the Agreement  
32 will be treated with dignity and respect, and that all procedures guiding the  
33 treatment of human remains, funerary objects, sacred objects, or objects of  
34 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
35  
36           B. As surface manager of the APE, FWS is the managing agency for any and all  
37 human remains and NAGPRA materials.  
38  
39           C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
40 Remains and NAGPRA Plan of Action (POA) that complies with 43 CFR 10.5  
41 and applicable state laws six (6) months after the execution of this PA. Upon  
42 completion, the Human Remains and NAGPRA POA shall be incorporated into  
43 this PA as *Appendix D*. At minimum, the POA shall contain:

Commented [KSF33]: Please define "NAGPRA materials."

Commented [HM(N34R33)]: Add to definition appendix

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- 1 1. Notification Procedures and Protocols;
- 2 2. Chain of Custody Procedures; and,
- 3 3. Contact information for Law Enforcement, Tribal Representatives, and
- 4 Agency personnel.

- 5
- 6 D. In the event that any Native American burials, human remains, or funerary items
- 7 are inadvertently encountered during any Program activity, the activity shall
- 8 immediately cease, the area shall be secured from further disturbance, and the
- 9 permittee, lessee or agency shall immediately notify the BLM of the discovery.
- 10 1. Upon notification, the BLM shall follow the procedures described in the
  - 11 NAGPRA POA (*Appendix D*).

**Commented [KSF35]:** The document is not consistent in terms of its reference to the lessee's obligations. For example, Sections X and XI use the term "permittee" but do not define that term. Please ensure consistent use of terminology throughout the Programmatic Agreement.

**Commented [HM(N36R35):** Will check for consistent use of terminolog=y

12 **XI. Curation**

- 13 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered
- 14 during any activities associated with the Undertaking are property of FWS as
- 15 surface manager of the APE and will be curated in accordance with 36 CFR 79,
- 16 *Curation of Federally-Owned and Administered Archaeological Collections* under
- 17 FWS' existing agreement with the University of Alaska Museum of the North
- 18 (UAMN).
- 19
- 20 B. The Permittee, and any contractors hired on their behalf, will be responsible for
- 21 submitting all materials recovered from federal lands to the UAMN within six
- 22 months following approval of a final report, within one year following completion
- 23 of the fieldwork that generated the collection, or other period of time as specified
- 24 in the ARPA permit. All collections will be curation-ready, as determined by the
- 25 UAMN. Prior to disposition, the Permittee, and any contractors hired on its
- 26 behalf, will safeguard all materials from theft or damage by providing adequate
- 27 interim storage facilities and conservation actions, consistent with the
- 28 requirements in 36 CFR 79. Within thirty (30) days following disposition, the
- 29 Permittee will provide BLM with all accession records and documentation
- 30 associated with the transfer and curation of materials. BLM will share the
- 31 documentation with the FWS. Information will be shared with the other
- 32 Signatories and Consulting Parties as appropriate.
- 33
- 34 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with
- 35 the curation of any materials that are collected during the implementation this PA,
- 36 in perpetuity. Curation costs may include, but are not limited to, curation fees
- 37 charged by approved institutions, acquisition of archival materials, shipping,
- 38 cleaning, rehousing, and any other conservation action.
- 39
- 40 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as
- 41 described above in Stipulation IX and in the NAGPRA POA (*Appendix D*).
- 42
- 43 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting
- 44 with Indian Tribes or other Consulting Parties to arrange for long-term loans or

**Commented [KSF37]:** Could also curate with Inupiat Heritage Center

**Commented [HM(N38R37):** Any museums that meet the 36 CFR 79 could potentially contain federal collections.

1 other transfers of artifacts recovered from the APE to local communities or  
2 facilities to support and enhance cultural ties to the APE.

3 **XII. Annual PA Meeting and Reports**

4 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
5 day annual meeting concerning this PA within one (1) year of the PA execution,  
6 and each succeeding year by that approximate same date, thereafter. The  
7 meeting will consist of: an initial day where Consulting Parties and Signatories  
8 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
9 for the upcoming year, (3) verify/update contact information for Consulting  
10 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
11 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
12 functioning to all parties benefit. The second day of meetings shall be held by the  
13 Signatories to consider the input received by Consulting Parties, discuss the PA's  
14 implementation, required amendments (as necessary), and other business  
15 related to the application of the PA terms.

- 16 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
17 Archaeology, or at another location by consensus of the Signatories. The  
18 parties may participate by telephone if they so desire.
- 19 2. The BLM will distribute meeting minutes to the meeting participants within  
20 thirty (30) days of the meeting, and meeting participants will provide  
21 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
22 amend the minutes as a result of comments and distribute finalized minutes  
23 within another fifteen (15) days.
- 24 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
25 BLM that a meeting is necessary outside of the regularly scheduled annual  
26 meeting, the Signatories and Consulting Parties will consider their request.  
27 BLM, taking into consideration the results of consultation, shall decide  
28 whether to convene additional meetings.

29  
30 B. Annual PA Report:

- 31 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
32 and Consulting Parties with a draft copy of that year's annual report that  
33 describes the completed and upcoming activities associated with the  
34 stipulations of this agreement. The report will include the following  
35 information, as appropriate:
  - 36 a. Number of leases issued;
  - 37 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 38 c. Consultation activities undertaken;
  - 39 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 40 e. Upcoming/Planned activities.
- 41 2. Signatories and Consulting Parties may provide comments to BLM at or  
42 before the Annual meeting regarding the content of the Annual Report.
- 43 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
44 and submit a Final Annual Report to Signatories and Consulting Parties.

1

2 **XIII. Dispute Resolution**

- 3 A. Should any of the Signatories or Consulting Parties who have become  
4 Concurring Parties to this PA have insight, improvements, or objections  
5 regarding the manner in which the terms of this PA are implemented, the BLM  
6 will consult with such party to determine if the inclusion, suggestion,  
7 recommendation, or objection may be addressed to the satisfaction of the party,  
8 which may include presenting a proposed amendment to this PA in accordance  
9 with Stipulation XV.
- 10
- 11 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
12 notify the Signatories of the dispute, and seek input from Signatories to resolve  
13 the dispute.
- 14
- 15 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 16 1. Forward all documentation relevant to the dispute, including the BLM's  
17 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
18 advice on the resolution of the objection within thirty (30) calendar days of  
19 receiving adequate documentation. Prior to reaching a final decision on the  
20 dispute, BLM will prepare a written response that takes into account any  
21 timely advice or comments regarding the dispute from the ACHP, Signatories,  
22 and Consulting Parties, and provide them with a copy of this written response.  
23 BLM will then proceed according to its final decision.
- 24
- 25 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
26 (30) calendar-day time period, BLM may make a final decision on the dispute  
27 and proceed accordingly. Prior to reaching such a final decision, BLM will  
28 prepare a written response that takes into account any timely comments  
29 regarding the dispute from the Signatories and Consulting Parties to the PA  
30 and provide them and the ACHP with a copy of such written response.
- 31
- 32 3. Regardless of the results of the dispute resolution measures described  
33 above, the BLM's responsibility is to carry out all other actions subject to the  
34 terms of this PA that are not the subject of the dispute.

**Commented [KSF39]:** Please explain how a consulting party becomes a concurring party to this Programmatic Agreement.

**Commented [HM(N40R39):** Add to definition appendix

35 **XIV. Duration**

- 36 A. The date the ACHP signs this PA is the ratification date, which officially executes  
37 the PA.
- 38
- 39 B. This PA will remain in effect for ten (10) years after its execution.
- 40
- 41 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
42 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
43 below no later than six (6) months prior to expiration of the agreement. If

**Commented [KSF41]:** The duration of the agreement should be much longer and be consistent with timeframe articulated in the Draft Environmental Impact Statement, Appendix B, Reasonably Foreseeable Development Scenario for Oil and Gas Resources in the Public Law 115-97 at B-7

**Commented [HM(N42R41):** This time period may be amended if appropriate in the future.

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1 appropriate, the Signatories may execute a new agreement or amend to extend  
2 the duration of the current agreement.

3 **XV. Amendments**

- 4 A. The Signatories may amend this PA at any time when such amendment is  
5 agreed to in writing by all Signatories. The amendment will be effective on the  
6 date a copy signed by all of the Signatories is filed with the ACHP.  
7
- 8 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
9 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
10
- 11 C. In the event that another federal agency not initially a party to or subject to this  
12 PA receives an application for funding/licensing/or permitting an Undertaking in  
13 the 1002 area as described in this PA, that agency may fulfill its Section 106  
14 responsibilities by stating in writing it concurs with the terms of this PA and  
15 notifying the Signatories and Consulting Parties that it intends to do so. Such  
16 agreement shall be evidenced by execution of a signature page signed by an  
17 authorized individual for that agency, distribution of said page to all Signatories  
18 and Consulting Parties, filing this page with the ACHP, and implementation of the  
19 terms of this PA.  
20
- 21 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
22 to reflect changes in personnel or contact information without requiring the PA to  
23 be amended in accordance with the procedures described above.

24 **XVI. Termination**

- 25 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
26 carried out, that party shall immediately consult with the other Signatories to  
27 attempt to develop an amendment or agreement on other actions that would  
28 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
29 such consultation (or another time period agreed to by all Signatories) an  
30 amendment or agreement on other actions that would avoid termination cannot  
31 be reached, any Signatory may terminate the Agreement upon written notification  
32 to the other Signatories.  
33
- 34 B. In the event that a Signatory terminates this PA, and prior to further Program  
35 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
36 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
37 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
38 as to the course of action it will pursue.

39 **XVII. Emergency Situations**

- 40 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
41 Consulting Parties of an emergency situation, which represents an imminent

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1 threat to public health or safety or creates a hazardous condition, that also has  
2 potential to harm Historic Properties or the subsequent response has potential to  
3 harm Historic Properties and the measures taken to respond to the emergency or  
4 hazardous condition. Should the Signatories or Consulting Parties desire to  
5 provide technical assistance to the BLM, they shall submit comments to BLM  
6 within seven (7) calendar days from notification, if the nature of the emergency or  
7 hazardous condition allows for such coordination.  
8

9 B. If the APE of the emergency situation has been surveyed for Historic Properties  
10 and none is within the APE, then BLM will request concurrence on a  
11 determination of “no Historic Properties affected” from the SHPO within five (5)  
12 calendar days from the initial notification.  
13

14 C. If the APE has not been surveyed for potential Historic Properties, then  
15 emergency actions will be monitored by a SOI qualified professional or the APE  
16 will be inventoried by a SOI-qualified professional no later than one (1) year after  
17 the emergency action is completed. BLM will require that a monitoring report or  
18 inventory report will be submitted to Signatories and Consulting Parties within  
19 thirty (30) days of the end of fieldwork.  
20

21 D. If a previously known or unknown Historic Property is adversely affected by  
22 emergency actions the BLM will consult with Signatories and Consulting Parties  
23 to resolve the adverse effect pursuant 36 CFR § 800.6.

24 **xviii. Anti-Deficiency Provision**

25 A. Any obligation of the federal agencies set forth in this PA is subject to and  
26 dependent on appropriations by Congress and allocation of sufficient funds for  
27 that purpose. The federal agencies shall make reasonable and good faith efforts  
28 to secure the necessary funds to implement this PA in its entirety. If compliance  
29 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
30 implement the stipulations of this agreement, the federal agencies shall consult in  
31 accordance with the amendment and termination procedures found at  
32 Stipulations XV and XVI of this agreement.

33 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
34 that the BLM and FWS have taken into account the effects of the Undertaking on  
35 Historic Properties and have afforded the ACHP an opportunity to comment.  
36



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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

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Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

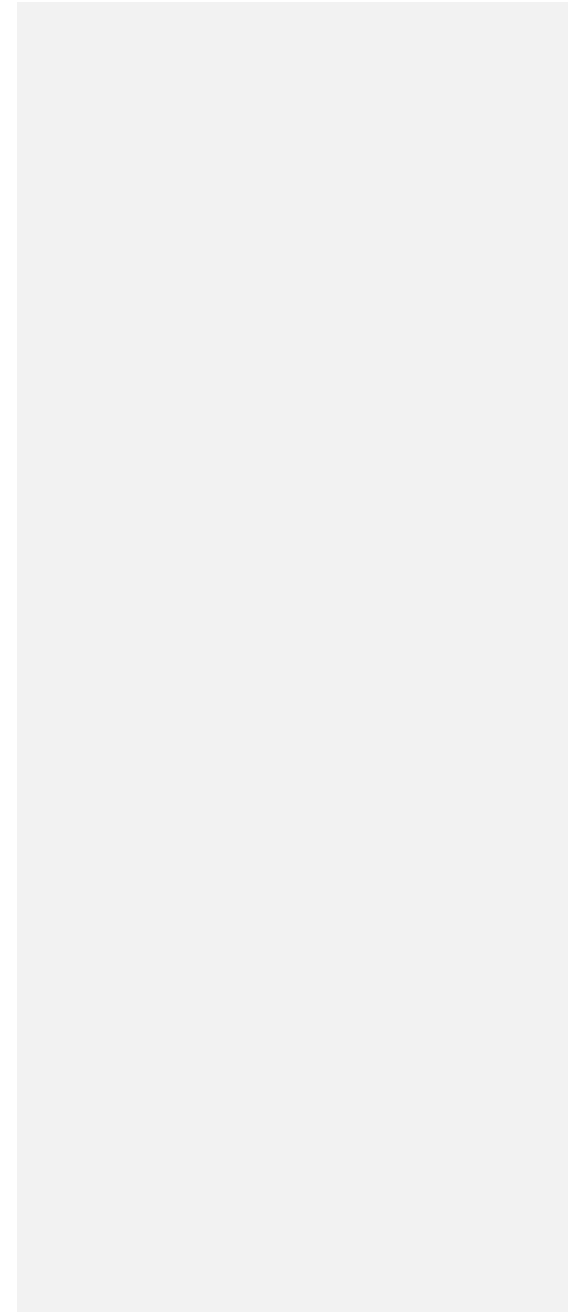
**[ORGANIZATION NAME PLACEHOLDER]**

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

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1 **Appendix A: Area of Potential Effects**  
2

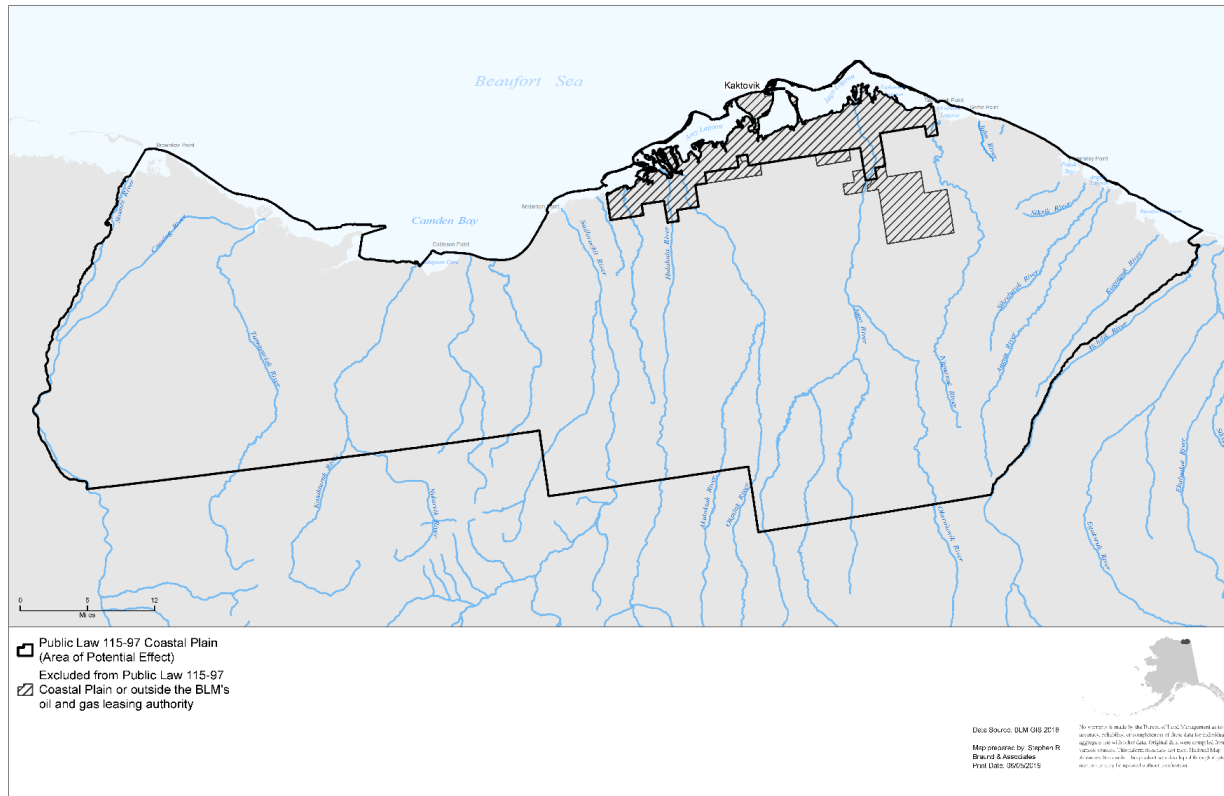
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**Appendix B: Consulting Parties**

List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local governments invited or requested to participate in consultation (\*indicates a response that they will participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

**Commented [KSF43]:** Please add the Native village corporation for Nuiqsut, Kuukpik Corporation, to the list.

**Commented [HM(N44R43):** We will consider any request to consult from Native Tribes and Corporations potentially impacted by this program.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

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1 **Appendix D: NAGPRA Plan of Action**

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

**Commented [KSF45]:** NSB would like to have an opportunity to review and comment upon the NAGPRA Plan of Action. This document should be subject to review and approval of the signatories, and consultation of the consulting parties.

**Commented [HM(N46R45):** See response to SHPO comment. Added text that development of Appendix D will follow same process as C (to included consultation with signatories and consulting parties).

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix F: DRAFT PA Tracking Sheet**  
2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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29

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]) directs the United States Department of the Interior (DOI), Bureau of Land Management (BLM) to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to; and

**Deleted:** has been directed

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized undertaking, to take into account the effects of the proposed undertaking on Historic Properties, which are properties listed on or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such undertaking; and

**Commented [MJR1]:** As we requested in the previous PA drat, make sentences active. Who is doing this directing?  
The ACHP, in their guidance on reviewing agreement documents, recommends using active voice. The ACHP states:  
"Because the stipulations of a Section 106 agreement assign responsibilities for certain measures and commit parties to identified actions, it is important to clearly state those responsibilities and commitments. Avoiding wordy, passive voice sentences (e.g., "the building will be recorded") makes the terms of the agreement easier to understand. Using active voice in an agreement helps answer the above questions and provides a construct to insert timeframes."

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing program, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

**Deleted:** Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017])

**WHEREAS**, the BLM's development and implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**Commented [WF2]:** As used here, these are not defined terms.

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**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**Deleted:** has

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 Programmatic Agreement (PA) as the BLM cannot fully determine effects on Historic  
2 Properties within the APE prior to approval of the Undertaking as defined in 36 Code of  
3 Federal Regulations (CFR) § 800.14(b)(1)(ii); and

4 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
5 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

6 **WHEREAS**, the DOI Fish and Wildlife Service (FWS), as the surface manager of  
7 the APE, has jurisdictional roles concerning certain aspects of the Undertaking,  
8 including, but not limited to, activities related to the NHPA, actions involving the  
9 Archaeological Resources Protection Act (ARPA) (Public Law 96-95 [October 31,  
10 1979]), and the Native American Graves Protection and Repatriation Act (NAGPRA)  
11 (Public Law 101-601 [November 16, 1990]), and therefore is an Invited Signatory to  
12 this PA; and

13 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
14 (Public Law 95-341 [August 11, 1978]), NAGPRA, as it applies to lands under federal  
15 control, and Executive Orders 13007 and 13175; and

16 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
17 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
18 PA to participate in consultation as Consulting Parties, consistent with 54 USC §  
19 302706 and 36 CFR 800.2(c)(2); and

20 **WHEREAS**, the BLM has invited regional and village corporations, as defined in Section  
21 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602), and listed in  
22 *Appendix B: Consulting Parties*, to participate in consultation as Consulting Parties,  
23 consistent with 36 CFR § 800.16(m); and

24 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
25 corporations the opportunity to provide information about Historic Properties within the  
26 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

27 **WHEREAS**, the BLM has invited local governments as defined in 36 CFR § 800.16(n),  
28 and listed in Appendix B: Consulting Parties, to participate in consultation as Consulting  
29 parties, consistent with 36 CFR § 800.2(c)(3); and

30 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
31 APE are limited in scope and extent; and

32 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
33 2019 listed 90 properties including sod house ruins, historic military features, graves,  
34 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
35 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
36 81 have not had formal evaluations for their NRHP eligibility; and

37 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
38 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
39 of which may be included in the AHRs database, including village sites, subsistence

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**Commented [MJR3]:** As we asked in the previous PA draft, when and how? Adding these specifics will aid the cold reader understand this agreement per the, [ACHP's Section 106 Agreement Document Guidance](#) they explicitly state that in the Preamble

"This information documents the federal agency's Section 106 compliance effort and should be written to allow a cold reader to understand the context for the stipulations to follow."

Deleted: and in 36 CFR § 800.16(m)

**Commented [MJR4]:** When and how?

**Commented [MJR5]:** When and how?

Deleted: to participate as Consulting Parties,

**Commented [WF6]:** What does this mean?

**Commented [WF7]:** The AHRs does not list "properties." "Properties" has a very specific definition under the Part 800 regulations, and what the AHRs covers often do not meet that definition. Indeed, this recital staets alter that only 5 "properties" are el

**Commented [WF8]:** Again, "property" has a very specific meaning in the Part 800 regulations

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1 use locations, sod house ruins, graves, and reindeer herding areas. None of these  
2 properties have been evaluated for their eligibility for listing in the NRHP; and

3 **WHEREAS**, the PA will outline the program-level stipulations applicable at the  
4 leasing stage and the process BLM shall follow for compliance with Section 106 for  
5 post-lease activities; and

6 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)  
7 agree that the Undertaking shall be implemented in accordance with the following  
8 stipulations in order to take into account the effects of the Undertaking on Historic  
9 Properties

### 10 STIPULATIONS

11 The BLM shall ensure that the following measures are carried out:

#### 12 I. Administrative

13 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
14 issued for the Program and will ensure that all lessees are aware that they must  
15 comply with the terms of this PA during activities on their lease(s).

16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.  
22

23 C. BLM shall require that any type of archaeological work associated with the  
24 Program within the APE not performed by BLM or FWS professional staff will be  
25 conducted only under terms of a federally issued Permit For Archaeological  
26 Investigations (“ARPA permit”). Such permits are obtained upon application to  
27 the BLM or otherwise coordinated by BLM.  
28

29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.  
31

32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.  
35

36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41

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Commented [MJR9]: This is more of an information request than a comment on the PA. How often does the NSB reconcile their TLUI database with the AHRs and when was the last time this reconciliation occurred?

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Commented [WF10]: Are these stipulations not applicable for post-leasing activities? Because that doesn't make sense.

Commented [WF11]: Is this PA not going to be incorporated into any authorizations that the FWS issues pursuant to the Program? What about other federal agencies later on, such as the USACE?

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Commented [WF12]: ARPA

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

(5) business days. Contact information for Signatories and Consulting Parties is included below in *Appendix B: Consulting Parties*.

G. At any time, Signatories and Consulting Parties to this PA may request additional time for reviews of documentation, preparation of guidance documents, or any other time-sensitive materials outlined in this PA by providing a written request to the BLM.

H. The Signatories may execute this PA in counterparts, with a separate page for each Signatory.

**Commented [WF13]:** The BLM is the lead federal agency. It is in charge of ensuring the PA is carried out, thus it should be the only signatory that should sign off on these request.

**Deleted:** all

**Deleted:** Signatories

## II. Scope of the PA

A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and other federal laws that may be affected by the Undertaking within the APE.

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B. This PA establishes the process the BLM and FWS will follow to fulfill their responsibilities under Section 106 of NHPA, including consultation with Indian Tribes, for Program decisions that may be implemented in accordance with the decisions supported by the Program EIS and BLM and FWS policy.

**Deleted:** i

**Deleted:** ts

C. This PA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this PA will be handled in accordance with applicable laws, regulations, and procedures including those for Federal Government procurement and printing. Separate agreements will outline such endeavors and will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority.

## III. Agency Coordination Procedures

A. Agency Roles and Coordination

1. BLM

a. BLM, as the lead federal agency for the purposes of NHPA and Section 106 compliance, is responsible for the following actions:

- i. Conducting Section 106 reviews of projects the PA addresses;
- ii. Receiving permit applications and issuing permits that may be needed for Section 106 compliance work for oil and gas-related projects in the APE. Such permits needed may include various types of land use authorizations as well as ARPA permits.

**Deleted:** Projects

**Commented [WF14]:** BLM is not the land manager, FWS is. How is this discrepancy reconciled?

**Deleted:** Permits for Archaeological Investigations (“

**Deleted:** ”

**Deleted:** Permits

**Deleted:** )

2. FWS

a. FWS, as surface manager of the APE, is responsible for the following actions:

- i. Receiving, reviewing, commenting on, and evaluating applications for ARPA permits;

**Commented [WF15]:** Why would the FWS “receive” ARPA permit applications, if that is the responsibility of the BLM? I get reviewing, commenting on, and evaluating, as the land manager, but the PA cannot obligate two different agencies to receive the same permit applications.

The PA needs to stipulate how the BLM will provide the FWS the ARPA permit application, how long the FWS has to respond, and how to resolve issues if the FWS and BLM disagree about its issuance or features of the permit/application

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1           ii. Receiving, reviewing, commenting on, and evaluating Section 106
- 2           determinations and findings made by BLM;
- 3           iii. Managing artifact collections originating from studies conducted within
- 4           the APE;
- 5           iv. Managing and conducting appropriate actions associated with
- 6           NAGPRA materials and Human Remains.
- 7

8 **IV. Section 106 Consultation Plan and Procedures**

- 9 A. BLM anticipates that the Program will include several Project types and that each
- 10 type will require consultation with Signatories and Consulting Parties. Project
- 11 types include, but are not limited to:
- 12 1. Leasing;
  - 13 2. Inventory, Research, and Monitoring Activities;
  - 14 3. Geophysical Exploration;
  - 15 4. Applications for Permit to Drill (APD) (drilling exploration and development);
  - 16 5. Marine and Intertidal Activities and Operations;
  - 17 6. Operations and Production;
  - 18 7. Inspections and Enforcement; and
  - 19 8. Reclamation
- 20
- 21 B. As appropriate and needed, BLM shall consult with Signatories and Consulting
- 22 Parties on an “as necessary” basis throughout the life of this PA on the above
- 23 Project types to include, but not limited to, the following:
- 24 1. Collect information to inform permitting, NEPA reviews, and if appropriate,
  - 25 selection of alternatives;
  - 26 2. Develop appropriate research designs and investigative methods for potential
  - 27 Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
  - 28 studies;
  - 29 3. Determine if incorporating Project-specific conditions and/or stipulations into
  - 30 BLM- and FWS-permitted activities can avoid, minimize, and/or mitigate
  - 31 effects to Historic Properties within the Project-specific APE;
  - 32 4. Consider conducting periodic joint (i.e., BLM and representatives from
  - 33 interested Signatories and Consulting Parties) site visits within the Project-
  - 34 specific APE(s).
  - 35 5. Develop Project-specific Historic Properties Management Plans (HPMPs) to
  - 36 avoid, minimize, and/or mitigate adverse effects to Historic Properties that
  - 37 may result from Program activities. These plans may include:
  - 38 a. Monitoring lessee activities and effects on Historic Properties within the
  - 39 Project-specific APE(s);
  - 40 b. Periodic Historic Property condition assessments;
  - 41 c. Documentation review to ensure lessees have fulfilled commitments
  - 42 stipulated by BLM, and have complied with the terms of this PA.
  - 43
- 44 C. The implementing regulations of Section 106 of the NHPA (36 CFR §
- 45 800.2[c][2][ii][A-C]) require BLM to:

**Commented [WF16]:** We made this comment before, but we'll make it again. It is easier for the BLM to create a list that is exclusive, rather than inclusive. Meaning, projects types are anything but X, Y, and Z.

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 1. Consult with any Indian Tribe that attaches religious and cultural significance
- 2 to Historic Properties that may be affected by an Undertaking,
- 3 2. Provide Indian Tribes with a reasonable opportunity to identify their concerns
- 4 about Historic Properties, to advise on the identification and evaluation of
- 5 Historic Properties, including those of traditional religious and cultural
- 6 importance, to articulate their views on the Undertaking's effects on such
- 7 properties, and to participate in the resolution of adverse effects,
- 8 3. Consult with Indian Tribes in a sensitive manner respectful of tribal
- 9 sovereignty, and in a manner sensitive to the concerns and needs of the
- 10 Indian Tribe.
- 11 4. In addition to those items listed above concerning BLM's consultation
- 12 obligations to Indian Tribes under the NHPA, BLM shall consult with Indian
- 13 Tribes as appropriate and needed, to:
- 14 a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see
- 15 *Appendix D*); and
- 16 b. Consider including Tribal representatives to participate in fieldwork,
- 17 monitoring, post-field analyses, and reporting activities.

Commented [WF17]: When is this happening?

- 18
- 19 D. At any time throughout the life of the PA, Consulting Parties may contact the
- 20 BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of
- 21 concern to the Signatories and other Consulting Parties at the Annual PA
- 22 Meeting.

Commented [WF18]: So consulting parties cannot

- 23
- 24 E. At any time throughout the life of the PA, any outside entity not initially part of this
- 25 PA, including any Indian Tribes, may contact the BLM and request to become a
- 26 Consulting Party. BLM will consider any such request and notify the Signatories
- 27 and other Consulting Parties of the request and BLM's decision.

28 **V. Section 106 Procedures**

- 29 A. The Undertaking involves a number of activities associated with oil and gas
- 30 leasing and associated activities within the APE that have varying potentials to
- 31 cause effects to Historic Properties, all of which are covered by this PA. The
- 32 steps below outline an alternate process for BLM to comply with NHPA for the
- 33 Undertaking, which will be carried out by BLM or FWS professional staff or non-
- 34 federal professionals who meet the Secretary of the Interior's (SOI) Professional
- 35 Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- 36
- 37 B. BLM shall make a good faith effort to identify and evaluate historic properties but
- 38 anticipates that in certain cases a 100-percent identification of a Project APE
- 39 may not be necessary, and NHRP evaluations may be conducted on all or some
- 40 of identified properties. BLM will collect, or direct lessees and/or their contractors
- 41 to collect, the amount of information necessary for the BLM to make decisions
- 42 regarding the potential of the Project Type(s) to affect Historic Properties.
- 43

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 C. At its discretion, BLM may submit documentation requesting SHPO concurrence  
2 on determinations of eligibility and findings of effect concurrently in a combined  
3 submission for Project Types described below.  
4
- 5 D. Nothing shall prevent the BLM from seeking informal consultation with the  
6 Signatories or Consulting Parties regarding the preparation of determinations of  
7 eligibility or findings of effect.  
8
- 9 F. **Step 1: Oil and Gas Program Project Types Addressed under this PA**  
10 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
11 that this PA will address the following Project types associated with the  
12 Program within the APE:  
13 a. Lease Sales;  
14 b. Inventory, Research, and Monitoring Activities;  
15 c. Geophysical Exploration;  
16 d. APD;  
17 e. Marine and Intertidal Activities and Operations;  
18 f. Operations and Production;  
19 g. Inspection and Enforcement; and  
20 h. Reclamation.
- 21
- 22 G. **Step 2: Assess Project Potential to Cause Effects**  
23 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
24 under review has potential to cause effects on Historic Properties. BLM shall  
25 determine that a Project type does not have the potential to cause effects if it  
26 meets one or more of the following conditions:  
27 a. No new visual, auditory, atmospheric, olfactory, and/or ground  
28 disturbances;  
29 b. Lease Sale or other Administrative Action; or  
30 c. Standard maintenance, repairs, or replacement of existing facilities or  
31 equipment.  
32 2. If the Project type meets one or more of the above conditions (Stipulation  
33 V.G.1.a-c), BLM shall make a determination that the Project type has “no  
34 potential to cause effects” and attach letter to the Project file [36 CFR  
35 800.3(a)(1) determination].  
36 3. If the Project type does not meet the above conditions (Stipulation V.G.1.a-c),  
37 and the Project type consists of Inventory, Research, and Monitoring  
38 Activities, Geophysical Exploration, Marine and Intertidal Activities and  
39 Operations, Operations and Production, or Inspection and Enforcement, the  
40 BLM will proceed to Step 3.  
41 4. If the Project type does not meet the above conditions, and the Project type is  
42 an APD or Reclamation, BLM will consult with Signatories and Consulting  
43 Parties, and BLM will determine if the Project should be addressed under this  
44 PA, or if a separate Section 106 process and agreement document (“kick-  
45 out”) must occur in accordance with Step 8 below.

**Commented [WF19]:** What about non-listed project types that may, under certain circumstances rise to the level of needing 106 review? A bright line cut off is not necessarily appropriate

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**Commented [MJR20]:** Archaeological bias just including ground disturbance. Effects are more than physical impacts. In March, the D.C. circuit court issued an opinion clarifying the meaning of the term “directly” for the NHPA. Direct includes visual, auditory, and atmospheric along with physical impacts. Please review court opinion and update this PA accordingly.

**Commented [WF21R20]:** See the ACHP's discussion of this opinion here:

<https://www.achp.gov/news/court-rules-definitions-informs-agencies-determining-effects>

**Commented [WF22]:** The Tribes fundamentally disagree with the BLM that lease sales are not an undertaking without potential to effect historic properties. This statement ignores the definition of adverse effects, which includes “reasonably foreseeable adverse effects by the undertaking that may occur later in time, be farther removed in distance of be cumulative.” 36 CFR § 800.5(a)(1). This position makes it impossible for the BLM to ensure that the Section 106 process informs the development of project/leasing alternatives (see 36 C.F.R. §§ 800.1(c), 800.6(a)), such as lease-wide stipulations, avoidance areas, etc. compartmentalizing Section 106 review until the ADP phase is inappropriate, undercuts the very purpose of the Section 106 process, and is unlawful.

Indeed, the ACHP recently published guidance on this issue, stating:

“Planning activities” avoid triggering Section 106 so long as they do not narrow the range of alternatives to avoid, minimize, or mitigate adverse effects to historic properties. For federal property managers, “planning” often includes long-term management of lands or properties under their purview. Such agencies may develop general or site-specific guidelines. Discrete shorter-term projects tend to derive from these overarching guidelines.

“In this context, the federal involvement is usually the agency creating and carrying out the plan itself. The analysis then shifts to whether the activity being proposed and carried out is the type with potential to affect historic properties. **When a “management plan” commits the agency to a decision regarding the use of resources or the location of a project, the agency has restricted the availability of alternatives to avoid, minimize, or mitigate adverse effects.** In other words, the “management planning” constitutes an undertaking with the potential to affect historic properties that must be preceded by Section 106 compliance. Development of new “management plans,” as well as revisions, amendments, and even updates to existing ones, may be considered “management planning” undertakings.”

<https://www.achp.gov/digital-library-section-106-landing/when-do-project-planning-activities-trigger-section-106-review>

**Commented [WF23]:** Is there no instance in which such repairs, maintenance, or replacements could affect historic properties? This statement is pretty absolutist and inflexible for larger, unforeseen projects

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**H. Step 3: APE**

1. Has BLM, in consultation with the SHPO [and Consulting Parties](#), defined the APE?
  - a. If yes, proceed to Step 4.
  - b. If no, BLM defines the APE in consultation with SHPO [and Consulting Parties](#).

**I. Step 4: Identification**

1. Has BLM determined that adequate efforts to identify Historic Properties consistent with the procedures described in *Appendix C: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix C: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project [in consultation with Consulting Parties and Indian Tribes](#).

**J. Step 5: Preliminary APE Assessment**

1. Has BLM determined that identification efforts have resulted in the identification of potential Historic Properties within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no, proceed to Step 7.

**K. Step 6: Evaluation**

1. Has BLM determined that potential Historic Properties identified within the APE have been evaluated for NRHP eligibility?
  - a. If yes, proceed to Step 7.
  - b. If no, the BLM will evaluate potential Historic Properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15).
    - i. BLM will concurrently consult with FWS on all determinations of eligibility (DOEs), [Consulting Parties](#), and with Indian Tribes on DOEs concerning potential Historic Properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
      1. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
      2. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will presume agreement with the DOE(s).

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- 1 ii. Additional time to review a BLM submittal of a DOE(s) may be
- 2 requested by FWS, Consulting Parties, and/or Indian Tribes, up to
- 3 thirty (30) days per submittal.
- 4 iii. After the review period for FWS, Consulting Parties, and Indian Tribes
- 5 has elapsed, including any extensions requested, BLM will submit the
- 6 DOE to SHPO, who will have thirty (30) days to review the DOE(s). If
- 7 SHPO does not offer comment within the review period, then BLM will
- 8 presume the SHPO agrees with BLM's DOE(s) and may proceed to
- 9 Step 7.
- 10 1. BLM may combine the DOE submittal to SHPO with a finding of
- 11 effect determination and request for concurrence as outlined below
- 12 in Step 7.
- 13 iv. Additional time to review a BLM submittal of a DOE(s) may be
- 14 requested by SHPO, up to thirty (30) days per submittal.
- 15 v. If agreement cannot be reached on a DOE between BLM and SHPO,
- 16 then the BLM shall follow the procedures outlined at 36 CFR §
- 17 800.4(c)(2).
- 18 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe
- 19 disagrees with BLM's DOE regarding a property of religious and
- 20 cultural significance, it may request the BLM obtain a determination
- 21 from the Keeper of the NRHP. The BLM will obtain a determination
- 22 from the Keeper if requested by an Indian Tribe.
- 23 vi. Once BLM completes the required NRHP evaluations in the APE, BLM
- 24 may then proceed to Step 7.
- 25

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26 L. **Step 7: Assess Effects**

- 27 1. Has BLM determined there are Historic Properties in the APE?
- 28 a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), in
- 29 consultation with Signatories, Indian Tribes, and Consulting Parties.
- 30 i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM
- 31 shall notify Signatories, Indian Tribes, and Consulting Parties of the
- 32 finding and provide them with documentation supporting this finding.
- 33 1. If SHPO, Indian Tribes, and Consulting Parties concur with the
- 34 BLM's determination, BLM shall document the concurrences to the
- 35 Project file.
- 36 2. If SHPO, Indian Tribes, or Consulting Parties do not concur, and
- 37 resolution cannot be reached through consultation, BLM shall follow
- 38 the procedures outlined at 36 CFR 800.5(c)(2-3).
- 39 ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]), BLM
- 40 shall request the lessee or applicant propose methods to avoid,
- 41 minimize, and/or mitigate adverse effects.
- 42 1. Upon receipt of the applicant's proposed methods to avoid,
- 43 minimize, and/or mitigate adverse effects, BLM shall reapply the

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1 criteria of adverse effect in consultation with Signatories, Indian  
2 Tribes, and Consulting Parties, and if necessary, revise their finding  
3 of effect.

4 iii. If BLM, in consultation with Signatories, Indian Tribes, and Consulting  
5 Parties determines that an applicant's proposed methods to avoid,  
6 minimize, and/or mitigate adverse effects will still result in adverse  
7 effects to Historic Properties, the process shall revert to the standard  
8 Section 106 procedures at 36 CFR 800.6.

9  
10 b. If no, BLM will make a finding of "no historic properties affected" (36 CFR  
11 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty  
12 (30) days to review the BLM's determination. BLM shall also provide  
13 notice to the Signatories and Consulting Parties of this finding in  
14 accordance with 36 CFR 800.4(d)(1).

15 i. If SHPO concurs with the BLM's determination, BLM shall document  
16 SHPO concurrence to the Project file.

17 ii. If SHPO or ACHP do not concur, and resolution cannot be reached  
18 through consultation between SHPO or ACHP and BLM, BLM shall  
19 follow the procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

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20 **M. Step 8: Decision regarding Undertaking**

21 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
22 applicable, and BLM has documented the appropriate finding of effect and  
23 resolution efforts, as required, to the Project file.

24  
25 2. Alternatively, if BLM has determined that a separate Section 106 process and  
26 agreement document ("kick-out") is required for an APD or Reclamation  
27 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
28 subject to this PA only after the separate Section 106 review has been  
29 completed, and if necessary, the appropriate agreement document (e.g.,  
30 Memorandum of Agreement or Programmatic Agreement) has been executed  
31 for the Project.

32  
33 **N. Step 9: Reporting**

34 1. BLM will include a summary of all Projects reviewed under this PA in the  
35 previous year in the annual PA report [Stipulation XII]. The summary will  
36 include a synopsis for each project, including at minimum:

- 37 a. A description of the Project;  
38 b. Delineation of the APE;  
39 c. Identification efforts within the APE;  
40 d. NRHP eligibility of known properties within the APE;  
41 e. BLM's finding of effect for the Project; and,

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f. The Qualifications of the Individual who conducted the PA Compliance Review.

2. BLM will submit reports associated with identification, evaluation, and assessments of effect that were used to support BLM findings of effect to the SHPO, Signatories, and Consulting Parties.

BLM may append reports associated with identification, evaluation, and assessments of effect that were used to support BLM finding to the annual PA report, provided they do not contain sensitive information regarding Historic Properties.

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VI. **Methods to Inventory APE**

A. The BLM shall finalize Appendix C: Methods to Inventory the APE before execution of the PA in consultation with Signatories, Consulting Parties, and Indian Tribes. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.

B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day comment.

C. BLM will consider timely comments received and revise the draft accordingly. Multiple drafts may be required, and a final draft will be sent out for review no later than three months prior to the execution of the PA.

D. BLM shall afford the opportunity to comment to Indian Tribes and Consulting Parties on each draft concurrent with Signatory review.

E. BLM, FWS, SHPO, and Consulting Parties must approve of the draft Appendix C: Methods to Inventory the APE before it is considered final.

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**Commented [MJR24]:** BLM needs to consult with Tribes, Signatories and Consulting Parties to finalize inventory methods prior to completion of the PA. When reviewing agreement documents, the ACHP states, "Where the Section 106 agreement cites or references an attachment or appendix, it is imperative that the actual attachment or appendix be appended to the agreement document." Appendices are an integral component of the PA. Without referenced appendices, the PA is incomplete, and Signatories should not sign an incomplete PA. The ACHP asks in their Section 106 Agreement Checklist: Reviewer's Guide, "Are all attachments and appendices cited in the agreement included?" Failing to include Appendix C means the answer is no, which means BLM is not using:

"best drafting practices [according to the ACHP] for writing agreements that are clear and comprehensible and that provide wisely for contingencies. ... [and failing to consider] ... important preparation practices that can help agreement document development move forward smoothly."

If I am misreading BLM's intent for when they intend to draft Appendix C, please let me know.

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Deleted: <#>Drafts cannot be used as interim guidance. If a project needs to move through Step 4 of this PA prior to finalization of Appendix C: Methods to Inventory the APE, then the appropriate level of effort and methods will be determined through consultation among BLM, FWS, and SHPO on a case-by-case basis.

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VII. **Standards**

A. Professional Qualifications:

1. For work performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of qualified historic preservation professionals who meet the SOI Professional Qualifications Standards (48 Federal Register 44716-44742).

2. For work not performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of qualified historic preservation professionals who meet the SOI Professional Qualifications Standards (48 Federal Register 44716-44742). The BLM and FWS, through review of permit applications or

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1 other means, shall ensure that consultants retained for services pursuant to  
2 the Agreement meet these standards. The review of permit applications and  
3 work not done by BLM or FWS professional staff shall be carried out by BLM  
4 or FWS professional staff who meet the SOI Professional Qualifications  
5 Standards (48 Federal Register 44716-44742).

**Commented [WF26]:** If the BLM or FWS are not doing the work, (a) the work needs to be done by contractors who meet the qualifications and (2) those at the BLM or FWS who review the work/make final determinations re. eligibility effects etc must also meet the qualifications

6  
7 3. A “qualified historic preservation professional” is a person who meets the  
8 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
9 Standards and Guidelines as Amended and Annotated]  
10 (http://www.nps.gov/history/local-law/arch\_stnds\_9.htm ) or revised  
11 equivalent.

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13 4. BLM acknowledges that Indian Tribes possess specialized expertise in  
14 identifying and assessing the eligibility of Historic Properties that may  
15 possess religious or cultural significance to Indian Tribes (36 CFR  
16 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
17 identifying and evaluating Historic Properties of religious or cultural  
18 significance to them. The BLM and FWS, through review of permit  
19 applications or other means, shall ensure that consultants retained for  
20 services pursuant to this PA shall include cultural advisors, approved by  
21 Consulting Parties, in fieldwork, ethnographic research, artifact analysis, and  
22 report writing.

**Commented [MJR27]:** Excellent! Now, let's be explicit how BLM will involve this "specialized expertise."

23  
24 B. Professional Standards:

25 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
26 ensure that all work conducted as a result of this PA not otherwise done by  
27 BLM or FWS professional staff is performed in accordance with the SOI  
28 Standards for Archeology and Historic Preservation (Standards and  
29 Guidelines) (48 Fed. Reg. 44716-44742).

**Commented [WF28]:** So, if the BLM and FWS do work, they don't need to meet these standards?

30  
31 2. BLM shall require that persons supervising and conducting work on the behalf  
32 of lessees hold the appropriate BLM permits and/or authorizations as  
33 appropriate for inventory, monitoring, and other investigations, and meet the  
34 Standards and Guidelines, as well as the SOI Professional Qualification  
35 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
36 that persons supervising and conducting work on the behalf of lessees  
37 comply with the NAGPRA POA.

38  
39 3. Investigations associated with Program activities will be conducted in  
40 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
41 the standards presented in BLM Manual 8110 Identifying And Evaluating  
42 Cultural Resources  
43 (https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\_blmpolicymanu  
44 al8110\_0.pdf) and BLM Manual 1780 Tribal Relations  
45 https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf.

**Commented [MJR29]:** Manual 8110 is more focused on archaeological sites and old buildings while giving cursory mention to ethnographic resources. Manual 1780 goes into more detail on ethnographic research with tribes.

1 4. Reports regarding Historic Properties shall meet the standards outlined in the  
2 SOI Standards for Archeology and Historic Preservation (Standards and  
3 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
4 guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History  
5 and Archaeology guidelines.

6 **VIII. Unanticipated Discoveries and Effects**

7 A. During the entire implementation of this Undertaking, BLM will ensure that the  
8 Signatories and Consulting Parties are informed of unanticipated discoveries and  
9 effects within the APE during lessees' or their contractors' related activities  
10 associated with the BLM's Program.

11 B. Lessees or their contractors will not take any actions that would adversely affect  
12 the discovery which may be eligible for listing in the NRHP or exacerbate  
13 unanticipated effect(s) to the integrity of properties listed in or eligible for listing in  
14 the NRHP without written approval from BLM.

15 C. Upon the unanticipated discovery or effect(s), the following steps listed below will  
16 be undertaken. If the unanticipated discovery or effect(s) includes human  
17 remains, burials, or funerary items, the additional steps listed in Stipulation IX  
18 shall be followed.

19 1. The lessee will ensure that their operator or contractor will halt all activity in  
20 the area of the find and an appropriate buffer surrounding the area where  
21 further cultural materials/property can be reasonably expected to occur, to be  
22 no less than fifty (500) feet, and will notify the BLM within one business day;

23 2. The BLM shall require the suspension of activity within the established buffer,  
24 and shall notify the Signatories and Consulting Parties within two business  
25 days of the discovery or unanticipated effect(s);

26 3. A BLM SOI-qualified archaeologist or a SOI-qualified archaeologist approved  
27 by them along with cultural advisors approved by Signatories and Consulting  
28 Parties will inspect the cultural materials/property as soon as possible and  
29 collect enough information to determine (if possible):

- 30 a. The extent of cultural materials/property associated with the unanticipated  
31 discovery or effect;  
32 b. The degree of integrity; and  
33 c. The cultural affiliation of the materials/property (if possible).

34 4. Within five (5) business days, BLM shall provide a summary of the information  
35 collected at the place of discovery or effect(s) to Signatories and Consulting  
36 Parties, which will include BLM's preliminary assessment of the NRHP  
37 eligibility of the discovery or assessment of effect(s) to the integrity of the  
38 known property.  
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**Commented [MJR30]:** Make the process the same for unanticipated discoveries and effects. Just as much damage if not more can occur at known properties due to mistakes (e.g., contractors incorrectly entering coordinates or misreading maps, cat trains changing routes due to environmental conditions, looting) as unknown properties. Relegating unanticipated effects to a lower tier of consideration is inappropriate. What if there are unanticipated effects to graves? Will BLM take up to 180 days to address the disturbance of human remains as BLM states in stipulation IX?

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**Commented [MJR32]:** 50' is way too small of buffer. Even SAExploration places a 500' buffer around properties to avoid impacts. This PA should use 500' at minimum.

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**Commented [MJR33]:** Changed for sake of consistency.

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**Commented [MJR34]:** Excellent! You were already thinking of combining discoveries and effects!

- 1 5. Within 14 days of the BLM's distribution of the information regarding the  
2 unanticipated discovery or effect(s), the BLM, in consultation with the  
3 Signatories and Consulting Parties, will determine whether the discovery  
4 encountered is eligible for listing in the NRHP or the unanticipated effect(s)  
5 have diminished the integrity of the property.
- 6 a. If the BLM determines that the discovery is ineligible for listing in the  
7 NRHP or unanticipated effects have not affected the integrity of a known  
8 property and SHPO along with Consulting Parties concur, BLM shall  
9 authorize the lessee to continue activities in the area of the discovery.
- 10 b. If the BLM determines the discovery is eligible for listing in the NRHP or  
11 unanticipated effects have affected the integrity of a known property and  
12 SHPO along with Consulting Parties concur, BLM will direct the lessee to  
13 prepare a plan for its avoidance, protection, or recovery of information in  
14 consultation with BLM, Signatories and Consulting Parties, as appropriate.
- 15 i. Within five (5) business days of receipt, BLM shall distribute copies of  
16 the proposed plan to Signatories and Consulting Parties for review and  
17 comment.
- 18 ii. Signatories and Consulting Parties shall have seven (7) business days  
19 to review the proposed plan and provide comments to BLM.
- 20 iii. BLM shall take into consideration timely comments received on the  
21 proposed plan and make a determination to either approve or request  
22 revisions to the proposed plan.
- 23 A. In the event that BLM requests revisions to the plan, BLM shall  
24 redistribute the revised plan under the same timelines as above,  
25 and Signatories and Consulting Parties shall have the same period  
26 of review.
- 27
- 28 6. Work in the established buffer will not proceed until either:  
29 a. BLM approves plan and requires its implementation; or  
30 b. The BLM determines that the discovery is not eligible for the NRHP or  
31 unanticipated effects have not affected the integrity of a known property,  
32 and the SHPO concurs with this determination.
- 33
- 34 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
35 discoveries and effects as provided in Stipulation XIII of this PA.

36 **IX. Treatment of Human Remains, Funerary Objects, Sacred**  
37 **Objects, and Objects of Cultural Patrimony**

- 38 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
39 that any Native American burials, human remains, and/or related items  
40 discovered on federal lands during implementation of the terms of this PA will be  
41 treated with dignity and respect, and that all procedures guiding the treatment of  
42 human remains, funerary objects, sacred objects, or objects of cultural patrimony  
43 comply with Section 3 of NAGPRA (43 CFR 10.4).

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<#>If BLM, in consultation with Signatories and Consulting Parties, determines that unanticipated effect(s), including cumulative effects, have occurred to a Historic Property, BLM, in consultation with Signatories and Consulting Parties, will assess the effect(s), develop a plan to address the unanticipated effect(s), and avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to complete this process within 180 days of the recognition of the unanticipated effect(s). .  
¶  
<#>BLM will address any disputes over the resolution of unanticipated effects as provided in Stipulation XIII of this PA.¶

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1 B. As surface manager of the APE, FWS is the managing agency for any and all  
2 human remains and NAGPRA materials.

3  
4 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
5 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
6 state laws prior to the execution of this PA. Upon completion, the Human  
7 Remains and NAGPRA POA shall be incorporated into this PA as *Appendix D*. At  
8 minimum, the POA shall contain:

- 9 1. Notification Procedures and Protocols;
- 10 2. Chain of Custody Procedures; and,
- 11 3. Contact information for Law Enforcement, Tribal Representatives, and  
12 Agency personnel.

13  
14 D. In the event that any Native American burials, human remains, or funerary items  
15 are inadvertently encountered during any Program activity, the activity shall  
16 immediately cease, the area shall be secured from further disturbance, and the  
17 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
18 1. Upon notification, the BLM shall follow the procedures described in the  
19 NAGPRA POA (*Appendix D*).

20 **X. Curation**

21 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
22 during any activities associated with the Undertaking are property of FWS as  
23 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
24 *Curation of Federally-Owned and Administered Archaeological Collections* under  
25 FWS's existing agreement with the University of Alaska Museum of the North  
26 (UAMN).

27  
28 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
29 submitting all materials recovered from federal lands to the UAMN within six  
30 months following approval of a final report, within one year following completion  
31 of the fieldwork that generated the collection, or other period of time as specified  
32 in the ARPA permit. All collections will be curation-ready, as determined by the  
33 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
34 behalf, will safeguard all materials from theft or damage by providing adequate  
35 interim storage facilities and conservation actions, consistent with the  
36 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
37 Permittee will provide BLM with all accession records and documentation  
38 associated with the transfer and curation of materials. BLM will share the  
39 documentation with the FWS. Information will be shared with the other  
40 Signatories and Consulting Parties as appropriate.

41  
42 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
43 the curation of any materials that are collected during the implementation this PA,  
44 in perpetuity. Curation costs may include, but are not limited to, curation fees

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Commented [MJR35]: See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

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1 charged by approved institutions, acquisition of archival materials, shipping,  
2 cleaning, rehousing, and any other conservation action.

3  
4 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
5 described above in Stipulation IX and in the NAGPRA POA (Appendix D).

6  
7 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
8 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
9 other transfers of artifacts recovered from the APE to local communities or  
10 facilities to support and enhance cultural ties to the APE.

11 **XI. Annual PA Meeting and Reports**

12 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
13 day annual meeting concerning this PA within one (1) year of the PA execution,  
14 and each succeeding year by that approximate same date, thereafter. The  
15 meeting will consist of: an initial day where Consulting Parties and Signatories  
16 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
17 for the upcoming year, (3) verify/update contact information for Consulting  
18 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
19 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
20 functioning to all parties benefit. The second day of meetings shall be held by the  
21 Signatories to consider the input received by Consulting Parties, discuss the PA's  
22 implementation, required amendments (as necessary), and other business  
23 related to the application of the PA terms.

- 24 1. BLM shall hold the meeting in Fairbanks at BLM's office, or at another  
25 location by consensus of the Signatories and Consulting Parties. The parties  
26 may participate by telephone if they so desire.  
27 2. The BLM will distribute meeting minutes to the meeting participants within  
28 thirty (30) days of the meeting, and meeting participants will provide  
29 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
30 amend the minutes as a result of comments and distribute finalized minutes  
31 within another fifteen (15) days.  
32 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
33 BLM that a meeting is necessary outside of the regularly scheduled annual  
34 meeting, the Signatories and Consulting Parties will consider their request.  
35 BLM, taking into consideration the results of consultation, shall decide  
36 whether to convene additional meetings.  
37

38 B. Annual PA Report:

- 39 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
40 and Consulting Parties with a draft copy of that year's annual report that  
41 describes the completed and upcoming activities associated with the  
42 stipulations of this agreement. The report will include the following  
43 information, as appropriate:  
44 a. Number of leases issued;  
45 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;

**Commented [MJR36]:** Fairbanks is much closer to all the consulting parties. Fairbanks is a direct flight from Arctic Village, Venetie, and Kaktovik. Why burden consulting parties with extra traveling costs by making them take an extra flight to Anchorage? If BLM is going to cover traveling costs for consulting parties, then have it in Anchorage.

**Deleted:** Anchorage at the Alaska Office of History and Archaeology

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 c. Consultation activities undertaken;
- 2 d. Maps of areas leased, surveyed, or otherwise investigated; and
- 3 e. Upcoming/Planned activities.
- 4 2. Signatories and Consulting Parties may provide comments to BLM at or
- 5 before the Annual meeting regarding the content of the Annual Report.
- 6 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare
- 7 and submit a Final Annual Report to Signatories and Consulting Parties.

8  
9 **XII. Dispute Resolution**

- 10 A. Should any of the Signatories or Consulting Parties who have become
- 11 Concurring Parties to this PA have insight, improvements, or objections
- 12 regarding the manner in which the terms of this PA are implemented, the BLM
- 13 will consult with such party to determine if the inclusion, suggestion,
- 14 recommendation, or objection may be addressed to the satisfaction of the party,
- 15 which may include presenting a proposed amendment to this PA in accordance
- 16 with Stipulation XV.
- 17
- 18 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall
- 19 notify the Signatories of the dispute, and seek input from Signatories to resolve
- 20 the dispute.
- 21
- 22 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 23 1. Forward all documentation relevant to the dispute, including the BLM's
- 24 proposed resolution, to the ACHP. The ACHP will provide the BLM with its
- 25 advice on the resolution of the objection within thirty (30) calendar days of
- 26 receiving adequate documentation. Prior to reaching a final decision on the
- 27 dispute, BLM will prepare a written response that takes into account any
- 28 timely advice or comments regarding the dispute from the ACHP, Signatories,
- 29 and Consulting Parties, and provide them with a copy of this written response.
- 30 BLM will then proceed according to its final decision.
- 31
- 32 2. If the ACHP does not provide its advice regarding the dispute within the thirty
- 33 (30) calendar-day time period, BLM may make a final decision on the dispute
- 34 and proceed accordingly. Prior to reaching such a final decision, BLM will
- 35 prepare a written response that takes into account any timely comments
- 36 regarding the dispute from the Signatories and Consulting Parties to the PA
- 37 and provide them and the ACHP with a copy of such written response.
- 38
- 39 3. Regardless of the results of the dispute resolution measures described
- 40 above, the BLM's responsibility is to carry out all other actions subject to the
- 41 terms of this PA that are not the subject of the dispute.

42 **XIII. Duration**



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 A. The date the ACHP signs this PA is the ratification date, which officially executes  
2 the PA.  
3  
4 B. This PA will remain in effect for ten (10) years after its execution.  
5  
6 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
7 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
8 below no later than six (6) months prior to expiration of the agreement. If  
9 appropriate, the Signatories may execute a new agreement or amend to extend  
10 the duration of the current agreement.

11 **XIV. Amendments**

- 12 A. The Signatories may amend this PA at any time when such amendment is  
13 agreed to in writing by all Signatories, [and in consultation with Consulting Parties](#).  
14 The amendment will be effective on the date a copy signed by all of the  
15 Signatories is filed with the ACHP.  
16  
17 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
18 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
19  
20 C. In the event that another federal agency not initially a party to or subject to this  
21 PA receives an application for funding/licensing/or permitting an Undertaking in  
22 the 1002 area as described in this PA, that agency may fulfill its Section 106  
23 responsibilities by stating in writing it concurs with the terms of this PA and  
24 notifying the Signatories and Consulting Parties that it intends to do so. Such  
25 agreement shall be evidenced by execution of a signature page signed by an  
26 authorized individual for that agency, distribution of said page to all Signatories  
27 and Consulting Parties, filing this page with the ACHP, and implementation of the  
28 terms of this PA.  
29  
30 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
31 to reflect changes in personnel or contact information without requiring the PA to  
32 be amended in accordance with the procedures described above.

33 **XV. Termination**

- 34 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
35 carried out, that party shall immediately consult with the other Signatories to  
36 attempt to develop an amendment or agreement on other actions that would  
37 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
38 such consultation (or another time period agreed to by all Signatories) an  
39 amendment or agreement on other actions that would avoid termination cannot  
40 be reached, any Signatory may terminate the Agreement upon written notification  
41 to the other Signatories.  
42

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- 1 B. In the event that a Signatory terminates this PA, and prior to further Program  
2 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
3 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
4 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
5 as to the course of action it will pursue.

6 **XVI. Emergency Situations**

- 7 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
8 Consulting Parties of an emergency situation, which represents an imminent  
9 threat to public health or safety or creates a hazardous condition, that also has  
10 potential to harm Historic Properties or the subsequent response has potential to  
11 harm Historic Properties and the measures taken to respond to the emergency or  
12 hazardous condition. Should the Signatories or Consulting Parties desire to  
13 provide technical assistance to the BLM, they shall submit comments to BLM  
14 within seven (7) calendar days from notification, if the nature of the emergency or  
15 hazardous condition allows for such coordination.  
16

- 17 B. If the APE of the emergency situation has been investigated for Historic  
18 Properties and none is within the APE, then BLM will request concurrence on a  
19 determination of “no Historic Properties affected” from the SHPO within five (5)  
20 calendar days from the initial notification.  
21

- 22 C. If the APE has not been investigated for potential Historic Properties, then  
23 emergency actions will be monitored by a SOI qualified professional with cultural  
24 advisors or the APE will be inventoried by a SOI-qualified professional with  
25 cultural advisors no later than one (1) year after the emergency action is  
26 completed. BLM will require that a monitoring report or inventory report will be  
27 submitted to Signatories and Consulting Parties within thirty (30) days of the end  
28 of fieldwork.  
29

- 30 D. If a previously known or unknown Historic Property is adversely affected by  
31 emergency actions the BLM will consult with Signatories and Consulting Parties  
32 to resolve the adverse effect pursuant 36 CFR § 800.6.

33 **XVII. Anti-Deficiency Provision**

- 34 A. Any obligation of the federal agencies set forth in this PA is subject to and  
35 dependent on appropriations by Congress and allocation of sufficient funds for  
36 that purpose. The federal agencies shall make reasonable and good faith efforts  
37 to secure the necessary funds to implement this PA in its entirety. If compliance  
38 with the Anti-Deficiency Act alters or impairs the federal agencies’ ability to  
39 implement the stipulations of this agreement, the federal agencies shall consult in  
40 accordance with the amendment and termination procedures found at  
41 Stipulations XV and XVI of this agreement.

**Commented [MJR37]:** Make sentence active. Who is doing this?

**Commented [MJR38]:** Changed because “surveyed” reflects an archaeological bias. Investigated is a broader term that includes ethnographic research.

**Deleted:** surveyed

**Commented [MJR39]:** Make sentence active. Who is doing this?

**Deleted:** surveyed

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
2 that the BLM and FWS have taken into account the effects of the Undertaking on  
3 Historic Properties and have afforded the ACHP an opportunity to comment.

4

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

DRAFT

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

DRAFT



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONCURRING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

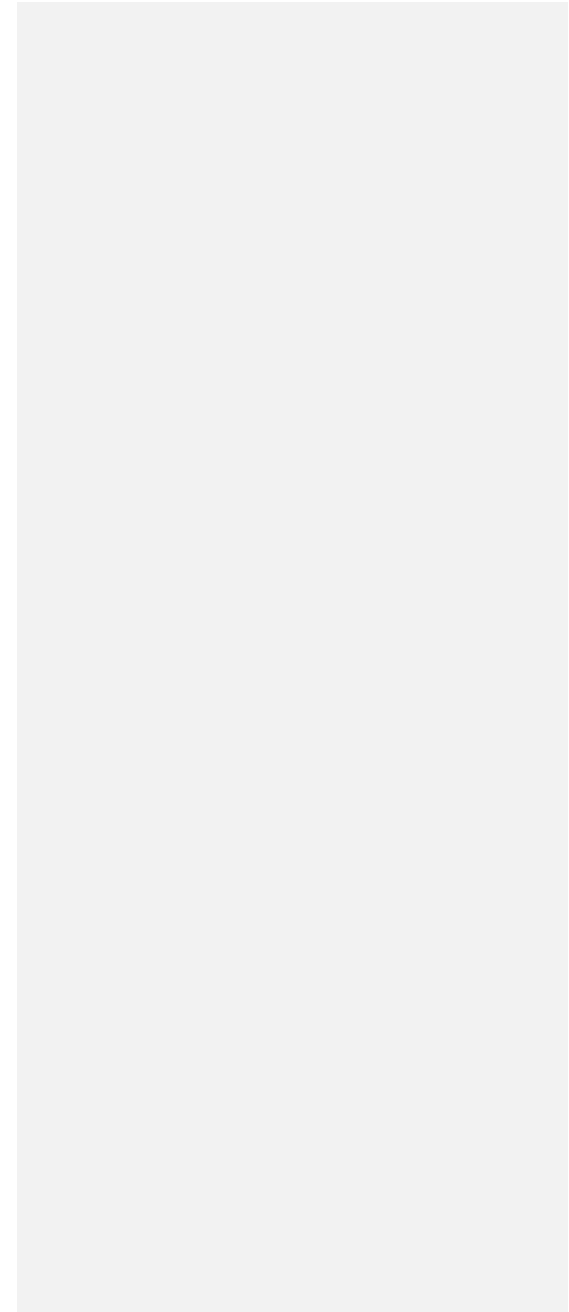
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1 **Appendix A: Area of Potential Effects**  
2

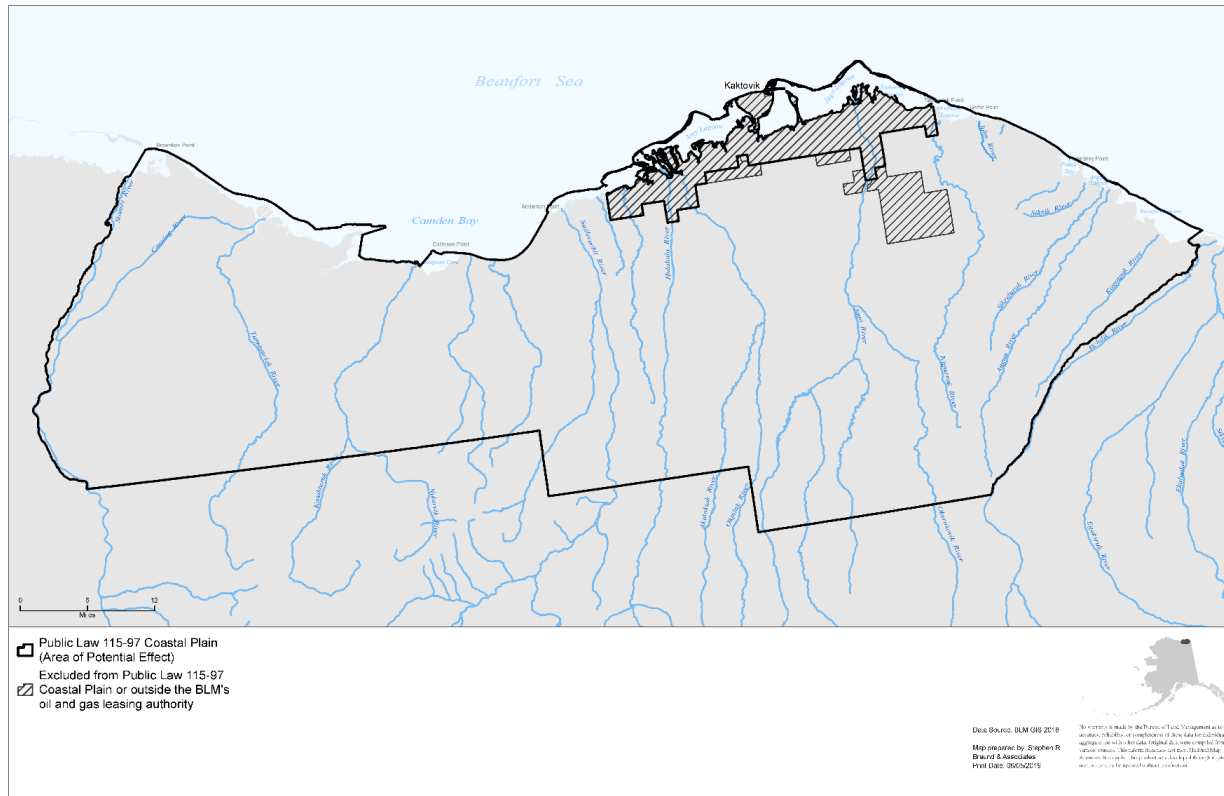
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2

A-2

NVVTG, AVC, VVC Comments on Draft PA\_07.11.19\_1.docx

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix B: Consulting Parties**

2  
3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
4 governments invited or requested to participate in consultation (\*indicates a response that they will  
5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

**Commented [WF40]:** This table should list every entity that was invited or requested to become a consulting party, including federal agencies and the state. It should also include the dates that those entities were invited/requested and the dates those invitations/requests were accepted. It should also more clearly show which parties did not participate. The PA also says this table will provide the POC, that should include the names of the POCs and their titles.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

6

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

**Commented [MJR41]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

**Commented [MJR42]:** See comments above on Appendix C. A PA without its appendices is an incomplete PA and cannot be signed.

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **Appendix F: DRAFT PA Tracking Sheet**  
2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

**Commented [WF43]:** Have there been no subsequent revisions or drafts since 3/25/19?

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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28

29

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed ~~in~~ or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment regarding such Undertaking; and

Deleted: o

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the ~~Program~~, and therefore the BLM is the lead federal agency for purposes of complying with Section 106 of the NHPA; and

Deleted: leasing p

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, including the development of an Environmental Impact Statement and selection of a preferred alternative that will guide the sale of leases for oil and gas activities pursuant to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is further described in *Appendix A: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

Deleted: Appendix B: Consulting Parties

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)   
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties

8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

10 **I. Administrative**

- 11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
13 ensure that all lessees are aware that they must comply with the terms of this PA  
14 during activities on their lease(s).  
15  
16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.  
22  
23 C. BLM shall require that any type of archaeological work associated with BLM’s  
24 Program proposed within the APE not performed by BLM or FWS professional  
25 staff will be conducted only under terms of a federally issued Permit For  
26 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
27 application to the BLM or otherwise coordinated by BLM.  
28  
29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.  
31  
32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.  
35  
36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41 (5) business days. Contact information for Signatories and Consulting Parties is  
42 included below in *Appendix B: Consulting Parties*.

Deleted:

Commented [MSJ(1)]: Will this be a revised Appendix B?

Commented [HM(N2R1)]: BLM will maintain a contact list for signatories and consulting parties, with primary agency point of contacts being maintained in Appendix B and being updated when formal amendments to the PA are made.

- 1  
2 G. At any time, Signatories to this PA may request additional time for reviews of  
3 documentation, preparation of guidance documents, or any other time-sensitive  
4 materials outlined in this PA by providing a written request to all Signatories.  
5  
6 H. The Signatories may execute this PA in counterparts, with a separate page for  
7 each Signatory.

8 **II. Scope of the PA**

- 9 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and  
10 other federal laws that may be affected by the BLM's Undertaking within the  
11 APE.  
12  
13 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
14 under Section 106 of NHPA, including consultation with Indian Tribes, for  
15 Program decisions that may be implemented in accordance with the decisions  
16 supported by the Program EIS and BLM policy.  
17  
18 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
19 involving reimbursement or contribution of funds between the parties to this PA  
20 will be handled in accordance with applicable laws, regulations, and procedures  
21 including those for Federal Government procurement and printing. Separate  
22 agreements will outline such endeavors and will be made in writing by  
23 representatives of the parties and will be independently authorized by  
24 appropriate statutory authority. This PA does not provide such authority.

25 **III. Agency Coordination Procedures**

- 26 A. Agency Roles and Coordination  
27 1. BLM  
28 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
29 106 compliance, is responsible for the following actions:  
30 i. Conducting Section 106 reviews of Projects the PA addresses;  
31 ii. Receiving permit applications and issuing permits that may be needed  
32 for Section 106 compliance work for oil and gas-related projects in the  
33 APE. Such permits needed may include various types of land use  
34 authorizations as well as Permits for Archaeological Investigations  
35 ("ARPA" Permits).  
36  
37 2. FWS  
38 a. FWS, as surface manager of the APE, is responsible for the following  
39 actions:  
40 i. Receiving, reviewing, commenting on, and evaluating applications for  
41 ARPA permits;  
42 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
43 determinations and findings made by BLM;

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- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

6 **IV. Section 106 Consultation Plan and Procedures**

- 7 A. BLM anticipates that the Program will include several Project types and that each
- 8 type will require consultation with Signatories and Consulting Parties. Project
- 9 types include:
- 10       1. Leasing;
- 11       2. Inventory, Research, and Monitoring Activities;
- 12       3. Geophysical Exploration;
- 13       4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14       5. Marine and Intertidal Activities and Operations;
- 15       6. Operations and Production;
- 16       7. Inspections and Enforcement; and
- 17       8. Reclamation
- 18
- 19 B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as
- 20 necessary” basis throughout the life of this PA on the above Project types to
- 21 include, but not limited to the following:
- 22       1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23       selection of alternatives;
- 24       2. Develop appropriate research designs and investigative methods for potential
- 25       Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26       studies;
- 27       3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28       BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29       Historic Properties within the Project-specific APE;
- 30       4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31       interested Consulting Parties) site visits within the Project-specific APE(s).
- 32       5. Develop project-specific Memorandum of Agreements or Programmatic
- 33       Agreements;
- 34       6. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 35       avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 36       may result from Program activities. These plans may include, but are not
- 37       limited to:
- 38           a. Monitoring lessee activities and effects on Historic Properties within the
- 39           Project-specific APE(s);
- 40           b. Periodic Historic Property condition assessments;
- 41           c. Documentation review to ensure lessees have fulfilled commitments
- 42           stipulated by BLM, and have complied with the terms of this PA.
- 43       C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c) and
- 44       Section 304 of the NHPA, the BLM shall withhold from public disclosure
- 45       information about the location, character, or ownership of a historic property

Deleted: USACE

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1 when disclosure may cause a significant invasion of privacy, risk harm to the  
2 historic property, or impede the use of a traditional religious site by practitioners.

- 3  
4 D. The implementing regulations of Section 106 of the NHPA (36 CFR §  
5 800.2[c][2][ii][A-C]) require BLM to:  
6 1. Consult with any Indian Tribe that attaches religious and cultural significance  
7 to Historic Properties that may be affected by an Undertaking,  
8 2. Provide Indian Tribes with a reasonable opportunity to identify their concerns  
9 about Historic Properties, to advise on the identification and evaluation of  
10 Historic Properties, including those of traditional religious and cultural  
11 importance, to articulate their views on the Undertaking's effects on such  
12 properties, and to participate in the resolution of adverse effects,  
13 3. Consult with Indian Tribes in a sensitive manner respectful of tribal  
14 sovereignty, and in a manner sensitive to the concerns and needs of the  
15 Indian Tribe.  
16 4. In addition to those items listed above concerning BLM's consultation  
17 obligations to Indian Tribes under the NHPA, BLM shall consult with Indian  
18 Tribes as appropriate and needed, to:  
19 a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see  
20 *Appendix D*); and  
21 b. Consider including Tribal representatives to participate in fieldwork,  
22 monitoring, post-field analyses, and reporting activities.  
23  
24 E. At any time throughout the life of the PA, Consulting Parties may contact the  
25 BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of  
26 concern to the Signatories and other Consulting Parties at the Annual PA  
27 Meeting.  
28  
29 F. At any time throughout the life of the PA, any outside entity not initially part of this  
30 PA, including any Indian Tribes, may contact the BLM and request to become a  
31 Consulting Party. BLM will consider any such request and notify the Signatories  
32 and other Consulting Parties of the request and BLM's decision.

33 **V. Section 106 Procedures**

- 34 A. BLM's Undertaking involves a number of activities associated with oil and gas  
35 leasing and associated activities within the APE that have varying potentials to  
36 cause effects to Historic Properties, all of which are covered by this PA. The  
37 steps below outline an alternate process for BLM to comply with NHPA for the  
38 Undertaking, which will be carried out by BLM or FWS professional staff or non-  
39 federal professionals who meet the Secretary of the Interior's (SOI) Professional  
40 Qualifications Standards (48 Federal Register 44716-44742), as appropriate.  
41  
42 B. BLM shall make a good faith effort to identify and evaluate historic properties but  
43 anticipates that in certain cases a 100 percent identification of a Project APE may  
44 not be necessary, and NHRP evaluations may be conducted on all or some of  
45 identified properties. BLM will collect, or direct lessees and/or their contractors to



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1 collect, the amount of information necessary for the BLM to make decisions  
2 regarding the potential of the Project Type(s) to affect Historic Properties.

3  
4 C. At its discretion, BLM may submit documentation requesting SHPO concurrence  
5 on determinations of eligibility and findings of effect concurrently in a combined  
6 submission for Project Types described below.

7  
8 D. Nothing shall prevent the BLM from seeking informal consultation with the  
9 Signatories or Consulting Parties regarding the preparation of determinations of  
10 eligibility or findings of effect.

11  
12 A. **Step 1: Oil and Gas Program Project Types Addressed under this PA**

13 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
14 that this PA will address the following Project types associated with the BLM's  
15 Oil and Gas Program within the APE:

- 16 a. Lease Sales
- 17 b. Inventory, Research, and Monitoring Activities
- 18 c. Geophysical Exploration
- 19 d. APD
- 20 e. Marine and Intertidal Activities and Operations
- 21 f. Operations and Production
- 22 g. Inspection and Enforcement
- 23 h. Reclamation

24  
25 B. **Step 2: Assess Project Potential to Cause Effects**

26 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
27 under review has potential to cause effects on Historic Properties. BLM shall  
28 determine that a Project type does not have the potential to cause effects if it  
29 meets one or more of the following conditions:

- 30 a. No new ground disturbance outside existing project footprint;
- 31 b. Lease Sale or other Administrative Action; or
- 32 c. Standard maintenance, repairs, or replacement of existing facilities or  
33 equipment that do not exceed the original disturbance area or footprint.

34 2. If the Project type meets one or more of the above conditions, BLM shall  
35 make a determination that the Project type has “no potential to cause effects”  
36 and attach letter to the Project file [36 CFR 800.3(a)(1) determination].

37 3. If the Project type does not meet the above conditions, and the Project type  
38 consists of Inventory, Research, and Monitoring Activities, Geophysical  
39 Exploration, Marine and Intertidal Activities and Operations, Operations and  
40 Production, or Inspection and Enforcement, proceed to Step 3.

41 4. If the Project type does not meet the above conditions, and the Project type is  
42 an APD or Reclamation, BLM will consult with Signatories and Consulting  
43 Parties, and BLM will determine if the Project should be addressed under this  
44 PA, or if a separate Section 106 process and agreement document (“kick-  
45 out”) must occur in accordance with Step 8 below.

**Commented [MSJ(3)]:** Ice roads technically do not cause ground disturbance but could cause effects (grave markers).

Given the need to move towards execution, our office recommends deleting item “a” rather than trying to figure out conditions that would allow this type of action to not have potential to cause effects.

**Commented [HM(N4R3)]:** Instead of deleting, add “...outside existing project footprint.”

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**C. Step 3: APE**

- 1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.
  - b. If no, BLM defines the APE in consultation with SHPO.

**D. Step 4: Identification**

- 1. Has BLM determined that adequate efforts to identify Historic Properties consistent with the procedures described in *Appendix C: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix C: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project.

**Commented [MSJ(5):** At the last meeting I remember discussing whether we could replace Appendix C with Manual 8110. Was that issue resolved?

**Commented [HM(N6R5):** No, it was not resolved. This will be considered with development of Appendix C

**E. Step 5: Preliminary APE Assessment**

- 1. Has BLM determined that identification efforts documented properties that have not been previously evaluated for NRHP eligibility within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no or if all known properties have been evaluated for NRHP eligibility, proceed to Step 7.

**Deleted:** have resulted in the identification of

**Deleted:** potential Historic P

**F. Step 6: Evaluation**

- a. ~~\_\_\_\_\_~~
- b. The BLM will evaluate previously unevaluated properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15) consistent with guidance found in Appendix C concerning level of effort.
  - i. BLM will concurrently consult with FWS on all determinations of eligibility (DOEs), and with Indian Tribes on DOEs concerning unevaluated properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
    - 1. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
    - 2. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
  - ii. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal.
  - iii. Within approximately five days of the end of the FWS and Indian Tribes review period, including any extensions granted, BLM will

**Deleted:** <#>Has BLM determined that potential Historic Properties identified within the APE have been evaluated for NRHP eligibility?¶  
<#>If yes, proceed to Step 7.

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1 submit the DOE to SHPO, who will have thirty (30) days to review the  
2 DOE(s). If SHPO does not offer comment within the review period,  
3 then BLM will presume the SHPO agrees with BLM's DOE(s) and may  
4 proceed to Step 7.

5 1. BLM may combine the DOE submittal to SHPO with a finding of  
6 effect determination and request for concurrence as outlined below  
7 in Step 7.

8 iv. Additional time to review a BLM submittal of a DOE(s) may be  
9 requested by SHPO, up to thirty (30) days per submittal.

10 v. If agreement cannot be reached on a DOE between BLM and SHPO,  
11 then the BLM shall follow the procedures outlined at 36 CFR §  
12 800.4(c)(2).

13 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe  
14 disagrees with BLM's DOE regarding a property of religious and  
15 cultural significance, it may ask the Council to request that the BLM  
16 obtain a determination from the Secretary of the Interior, as  
17 delegated to the Keeper of the NRHP.

18 vi. Once BLM completes the required NRHP evaluations in the APE, BLM  
19 may then proceed to Step 7.

20  
21 **G. Step 7: Assess Effects**

22 1. Has BLM determined there are Historic Properties in the APE?

23 If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), which shall notify  
24 all consulting parties of the finding and provide them with the documentation specified in  
25 Section 800.11(e). The SHPO shall have 30 days from receipt to review the finding.

26 i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM  
27 shall notify Signatories and Consulting Parties of the finding and  
28 provide them with documentation supporting this finding.

29 ii. If SHPO concurs with the BLM's determination, BLM shall document  
30 SHPO concurrence to the Project file.

31 iii. If the SHPO or any consulting party notifies the agency official in  
32 writing that it disagrees with the finding and specifies the reasons for  
33 the disagreement in the notification, the BLM shall follow the  
34 procedures outlined at 36 CFR 800.5(c)(2-3).

35 iv. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then  
36 BLM shall request the lessee or applicant propose methods to avoid,  
37 minimize, and/or mitigate adverse effects.

38 1. Upon receipt of the applicant's proposed methods to avoid,  
39 minimize, and/or mitigate adverse effects, BLM shall reapply the  
40 criteria of adverse effect in consultation with Signatories and  
41 Consulting Parties, and if necessary, revise their finding of effect.

42 v. If BLM, in consultation with Signatories and Consulting Parties  
43 determines that an applicant's proposed methods to avoid, minimize,

**Commented [MSJ(7)]:** There doesn't seem to be any alternative process in a.i, but a lot of detail in the regs that is not included here. Is there any reason why we can state "BLM shall follow 36 CFR 800.5" and leave the content from a.ii and a.iii as guidance for those situations?

**Commented [HM(N8R7)]:** Change text as shown in track changes

**Commented [MSJ(9)]:** How, when, and for how long?

**Commented [HM(N10R9)]:** See changed text

**Deleted:** include consultation with Signatories and Consulting Parties

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**Deleted:** If SHPO does not concur, and resolution cannot be reached through consultation,

**Commented [MSJ(11)]:** Consulting parties can also object to a no adverse effect finding (36 CFR 800.5(c)(2).

**Commented [HM(N12R11)]:** See revisions

**Commented [MSJ(13)]:** What does this look like and how long will it take?

**Commented [HM(N14R13)]:** Add "...pursuant to 36 CFR 800.6"

1 and/or mitigate adverse effects will still result in adverse effects to  
2 Historic Properties, the process shall revert to the standard Section  
3 106 procedures at 36 CFR 800.6.  
4

- 5 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR  
6 800.4[d][1]) and submit to SHPO for concurrence with appropriate  
7 supporting documentation. SHPO shall have thirty (30) days to review the  
8 BLM’s determination. BLM shall also provide notice to the Signatories and  
9 Consulting Parties of this finding in accordance with 36 CFR 800.4(d)(1).  
10 i. If SHPO concurs with the BLM’s determination, BLM shall document  
11 SHPO concurrence to the Project file.  
12 ii. If SHPO does not concur, and resolution cannot be reached through  
13 consultation between SHPO and BLM, BLM shall follow the  
14 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

15 **H. Step 8: Decision regarding Undertaking**

- 16 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
17 applicable, and BLM has documented the appropriate finding of effect and  
18 resolution efforts, as required, to the Project file.  
19  
20 2. Alternatively, if BLM has determined that a separate Section 106 process and  
21 agreement document (“kick-out”) is required for an APD or Reclamation  
22 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
23 subject to this PA only after the separate Section 106 review has been  
24 completed, and if necessary, the appropriate agreement document (e.g.,  
25 Memorandum of Agreement or Programmatic Agreement) has been executed  
26 for the Project.  
27

28 **I. Step 9: Reporting**

- 29 1. BLM will include a summary of all Projects reviewed under this PA in the  
30 previous year in the annual PA report [Stipulation XII]. The summary will  
31 include a synopsis for each project, including at minimum:  
32 a. A description of the Project;  
33 b. Delineation of the APE;  
34 c. Identification efforts within the APE;  
35 d. NRHP eligibility of known properties within the APE;  
36 e. BLM’s finding of effect for the Project; and,  
37 f. The Qualifications of the Individual who conducted the PA Compliance  
38 Review.  
39  
40 2. BLM will submit reports associated with identification, evaluation, and  
41 assessments of effect that were used to support BLM findings of effect to the  
42 SHPO. Copies of these reports will be provided to Consulting Parties to the  
43 extent allowed under confidentiality requirements.

Commented [HM(N15)]: SHPO: Please provide recommended revised language.

BLM may append reports associated with identification, evaluation, and assessments of effect that were used to support BLM finding to the annual PA report, provided they do not contain sensitive information regarding Historic Properties.

**VI. Methods to Inventory APE**

- A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE, within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.
- B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day comment.
- C. BLM will consider timely comments received and revise the draft accordingly. Multiple drafts may be required, and a final draft will be sent out for review no later than one year from the execution of the PA.
- D. Consulting Parties shall be offered the opportunity to comment on, at a minimum, the first draft and the final draft concurrent with Signatory review.
- E. BLM, FWS, and SHPO must approve of the draft Appendix C: Methods to Inventory the APE, before it is considered final.
- F. Drafts cannot be used as interim guidance. If a project needs to move through Step 4 of this PA prior to finalization of Appendix C: Methods to Inventory the APE, then the appropriate level of effort and methods will be determined through consultation among BLM, FWS, and SHPO on a case-by-case basis.

**Commented [MSJ16]:** The PA should include a guidance statement to assist with content development for the appendix.

For example: Appendix C will include parameters on when an unevaluated property within the APE will not be evaluated for the NRHP, guidance on intensity of fieldwork based on proposed actions/activity, guidance on when and at what level archaeological, ethnographic, historical, and archival research should be conducted, and the role of GIS-based modeling for the identification of historic properties.

**Commented [HM(N17R16):** Add Sarah's example as a new bullet B that describes what Appendix C will contain. All other letters will change sequentially.

**Deleted:** Appendix C: Methods to Inventory the APE

**Deleted:** Appendix C: Methods to Inventory the APE

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**VII. Standards**

- A. Professional Qualifications:
  - 1. For work not performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of a qualified historic preservation professionals who meet the (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742). The BLM and FWS, through review of permit applications or other means, shall ensure that consultants retained for services pursuant to the Agreement meet these standards.
  - 2. A "qualified historic preservation professional" is a person who meets the relevant standards outlined in the Archeology and Historic Preservation: (SOI) Standards and Guidelines [As Amended and Annotated]

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1 (http://www.nps.gov/history/local-law/arch\_stnds\_9.htm ) or revised  
2 equivalent.

- 3  
4 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
5 identifying and assessing the eligibility of Historic Properties that may  
6 possess religious or cultural significance to Indian Tribes (36 CFR  
7 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
8 identifying and evaluating Historic Properties of religious or cultural  
9 significance to them.

10  
11 B. Professional Standards:

- 12 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
13 ensure that all work conducted as a result of this PA not otherwise done by  
14 BLM or FWS professional staff is performed in accordance with the SOI  
15 Standards for Archeology and Historic Preservation (Standards and  
16 Guidelines) (48 Fed. Reg. 44716-44742).  
17  
18 2. BLM shall require that persons supervising and conducting work on the behalf  
19 of lessees hold the appropriate BLM permits and/or authorizations as  
20 appropriate for inventory, monitoring, and other investigations, and meet the  
21 Standards and Guidelines, as well as the SOI Professional Qualification  
22 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
23 that persons supervising and conducting work on the behalf of lessees  
24 comply with the NAGPRA POA.  
25  
26 3. Investigations associated with Program activities will be conducted in  
27 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
28 the standards presented in BLM Manual 8110  
29 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
30 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)).  
31  
32 4. Reports regarding Historic Properties shall meet the standards outlined in the  
33 SOI Standards for Archeology and Historic Preservation (Standards and  
34 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
35 guidance (i.e., BLM Manual 8110), and Alaska Office of History and  
36 Archaeology guidelines.

37 **VIII. Unanticipated Discoveries**

- 38 A. During the entire implementation of this Undertaking, BLM will ensure that the  
39 Signatories and Consulting Parties are informed of unanticipated discoveries  
40 within the Undertaking's APE during lessees or their contractor related activities  
41 associated with the BLM's oil and gas leasing program.  
42  
43 B. Lessees or their contactors will not take any actions that would adversely affect  
44 the discovery which may be eligible for listing in the NRHP without written

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1 approval from BLM.  
2

3 C. Stipulation IX will be undertaken if an unanticipated discovery is made. If the  
4 unanticipated discovery includes human remains, burials, or funerary items, then  
5 the additional steps listed in Stipulation X shall be followed.

Deleted: Upon the unanticipated discovery , the following steps listed below

Deleted: IX

6  
7 1. The lessee will ensure that their operator or contractor will halt all activity in  
8 the area of the find and an appropriate buffer surrounding the area where  
9 further subsurface finds can be reasonably expected to occur, to be no less  
10 than fifty (50) feet, and will notify the BLM within one business day;

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11  
12 2. The BLM shall require the suspension of activity within the established buffer,  
13 and shall notify the Signatories and Consulting Parties within two business  
14 days of the discovery;

15  
16 3. The BLM or a SOI-qualified archaeologist approved by them will inspect the  
17 property as soon as possible and collect enough information to determine (if  
18 possible):

- 19 a. The extent of cultural materials associated with the inadvertent discovery  
20 or effect;  
21 b. The degree of integrity; and  
22 c. The cultural affiliation of the materials (if possible).

23  
24 4. Within five (5) business days, BLM shall provide a summary of the information  
25 collected at the discovery to Signatories and Consulting Parties, which will  
26 include BLM's preliminary assessment of the NRHP eligibility of the  
27 discovery.

28  
29 5. Within 14 days of the BLM's distribution of the information regarding the  
30 discovery, the BLM, in consultation with the Signatories and Consulting  
31 Parties, will determine whether the discovery encountered is eligible for listing  
32 in the NRHP.

Deleted:

33 a. If the BLM determines that the discovery is not eligible for listing in the  
34 NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
35 activities in the area of the discovery.

Deleted: in

36 b. If the BLM determines the discovery is eligible for listing in the NRHP and  
37 SHPO concurs, BLM will direct the lessee to prepare a plan for its  
38 avoidance, protection, or recovery of information in consultation with BLM,  
39 Signatories and Consulting Parties, as appropriate.

- 40 i. Within five (5) business days of receipt, BLM shall distribute copies of  
41 the proposed plan to Signatories and Consulting Parties for review and  
42 comment.  
43 ii. Signatories and Consulting Parties shall have seven (7) days to review  
44 the proposed plan and provide comments to BLM.

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 iii. BLM shall take into consideration timely comments received on the  
2 proposed plan and make a determination to either approve or request  
3 revisions to the proposed plan.

4 A. In the event that BLM requests revisions to the plan, BLM shall  
5 redistribute the revised plan under the same timelines as above,  
6 and Signatories and Consulting Parties shall have the same period  
7 of review. BLM may request revisions to the plan two times or until  
8 the plan adequately responds to comments. BLM will finalize the  
9 plan and provide the final plan to Signatories and Consulting  
10 Parties for their information.

Commented [MSJ(18)]: Our office recommends providing direction on how to end the review process.

Commented [HM(N19R18)]: Accept inserted text

11  
12 6. Work in the established buffer will not proceed until either:  
13 a. BLM approves the plan and requires its implementation; or  
14 b. The BLM determines that the discovery is not eligible for the NRHP, and  
15 the SHPO concurs with this determination.

16  
17 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
18 discoveries as provided in Stipulation XIII of this PA.

19 **IX. Unanticipated Effects**

20 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
21 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
22 Property, BLM, in consultation with Signatories and Consulting Parties, will  
23 assess the effect(s), develop a plan to address the unanticipated adverse  
24 effect(s), and avoid, minimize, and/or mitigate the unanticipated adverse  
25 effect(s).

26 B. BLM will notify Signatories and Consulting Parties of unanticipated effects within  
27 approximately two business days if caused by a current action (i.e. construction)  
28 or other situation requiring expedited review. Within approximately 7 days of  
29 discovery, BLM will submit to Signatories and Consulting Parties for a 7-day  
30 comment period a finding on whether the unanticipated effect was adverse.

31 C. If the unanticipated effect is the result of cumulative or past actions, then BLM  
32 will notify Signatories and Consulting Parties within approximately 30 days of  
33 discovery, which will include a finding on whether the effect was adverse.

34 D. If BLM, in consultation with Signatories and Consulting Parties determines that  
35 the unanticipated effect was adverse, then the process shall revert to the  
36 standard Section 106 procedures at 36 CFR 800.6.

37 E. BLM will attempt to complete this process within 180 days of the recognition of  
38 the unanticipated effect(s).

39  
40 F. BLM will address any disputes over the resolution of unanticipated effects as  
41 provided in Stipulation XIII of this PA.

Commented [MSJ(20)]: Initial thoughts on making this process clearer.

Commented [HM(N21R20)]: Agree with text. Added "approximately" for flexibility.

42 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
43 **Objects, and Objects of Cultural Patrimony**



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- 1 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
2 that any Native American burials, human remains, and/or related items  
3 discovered on federal lands during implementation of the terms of the Agreement  
4 will be treated with dignity and respect, and that all procedures guiding the  
5 treatment of human remains, funerary objects, sacred objects, or objects of  
6 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
7  
8 B. As surface manager of the APE, FWS is the managing agency for any and all  
9 human remains and NAGPRA materials.  
10  
11 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
12 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
13 state laws six (6) months after the execution of this PA. Upon completion, the  
14 Human Remains and NAGPRA POA shall be incorporated into this PA as  
15 *Appendix D*. At minimum, the POA shall contain:  
16 1. Notification Procedures and Protocols;  
17 2. Chain of Custody Procedures; and,  
18 3. Contact information for Law Enforcement, Tribal Representatives, and  
19 Agency personnel.  
20  
21 D. In the event that any Native American burials, human remains, or funerary items  
22 are inadvertently encountered during any Program activity, the activity shall  
23 immediately cease, the area shall be secured from further disturbance, and the  
24 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
25 1. Upon notification, the BLM shall follow the procedures described in the  
26 NAGPRA POA (*Appendix D*).

Commented [MSJ(22)]: To be consistent with Stipulation III.A.2.iv, should FWS be the lead on all NAGPRA actions?

Commented [HM(N23R22)]: Yes – will reword to say "FWS shall develop, in consultation with BLM..."

Commented [MSJ(24)]: Likely need at least one year.

Commented [HM(N25R24)]: Make change to twelve months

Commented [MSJ(26)]: Recommend using the same process or similar as is used for development of Appendix C.

Commented [HM(N27R26)]: Add a statement to the effect "The process for development of this POA will follow the process for development of Appendix C as described in Section VI as practicable."

27 **XI. Curation**

- 28 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
29 during any activities associated with the Undertaking are property of FWS as  
30 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
31 *Curation of Federally-Owned and Administered Archaeological Collections* under  
32 FWS' existing agreement with the University of Alaska Museum of the North  
33 (UAMN).  
34  
35 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
36 submitting all materials recovered from federal lands to the UAMN within six  
37 months following approval of a final report, within one year following completion  
38 of the fieldwork that generated the collection, or other period of time as specified  
39 in the ARPA permit. All collections will be curation-ready, as determined by the  
40 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
41 behalf, will safeguard all materials from theft or damage by providing adequate  
42 interim storage facilities and conservation actions, consistent with the  
43 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
44 Permittee will provide BLM with all accession records and documentation  
45 associated with the transfer and curation of materials. BLM will share the

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1 documentation with the FWS. Information will be shared with the other  
2 Signatories and Consulting Parties as appropriate.

- 3  
4 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
5 the curation of any materials that are collected during the implementation this PA,  
6 in perpetuity. Curation costs may include, but are not limited to, curation fees  
7 charged by approved institutions, acquisition of archival materials, shipping,  
8 cleaning, rehousing, and any other conservation action.  
9  
10 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
11 described above in Stipulation IX and in the NAGPRA POA (Appendix D).  
12  
13 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
14 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
15 other transfers of artifacts recovered from the APE to local communities or  
16 facilities to support and enhance cultural ties to the APE.

17 **xii. Annual PA Meeting and Reports**

18 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to an  
19 annual meeting concerning this PA within one (1) year of the PA execution, and  
20 each succeeding year by that approximate same date, thereafter, A subsequent  
21 Signatories meeting will be held by the Signatories to consider the input received  
22 by Consulting Parties, discuss the PA's implementation, required amendments  
23 (as necessary) or other changes, and other business related to the application of  
24 the PA terms.

- 25 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
26 Archaeology, or at another location by consensus of the Signatories. The  
27 parties may participate by telephone if they so desire.  
28 2. The BLM will distribute meeting minutes to the meeting participants within  
29 thirty (30) days of the meeting, and meeting participants will provide  
30 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
31 amend the minutes as a result of comments and distribute finalized minutes  
32 within another fifteen (15) days to Signatories and Consulting Parties.  
33 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
34 BLM that a meeting is necessary outside of the regularly scheduled annual  
35 meeting, the Signatories and Consulting Parties will consider their request.  
36 BLM, taking into consideration the results of consultation, shall decide  
37 whether to convene additional meetings.  
38

39 B. Annual PA Report:

- 40 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
41 and Consulting Parties with a draft copy of that year's annual report that  
42 describes the completed and upcoming activities associated with the  
43 stipulations of this agreement. The report will include the following  
44 information, as appropriate:  
45 a. Number of leases issued;

**Deleted:** a two-day

**Commented [MSJ(28):** A two-day annual meeting was not included in the previous draft reviewed by our office. We recommend having one annual meeting among Signatories and Consulting Parties without a specified duration on its length. This meeting can be followed by a meeting among Signatories, if necessary.

**Deleted:** The meeting will consist of: an initial day where Consulting Parties and Signatories meet to discuss (1) the program activities conducted under the PA during the past year, (2) program activities scheduled for the upcoming year, (3) verify/update contact information for Consulting Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current, (5) cumulative effects, and (6) any other topics necessary to ensure the PA is functioning to all parties benefit.

**Deleted:** As needed, a

**Deleted:** The second day of

**Deleted:** s

**Deleted:** shall

**Commented [MSJ(30):** Listing out the many of the same topics as will be covered in the annual report is redundant, but if you wish to re-state these topics then we recommend including summaries of CRM activities and reporting – see comments in the annual report section.

Recommended language: The goal of the meeting will be to discuss the PA's implementation to ensure that it is fulfilling BLM's and FWS' obligations under federal law and statute. Attendees will discuss the contents of the annual report and concerns about the implementation of the PA.

**Commented [HM(N31R30):** Add recommended language in place of deleted text (below).

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- b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
- c. Consultation activities undertaken;
- d. A summary of the past year's and anticipated upcoming efforts to related to cultural resource management, which may include but not be limited to:
  - 1. Efforts to identify, evaluate, and protect historic properties;
  - 2. Measures drafted or implemented to resolve adverse effects;
  - 3. A summary of materials submitted to an approved repository for curation; and
  - 4. References for cultural resources reports produced in the past year.
- e. A summary of historic properties adversely affected, as well as any;
- f. Maps of areas leased, surveyed, or otherwise investigated;
- g. Upcoming/Planned activities for the Program; and
- h. An evaluation of this PA and recommendations for any amendments or changes.

Commented [MSJ(32)]: Should this be Stipulation V?

Commented [HM(N33R32)]: Yes – change to V

- 2. Signatories and Consulting Parties may provide comments to BLM at or before the Annual meeting regarding the content of the Annual Report.
- 4. Thirty (30) days after the annual meeting have concluded, BLM will prepare and submit a Final Annual Report to Signatories and Consulting Parties.

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C. Other Reports

- 1. Cultural resource activities, such as archaeological surveys, site evaluations, excavations, data recovery for mitigation, and monitoring, will be documented in reports subject to review by Signatories and Consulting Parties, as allowed by Stipulation IV.C, to allow timely and meaningful comment on findings and determinations made during implementation of Stipulation V Section 106 Procedures. Review and comment periods will follow the process outlined in Stipulation V. If a report is not accompanied by a determination or finding, then Signatories and Consulting Parties shall have 30 days to review and provide comment.
- 2. Full attachment of reports that have not been submitted to SHPO as part of a project review shall be attached to the Annual Report sent to SHPO.

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Commented [HM(N34)]: Changed recommendation from "Technical" to "other" as all of these types of reports may not be considered technical

Deleted: Technical

Deleted: technical

Commented [MSJ(35)]: Confidentiality provision

Commented [HM(N36R35)]: Accept additions/revisions

34 **XIII. Dispute Resolution**

- A. Should any of the Signatories or Consulting Parties who have become Concurring Parties to this PA have insight, improvements, or objections regarding the manner in which the terms of this PA are implemented, the BLM will consult with such party to determine if the inclusion, suggestion, recommendation, or objection may be addressed to the satisfaction of the party, which may include presenting a proposed amendment to this PA in accordance with Stipulation XV.
- A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall notify the Signatories of the dispute, and seek input from Signatories to resolve

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1 the dispute.

- 2  
3 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 4 1. Forward all documentation relevant to the dispute, including the BLM's  
5 proposed resolution, to the ACHP. The ACHP will provide the BLM with its  
6 advice on the resolution of the objection within thirty (30) calendar days of  
7 receiving adequate documentation. Prior to reaching a final decision on the  
8 dispute, BLM will prepare a written response that takes into account any  
9 timely advice or comments regarding the dispute from the ACHP, Signatories,  
10 and Consulting Parties, and provide them with a copy of this written response.  
11 BLM will then proceed according to its final decision.
  - 12  
13 2. If the ACHP does not provide its advice regarding the dispute within the thirty  
14 (30) calendar-day time period, BLM may make a final decision on the dispute  
15 and proceed accordingly. Prior to reaching such a final decision, BLM will  
16 prepare a written response that takes into account any timely comments  
17 regarding the dispute from the Signatories and Consulting Parties to the PA  
18 and provide them and the ACHP with a copy of such written response.
  - 19  
20 3. Regardless of the results of the dispute resolution measures described  
21 above, the BLM's responsibility is to carry out all other actions subject to the  
22 terms of this PA that are not the subject of the dispute.

23 **XIV. Duration**

- 24 A. The date the ACHP signs this PA is the ratification date, which officially executes  
25 the PA.  
26  
27 B. This PA will remain in effect for ten (10) years after its execution.  
28  
29 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to  
30 reconsider the terms of the PA and amend it in accordance with Stipulation XV  
31 below no later than six (6) months prior to expiration of the agreement. If  
32 appropriate, the Signatories may execute a new agreement or amend to extend  
33 the duration of the current agreement.

**Commented [MSJ(37)]:** 36 CFR 800.14(b)(iii) The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region..." ACHP signature alone does not execute the PA. Recommend revising to be more consistent with the implementing regulations.

**Commented [HM(N38R37)]:** Make revision to say "The programmatic agreement shall take effect when executed by the ACHP, the BLM, and the SHPO."

34 **XV. Amendments**

- 35 A. The Signatories may amend this PA at any time when such amendment is  
36 agreed to in writing by all Signatories. The amendment will be effective on the  
37 date a copy signed by all of the Signatories is filed with the ACHP.  
38  
39 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All  
40 amendments will be attached to the PA in *Appendix E: PA Amendments*.  
41  
42 C. In the event that another federal agency not initially a party to or subject to this  
43 PA receives an application for funding/licensing/or permitting an Undertaking in

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1 the 1002 area as described in this PA, that agency may fulfill its Section 106  
2 responsibilities by stating in writing it concurs with the terms of this PA and  
3 notifying the Signatories and Consulting Parties that it intends to do so. Such  
4 agreement shall be evidenced by execution of a signature page signed by an  
5 authorized individual for that agency, distribution of said page to all Signatories  
6 and Consulting Parties, filing this page with the ACHP, and implementation of the  
7 terms of this PA.  
8

- 9 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
10 to reflect changes in personnel or contact information without requiring the PA to  
11 be amended in accordance with the procedures described above.

12 **xvi. Termination**

13 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
14 carried out, that party shall immediately consult with the other Signatories to  
15 attempt to develop an amendment or agreement on other actions that would  
16 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
17 such consultation (or another time period agreed to by all Signatories) an  
18 amendment or agreement on other actions that would avoid termination cannot  
19 be reached, any Signatory may terminate the Agreement upon written notification  
20 to the other Signatories.  
21

22 B. In the event that a Signatory terminates this PA, and prior to further Program  
23 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
24 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
25 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
26 as to the course of action it will pursue.

27 **xvii. Emergency Situations**

28 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
29 Consulting Parties of an emergency situation, which represents an imminent  
30 threat to public health or safety or creates a hazardous condition, that also has  
31 potential to harm Historic Properties or the subsequent response has potential to  
32 harm Historic Properties and the measures taken to respond to the emergency or  
33 hazardous condition. Should the Signatories or Consulting Parties desire to  
34 provide technical assistance to the BLM, they shall submit comments to BLM  
35 within seven (7) calendar days from notification, if the nature of the emergency or  
36 hazardous condition allows for such coordination.  
37

38 B. If the APE of the emergency situation has been surveyed for Historic Properties  
39 and none ~~are~~ within the APE, then BLM will request concurrence on a  
40 determination of “no Historic Properties affected” from the SHPO within five (5)  
41 calendar days from the initial notification.  
42

Deleted: is

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- 1 C. If the APE has not been surveyed for potential Historic Properties, then  
2 emergency actions will be monitored by a SOI qualified professional or the APE  
3 will be inventoried by a SOI-qualified professional no later than one (1) year after  
4 the emergency action is completed. BLM will require that a monitoring report or  
5 inventory report will be submitted to Signatories and Consulting Parties within  
6 thirty (30) days of the end of fieldwork.  
7
- 8 D. If a previously known or unknown Historic Property is adversely affected by  
9 emergency actions the BLM will consult with Signatories and Consulting Parties  
10 to resolve the adverse effect pursuant 36 CFR § 800.6.

11 **XVIII. Anti-Deficiency Provision**

- 12 A. Any obligation of the federal agencies set forth in this PA is subject to and  
13 dependent on appropriations by Congress and allocation of sufficient funds for  
14 that purpose. The federal agencies shall make reasonable and good faith efforts  
15 to secure the necessary funds to implement this PA in its entirety. If compliance  
16 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
17 implement the stipulations of this agreement, the federal agencies shall consult in  
18 accordance with the amendment and termination procedures found at  
19 Stipulations XV and XVI of this agreement.

20 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
21 that the BLM and FWS have taken into account the effects of the Undertaking on  
22 Historic Properties and have afforded the ACHP an opportunity to comment.  
23

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

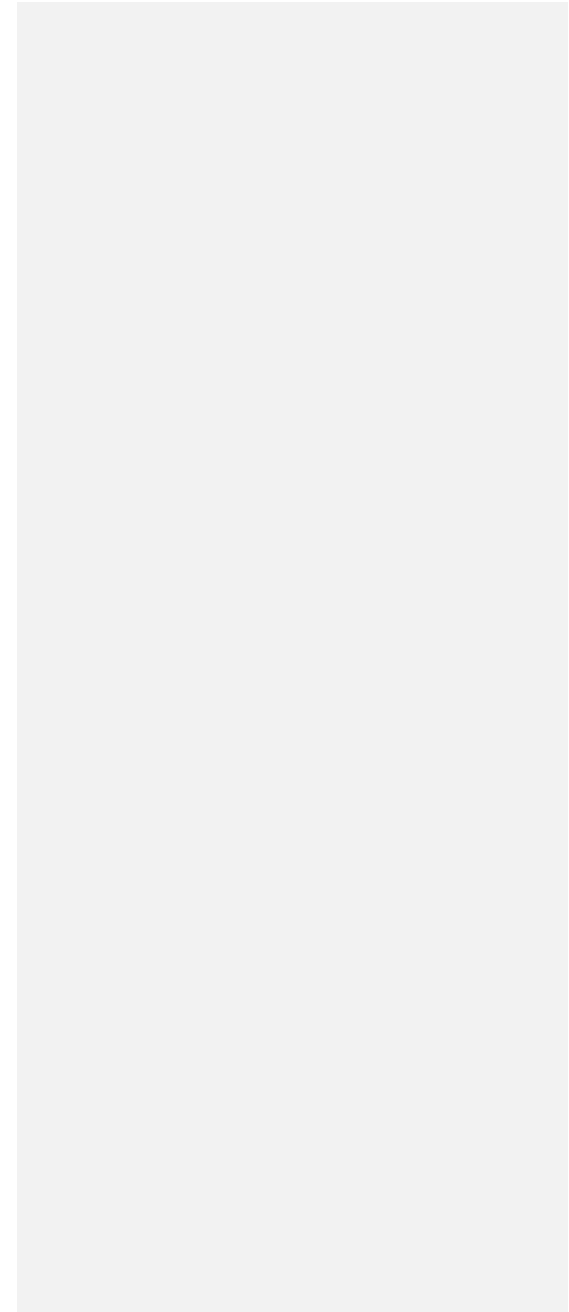
**[ORGANIZATION NAME PLACEHOLDER]**

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

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1 **Appendix A: Area of Potential Effects**  
2

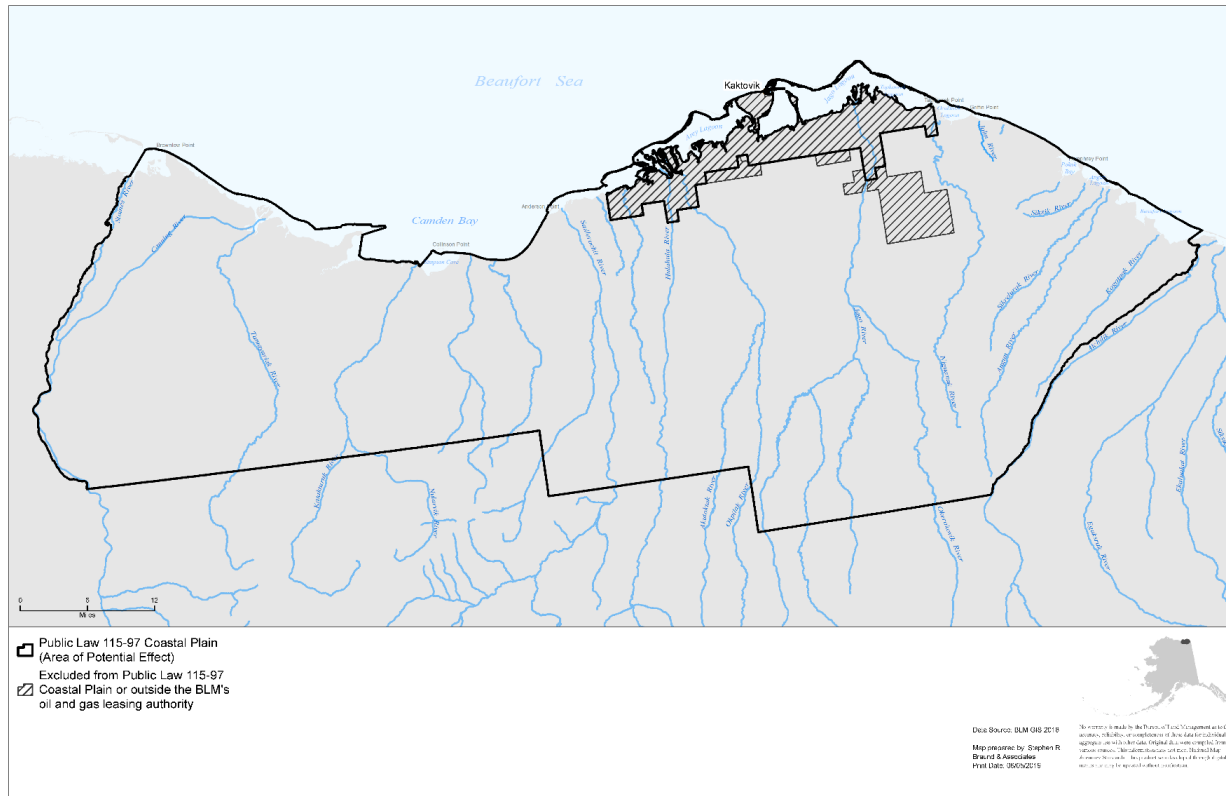
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Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



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1 **Appendix B: Consulting Parties**

2  
 3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

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1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 **[PLACEHOLDER]**

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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1 **Appendix F: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

3

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**DRAFT FINAL PROGRAMMATIC AGREEMENT**  
**AMONG**  
**UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND**  
**MANAGEMENT,**  
**UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE**  
**SERVICE,**  
**ALASKA STATE HISTORIC PRESERVATION OFFICER,**  
**AND**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**REGARDING THE**  
**COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

**Commented [WNM1]:** ACHP Comments completed  
7/11/2019

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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1  
2 **DRAFT PROGRAMMATIC AGREEMENT**

3 Among the  
4 United States Department of the Interior, Bureau of Land Management  
5 United States Department of the Interior, Fish and Wildlife Service  
6 Alaska State Historic Preservation Officer  
7 and  
8 Advisory Council on Historic Preservation  
9 Regarding the  
10 Coastal Plain Oil and Gas Leasing Program  
11

12 **PREAMBLE**  
13

14 **WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land  
15 Management (BLM) has been directed to implement an oil and gas leasing program  
16 (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)  
17 pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December  
18 22, 2017]); and

19 **WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires  
20 each federal agency, prior to any federal or federally sponsored, assisted, or  
21 authorized Undertaking, to take into account the effects of the proposed Undertaking  
22 on Historic Properties, which are properties listed on or eligible for listing in the  
23 National Register of Historic Places (NRHP), and to afford the Advisory Council on  
24 Historic Preservation (ACHP) a reasonable opportunity to comment regarding such  
25 Undertaking; and

26 **WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing  
27 program, and therefore the BLM is the lead federal agency for purposes of  
28 complying with Section 106 of the NHPA; and

29 **WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation  
30 IV, including the development of an Environmental Impact Statement and selection of a  
31 preferred alternative that will guide the sale of leases for oil and gas activities pursuant  
32 to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an  
33 Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the  
34 NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

35 **WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation  
36 Officer (SHPO) and the ACHP, has determined that the area of potential effects  
37 (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5  
38 million acres, and is defined in Section 20001 of Public Law 115-97, and is further  
39 described in *Appendix A: Area of Potential Effects*; and

40 **WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined  
41 that compliance with Section 106 may best be achieved through the development of a  
42 PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

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1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

Commented [WNM2]: To be discussed later this afternoon

Commented [HM(N3R2): Being resolved between FWS and BLM

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1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”)  
5 agree that the Undertaking shall be implemented in accordance with the following  
6 stipulations in order to take into account the effects of the Undertaking on Historic  
7 Properties and have afforded the ACHP an opportunity to comment.

Commented [WNM4]: This section was removed from the previous draft—any reason? If not suggest returning.

Commented [HM(N5R4): Accept return of text

8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

10 **I. Administrative**

- 11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
13 ensure that all lessees are aware that they must comply with the terms of this PA  
14 during activities on their lease(s).  
15  
16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.  
22  
23 C. BLM shall require that any type of archaeological work associated with BLM’s  
24 Program proposed within the APE not performed by BLM or FWS professional  
25 staff will be conducted only under terms of a federally issued Permit For  
26 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
27 application to the BLM or otherwise coordinated by BLM.  
28  
29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.  
31  
32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.  
35  
36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41 (5) business days. Contact information for Signatories and Consulting Parties is  
42 included below in *Appendix B: Consulting Parties*.

Deleted:



- 1  
2 G. At any time, Signatories to this PA may request additional time for reviews of  
3 documentation, preparation of guidance documents, or any other time-sensitive  
4 materials outlined in this PA by providing a written request to all Signatories.  
5  
6 H. The Signatories may execute this PA in counterparts, with a separate page for  
7 each Signatory.

8 **II. Scope of the PA**

- 9 A. This PA only addresses **potential effects on** Historic Properties, consistent with  
10 36 CFR § 800 and other federal laws that may be affected by the BLM's  
11 Undertaking within the APE.  
12  
13 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
14 under Section 106 of NHPA, including consultation with Indian Tribes, for  
15 Program decisions that may be implemented in accordance with the decisions  
16 supported by the Program EIS and BLM policy.  
17  
18 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
19 involving reimbursement or contribution of funds between the parties to this PA  
20 will be handled in accordance with applicable laws, regulations, and procedures  
21 including those for Federal Government procurement and printing. Separate  
22 agreements will outline such endeavors and will be made in writing by  
23 representatives of the parties and will be independently authorized by  
24 appropriate statutory authority. This PA does not provide such authority.

25 **III. Agency Coordination Procedures**

- 26 A. Agency Roles and Coordination  
27 1. BLM  
28 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
29 106 compliance, is responsible for the following actions:  
30 i. Conducting Section 106 reviews of Projects the PA addresses;  
31 ii. Receiving permit applications and issuing permits that may be needed  
32 for Section 106 compliance work for oil and gas-related projects in the  
33 APE. Such permits needed may include various types of land use  
34 authorizations as well as Permits for Archaeological Investigations  
35 ("ARPA" Permits).  
36  
37 2. FWS  
38 a. FWS, as surface manager of the APE, is responsible for the following  
39 actions:  
40 i. Receiving, reviewing, commenting on, and evaluating applications for  
41 ARPA permits;  
42 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
43 determinations and findings made by BLM;

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- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

6 **IV. Section 106 Consultation Plan and Procedures**

- 7   A. BLM anticipates that the Program will include several Project types and that each
- 8   type will require consultation with Signatories and Consulting Parties. Project
- 9   types include:
- 10   1. Leasing;
- 11   2. Inventory, Research, and Monitoring Activities;
- 12   3. Geophysical Exploration;
- 13   4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14   5. Marine and Intertidal Activities and Operations;
- 15   6. Operations and Production;
- 16   7. Inspections and Enforcement; and
- 17   8. Reclamation
- 18
- 19   B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as
- 20   necessary” basis throughout the life of this PA on the above Project types to
- 21   include, but not limited to the following:
- 22   1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23   selection of alternatives;
- 24   2. Develop appropriate research designs and investigative methods for potential
- 25   Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26   studies;
- 27   3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28   BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29   Historic Properties within the Project-specific APE;
- 30   4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31   interested Consulting Parties) site visits within the Project-specific APE(s).
- 32   5. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 33   avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 34   may result from Program activities. These plans may include:
- 35   a. Monitoring lessee activities and effects on Historic Properties within the
- 36   Project-specific APE(s);
- 37   b. Periodic Historic Property condition assessments;
- 38   c. Documentation review to ensure lessees have fulfilled commitments
- 39   stipulated by BLM, and have complied with the terms of this PA.
- 40
- 41   C. The implementing regulations of Section 106 of the NHPA (36 CFR §
- 42   800.2[c][2][ii][A-C]) require BLM to:
- 43   1. Consult with any Indian Tribe that attaches religious and cultural significance
- 44   to Historic Properties that may be affected by an Undertaking,

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2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects,
3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe.
4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
  - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see *Appendix D*); and
  - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.

D. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.

E. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

- A. BLM's Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying potentials to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- B. BLM shall make a good faith effort to identify and evaluate historic properties but anticipates that in certain cases a 100 percent identification of a Project APE may not be necessary, and NHRP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect, the amount of information necessary for the BLM to make decisions regarding the potential of the Project Type(s) to affect Historic Properties.
- C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility and findings of effect concurrently in a combined submission for Project Types described below.

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1 D. Nothing shall prevent the BLM from seeking informal consultation with the  
2 Signatories or Consulting Parties regarding the preparation of determinations of  
3 eligibility or findings of effect.  
4

5 **F. Step 1: Oil and Gas Program Project Types Addressed under this PA**

- 6 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
7 that this PA will address the following Project types associated with the BLM's  
8 Oil and Gas Program within the APE:  
9 a. Lease Sales  
10 b. Inventory, Research, and Monitoring Activities  
11 c. Geophysical Exploration  
12 d. APD  
13 e. Marine and Intertidal Activities and Operations  
14 f. Operations and Production  
15 g. Inspection and Enforcement  
16 h. Reclamation  
17

18 **G. Step 2: Assess Project Potential to Cause Effects**

- 19 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
20 under review has potential to cause effects on Historic Properties. BLM shall  
21 determine that a Project type does not have the potential to cause effects if it  
22 meets one or more of the following conditions:  
23 a. No new ground disturbance;  
24 b. Lease Sale or other Administrative Action; or  
25 c. Standard maintenance, repairs, or replacement of existing facilities or  
26 equipment.  
27 2. If the Project type meets one or more of the above conditions, BLM shall  
28 make a determination that the Project type has “no potential to cause effects”  
29 and attach letter to the Project file [36 CFR 800.3(a)(1) determination].  
30 3. If the Project type does not meet the above conditions, and the Project type  
31 consists of Inventory, Research, and Monitoring Activities, Geophysical  
32 Exploration, Marine and Intertidal Activities and Operations, Operations and  
33 Production, or Inspection and Enforcement, proceed to Step 3.  
34 4. If the Project type does not meet the above conditions, and the Project type is  
35 an APD or Reclamation, BLM will consult with Signatories and Consulting  
36 Parties, and BLM will determine if the Project should be addressed under this  
37 PA, or if a separate Section 106 process and agreement document (“kick-  
38 out”) must occur in accordance with Step 8 below.  
39

40 **H. Step 3: APE**

- 41 1. Has BLM, in consultation with the SHPO, defined the APE?  
42 a. If yes, proceed to Step 4.  
43 b. If no, BLM defines the APE in consultation with SHPO and other  
44 Signatories (or just FWS)?.

Commented [HM(N6)]: Accept “and other Signatories”

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I. **Step 4: Identification**

1. Has BLM determined that adequate efforts to identify Historic Properties consistent with the procedures described in *Appendix C: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix C: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project.

J. **Step 5: Preliminary APE Assessment**

1. Has BLM determined that identification efforts have resulted in the identification of potential Historic Properties within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no, proceed to Step 7.

K. **Step 6: Evaluation**

1. Has BLM determined that potential Historic Properties identified within the APE have been evaluated for NRHP eligibility?
  - a. If yes, proceed to Step 7.
  - b. If no, the BLM will evaluate potential Historic Properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15).
    - i. BLM will concurrently consult with FWS on all determinations of eligibility (DOEs), and with Indian Tribes on DOEs concerning potential Historic Properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
      1. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
      2. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will presume agreement with the DOE(s).
    - ii. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal.
    - iii. After the review period for FWS and Indian Tribes has elapsed, including any extensions requested, BLM will submit the DOE to SHPO, who will have thirty (30) days to review the DOE(s). If SHPO does not offer comment within the review period, then BLM will presume the SHPO agrees with BLM's DOE(s) and may proceed to Step 7.

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1. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
- iv. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
- v. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
  1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
- vi. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

**L. Step 7: Assess Effects**

1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), which shall include consultation with Signatories and Consulting Parties.
    - i. If BLM makes a finding of “no adverse effect” (36 CFR 800.5[b]), BLM shall notify Signatories and Consulting Parties of the finding and provide them with documentation supporting this finding.
      1. If SHPO concurs with the BLM's determination, BLM shall document SHPO concurrence to the Project file.
      2. If SHPO does not concur, and resolution cannot be reached through consultation, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
    - ii. If BLM makes a finding of “adverse effect” (36 CFR 800.5[d][2]) then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
      1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the criteria of adverse effect in consultation with Signatories and Consulting Parties, and if necessary, revise their finding of effect.
    - iii. If BLM, in consultation with Signatories and Consulting Parties determines that an applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects will still result in adverse effects to Historic Properties, the process shall revert to the standard Section 106 procedures at 36 CFR 800.6.
  - b. If no, BLM will make a finding of “no historic properties affected” (36 CFR 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty

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1 (30) days to review the BLM's determination. BLM shall also provide  
2 notice to the Signatories and Consulting Parties of this finding in  
3 accordance with 36 CFR 800.4(d)(1).

- 4 i. If SHPO concurs with the BLM's determination, BLM shall document  
5 SHPO concurrence to the Project file.  
6 ii. If SHPO does not concur, and resolution cannot be reached through  
7 consultation between SHPO and BLM, BLM shall follow the  
8 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

9 **M. Step 8: Decision regarding Undertaking**

- 10 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as  
11 applicable, and BLM has documented the appropriate finding of effect and  
12 resolution efforts, as required, to the Project file.  
13  
14 2. Alternatively, if BLM has determined that a separate Section 106 process and  
15 agreement document ("kick-out") is required for an APD or Reclamation  
16 Project (see Step 2), BLM may authorize an APD or Reclamation Project  
17 subject to this PA only after the separate Section 106 review has been  
18 completed, and if necessary, the appropriate agreement document (e.g.,  
19 Memorandum of Agreement or Programmatic Agreement) has been executed  
20 for the Project.

21  
22 **N. Step 9: Reporting**

- 23 1. BLM will include a summary of all Projects reviewed under this PA in the  
24 previous year in the annual PA report [Stipulation XII]. The summary will  
25 include a synopsis for each project, including at minimum:  
26 a. A description of the Project;  
27 b. Delineation of the APE;  
28 c. Identification efforts within the APE;  
29 d. NRHP eligibility of known properties within the APE;  
30 e. BLM's finding of effect for the Project; and,  
31 f. The Qualifications of the Individual who conducted the PA Compliance  
32 Review.  
33  
34 2. BLM will submit reports associated with identification, evaluation, and  
35 assessments of effect that were used to support BLM findings of effect to the  
36 SHPO.

37  
38 BLM may append reports associated with identification, evaluation, and  
39 assessments of effect that were used to support BLM finding to the annual PA  
40 report, provided they do not contain sensitive information regarding Historic  
41 Properties.

42 **VI. Methods to Inventory APE**

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- 1 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*  
2 within six (6) months of execution of the PA. BLM may request additional time to  
3 complete this draft; however, BLM must submit this request in writing to the  
4 Signatories for concurrence.  
5  
6 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
7 comment.  
8  
9 C. BLM will consider timely comments received and revise the draft accordingly.  
10 Multiple drafts may be required, and a final draft will be sent out for review no  
11 later than one year from the execution of the PA.  
12  
13 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
14 the first draft and the final draft concurrent with Signatory review.  
15  
16 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*  
17 *Inventory the APE* before it is considered final.  
18  
19 F. Drafts cannot be used as interim guidance. If a project needs to move through  
20 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*  
21 *APE*, then the appropriate level of effort and methods will be determined through  
22 consultation among BLM, FWS, and SHPO on a case-by-case basis.

23 **VII. Standards**

- 24 A. Professional Qualifications:  
25 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
26 shall ensure that all work carried out pursuant to this Agreement shall be  
27 done by or under the direct supervision of a qualified historic preservation  
28 professionals who meet the (SOI) Professional Qualifications Standards (48  
29 Federal Register 44716-44742). The BLM and FWS, through review of permit  
30 applications or other means, shall ensure that consultants retained for  
31 services pursuant to the Agreement meet these standards.  
32  
33 2. A “qualified historic preservation professional” is a person who meets the  
34 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
35 Standards and Guidelines [As Amended and Annotated]  
36 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised  
37 equivalent.  
38  
39 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
40 identifying and assessing the eligibility of Historic Properties that may  
41 possess religious or cultural significance to Indian Tribes (36 CFR  
42 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
43 identifying and evaluating Historic Properties of religious or cultural  
44 significance to them.  
45



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B. Professional Standards:

1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall ensure that all work conducted as a result of this PA not otherwise done by BLM or FWS professional staff is performed in accordance with the SOI Standards for Archeology and Historic Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
2. BLM shall require that persons supervising and conducting work on the behalf of lessees hold the appropriate BLM permits and/or authorizations as appropriate for inventory, monitoring, and other investigations, and meet the Standards and Guidelines, as well as the SOI Professional Qualification Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure that persons supervising and conducting work on the behalf of lessees comply with the NAGPRA POA.
3. Investigations associated with Program activities will be conducted in accordance with *Appendix C: Methods to Inventory the APE*, and will meet the standards presented in BLM Manual 8110 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)).
4. Reports regarding Historic Properties shall meet the standards outlined in the SOI Standards for Archeology and Historic Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and guidance (i.e., BLM Manual 8110), and Alaska Office of History and Archaeology guidelines.

VIII. **Unanticipated Discoveries**

- A. During the entire implementation of this Undertaking, BLM will ensure that the Signatories and Consulting Parties are informed of unanticipated discoveries within the Undertaking's APE during lessees or their contractor related activities associated with the BLM's oil and gas leasing program.
- B. Lessees or their contactors will not take any actions that would adversely affect the discovery which may be eligible for listing in the NRHP without written approval from BLM.
- C. Upon the unanticipated discovery, the following steps listed below will be undertaken. If the unanticipated discovery includes human remains, burials, or funerary items, the additional steps listed in Stipulation IX shall be followed.
  1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further subsurface finds can be reasonably expected to occur, to be no less than fifty (50) feet, and will notify the BLM within one business day;

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2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two business days of the discovery;
3. The BLM or a SOI-qualified archaeologist approved by them will inspect the property as soon as possible and collect enough information to determine (if possible):
  - a. The extent of cultural materials associated with the inadvertent discovery or effect;
  - b. The degree of integrity; and
  - c. The cultural affiliation of the materials (if possible).
4. Within five (5) business days, BLM shall provide a summary of the information collected at the discovery to Signatories and Consulting Parties, which will include BLM's preliminary assessment of the NRHP eligibility of the discovery.
5. Within 14 days of the BLM's distribution of the information regarding the discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.
  - a. If the BLM determines that the discovery is ineligible for listing in the NRHP and SHPO concurs, BLM shall authorize the lessee to continue activities in the area of the discovery.
  - b. If the BLM determines the discovery is eligible for listing in the NRHP and SHPO concurs, BLM will direct the lessee to prepare a plan for its avoidance, protection, or recovery of information in consultation with BLM, Signatories and Consulting Parties, as appropriate.
    - i. Within five (5) business days of receipt, BLM shall distribute copies of the proposed plan to Signatories and Consulting Parties for review and comment.
    - ii. Signatories and Consulting Parties shall have seven (7) days to review the proposed plan and provide comments to BLM.
    - iii. BLM shall take into consideration timely comments received on the proposed plan and make a determination to either approve or request revisions to the proposed plan.
      - A. In the event that BLM requests revisions to the plan, BLM shall redistribute the revised plan under the same timelines as above, and Signatories and Consulting Parties shall have the same period of review.
6. Work in the established buffer will not proceed until either:
  - a. BLM approves plan and requires its implementation; or
  - b. The BLM determines that the discovery is not eligible for the NRHP, and the SHPO concurs with this determination.

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- 1 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
2 discoveries as provided in Stipulation XIII of this PA.

3 **IX. Unanticipated Effects**

- 4 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
5 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
6 Property, BLM, in consultation with Signatories and Consulting Parties, will  
7 assess the effect(s), develop a plan to address the unanticipated effect(s), and  
8 avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to  
9 complete this process within 180 days of the recognition of the unanticipated  
10 effect(s).  
11  
12 B. BLM will address any disputes over the resolution of unanticipated effects as  
13 provided in Stipulation XIII of this PA.

14 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
15 **Objects, and Objects of Cultural Patrimony**

- 16 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
17 that any Native American burials, human remains, and/or related items  
18 discovered on federal lands during implementation of the terms of the Agreement  
19 will be treated with dignity and respect, and that all procedures guiding the  
20 treatment of human remains, funerary objects, sacred objects, or objects of  
21 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
22  
23 B. As surface manager of the APE, FWS is the managing agency for any and all  
24 human remains and NAGPRA materials.  
25  
26 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
27 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
28 state laws six (6) months after the execution of this PA. Upon completion, the  
29 Human Remains and NAGPRA POA shall be incorporated into this PA as  
30 *Appendix D*. At minimum, the POA shall contain:  
31 1. Notification Procedures and Protocols;  
32 2. Chain of Custody Procedures; and,  
33 3. Contact information for Law Enforcement, Tribal Representatives, and  
34 Agency personnel.  
35  
36 D. In the event that any Native American burials, human remains, or funerary items  
37 are inadvertently encountered during any Program activity, the activity shall  
38 immediately cease, the area shall be secured from further disturbance, and the  
39 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
40 1. Upon notification, the BLM shall follow the procedures described in the  
41 NAGPRA POA (*Appendix D*).

42 **XI. Curation**

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- 1 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
2 during any activities associated with the Undertaking are property of FWS as  
3 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
4 *Curation of Federally-Owned and Administered Archaeological Collections* under  
5 FWS' existing agreement with the University of Alaska Museum of the North  
6 (UAMN).  
7
- 8 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
9 submitting all materials recovered from federal lands to the UAMN within six  
10 months following approval of a final report, within one year following completion  
11 of the fieldwork that generated the collection, or other period of time as specified  
12 in the ARPA permit. All collections will be curation-ready, as determined by the  
13 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
14 behalf, will safeguard all materials from theft or damage by providing adequate  
15 interim storage facilities and conservation actions, consistent with the  
16 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
17 Permittee will provide BLM with all accession records and documentation  
18 associated with the transfer and curation of materials. BLM will share the  
19 documentation with the FWS. Information will be shared with the other  
20 Signatories and Consulting Parties as appropriate.  
21
- 22 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
23 the curation of any materials that are collected during the implementation this PA,  
24 in perpetuity. Curation costs may include, but are not limited to, curation fees  
25 charged by approved institutions, acquisition of archival materials, shipping,  
26 cleaning, rehousing, and any other conservation action.  
27
- 28 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
29 described above in Stipulation IX and in the NAGPRA POA (Appendix D).  
30
- 31 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
32 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
33 other transfers of artifacts recovered from the APE to local communities or  
34 facilities to support and enhance cultural ties to the APE.

35 **XII. Annual PA Meeting and Reports**

- 36 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
37 day annual meeting concerning this PA within one (1) year of the PA execution,  
38 and each succeeding year by that approximate same date, thereafter. The  
39 meeting will consist of: an initial day where Consulting Parties and Signatories  
40 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
41 for the upcoming year, (3) verify/update contact information for Consulting  
42 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
43 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
44 functioning to all parties benefit. The second day of meetings shall be held by the  
45 Signatories to consider the input received by Consulting Parties, discuss the PA's

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- 1 implementation, required amendments (as necessary), and other business  
2 related to the application of the PA terms.
- 3 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
4 Archaeology, or at another location by consensus of the Signatories. The  
5 parties may participate by telephone if they so desire.
  - 6 2. The BLM will distribute meeting minutes to the meeting participants within  
7 thirty (30) days of the meeting, and meeting participants will provide  
8 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
9 amend the minutes as a result of comments and distribute finalized minutes  
10 within another fifteen (15) days.
  - 11 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
12 BLM that a meeting is necessary outside of the regularly scheduled annual  
13 meeting, the Signatories and Consulting Parties will consider their request.  
14 BLM, taking into consideration the results of consultation, shall decide  
15 whether to convene additional meetings.

16  
17 B. Annual PA Report:

- 18 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
19 and Consulting Parties with a draft copy of that year's annual report that  
20 describes the completed and upcoming activities associated with the  
21 stipulations of this agreement. The report will include the following  
22 information, as appropriate:
  - 23 a. Number of leases issued;
  - 24 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 25 c. Consultation activities undertaken;
  - 26 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 27 e. Upcoming/Planned activities.
- 28 2. Signatories and Consulting Parties may provide comments to BLM at or  
29 before the Annual meeting regarding the content of the Annual Report.
- 30 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
31 and submit a Final Annual Report to Signatories and Consulting Parties.

Commented [WNM7]: Ensure this is worded to include all Project Types considered under Stipulation IV.A

Commented [HM(N8R7): Accept. Change to "All Project Types considered under Stipulation IV.A."

32  
33 **XIII. Dispute Resolution**

- 34 A. Should any of the Signatories or Consulting Parties who have become  
35 Concurring Parties to this PA have insight, improvements, or objections  
36 regarding the manner in which the terms of this PA are implemented, the BLM  
37 will consult with such party to determine if the inclusion, suggestion,  
38 recommendation, or objection may be addressed to the satisfaction of the party,  
39 which may include presenting a proposed amendment to this PA in accordance  
40 with Stipulation XV.
- 41  
42 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
43 notify the Signatories of the dispute, and seek input from Signatories to resolve

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1 the dispute.

- 2
- 3 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 4 1. Forward all documentation relevant to the dispute, including the BLM's
- 5 proposed resolution, to the ACHP. The ACHP will provide the BLM with its
- 6 advice on the resolution of the objection within thirty (30) calendar days of
- 7 receiving adequate documentation. Prior to reaching a final decision on the
- 8 dispute, BLM will prepare a written response that takes into account any
- 9 timely advice or comments regarding the dispute from the ACHP, Signatories,
- 10 and Consulting Parties, and provide them with a copy of this written response.
- 11 BLM will then proceed according to its final decision.
- 12
- 13 2. If the ACHP does not provide its advice regarding the dispute within the thirty
- 14 (30) calendar-day time period, BLM may make a final decision on the dispute
- 15 and proceed accordingly. Prior to reaching such a final decision, BLM will
- 16 prepare a written response that takes into account any timely comments
- 17 regarding the dispute from the Signatories and Consulting Parties to the PA
- 18 and provide them and the ACHP with a copy of such written response.
- 19
- 20 3. Regardless of the results of the dispute resolution measures described
- 21 above, the BLM's responsibility is to carry out all other actions subject to the
- 22 terms of this PA that are not the subject of the dispute.

23 **XIV. Duration**

- 24 A. The date the ACHP signs this PA is the ratification date, which officially executes
- 25 the PA.
- 26
- 27 B. This PA will remain in effect for ten (10) years after its execution.
- 28
- 29 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to
- 30 reconsider the terms of the PA and amend it in accordance with Stipulation XV
- 31 below no later than six (6) months prior to expiration of the agreement. If
- 32 appropriate, the Signatories may execute a new agreement or amend to extend
- 33 the duration of the current agreement.

34 **XV. Amendments**

- 35 A. The Signatories may amend this PA at any time when such amendment is
- 36 agreed to in writing by all Signatories. The amendment will be effective on the
- 37 date a copy signed by all of the Signatories is filed with the ACHP.
- 38
- 39 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All
- 40 amendments will be attached to the PA in *Appendix E: PA Amendments*.
- 41
- 42 C. In the event that another federal agency not initially a party to or subject to this
- 43 PA receives an application for funding/licensing/or permitting an Undertaking in

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1 the 1002 area as described in this PA, that agency may fulfill its Section 106  
2 responsibilities by stating in writing it concurs with the terms of this PA and  
3 notifying the Signatories and Consulting Parties that it intends to do so. Such  
4 agreement shall be evidenced by execution of a signature page signed by an  
5 authorized individual for that agency, distribution of said page to all Signatories  
6 and Consulting Parties, filing this page with the ACHP, and implementation of the  
7 terms of this PA.  
8

- 9 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
10 to reflect changes in personnel or contact information without requiring the PA to  
11 be amended in accordance with the procedures described above.

12 **xvi. Termination**

13 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
14 carried out, that party shall immediately consult with the other Signatories to  
15 attempt to develop an amendment or agreement on other actions that would  
16 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
17 such consultation (or another time period agreed to by all Signatories) an  
18 amendment or agreement on other actions that would avoid termination cannot  
19 be reached, any Signatory may terminate the Agreement upon written notification  
20 to the other Signatories.  
21

22 B. In the event that a Signatory terminates this PA, and prior to further Program  
23 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
24 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
25 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
26 as to the course of action it will pursue.

27 **xvii. Emergency Situations**

28 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
29 Consulting Parties of an emergency situation, which represents an imminent  
30 threat to public health or safety or creates a hazardous condition, that also has  
31 potential to harm Historic Properties or the subsequent response has potential to  
32 harm Historic Properties and the measures taken to respond to the emergency or  
33 hazardous condition. Should the Signatories or Consulting Parties desire to  
34 provide technical assistance to the BLM, they shall submit comments to BLM  
35 within seven (7) calendar days from notification, if the nature of the emergency or  
36 hazardous condition allows for such coordination.  
37

38 B. If the APE of the emergency situation has been surveyed for Historic Properties  
39 and none is within the APE, then BLM will request concurrence on a  
40 determination of “no Historic Properties affected” from the SHPO within five (5)  
41 calendar days from the initial notification.  
42

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- 1 C. If the APE has not been surveyed for potential Historic Properties, then  
2 emergency actions will be monitored by a SOI qualified professional or the APE  
3 will be inventoried by a SOI-qualified professional no later than one (1) year after  
4 the emergency action is completed. BLM will require that a monitoring report or  
5 inventory report will be submitted to Signatories and Consulting Parties within  
6 thirty (30) days of the end of fieldwork.  
7
- 8 D. If a previously known or unknown Historic Property is adversely affected by  
9 emergency actions the BLM will consult with Signatories and Consulting Parties  
10 to resolve the adverse effect pursuant 36 CFR § 800.6.

11 **XVIII. Anti-Deficiency Provision**

- 12 A. Any obligation of the federal agencies set forth in this PA is subject to and  
13 dependent on appropriations by Congress and allocation of sufficient funds for  
14 that purpose. The federal agencies shall make reasonable and good faith efforts  
15 to secure the necessary funds to implement this PA in its entirety. If compliance  
16 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
17 implement the stipulations of this agreement, the federal agencies shall consult in  
18 accordance with the amendment and termination procedures found at  
19 Stipulations XV and XVI of this agreement.

20 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
21 that the BLM and FWS have taken into account the effects of the Undertaking on  
22 Historic Properties and have afforded the ACHP an opportunity to comment.  
23



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

**Commented [WNM9]:** If known and possible, please add names of Signatories below signature line.  
**Commented [HM(N10R9):** Will strive to have for signing.

DRAFT

DRAFT

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

DRAFT

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

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

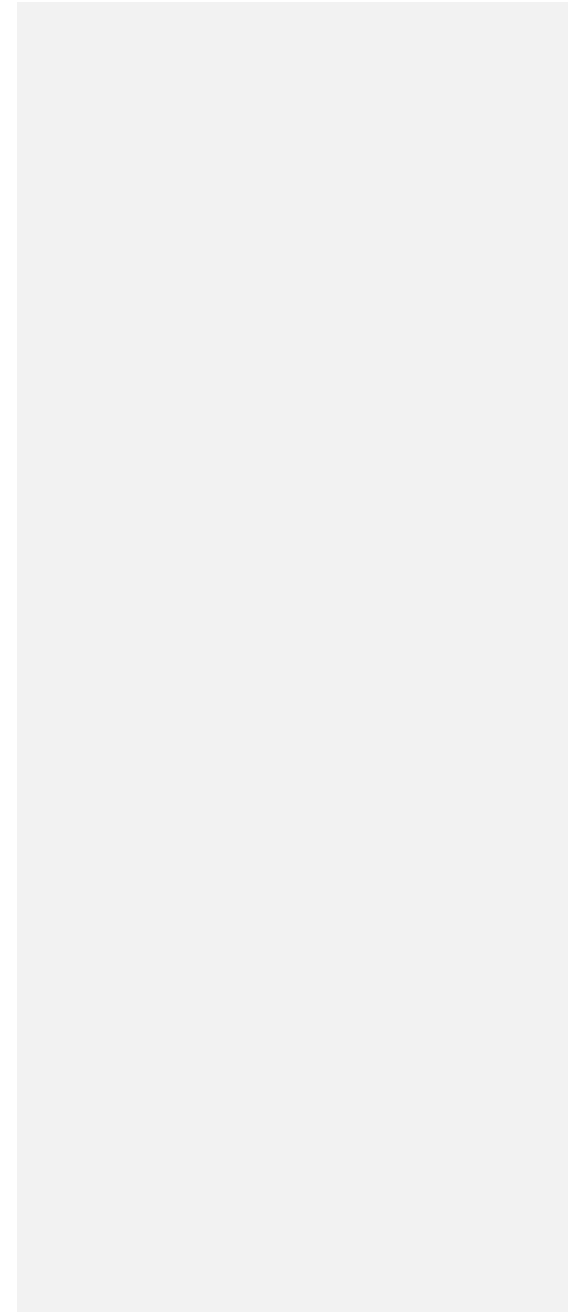
**Commented [WNM11]:** Have any or all of the Indian Tribes (or others) been invited to sign the PA as concurring parties? If so, suggest adjusting this language and modifying the appropriate recital to reflect that they have been invited to participate as such.

**Commented [HM(N12R11)]:** Not through formal invitation letters at this time. As stated in the regulations we intend to invite all consulting parties to concur on the PA.

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1 **Appendix A: Area of Potential Effects**  
2

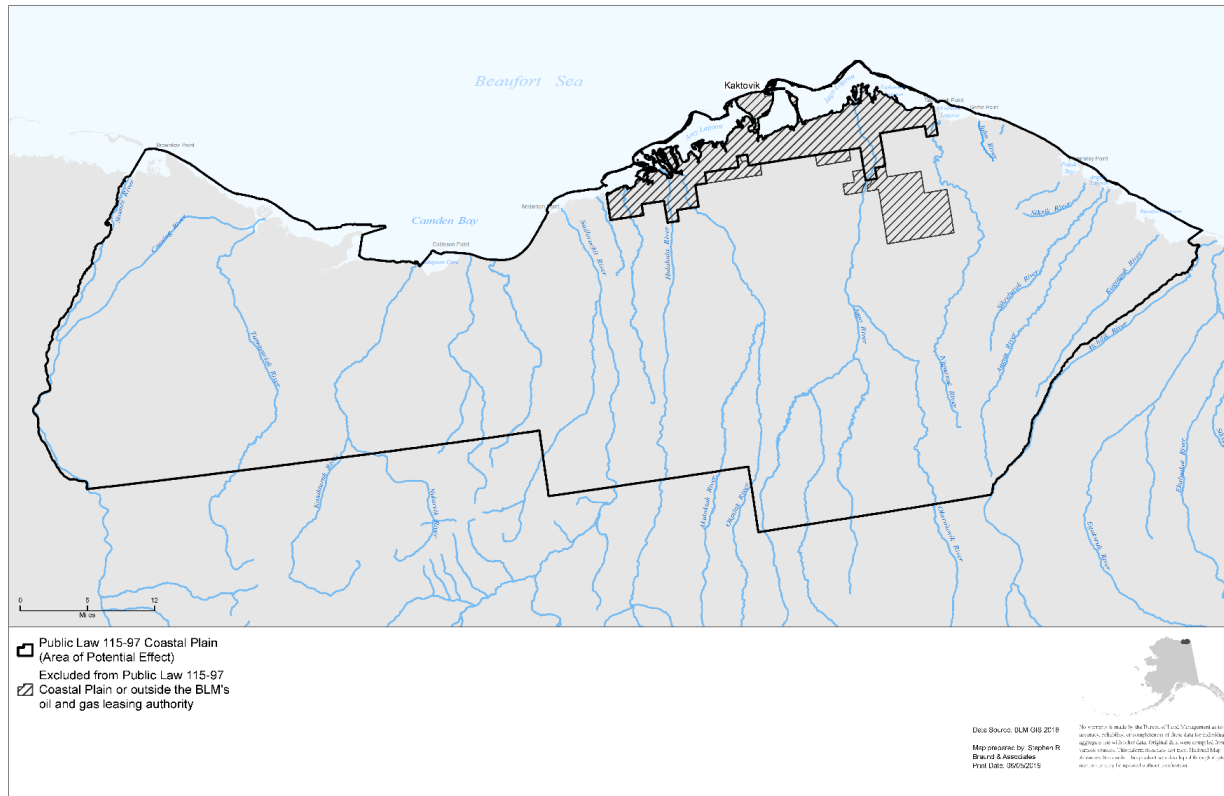
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# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2



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1 **Appendix B: Consulting Parties**

2  
 3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 [PLACEHOLDER]

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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1 **Appendix F: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

3

4

DRAFT

**From:** [Hayes, Miriam \(Nicole\) N](#)  
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**Cc:** [Loya, Wendy M](#); [King, Robert \(Bob\)](#)  
**Subject:** SIGNATURE REQUESTED Final Programmatic Agreement  
**Date:** Friday, September 20, 2019 10:01:41 AM  
**Attachments:** [Final PA 9 20 19.pdf](#)

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Dear Signatories,

The final programmatic agreement for the Coastal Plain Oil and Gas Leasing Program is attached. The only changes since the last version were made through the technical editing/formatting process and did not result in any substantive changes.

BLM requests that you review and obtain the appropriate signature for your agency **by close of business October 1st**. In order to maintain quality of the original, please only scan in your agency signature page and email it back. It would be appreciated if you could also send the original signature page to the mailing address below. Once I have received all of the signature pages I will send out a compiled document to everyone.

Thank you all for your work into development of this PA. We look forward to working with you in the future as it is implemented.

Please let me know if you have any questions.

Nicole

**Nicole Hayes**

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**FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

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**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management,  
Alaska State Historic Preservation Officer,  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**PREAMBLE**

**WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land Management (BLM) has been directed to implement an oil and gas leasing program (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December 22, 2017]); and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires each federal agency, prior to any federal or federally sponsored, assisted, or authorized Undertaking, to take into account the effects of the proposed Undertaking on Historic Properties, which are properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic Preservation (ACHP or Council) a reasonable opportunity to comment regarding such Undertaking; and

**WHEREAS**, the Public Law 115-97 directs the BLM to implement the Program, and therefore the BLM is the federal agency for purposes of complying with Section 106 of the NHPA; and

**WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation IV, is an Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking");

**WHEREAS**, the BLM's development of an Environmental Impact Statement (EIS) and selection of a preferred alternative that will guide the sale of leases for oil and gas activities is pursuant to the National Environmental Policy Act (NEPA) (Public Law 91-190 [January 1, 1970]); and

**WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation Officer (SHPO) and the ACHP, has determined that the area of potential effects (APE) for the Undertaking consists of the "1002" area of the ANWR, which is approximately 1.5 million acres, and is defined in Section 20001 of Public Law 115-97, and is presented in *Appendix B: Area of Potential Effects*; and

**WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined that compliance with Section 106 may best be achieved through the development of a

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Programmatic Agreement (PA) as the BLM cannot fully determine effects on Historic Properties within the APE prior to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) § 800.14(b)(1)(ii); and

**WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.14(b)(2) and is a Signatory to this PA; and

**WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of the APE, has jurisdictional roles concerning certain aspects of the BLM's Undertaking, including, but not limited to, actions involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95 [October 31, 1979]), and the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an Invited Signatory to this PA; and

**WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal control; and Executive Orders 13007 and 13175; and

**WHEREAS**, the BLM has invited federally recognized Indian Tribes as defined in 36 CFR § 800.16(m), and listed in *Appendix C: Consulting Parties*, of this PA to participate in consultation as Consulting Parties, consistent with 54 USC § 302706(b) and 36 CFR 800.2(c)(2); and

**WHEREAS**, the BLM has invited regional and village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR § 800.16(m), and listed in *Appendix C: Consulting Parties*, to participate in consultation; and

**WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA corporations the opportunity to provide information about Historic Properties within the APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so in implementing this PA; and

**WHEREAS**, the BLM has invited local governments to participate as Consulting Parties, consistent with 36 CFR § 800.2(c)(3); and

**WHEREAS**, previous investigations and documentation of Historic Properties within the APE are limited in scope and extent; and

**WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRS) in March 2019 listed 90 properties including sod house ruins, historic military features, graves, archaeological sites, ice cellars, and material sources; five (5) are eligible for the NRHP, two (2) are not eligible for the NRHP, two (2) are pending reevaluation for their eligibility, and 81 have not had formal evaluations for their NRHP eligibility; and

**WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory (TLUI) in July 2019 listed 54 properties of traditional and/or cultural importance, some of which may be included in the AHRS database, including village sites, subsistence use

locations, sod house ruins, graves, and reindeer herding areas. None of the 54 properties have been evaluated for their eligibility for listing in the NRHP; and

**WHEREAS**, the PA will serve to outline the program-level stipulations applicable at the leasing stage and the process BLM shall follow for compliance with Section 106 for post-lease activities; and

**NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on Historic Properties and afford the ACHP an opportunity to comment.

## **STIPULATIONS**

The BLM shall ensure that the following measures are carried out:

### **I. Administrative**

- A. BLM shall ensure that this PA is attached and incorporated into any lease BLM issues for the Program and will ensure that all lessees are aware that they must comply with the terms of this PA during activities on their lease(s).
- B. BLM shall ensure that all lessees provide a copy of the PA to all operators and contractors engaged in exploration, development, production, or reclamation work associated with an issued Program lease prior to their arrival within the APE. Prior to the arrival of any contractor within the APE, lessees will make sure all contractors are made aware of the PA and that BLM requires compliance with its terms.
- C. BLM shall require that any type of archaeological work associated with the Program within the APE not performed by BLM or FWS professional staff will be conducted only under terms of a federally issued Permit for Archaeological Investigations (“ARPA permit”). Such permits are obtained upon application to the BLM or otherwise coordinated by BLM.
- D. If ownership of a lease is transferred, BLM will include as a condition of the transfer that the new lessee must adhere to the terms of this PA.
- E. Electronic mail (e-mail) shall serve as the official correspondence method for all communications regarding this PA and its provisions, with an alternative method of postal mail delivery if the contacts do not have reliable e-mail.
- F. Consulting Parties and Signatories shall provide contact information for this PA. It is the responsibility of each Signatory and Consulting Party to immediately inform BLM of any change in name, mailing address, e-mail address, or phone number for any Consulting Party. Once received, the BLM will forward this information to all Signatories and Consulting Parties by e-mail or mail within five (5) business

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days, and will update the contact information for Consulting Parties, which is included below in *Appendix C: Consulting Parties*, and provide an updated version to all Consulting Parties at the Annual Meeting in accordance with Stipulation XII.B.1.i. In accordance with Stipulation XV.D, updates to *Appendix C: Consulting Parties* do not require formal amendments to this PA.

- G. At any time, Signatories to this PA may request additional time for reviews of documentation, preparation of guidance documents, or any other time-sensitive materials outlined in this PA by providing a written request to the BLM.
- H. The Signatories may execute this PA in counterparts, with a separate page for each Signatory.

### II. **Scope of the PA**

- A. This PA only addresses potential effects on Historic Properties, consistent with 36 CFR Part 800 and other federal laws that may be affected by the BLM's Undertaking within the APE.
- B. This PA establishes the process the BLM will follow to fulfill its responsibilities under Section 106 of NHPA, including consultation with Indian Tribes, for the Undertaking that may be implemented in accordance with the decisions supported by the Program EIS and BLM policy.
- C. BLM will make a reasonable and good faith effort to implement this PA in its entirety. This PA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this PA will be handled in accordance with applicable laws, regulations, and procedures including those for Federal Government procurement and printing. Separate agreements will outline such endeavors and will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority. If any commitment made in this PA cannot be fulfilled as stated, prior to continuing work on the Undertaking, the BLM shall either execute an amendment to this PA in accordance with Stipulation XV or terminate this PA in accordance with Stipulation XVI.

### III. **Agency Coordination Procedures**

- A. Agency Roles and Coordination
  - 1. BLM
    - a. BLM, as the lead federal agency for the purposes of Section 106 compliance, is responsible for the following actions:
      - i. Conducting Section 106 reviews of Project types in Stipulation IV.A., in accordance with the terms of this PA;
      - ii. Receiving permit applications and considering the issuance of permits that may be needed for Section 106 compliance work for oil and gas-

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related projects in the APE. Such permits may include various types of land use authorizations as well as ARPA permits.

2. FWS
  - a. FWS, as surface manager of the APE, is responsible for the following actions:
    - i. Receiving, reviewing, commenting on, and evaluating applications for ARPA permits provided by BLM;
    - ii. Receiving, reviewing, commenting on, and evaluating Section 106 determinations and findings made by BLM;
    - iii. Managing artifact collections originating from studies conducted within the APE;
    - iv. Managing and conducting appropriate actions associated with NAGPRA materials and Human Remains, including development of the Plan of Action (POA) *Appendix E: NAGPRA Plan of Action*.

### **IV. Section 106 Consultation Plan and Procedures**

- A. BLM anticipates that the Program will include several Project types and that each type will require consultation with Signatories and Consulting Parties. Project types include, but may not be limited to:
  1. Leasing;
  2. Inventory, Research, and Monitoring Activities;
  3. Geophysical Exploration;
  4. Applications for Permit to Drill (APD) (drilling exploration and development);
  5. Marine and Intertidal Activities and Operations;
  6. Operations and Production;
  7. Inspections and Enforcement; and
  8. Reclamation
- B. As appropriate and needed, BLM shall consult with Signatories and Consulting Parties throughout the life of this PA on the above Project types to include, but not limited to the following:
  1. Collecting information to inform permitting, NEPA reviews, and if appropriate, selection of alternatives;
  2. Developing appropriate research designs and investigative methods for potential Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural) studies;
  3. Determining whether incorporating Project-specific conditions and/or stipulations into BLM-permitted activities can avoid, minimize, and/or mitigate effects to Historic Properties within the Project-specific APE;
  4. Considering conducting periodic joint (i.e., BLM and representatives from interested Signatories and Consulting Parties) site visits within the Project-specific APE(s);
  5. Developing project-specific Memorandum of Agreement (MOA) or PAs; and
  6. Developing Project-specific Historic Properties Management Plans (HPMPs) to avoid, minimize, and/or mitigate adverse effects to Historic Properties that

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- may result from Program activities. These plans may include, but are not limited to:
- a. Monitoring lessee activities and effects on Historic Properties within the Project-specific APE(s);
  - b. Periodic Historic Property condition assessments;
  - c. Documentation review to ensure lessees have fulfilled commitments stipulated by BLM, and have complied with the terms of this PA.
- C. Consistent with the confidentiality requirements in 36 C.F.R. § 800.11(c) and Section 304 of the NHPA, and in consultation with the National Park Service, the BLM shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.
- D. The implementing regulations of Section 106 of the NHPA (36 CFR § 800.2[c][2][ii][A-C]) require BLM to:
1. Consult with any Indian Tribe that attaches religious and cultural significance to Historic Properties that may be affected by an Undertaking;
  2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects;
  3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe; and
  4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
    - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see *Appendix E: NAGPRA Plan of Action*); and
    - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.
- E. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.
- F. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

- A. The Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying levels of potential to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.
- B. BLM shall make a good faith effort to identify and evaluate Historic Properties but anticipates that in certain cases a 100-percent identification may not be necessary, and NRHP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect the amount of information necessary for the BLM to make decisions regarding the potential of the Project type(s) to affect Historic Properties in accordance with the terms of the PA below.
- C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility (DOEs) and findings of effect concurrently in a combined submission for Project types described below.
- D. Nothing shall prevent the BLM from seeking informal consultation with the Signatories or Consulting Parties regarding the preparation of DOEs or findings of effect under the terms of this PA.
- E. **Step 1: Oil and Gas Program Project Types Addressed under this PA**
  - 1. BLM, in consultation with Signatories and Consulting Parties, has determined that this PA will address the following Project types associated with the Program within the APE:
    - a. Lease Sales;
    - b. Inventory, Research, and Monitoring Activities;
    - c. Geophysical Exploration;
    - d. APDs;
    - e. Marine and Intertidal Activities and Operations;
    - f. Operations and Production;
    - g. Inspection and Enforcement; and,
    - h. Reclamation.
- F. **Step 2: Assess Project Potential to Cause Effects**
  - 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type has the potential to cause effects on Historic Properties. BLM has determined that the following undertakings pose little potential to affect historic properties and are therefore exempt from further review under this PA:
    - a. Lease Sale or other Administrative Action; or

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- b. Standard maintenance, repairs, or replacement of existing facilities or equipment that do not exceed the original disturbance footprint.
2. If the Project type meets one or more of the above conditions (Section V.F.1.a-b), BLM shall make a determination that the Project type requires no further review under this PA and attach letter to the Project file.
3. If the Project type does not meet the above conditions, and the Project type consists of Inventory, Research, and Monitoring Activities, Geophysical Exploration, Marine and Intertidal Activities and Operations, Operations and Production, or Inspection and Enforcement, the BLM will proceed to Step 3.
4. If the Project type does not meet the above conditions, and the Project type is an APD or Reclamation, BLM will consult with Signatories and Consulting Parties, and BLM will determine if the Project should be addressed under this PA, or if a separate Section 106 process and agreement document (“kick-out”) must occur in accordance with Step 8 below. BLM will notify the Signatories and Consulting Parties as to how it will comply with Section 106 for each of these Projects.

### G. **Step 3: APE**

1. Has BLM, in consultation with the SHPO, defined the APE?
  - a. If yes, proceed to Step 4.
  - b. If no, BLM defines the APE in consultation with SHPO and other Signatories.

### H. **Step 4: Identification**

1. Has BLM determined that efforts to identify Historic Properties consistent with the procedures described in *Appendix D: Methods to Inventory the APE* have been completed within the APE?
  - a. If yes, proceed to Step 5.
  - b. If no, BLM will implement or direct the implementation of methods detailed in *Appendix D: Methods to Inventory the APE* to conduct the appropriate level of effort to identify Historic Properties within the APE of the Project.

### I. **Step 5: Preliminary APE Assessment**

1. Has BLM determined that identification efforts documented properties that have not been previously evaluated for NRHP eligibility within the APE?
  - a. If yes, proceed to Step 6.
  - b. If no or if all known properties have been evaluated for NRHP eligibility, proceed to Step 7.

### J. **Step 6: Evaluation**

1. The BLM will evaluate potential Historic Properties in the APE of the Project for NRHP eligibility (NRHP Bulletin 15) consistent with guidance found in *Appendix D: Methods to Inventory the APE* concerning level of effort.



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- a. BLM will concurrently consult with FWS on all DOEs, and with Indian Tribes on DOEs concerning unevaluated properties of religious and cultural significance prior to submitting them to SHPO for concurrence.
  - i. FWS will have thirty (30) days to review and respond to determinations submitted by BLM. If FWS does not offer comment within the review period, then BLM will move forward with its proposed DOE(s).
  - ii. Indian Tribes will have thirty (30) days to review and respond to determinations submitted by BLM. If an Indian Tribe(s) does not offer comment within the review period, then BLM will move forward with its proposed DOE(s).
- b. Additional time to review a BLM submittal of a DOE(s) may be requested by FWS and/or Indian Tribes, up to thirty (30) days per submittal. BLM has discretion in deciding whether and/or how much extended time to grant.
- c. Within approximately five days of the end of the FWS' and Indian Tribes' review period, including any granted extensions, BLM will submit the DOE to SHPO, who will have thirty (30) days to review the DOE(s). If SHPO does not offer comment within the review period, then BLM may proceed to Step 7.
  - i. BLM may combine the DOE submittal to SHPO with a finding of effect determination and request for concurrence as outlined below in Step 7.
- d. Additional time to review a BLM submittal of a DOE(s) may be requested by SHPO, up to thirty (30) days per submittal.
- e. If agreement cannot be reached on a DOE between BLM and SHPO, then the BLM shall follow the procedures outlined at 36 CFR § 800.4(c)(2).
  - i. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe disagrees with BLM's DOE regarding a property of religious and cultural significance, it may ask the Council to request that the BLM obtain a determination of eligibility from the Secretary of the Interior, as delegated to the Keeper of the NRHP.
- f. Once BLM completes the required NRHP evaluations in the APE, BLM may then proceed to Step 7.

### **K. Step 7: Assess Effects**

1. Has BLM determined there are Historic Properties in the APE?
  - a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]), and shall notify all Signatories and Consulting Parties of the finding and provide them with the documentation specified in Section 800.11(e). The SHPO shall have 30 days from receipt to review the finding and provide comments.
    - i. If BLM makes a finding of "no adverse effect" (36 CFR 800.5[b]), BLM shall notify Signatories and Consulting Parties of the finding and provide them with documentation supporting this finding.

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1. If SHPO concurs with the BLM's determination, BLM shall document the concurrence to the Project file.
2. If the SHPO or any consulting party notifies the BLM in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, BLM shall follow the procedures outlined at 36 CFR 800.5(c)(2-3).
- ii. If BLM makes a finding of "adverse effect" (36 CFR 800.5[d][2]) then BLM shall request the lessee or applicant propose methods to avoid, minimize, and/or mitigate adverse effects.
  1. Upon receipt of the applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects, BLM shall reapply the criteria of adverse effect in consultation with Signatories and Consulting Parties, and if historic properties can be avoided, revise their finding of effect pursuant to 36 CFR 800.6.
- iii. If BLM, in consultation with Signatories and Consulting Parties determines that an applicant's proposed methods to avoid, minimize, and/or mitigate adverse effects will still result in adverse effects to Historic Properties, the process shall revert to the standard Section 106 procedures at 36 CFR 800.6 and conclude with an executed MOA under 36 CFR 800.6 or a Council comment under 36 CFR 800.7.
- b. If no, BLM will make a finding of "no Historic Properties affected" (36 CFR 800.4[d][1]) and submit to SHPO for concurrence with appropriate supporting documentation. SHPO shall have thirty (30) days to review the BLM's determination. BLM shall also provide notice to the Signatories and Consulting Parties of this finding in accordance with 36 CFR 800.4(d)(1).
  - i. If SHPO concurs with the BLM's determination, BLM shall document SHPO concurrence to the Project file.
  - ii. If SHPO does not concur, and resolution cannot be reached through consultation among SHPO, ACHP, and BLM, BLM shall follow the procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

### **L. Step 8: Decision regarding Undertaking**

1. BLM will not authorize a Project until BLM has completed Steps 1-7, as applicable, and BLM has documented the appropriate finding of effect and resolution efforts, as required, to the Project file.
2. Alternatively, if BLM has determined that a separate Section 106 process and agreement document ("kick-out") is required for an APD or Reclamation Project (see Step 2), BLM may authorize an APD or Reclamation Project subject to this PA only after the separate Section 106 review has been completed, and if necessary, the appropriate agreement document (e.g., MOA or PA) has been executed for the Project.

**M. Step 9: Reporting**

1. BLM will include a summary of all Projects reviewed under this PA in the previous year in the annual PA report [Stipulation XII]. The summary will include a synopsis for each project, including at minimum:
  - a. A description of the Project;
  - b. Delineation of the APE;
  - c. Identification efforts within the APE;
  - d. NRHP eligibility of known properties within the APE;
  - e. BLM's finding of effect for the Project; and,
  - f. The Qualifications of the Individual who conducted the PA Compliance Review.
2. BLM will submit to the SHPO reports associated with identification, evaluation, and assessments of effect that were used to support BLM findings of effect to the SHPO.
3. BLM may append reports associated with identification, evaluation, and assessments of effect that were used to support BLM finding to the annual PA report, provided they do not contain sensitive information regarding Historic Properties pursuant to Stipulation IV.C.

**VI. Methods to Inventory APE**

- A. The BLM shall produce a draft of *Appendix D: Methods to Inventory the APE* within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.
- B. *Appendix D: Methods to Inventory the APE* will include parameters on when an unevaluated property within the APE will not be evaluated for the NRHP, guidance on intensity of fieldwork based on proposed actions/activity, guidance on when and at what level archaeological, ethnographic, historical, and archival research should be conducted, and the role of geographic information systems (GIS)-based modeling for the identification of Historic Properties.
- C. BLM shall distribute the first and final drafts of *Appendix D: Methods to Inventory the APE* to Signatories and Consulting Parties for 60-day comment periods. BLM shall distribute interim drafts to Signatories for 30-day comment periods.
- D. BLM will consider timely comments received and revise the draft *Appendix D: Methods to Inventory the APE* accordingly. Multiple drafts may be required, and a final draft will be sent out for review no later than one (1) year from the execution of the PA.
- E. BLM, FWS, and SHPO must approve the draft *Appendix D: Methods to Inventory the APE* before it is considered final.

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- F. Drafts cannot be used as interim guidance. If a project needs to move through Step 4 of this PA prior to finalization of *Appendix D: Methods to Inventory the APE*, then the appropriate level of effort and methods will be determined through consultation among BLM, FWS, and SHPO on a case-by-case basis.

### VII. **Standards**

#### A. Professional Qualifications:

1. For work not performed by BLM or FWS professional staff, BLM and FWS shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of qualified historic preservation professionals who meet the Secretary of Interior (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742). The BLM and FWS, through review of permit applications or other means, shall ensure that consultants retained for services pursuant to the Agreement meet these standards.
2. A “qualified historic preservation professional” is a person who meets the relevant standards outlined in the Archeology and Historic Preservation: SOI Standards and Guidelines [as Amended and Annotated] ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) or revised equivalent.
3. BLM acknowledges that Indian Tribes possess specialized expertise in identifying and assessing the eligibility of Historic Properties that may possess religious and cultural significance to them (36 CFR 800.4(c)(1)), and as such, do not need to meet the SOI standards regarding identifying and evaluating Historic Properties of religious and cultural significance to them.

#### B. Professional Standards:

1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall ensure that all work conducted as a result of this PA is performed in accordance with the SOI Standards for Archeology and Historic Preservation (Standards and Guidelines) (48 Fed. Reg. 44716-44742).
2. BLM shall require that persons supervising and conducting work on the behalf of lessees hold the appropriate BLM permits and/or authorizations as appropriate for inventory, monitoring, and other investigations, and meet the Standards and Guidelines, as well as the SOI Professional Qualification Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure that persons supervising and conducting work on the behalf of lessees comply with the NAGPRA POA.
3. Investigations associated with Program activities will be conducted in accordance with *Appendix D: Methods to Inventory the APE*, and will meet the standards presented in BLM Manual 8110 Identifying and Evaluating Cultural Resources ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)) and BLM Manual 1780 Tribal Relations (<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>).
4. Reports regarding Historic Properties shall meet the standards outlined in the SOI Standards for Archeology and Historic Preservation (Standards and

Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and guidance (i.e., BLM Manuals 8110 and 1780), and Alaska Office of History and Archaeology guidelines.

### **VIII. Unanticipated Discoveries**

- A. During the entire implementation of this Undertaking, BLM will ensure that the Signatories and Consulting Parties are informed of unanticipated discoveries within the Undertaking's APE during lessees or their contractor related activities associated with the BLM's oil and gas leasing program.
- B. Lessees or their contactors will not take any actions that would adversely affect the discovery (which may be eligible for listing in the NRHP) without written approval from BLM.
- C. Upon the unanticipated discovery, the following steps listed below will be undertaken. If the unanticipated discovery includes human remains, burials, or funerary items, then the additional steps listed in Stipulation X shall be followed.
  - 1. The lessee will ensure that their operator or contractor will halt all activity in the area of the find and an appropriate buffer surrounding the area where further discoveries can be reasonably expected to occur, to be no less than one hundred (100) feet, and will notify the BLM within one (1) business day;
  - 2. The BLM shall require the suspension of activity within the established buffer, and shall notify the Signatories and Consulting Parties within two (2) business days of the discovery;
  - 3. The BLM or a SOI-qualified archaeologist approved by the Signatories will inspect the property as soon as possible and collect enough information to determine (if possible):
    - a. The extent of cultural materials associated with the unanticipated discovery;
    - b. The degree of integrity; and
    - c. The cultural affiliation of the materials (if possible).
  - 4. Within five (5) business days of collection, BLM shall provide a summary of the information collected at the place of discovery to Signatories and Consulting Parties, which will include BLM's preliminary assessment of the NRHP eligibility of the discovery;
  - 5. Within fourteen (14) days of the BLM's distribution of the information regarding the unanticipated discovery, the BLM, in consultation with the Signatories and Consulting Parties, will determine whether the discovery encountered is eligible for listing in the NRHP.
    - a. If the BLM determines that the discovery is ineligible for listing in the NRHP and SHPO concurs, BLM shall authorize the lessee to continue activities in the area of the discovery.
    - b. If the BLM determines the discovery is eligible for listing in the NRHP and SHPO concurs, BLM will direct the lessee to prepare a plan for its

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

avoidance, protection, or recovery of information in consultation with BLM, Signatories and Consulting Parties, as appropriate.

- i. Within five (5) business days of receipt of the lessee's plan, BLM shall distribute copies of the proposed plan to Signatories and Consulting Parties for review and comment.
  - ii. Signatories and Consulting Parties shall have seven (7) business days to review the proposed plan and provide comments to BLM.
  - iii. BLM shall take into consideration timely comments received on the proposed plan and make a determination to either approve or request revisions to the proposed plan.
    - A. In the event that BLM requests revisions to the plan, BLM shall redistribute the revised plan under the same timelines as above, and Signatories and Consulting Parties shall have the same period of review. BLM may request revisions to the plan two times or until the plan adequately responds to comments. BLM will finalize the plan and provide the final plan to Signatories and Consulting Parties for their information.
6. Work in the established buffer will not proceed until either:
- a. BLM approves the plan and requires its implementation; or
  - b. The BLM determines that the discovery is not eligible for the NRHP, and the SHPO concurs with this determination.
- D. BLM will address any disputes over the evaluation or treatment of unanticipated discoveries as provided in Stipulation XIII of this PA.

### **IX. Unanticipated Effects**

- A. If BLM, in consultation with Signatories and Consulting Parties, determines that unanticipated effect(s), including cumulative effects, have occurred to a Historic Property, BLM, in consultation with Signatories and Consulting Parties, will assess the effect(s), develop a plan to address the unanticipated adverse effect(s), and avoid, minimize, and/or mitigate the unanticipated adverse effect(s).
- B. BLM will notify Signatories and Consulting Parties of unanticipated effects within approximately two (2) business days of the determination in IX.A. if caused by a current action (i.e., construction) or other situation requiring expedited review. Within approximately seven (7) days of discovery of an unanticipated effect, BLM will submit to Signatories and Consulting Parties, for a seven (7) day comment period, a finding on whether the unanticipated effect was adverse.
- C. If the unanticipated effect is the result of cumulative or past actions, then BLM will notify Signatories and Consulting Parties within approximately thirty (30) days of discovery of the unanticipated effect, which will include a finding on whether the effect was adverse.

- D. If BLM, in consultation with Signatories and Consulting Parties, determines that the unanticipated effect was adverse, then the process shall revert to the standard Section 106 procedures at 36 CFR 800.6 and conclude with an executed MOA or Council comment under 36 CFR 800.7.
- E. BLM will attempt to complete this process within 180 days of the recognition of the unanticipated effect(s).
- F. BLM will address any disputes over the resolution of unanticipated effects as provided in Stipulation XIII of this PA.

**X. Treatment of Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

- A. The APE exists entirely on federally-managed lands, and the BLM shall ensure that any Native American burials, human remains, and/or related items discovered on federal lands during implementation of the terms of this PA will be treated with dignity and respect, and that all procedures guiding the treatment of human remains, funerary objects, sacred objects, or objects of cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).
- B. As surface manager of the APE, FWS is the managing agency for any and all human remains and NAGPRA materials.
- C. FWS shall develop, in consultation with BLM, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA to comply with 43 CFR 10.5 and applicable state laws within six (6) months after execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be attached to this PA for reference as *Appendix E: NAGPRA Plan of Action*.
- D. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall immediately cease, the area shall be secured from further disturbance, and the permittee, lessee or agency shall immediately notify the BLM of the discovery.
  - 1. Upon notification, the BLM shall follow the procedures described in the NAGPRA POA (*Appendix E: NAGPRA Plan of Action*).

**XI. Curation**

- A. Archaeological materials not falling under jurisdiction of NAGPRA and recovered during any activities associated with the Undertaking are the property of FWS as surface manager of the APE and will be curated in accordance with 36 CFR 79, *Curation of Federally-Owned and Administered Archaeological Collections* under FWS' existing agreement with the University of Alaska Museum of the North (UAMN).

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

- B. The Permittee, and any contractors hired on their behalf, will be responsible for submitting all materials recovered from federal lands to the UAMN within six (6) months following approval of a final report, within one (1) year following completion of the fieldwork that generated the collection, or other period of time as specified in the ARPA permit. All collections will be curation-ready, as determined by the UAMN. Prior to disposition, the Permittee, and any contractors hired on its behalf, will safeguard all materials from theft or damage by providing adequate interim storage facilities and conservation actions, consistent with the requirements in 36 CFR 79. Within thirty (30) days following disposition, the Permittee will provide BLM with all accession records and documentation associated with the transfer and curation of materials. BLM will share the documentation with the FWS. Information will be shared with the other Signatories and Consulting Parties as appropriate.
- C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with the curation of any materials that are collected during the implementation of this PA, in perpetuity. Curation costs may include, but are not limited to, curation fees charged by approved institutions, acquisition of archival materials, shipping, cleaning, rehousing, and any other conservation action.
- D. BLM and FWS shall manage materials determined to be subject to NAGPRA as described above in Stipulation X and in the NAGPRA POA (*Appendix E: NAGPRA Plan of Action*).
- E. Nothing in this PA shall prevent the FWS, as surface manager of the APE, from consulting with Indian Tribes or other Consulting Parties to arrange for long-term loans or other transfers of artifacts recovered from the APE to local communities or facilities to support and enhance cultural ties to the APE.

## **XII. Annual PA Meeting and Reports**

- A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to an annual meeting concerning this PA within one (1) year of the PA execution, and at that approximate date in each succeeding year. A subsequent Signatories meeting will be held by the Signatories to consider the input received by Consulting Parties, discuss the PA's implementation, required amendments (as necessary), other changes to the Program that may necessitate an amendment to the PA, and other business related to the application of the PA terms.
  - 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories. The parties may participate by telephone if they so desire.
  - 2. The BLM will distribute meeting minutes to the meeting participants within thirty (30) days of the meeting, and meeting participants will provide comments on the minutes to BLM within fifteen (15) days of receipt. The BLM shall amend the minutes as a result of comments and distribute finalized minutes within approximately sixty (60) days of the meeting to Signatories and Consulting Parties.



## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to BLM that a meeting is necessary outside the regularly scheduled annual meeting, the Signatories will consider their request. BLM, taking into consideration the results of consultation, shall decide whether to convene additional meetings.

### B. Annual PA Report:

1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories and Consulting Parties with a draft copy of that year's annual report that describes the completed activities pursuant to this PA and upcoming activities associated with the stipulations of this agreement. The report will include the following information, as appropriate:
  - a. Number of leases issued;
  - b. All Project types considered under Stipulation V.A;
  - c. Consultation activities undertaken;
  - d. A summary of the past year's and anticipated upcoming efforts related to cultural resource management, which may include but not be limited to:
    1. Efforts to identify, evaluate, and protect historic properties;
    2. Measures drafted or implemented to resolve adverse effects;
    3. A summary of materials submitted to an approved repository for curation; and
    4. References for cultural resources reports produced in the past year.
  - e. A summary of historic properties adversely affected;
  - f. Maps of areas leased, surveyed, or otherwise investigated;
  - g. Upcoming/Planned activities for the Program;
  - h. An evaluation of this PA and recommendations for any amendments or changes; and
  - i. An updated *Appendix C: Consulting Parties* if points of contact for Consulting Parties have changed.
2. Signatories and Consulting Parties may provide comments to BLM at or before the Annual meeting regarding the content of the Annual Report.
3. BLM will prepare and submit a Final Annual Report to Signatories and Consulting Parties within thirty (30) days after the annual meetings have concluded.

### C. Other Reports:

1. Cultural resource activities, such as archaeological surveys, site evaluations, excavations, data recovery for mitigation, and monitoring, will be documented in reports subject to review by Signatories and Consulting Parties, as allowed by Stipulation IV.C, to allow timely and meaningful comment on findings and determinations made during implementation of Stipulation V Section 106 Procedures. Review and comment periods will follow the process outlined in Stipulation V. If a report is not accompanied by a determination or finding, then Signatories and Consulting Parties shall have 30 days to review and provide comment.

2. Full attachment of reports that have not been submitted to SHPO as part of a project review shall be attached to the Annual Report sent to SHPO.

### **XIII. Dispute Resolution**

- A. Should any of the Signatories or Consulting Parties who have become Concurring Parties to this PA have insight, improvements, or objections regarding the manner in which the terms of this PA are implemented, the BLM will consult with such party to determine if the inclusion, suggestion, recommendation, or objection may be addressed to the satisfaction of the party, which may include presenting a proposed amendment to this PA in accordance with Stipulation XV.
- B. If BLM cannot resolve the conflict with the individual party or parties, BLM shall notify the Signatories of the dispute, and seek input from Signatories to resolve the dispute.
- C. If the Signatories determine that an objection cannot be resolved, the BLM will:
  1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP will provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Consulting Parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar-day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties to the PA and provide them and the ACHP with a copy of such written response.
  3. The BLM remains responsible for carrying out all other actions subject to the terms of this PA that are not the subject of the dispute.

### **XIV. Duration**

- A. This PA shall take effect when executed by the ACHP, the BLM, and the SHPO.
- B. This PA will remain in effect for ten (10) years after its execution, unless extended by the Signatories through the process outlined in XV.
- C. Prior to such time, and no later than six (6) months prior to the expiration of this agreement the BLM will consult with the Signatories and Consulting Parties to

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

reconsider the terms of the PA and whether it should be amended in accordance with Stipulation XV below.

### **XV. Amendments**

- A. The Signatories may amend this PA at any time when such amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.
- B. The BLM will distribute any PA amendments to all Consulting Parties. All amendments will be attached to the PA in *Appendix F: PA Amendments (reserved)*.
- C. In the event that another federal agency not initially a party to or subject to this PA receives an application for funding/licensing/or permitting an Undertaking in the 1002 area as described in this PA, that agency may fulfill its Section 106 responsibilities by stating in writing that it concurs with the terms of this PA and notifying the Signatories and Consulting Parties that it intends to do so. Such agreement shall be evidenced by execution of a signature page signed by an authorized individual for that agency, distribution of said page to all Signatories and Consulting Parties, filing this page with the ACHP, and implementation of the terms of this PA.
- D. The Signatories agree that *Appendix C: Consulting Parties* may be updated as necessary to reflect changes in personnel or contact information without requiring the PA to be amended in accordance with the procedures described above.

### **XVI. Termination**

- A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment or agreement on other actions that would avoid termination of the PA. If after thirty (30) days from the initiation of such consultation (or another time period agreed to by all Signatories) an amendment or agreement on other actions that would avoid termination cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.
- B. In the event that a Signatory terminates this PA, and prior to undertaking further Program actions, the BLM must either (a) develop and execute a new Programmatic Agreement pursuant to 36 CFR 800.14(b) for the Program, or (b) comply with 36 CFR Part 800 for each undertaking subject to the Program. The BLM shall notify the Signatories as to the course of action it will pursue.

**XVII. Emergency Situations**

- A. The BLM shall attempt to notify within one (1) business day the Signatories and Consulting Parties of an emergency situation, which represents an imminent threat to public health or safety or creates a hazardous condition that requires a response action that has potential to harm Historic Properties. Should the Signatories or Consulting Parties desire to provide technical assistance to the BLM on how the response action could avoid or minimize adverse effects to historic properties, they shall submit comments to the BLM within seven (7) days from notification, if the nature of the emergency or hazardous condition allows for such coordination.
- B. If the APE of the emergency situation has been surveyed for Historic Properties and none are within the APE, then the BLM will request concurrence on a determination of “no Historic Properties affected” from the SHPO within five (5) days from the initial notification.
- C. If the APE has not been surveyed for potential Historic Properties, then emergency actions will be monitored by a SOI-qualified professional or the APE will be inventoried by a SOI-qualified professional no later than one (1) year after the emergency action is completed. BLM will require that a monitoring report or inventory report be submitted to Signatories and Consulting Parties within thirty (30) days following fieldwork completion.
- D. If a previous known or unknown Historic Property is adversely affected by emergency actions, refer to Section IX. Unanticipated Effects.

**XVIII. Anti-Deficiency Provision**

- A. Any obligation of the BLM set forth in this PA is subject to and dependent on appropriations by Congress and allocation of sufficient funds for that purpose. The BLM shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the BLM’s ability to implement the stipulations of this agreement, the BLM shall consult in accordance with the amendment and termination procedures found at Stipulations XV and XVI of this agreement.

**EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences that the BLM has taken into account the effects of the Undertaking on Historic Properties and has afforded the ACHP an opportunity to comment.


FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

United States Department of the Interior, Bureau of Land Management

By:  \_\_\_\_\_ Date: 9/20/19  
Chad B. Padgett, State Director, Alaska

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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United States Department of the Interior, Bureau of Land Management  
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and  
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Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

Alaska State Historic Preservation Office

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Judith Bittner, State Historic Preservation Officer

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

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United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John M. Fowler, Executive Director

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

United States Department of the Interior, Fish and Wildlife Service

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Gregory E. Siekaniec, Regional Director, Alaska



FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**FINAL PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONCURRING PARTIES**

**[ORGANIZATION NAME PLACEHOLDER]**

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

## **Appendix A: List of Acronyms and Definitions**

FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**ACRONYMS**

ACHP .....	Advisory Council on Historic Preservation
ADNR .....	Alaska Department of Natural Resources
AHRS .....	Alaska Heritage Resource Survey
ANCSA.....	Alaska Native Claims Settlement Act
ANWR .....	Arctic National Wildlife Refuge
APD.....	Application for Permit to Drill
APE.....	Area of Potential Effects
ARPA .....	Archaeological Resources Protection Act
BLM.....	Bureau of Land Management
CFR.....	Code of Federal Regulations
DOE .....	Determination of Eligibility
DOI.....	United States Department of the Interior
EIS .....	Environmental Impact Statement
FWS .....	Fish and Wildlife Service
GIS .....	Geographic Information Systems
HPMP .....	Historic Properties Management Plan
MOA .....	Memorandum of Agreement
NAGPRA .....	Native American Graves Protections and Repatriation Act
NEPA .....	National Environmental Policy Act
NHPA .....	National Historic Preservation Act
NRHP .....	National Register of Historic Places
PA .....	Programmatic Agreement
POA.....	Plan of Action
SHPO .....	State Historic Preservation Office
SOI.....	Secretary of the Interior
TLUI .....	Traditional Land Use Inventory
UAMN.....	University of Alaska Museum of the North
USC.....	United States Code

## DEFINITIONS

Administrative Action: Actions or decisions made by BLM or other federal agencies that relate to the internal administration of their agency, personnel, or jurisdiction, which do not authorize activities that will alter the physical environment or character of a place.

Adverse Effect: When an Undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the Undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of Potential Effects (APE): The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking [as noted in 36 C.F.R. § 800.16(d)].

Concurring Parties: The signatory parties may agree to invite others (concurring parties) to concur in the PA. The refusal of any party invited to concur in the PA does not invalidate the PA, (as noted in 36 C.F.R. § 800.6(c)(3)). Concurring Parties may not terminate the PA. Signing this PA as a Concurring Party does not imply endorsement or approval of the Project itself, or limit or restrict in any way the Concurring Party's right to object to, petition against, litigate against or in any other way express or advance critical or negative comments toward, the Project or its proponent.

Consultation: The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary of the Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation (36 C.F.R. § 800.16(f)).

Consulting Parties: Parties that have consultative roles in the Section 106 process, as defined in 36 C.F.R. § 800.2(c). These include the SHPO, Indian Tribes (which include native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), representatives of local governments, individuals and organizations with a demonstrated interest in the undertaking, and the public.

Cultural Resource: Locations of human activity, occupation, or usage that contain materials, structures, or landscapes that were used, built, or modified by people.

Curation: The disposition of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Data Recovery: The gathering of archaeological information from a historic property subject to an adverse effect. The associated procedures generally include, but are not limited to, excavation of subsurface archaeological deposits and documentation in the

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

form of maps, photographs, feature drawings, field notes, and technical reports. The data recovered during these procedures can be utilized for future research.

Days: Days refer to calendar days unless otherwise noted.

Determination of Eligibility (DOE): A determination made by a Federal agency, in coordination with the SHPO and/or designated representatives of Consulting Indian Tribes, as appropriate, respecting a cultural resource's eligibility for inclusion in the NRHP and more fully described in 36 CFR Part 63 and 36 CFR § 800.16(l)(2).

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP (see 36 C.F.R. § 800.16(i)).

Eligible for Inclusion in the National Register: Properties that have been determined by the Keeper or through consultation with the appropriate SHPO/THPO to meet the criteria (36 CFR 60.4) and have sufficient integrity to convey their significance.

Environmental Impact Statement (EIS): An analysis of a major federal action's environmental impacts conducted under the auspices of NEPA.

Federal Agency: Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an Undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the Undertaking and can commit the Federal agency to take appropriate action for a specific Undertaking as a result of Section 106 compliance.

Finding of Effect: A finding made by a Federal agency in consultation with the SHPO and other Consulting Parties in regards to a Project's effect upon a historic property consistent with 36 CFR Part 800.

Historic Property: Any historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior pursuant to the criteria for evaluation set forth in 36 C.F.R. § 60.4.

Historic Property Management Plan (HPMP): HPMPs are developed to help meet the requirements under Section 106 of the NHPA. These plans provide detailed procedures and requirements to be implemented to resolve adverse effects to historic properties. HPMPs are often developed in conjunction with agreement documents (i.e. Memorandum of Agreement or PA).

Indian Tribe: An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Invited Signatory: The agency official may invite additional parties to be signatories to a PA; any such party that signs the PA shall have the same rights with regard to seeking amendment or termination of the agreement as other Signatories. The refusal of any party invited to become a Signatory pursuant to paragraph (c)(2) does not invalidate the PA.

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National Environmental Policy Act (NEPA): NEPA is a federal law that requires federal agencies to disclose to the public the effects that major federal actions would have on environmental quality. These disclosures are reported as environmental assessments or environmental impact statements and quantify the potential environmental effects of proposed actions.

National Historic Preservation Act (NHPA): The NHPA is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Among other things, the act requires federal agencies to evaluate the impact of all federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

National Register of Historic Places (NRHP): The NRHP is the official list of the Nation's historic places worthy of preservation. Authorized by the NHPA and maintained by the Secretary of the Interior, it is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Native American Graves Protection and Repatriation Act (NAGPRA): (25 U.S.C. 3001 et. seq.). The Act requires federal agencies and institutions that receive federal funding to return Native American cultural items to lineal descendants and culturally affiliated Indian Tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties on museums that fail to comply. NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discoveries or excavations on private or state lands, the collection provisions of the Act may apply to Native American cultural items if they come under the control of an institution that receives federal funding.

Programmatic Agreement (PA): A Programmatic Agreement is a document that spells out the terms of a formal, legally binding agreement between federal agencies and other consulting parties. A PA establishes a process for consultation, review, and compliance with one or more federal laws, most often with those federal laws concerning historic preservation.

Qualified Archaeologist: An archaeologist that meets the Secretary of the Interior's Standards and Guidelines for archeology (36 C.F.R. Part 61), which consist of, at a minimum, a graduate degree in archeology, anthropology, or closely related field plus, at least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American archeology, demonstrated ability to carry research to completion, and at least one year of full-time professional experience at a supervisory level in the study of prehistoric or historic period archeology.

## FINAL Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Signatories: In accordance with 36 C.F.R. § 800.6(c)(1), signatories have the authority to execute, amend, or terminate the agreement.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both"(Binford 1972:46). These definitions apply to both prehistoric and historic sites. Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

State Historic Preservation Officer (SHPO): The SHPO is responsible for administering the State Historic Preservation Program which includes providing assistance to Federal and State agencies and local governments in carrying out their historic preservation responsibilities.

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





## Appendix C: Consulting Parties

List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local governments invited or requested to participate in consultation (\*indicates a response that they will participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information. Without a specific point of contact, communications will be directed to the leadership of the organization (e.g., President, Chairperson, Executive Director, etc.).

Organization	E-mail or phone
Arctic Village Council*	AV_Council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	nadine@birchcreektribe.org
Chalkyitsik Village Council	907-848-8117
Circle Tribal Council	angela@circletribal.com
Gwichyaa Zhee (Native Village of Fort Yukon)	michael.peter@fortyukon.org
Iñupiat Community of the Arctic Slope (ICAS)*	frederick.brower@inupiatgov.com
Native Village of Barrow Iñupiat Traditional Government*	doreen.leavitt@nvbarrow.net
Native Village of Eagle	eagle.village@yahoo.com
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	907-480-3010
Native Village of Stevens	907-478-7228
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyon.com
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	kevin.fisher@north-slope.org
Council of Athabascan Tribal Governments	donna.thomas@catg.org

## **Appendix D: Methods to Inventory the APE**

### **Excerpt from Stipulation VI: Methods to Inventory APE above**

A. The BLM shall produce a draft of *Appendix D: Methods to Inventory the APE* within six (6) months of execution of the PA. BLM may request additional time to complete this draft; however, BLM must submit this request in writing to the Signatories for concurrence.

## **Appendix E: NAGPRA Plan of Action**

### **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects, Sacred Object, and Objects of Cultural Patrimony above:**

- A. FWS shall develop, in consultation with BLM, SHPO, and Indian Tribes, a Human Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable state laws six (6) months after the execution of this PA. Upon completion, the Human Remains and NAGPRA POA shall be incorporated into this PA as Appendix E. At minimum, the POA shall contain:
  - 1. Notification Procedures and Protocols;
  - 2. Chain of Custody Procedures; and,
  - 3. Contact information for Law Enforcement, Tribal Representatives, and Agency personnel.
  
- B. In the event that any Native American burials, human remains, or funerary items are inadvertently encountered during any Program activity, the activity shall immediately cease, the area shall be secured from further disturbance, and the permittee, lessee or agency shall immediately notify the BLM of the discovery.

Upon notification, the BLM shall follow the procedures described in the NAGPRA POA (Appendix E).

**Appendix F: PA Amendments (reserved)**

ACHP Amendment Template:

[https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

**From:** [Decleva, Edward J](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Bill Marzella](#); [Meitl, Sarah J \(DNR\)](#); [Judith E. Bittner](#); [Tom McCulloch](#); [Loya, Wendy M](#); [Chad Ricklefs](#); [amy lewis](#); [Jake Anders](#); [Stephen Braund](#); [Paul Lawrence](#); [King, Robert \(Bob\)](#)  
**Subject:** USFWS Invited Signatory  
**Date:** Tuesday, August 13, 2019 9:19:19 AM  
**Importance:** High

---

Hi Nicole,

USFWS Invited Signatory for the Coastal Plain Oil & Gas Leasing Program PA is:

Gregory E. Siekaniec, Regional Director

Thank you,  
Ed

Edward J. DeCleva  
Regional Historic Preservation Officer  
U.S. Fish and Wildlife Service, Alaska Region  
1011 E Tudor Rd, MS-235  
Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)  
907-786-3399

On Mon, Aug 5, 2019 at 1:06 PM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Thank you, everyone! Attached is the the track change version of the final edits made to the PA. There is a little confusion about the language of the Unanticipated Discoveries stipulation and the 800.13 language, so will discuss next week in our FINAL meeting on 8/13 before producing signature pages so we can ensure we have reached consensus and all on the same page.

Thanks again,

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

On Fri, Jul 26, 2019 at 7:51 AM Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)> wrote:

Nicole and all—See attached responses from the ACHP attached. A few additional notes below:

1. I second the SHPO's recommendation of 100' avoidance buffer.
2. Agree generally about the ground disturbance. If this is to be left in, it should be more inclusive to describe other types of direct effects. Suggested language included in the

comments, but generally physical alteration, atmospheric changes, etc. At that point it may be too restrictive and just work removing this point entirely.

3. Agreed it would be helpful to see the specific language. It seems this section is serving to differentiate NAGPRA discoveries from other more Section-106 focused discoveries. If so, I would feel more comfortable with more explicit language to that effect, or at least that separates a NAGPRA discovery with the determination of effect under 106.

Thanks,

Bill

---

**From:** "Meitl, Sarah J (DNR)" <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>  
**Date:** Friday, July 19, 2019 at 6:29 PM  
**To:** Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>, "Hayes, Miriam (Nicole)" <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>, "Judith E. Bittner" <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>, Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>, Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>, Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>  
**Cc:** Chad Ricklefs <[chad.ricklefs@empfi.com](mailto:chad.ricklefs@empfi.com)>, amy lewis <[amy.lewis@empfi.com](mailto:amy.lewis@empfi.com)>, Jake Anders <[Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com)>, Stephen Braund <[Stephen.Braund@srbak.com](mailto:Stephen.Braund@srbak.com)>, Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>, "Robert (Bob) King" <[r2king@blm.gov](mailto:r2king@blm.gov)>  
**Subject:** RE: Response to comments on Draft Final PA

Hi Nicole,

Thanks for sending these out. It is really helpful to see the full spread of comments. We are looking forward to seeing a clean document that has taken into account the various comments and responses.

Comments on BLM's response to SHPO comments:

I.F comment – BLM's response seems inconsistent with the process in the Amendments section (XV.D), which allows us to update Appendix B as necessary without the amendment process. I recommend clarifying that the step in I.F updates Appendix B or revise the amendments section to follow the process presented in the response.

V.B.1.a comment – How will the existing project footprint be defined? Even with this qualifier,

the continued use of the 'no ground disturbance' condition is problematic, as it is a legacy condition that in the past has led to unfortunate outcomes for historic properties and we are encouraging agencies to think beyond ground disturbance for possible effects. Another not-so-great example of an adverse effect that did not involve ground disturbance would be the cabin that was destroyed with a hydro-ax. Our office still recommends deleting 'a'.

Request for language from SHPO: The blue text currently serving as a placeholder is probably fine as is or could include reference to Stipulation IV.C.

Inadvertent discovery stop work zone – The five hundred feet avoidance zone used on the North Slope is for known properties and is so large to account for potential GPS error and personnel getting lost, as well as to provide some buffer for the anticipated error margin on known site locations. One hundred feet seems to be the consensus distance used in agreements our office has on file for inadvertent discovery situations, including agreements for projects on the North Slope. One document included one hundred feet from the known extent of the property, which I think would be a good addition for this situation.

Question about using 800.13 language in the inadvertent discovery section – Which language would you like to use? At present this section of the PA is providing an alternative to the process outlined in 800.13 with different timelines or other details such as the stop work zone distance.

Best,

**Sarah Meitl**

Review and Compliance Coordinator

Alaska State Historic Preservation Office / Office of History and Archaeology

550 West 7<sup>th</sup> Avenue, Suite 1310

Anchorage, AK 99501-3510

[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)

907-269-8720

---

**From:** Bill Marzella

**Sent:** Friday, July 19, 2019 12:27 PM

**To:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>; Bittner, Judith E (DNR) <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>; Meitl, Sarah J (DNR) <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>; Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>; Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>; Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>

**Cc:** Chad Ricklefs <[chad.ricklefs@empfi.com](mailto:chad.ricklefs@empfi.com)>; amy lewis <[amy.lewis@empfi.com](mailto:amy.lewis@empfi.com)>; Jake Anders <[Jake.Anders@srbak.com](mailto:Jake.Anders@srbak.com)>; Stephen Braund <[Stephen.Braund@srbak.com](mailto:Stephen.Braund@srbak.com)>; Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>; Robert (Bob) King <[r2king@blm.gov](mailto:r2king@blm.gov)>

**Subject:** RE: Response to comments on Draft Final PA

Nicole—Thanks for sending, I'm sure it was no small task to reconcile all of these comments. Responses to the ACHP version look good to me. Next week I will take a closer look at the other responses and the additional feedback requested on the NVVTG, AVC, VVC comments. Signing for the ACHP will be: John M. Fowler, Executive Director.

Thanks,

**Bill Marzella**

Program Analyst/BLM Liaison

(202) 517-0209

Register TODAY for the [Section 106 Practitioners Workshop](#) on August 6-7 or the [Agreements Seminar](#) on August 8 in Cheyenne, WY!

**From:** Hayes, Miriam (Nicole) [<mailto:mnhayes@blm.gov>]

**Sent:** Friday, July 19, 2019 2:18 PM

**To:** Judith E. Bittner; Meitl, Sarah J (DNR); Bill Marzella; Edward Decleva; Wendy Loya; Tom McCulloch

**Cc:** Chad Ricklefs; amy lewis; Jake Anders; Stephen Braund; Paul Lawrence; Robert (Bob) King

**Subject:** Response to comments on Draft Final PA

Dear Signatories,



Attached are BLM's response to comments on the Draft Final PA, consistent with previous responses to comments and conversations we have had on the various topics.

A few things we still need to finalize this PA are:

1. SIGNATORY INPUT on a couple of responses on the NVVTG, AVC, VVC comments (you can see the request for input in the comment bubbles that start with "SIGNATORIES:...").
2. Judy/Sarah, there is one comment on the SHPO comments I need recommended language (comment bubble starts with "SHPO:...")
3. Review of all the responses to comments. If there is any concern with how the BLM responded please advise ASAP (**but NLT July 26th**) as SRBA will be proceeding with changes.
4. Identify person with your agency that will be signing PA and correct title so we can prepare signature pages accordingly.

Attached are comments with BLM responses from:

ACHP

SHPO

NSB

NVVTG, AVC, VVC (also attached w/o comment response so you can see all edits made in track changes since several inserts and deletions were rejected)

Schedule of next steps:

**JULY 26-DUE** from signatories - requests above

**AUG 5-** FINAL PA will be distributed for review by signatories

**AUG 13-** LAST Signatories meeting before signing to discuss any minor fixes needed

Please let me know if I may have missed anything or there are any questions.

THANK YOU!

Nicole

**Nicole Hayes**

Project Coordinator

Bureau of Land Management

222 W. 7th Avenue #13

Anchorage, Alaska 99513

Desk: (907) 271-4354

Cell: (907) 290-0179

**From:** [Decleva, Edward J](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Marino, Eugene](#); [Tom McCulloch](#); [kkerr@achp.gov](mailto:kkerr@achp.gov); [Bittner, Judith E \(DNR\)](#); [Meitl, Sarah J \(DNR\)](#); [King, Robert \(Bob\)](#); [Loya, Wendy M](#); [Steen, Debbie DS](#)  
**Subject:** Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response  
**Date:** Wednesday, July 3, 2019 8:06:44 AM  
**Attachments:** [EMP18\\_Draft\\_Final\\_PA\\_USFWS\\_Comments\\_0703\\_2019.docx](#)  
**Importance:** High

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Good morning Nicole,

Regarding the subject (EMP18\_Draft\_PA\_6\_10\_19\_SRBA) you provided on June 13, 2019: U.S. Fish and Wildlife Service (USFWS) comments are provided within the attached document.

Of particular the change from Signatory status to Invited Signatory status.

Early in the development of this Programmatic Agreement (PA), the Bureau of Land Management (BLM) identified USFWS as an Invited Signatory, according to BLM at the suggestion of the Alaska State Historic Preservation Office (AK SHPO). I disputed this, arguing that because USFWS has jurisdiction on the cultural resources within the Arctic National Wildlife Refuge, including control of recovered cultural resources and compliance responsibilities associated with the Archeological Resource Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA), USFWS would need to have and agree to roles/responsibilities for such in the PA. Otherwise, perhaps BLM should take control of cultural resources and full responsibility for ARPA and NAGPRA compliance on matters related to BLM approval of oil and gas leasing and operation within the Arctic National Wildlife Refuge - an approach that may make more sense.

I briefed Greg Siekaniec, Regional Director, USFWS Alaska Region, on the matter. Regional Director Siekaniec agreed with my argument and instructed me to pursue full Signatory status for USFWS.

At a PA meeting held on March 18, 2019, I presented my argument to the BLM, AK SHPO, and the Advisory Council on Historic Preservation (ACHP). Tom McCulloch, Assistant Director, ACHP Federal Property Management Section, agreed and indicated that USFWS should be a full Signatory. The next version of the PA was revised to reflect USFWS as a full Signatory.

The current version of the PA, however, has USFWS as an Invited Signatory. To my knowledge, no explanation has been provided by BLM.

At my request, Eugene Marino, Federal Preservation Officer, USFWS Headquarters, is reaching out to the ACHP to discuss and hopefully resolve the matter with BLM.

Please note that I will be unavailable July 8-31 and possibly longer due to a summons for jury duty in August. During this period, please either direct any further discussion regarding the Arctic Plain Oil & Gas Leasing Program PA and cultural resources sections within the Preliminary FEIS to Wendy Loya, Eugene Marino, and Debbie Steen.

Thank you,  
Ed

Edward J. DeCleva  
Regional Historic Preservation Officer  
U.S. Fish and Wildlife Service, Alaska Region  
1011 E Tudor Rd, MS-235  
Anchorage, AK 99503

[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)  
907-786-3399

On Thu, Jun 13, 2019 at 9:18 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Good afternoon,

Attached is the DRAFT Final Programmatic Agreement (PA) based on the comments received on the March 25, 2019 draft.

In addition to content changes, you will see structural changes were made to the PA to:

- 1) Ensure the PA is in conformance with the 36 CFR Part 800 regulations written by the Advisory Council on Historic Preservation (ACHP);
- 2) Take into account the ACHP's written guidance on how to appropriately write PAs and what their contents should be, etc. (e.g., coordination processes between FWS and BLM were taken out of the PA);
- 3) Create a PA that does not include stipulations that were inappropriate per the ACHP's regulations and guidance;
- 4) Improve wording, eliminate redundancies, and bring better focus to the PA, thus making it more understandable to everyone; and
- 5) Ensure the document is reflective of the PA objective: Trying to plan for events and corresponding actions to be taken in the future, yet recognizing the lack of total certainty of what may happen in the future requires the need for the PA to be reasonable, workable, and provide adequate flexibility.

The attached version (dated June 12), thoroughly considers all of the comments received to date. If you would like to see the response to comments and/or set up an individual meeting to discuss the response to your comments prior to the next consulting parties meeting, please let me know.

Comments on the attached draft final PA are **due by close of business July 11th**. Our next consulting parties meeting will be **July 16th**. Will send out meeting invite in the next couple of weeks.

Please feel free to contact me directly anytime to discuss further.

Thank you,  
Nicole

**Nicole Hayes**  
Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

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**DRAFT FINAL PROGRAMMATIC AGREEMENT  
AMONG  
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
MANAGEMENT,  
UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE  
SERVICE,  
ALASKA STATE HISTORIC PRESERVATION OFFICER,  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
COASTAL PLAIN OIL AND GAS LEASING PROGRAM**

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

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29

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1  
2 **DRAFT PROGRAMMATIC AGREEMENT**

3 Among the  
4 United States Department of the Interior, Bureau of Land Management  
5 United States Department of the Interior, Fish and Wildlife Service  
6 Alaska State Historic Preservation Officer  
7 and  
8 Advisory Council on Historic Preservation  
9 Regarding the  
10 Coastal Plain Oil and Gas Leasing Program  
11

12 **PREAMBLE**  
13

14 **WHEREAS**, the United States Department of the Interior (DOI), Bureau of Land  
15 Management (BLM) has been directed to implement an oil and gas leasing program  
16 (Program) within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR)  
17 pursuant to Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97 [December  
18 22, 2017]); and

19 **WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA) requires  
20 each federal agency, prior to any federal or federally sponsored, assisted, or  
21 authorized Undertaking, to take into account the effects of the proposed Undertaking  
22 on Historic Properties, which are properties listed on or eligible for listing in the  
23 National Register of Historic Places (NRHP), and to afford the Advisory Council on  
24 Historic Preservation (ACHP) a reasonable opportunity to comment regarding such  
25 Undertaking; and

26 **WHEREAS**, the Public Law 115-97 directs the BLM to implement the leasing  
27 program, and therefore the BLM is the lead federal agency for purposes of  
28 complying with Section 106 of the NHPA; and

29 **WHEREAS**, the BLM's implementation of the Program, as defined below in Stipulation  
30 IV, including the development of an Environmental Impact Statement and selection of a  
31 preferred alternative that will guide the sale of leases for oil and gas activities pursuant  
32 to the National Environmental Policy Act (Public Law 91-190 [January 1, 1970]), is an  
33 Undertaking subject to Section 106 (54 United States Code [USC] § 306108) of the  
34 NHPA (Public Law 89-665 [October 15, 1966]) ("the Undertaking"); and

35 **WHEREAS**, the BLM, in consultation with the Alaska State Historic Preservation  
36 Officer (SHPO) and the ACHP, has determined that the area of potential effects  
37 (APE) for the Undertaking consists of the "1002" area, which is approximately 1.5  
38 million acres, and is defined in Section 20001 of Public Law 115-97, and is further  
39 described in *Appendix A: Area of Potential Effects*; and

40 **WHEREAS**, the BLM, in consultation with the SHPO and the ACHP, has determined  
41 that compliance with Section 106 may best be achieved through the development of a  
42 PA as the BLM cannot fully determine effects on Historic Properties within the APE prior

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 to approval of the Undertaking as defined in 36 Code of Federal Regulations (CFR) §  
2 800.14(b)(1)(ii); and

3 **WHEREAS**, the ACHP has chosen to participate in the consultation pursuant to 36 CFR  
4 § 800.6(a)(1)(iii) and is a Signatory to this PA; and

5 **WHEREAS**, the DOI, Fish and Wildlife Service (FWS), as the surface manager of  
6 the APE, has jurisdictional roles concerning certain aspects of the BLM's  
7 Undertaking, including, but not limited to activities related to the NHPA, actions  
8 involving the Archaeological Resources Protection Act (ARPA) (Public Law 96-95  
9 [October 31, 1979]), and the Native American Graves Protection and Repatriation  
10 Act (NAGPRA) (Public Law 101-601 [November 16, 1990]), and therefore is an  
11 Invited Signatory to this PA; and

12 **WHEREAS**, the BLM also complies with the American Indian Religious Freedom Act  
13 (Public Law 95-341 [August 11, 1978]); NAGPRA, as it applies to lands under federal  
14 control; and Executive Orders 13007 and 13175; and

15 **WHEREAS**, the BLM has invited potentially affected federally recognized Indian Tribes  
16 as defined in 36 CFR § 800.16(m), and listed in *Appendix B: Consulting Parties*, of this  
17 PA to participate in consultation, consistent with 54 USC § 302706 and 36 CFR  
18 800.2(c)(2); and

19 **WHEREAS**, the BLM has invited regional and village corporations as defined in Section  
20 3 of the Alaska Native Claims Settlement Act (ANCSA) (43 USC § 1602) and in 36 CFR  
21 § 800.16(m), and listed in *Appendix B: Consulting Parties*, to participate in consultation;  
22 and

23 **WHEREAS**, the BLM has provided Indian Tribes and regional and village ANCSA  
24 corporations the opportunity to provide information about Historic Properties within the  
25 APE consistent with 36 CFR § 800.2(c)(2), and will continue to do so; and

26 **WHEREAS**, the BLM has invited local governments to participate as Consulting Parties,  
27 consistent with 36 CFR § 800.2(c)(3); and

28 **WHEREAS**, previous investigations and documentation of Historic Properties within the  
29 APE are limited in scope and extent; and

30 **WHEREAS**, within the APE, the Alaska Heritage Resources Survey (AHRs) in March  
31 2019 listed 90 properties including sod house ruins, historic military features, graves,  
32 archaeological sites, ice cellars, and material sources; five are eligible for the NRHP,  
33 two are not eligible for the NRHP, two are pending reevaluation for their eligibility, and  
34 81 have not had formal evaluations for their NRHP eligibility; and

35 **WHEREAS**, within the APE, the North Slope Borough's Traditional Land Use Inventory  
36 (TLUI) in March 2019 listed 34 properties of traditional and/or cultural importance, some  
37 of which may be included in the AHRs database, including village sites, subsistence  
38 use locations, sod house ruins, graves, and reindeer herding areas. None have been  
39 evaluated for their eligibility for listing in the NRHP; and

**Commented [DEJ1]:** This wasn't the approach in the 5/17/19 version. Why did BLM revert back to this and why wasn't this discussed directly between BLM and FWS?



DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

1 **WHEREAS**, the PA will serve to outline the program-level stipulations applicable at  
2 the leasing stage and the process BLM shall follow for compliance with Section 106  
3 for post-lease activities; and

4 **NOW THEREFORE**, the BLM, ACHP, SHPO, and FWS (collectively the “Signatories”) Commented [DEJ2]: This is good, but why then is FWS  
5 agree that the Undertaking shall be implemented in accordance with the following indicated as an Invited Signatory above and on the signature  
6 stipulations in order to take into account the effects of the Undertaking on Historic page?  
7 Properties

## 8 **STIPULATIONS**

9 The BLM shall ensure that the following measures are carried out:

### 10 **I. Administrative**

- 11 A. BLM shall ensure that this PA is attached and incorporated into any lease BLM-  
12 issued for the Coastal Plain Oil and Gas Leasing Program (Program) and will  
13 ensure that all lessees are aware that they must comply with the terms of this PA  
14 during activities on their lease(s).  
15
- 16 B. BLM shall ensure that all lessees provide a copy of the PA to all operators and  
17 contractors engaged in exploration, development, production, or reclamation  
18 work associated with an issued Program lease prior to their arrival within the  
19 APE. Prior to the arrival of any contractor within the APE, lessees will make sure  
20 all contractors are made aware of the PA and that BLM requires compliance with  
21 its terms.  
22
- 23 C. BLM shall require that any type of archaeological work associated with BLM’s  
24 Program proposed within the APE not performed by BLM or FWS professional  
25 staff will be conducted only under terms of a federally issued Permit For  
26 Archaeological Investigations (“ARPA permit”). Such permits are obtained upon  
27 application to the BLM or otherwise coordinated by BLM.  
28
- 29 D. If ownership of a lease is transferred, BLM will include as a condition of the  
30 transfer that the new lessee must adhere to the terms of this PA.  
31
- 32 E. Electronic mail (e-mail) shall serve as the official correspondence method for all  
33 communications regarding this PA and its provisions, with an alternative method  
34 of postal mail delivery if the contacts do not have reliable e-mail.  
35
- 36 F. Consulting Parties and Signatories shall provide two points of contact for this PA.  
37 It is the responsibility of each Signatory and Consulting Party to immediately  
38 inform BLM of any change in name, mailing address, e-mail address, or phone  
39 number for any point-of-contact. Once received, the BLM will forward this  
40 information to all Signatories and Consulting Parties by e-mail or mail within five  
41 (5) business days. Contact information for Signatories and Consulting Parties is  
42 included below in *Appendix B: Consulting Parties*. Commented [DEJ3]: Contacts for Signatories are missing  
from Appendix B in this version.

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- 1  
2 G. At any time, Signatories to this PA may request additional time for reviews of  
3 documentation, preparation of guidance documents, or any other time-sensitive  
4 materials outlined in this PA by providing a written request to all Signatories.  
5  
6 H. The Signatories may execute this PA in counterparts, with a separate page for  
7 each Signatory.

8 **II. Scope of the PA**

- 9 A. This PA only addresses Historic Properties, consistent with 36 CFR § 800 and  
10 other federal laws that may be affected by the BLM's Undertaking within the  
11 APE.  
12  
13 B. This PA establishes the process the BLM will follow to fulfill its responsibilities  
14 under Section 106 of NHPA, including consultation with Indian Tribes, for  
15 Program decisions that may be implemented in accordance with the decisions  
16 supported by the Program EIS and BLM policy.  
17  
18 C. This PA is neither a fiscal nor a funds obligation document. Any endeavor  
19 involving reimbursement or contribution of funds between the parties to this PA  
20 will be handled in accordance with applicable laws, regulations, and procedures  
21 including those for Federal Government procurement and printing. Separate  
22 agreements will outline such endeavors and will be made in writing by  
23 representatives of the parties and will be independently authorized by  
24 appropriate statutory authority. This PA does not provide such authority.

25 **III. Agency Coordination Procedures**

- 26 A. Agency Roles and Coordination  
27 1. BLM  
28 a. BLM, as the lead federal agency for the purposes of NHPA and Section  
29 106 compliance, is responsible for the following actions:  
30 i. Conducting Section 106 reviews of Projects the PA addresses;  
31 ii. Receiving permit applications and issuing permits that may be needed  
32 for Section 106 compliance work for oil and gas-related projects in the  
33 APE. Such permits needed may include various types of land use  
34 authorizations as well as Permits for Archaeological Investigations  
35 ("ARPA" Permits).  
36  
37 2. FWS  
38 a. FWS, as surface manager of the APE, is responsible for the following  
39 actions:  
40 i. Receiving, reviewing, commenting on, and evaluating applications for  
41 ARPA permits;  
42 ii. Receiving, reviewing, commenting on, and evaluating Section 106  
43 determinations and findings made by BLM;

**Commented [DEJ4]:** What about administering permits and ensuring that permittees comply with conditions (such as curation and plans of action)?

**Commented [DEJ5]:** Does FWS receive directly from applicant? Recommend removing "Receiving" and clarifying that FWS reviews ARPA permit applications that are forwarded to it by BLM, then FWS provides comments to BLM. Or is something else intended here?

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- 1           iii. Managing artifact collections originating from studies conducted within
- 2           the APE;
- 3           iv. Managing and conducting appropriate actions associated with
- 4           NAGPRA materials and Human Remains.
- 5

Commented [DEJ6]: USFWS would need BLM support in administering/enforcing permit conditions.

6 **IV. Section 106 Consultation Plan and Procedures**

- 7 A. BLM anticipates that the Program will include several Project types and that each
- 8 type will require consultation with Signatories and Consulting Parties. Project
- 9 types include:
- 10       1. Leasing;
- 11       2. Inventory, Research, and Monitoring Activities;
- 12       3. Geophysical Exploration;
- 13       4. Applications for Permit to Drill (APD) (drilling exploration and development);
- 14       5. Marine and Intertidal Activities and Operations;
- 15       6. Operations and Production;
- 16       7. Inspections and Enforcement; and
- 17       8. Reclamation
- 18
- 19 B. As appropriate and needed, BLM shall consult with Consulting Parties on an “as
- 20 necessary” basis throughout the life of this PA on the above Project types to
- 21 include, but not limited to the following:
- 22       1. Collect information to inform permitting, NEPA reviews, and if appropriate,
- 23       selection of alternatives;
- 24       2. Develop appropriate research designs and investigative methods for potential
- 25       Historic Properties (i.e., archaeological, ethnographic, historic, socio-cultural)
- 26       studies;
- 27       3. Determine if incorporating Project-specific conditions and/or stipulations into
- 28       BLM-permitted activities can avoid, minimize, and/or mitigate effects to
- 29       Historic Properties within the Project-specific APE;
- 30       4. Consider conducting periodic joint (i.e., BLM and representatives from
- 31       interested Consulting Parties) site visits within the Project-specific APE(s).
- 32       5. Develop Project-specific Historic Properties Management Plans (HPMPs) to
- 33       avoid, minimize, and/or mitigate adverse effects to Historic Properties that
- 34       may result from Program activities. These plans may include:
- 35           a. Monitoring lessee activities and effects on Historic Properties within the
- 36           Project-specific APE(s);
- 37           b. Periodic Historic Property condition assessments;
- 38           c. Documentation review to ensure lessees have fulfilled commitments
- 39           stipulated by BLM, and have complied with the terms of this PA.
- 40
- 41 C. The implementing regulations of Section 106 of the NHPA (36 CFR §
- 42 800.2[c][2][ii][A-C]) require BLM to:
- 43       1. Consult with any Indian Tribe that attaches religious and cultural significance
- 44       to Historic Properties that may be affected by an Undertaking,

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2. Provide Indian Tribes with a reasonable opportunity to identify their concerns about Historic Properties, to advise on the identification and evaluation of Historic Properties, including those of traditional religious and cultural importance, to articulate their views on the Undertaking's effects on such properties, and to participate in the resolution of adverse effects,
3. Consult with Indian Tribes in a sensitive manner respectful of tribal sovereignty, and in a manner sensitive to the concerns and needs of the Indian Tribe.
4. In addition to those items listed above concerning BLM's consultation obligations to Indian Tribes under the NHPA, BLM shall consult with Indian Tribes as appropriate and needed, to:
  - a. Develop a NAGPRA Plan of Action (POA) (43 CFR 10.3 and 10.5) (see *Appendix D*); and
  - b. Consider including Tribal representatives to participate in fieldwork, monitoring, post-field analyses, and reporting activities.

D. At any time throughout the life of the PA, Consulting Parties may contact the BLM regarding the PA's effectiveness, and if requested, BLM may raise issues of concern to the Signatories and other Consulting Parties at the Annual PA Meeting.

E. At any time throughout the life of the PA, any outside entity not initially part of this PA, including any Indian Tribes, may contact the BLM and request to become a Consulting Party. BLM will consider any such request and notify the Signatories and other Consulting Parties of the request and BLM's decision.

**V. Section 106 Procedures**

A. BLM's Undertaking involves a number of activities associated with oil and gas leasing and associated activities within the APE that have varying potentials to cause effects to Historic Properties, all of which are covered by this PA. The steps below outline an alternate process for BLM to comply with NHPA for the Undertaking, which will be carried out by BLM or FWS professional staff or non-federal professionals who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (48 Federal Register 44716-44742), as appropriate.

B. BLM shall make a good faith effort to identify and evaluate historic properties but anticipates that in certain cases a 100 percent identification of a Project APE may not be necessary, and NHRP evaluations may be conducted on all or some of identified properties. BLM will collect, or direct lessees and/or their contractors to collect, the amount of information necessary for the BLM to make decisions regarding the potential of the Project Type(s) to affect Historic Properties.

C. At its discretion, BLM may submit documentation requesting SHPO concurrence on determinations of eligibility and findings of effect concurrently in a combined submission for Project Types described below.

**Commented [DEJ7]:** FWS is the jurisdictional authority for historic properties within National Wildlife Refuge System lands. As such, BLM would need concurrence from FWS on determinations of eligibility and findings of effect. Please insert "FWS" before or after "SHPO".

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1 D. Nothing shall prevent the BLM from seeking informal consultation with the  
2 Signatories or Consulting Parties regarding the preparation of determinations of  
3 eligibility or findings of effect.  
4

5 **F. Step 1: Oil and Gas Program Project Types Addressed under this PA**

- 6 1. BLM, in consultation with Signatories and Consulting Parties, has determined  
7 that this PA will address the following Project types associated with the BLM's  
8 Oil and Gas Program within the APE:  
9 a. Lease Sales  
10 b. Inventory, Research, and Monitoring Activities  
11 c. Geophysical Exploration  
12 d. APD  
13 e. Marine and Intertidal Activities and Operations  
14 f. Operations and Production  
15 g. Inspection and Enforcement  
16 h. Reclamation  
17

18 **G. Step 2: Assess Project Potential to Cause Effects**

- 19 1. BLM, in accordance with 36 CFR 800.3[a], will determine if a Project type  
20 under review has potential to cause effects on Historic Properties. BLM shall  
21 determine that a Project type does not have the potential to cause effects if it  
22 meets one or more of the following conditions:  
23 a. No new ground disturbance;  
24 b. Lease Sale or other Administrative Action; or  
25 c. Standard maintenance, repairs, or replacement of existing facilities or  
26 equipment.  
27 2. If the Project type meets one or more of the above conditions, BLM shall  
28 make a determination that the Project type has “no potential to cause effects”  
29 and attach letter to the Project file [36 CFR 800.3(a)(1) determination].  
30 3. If the Project type does not meet the above conditions, and the Project type  
31 consists of Inventory, Research, and Monitoring Activities, Geophysical  
32 Exploration, Marine and Intertidal Activities and Operations, Operations and  
33 Production, or Inspection and Enforcement, proceed to Step 3.  
34 4. If the Project type does not meet the above conditions, and the Project type is  
35 an APD or Reclamation, BLM will consult with Signatories and Consulting  
36 Parties, and BLM will determine if the Project should be addressed under this  
37 PA, or if a separate Section 106 process and agreement document (“kick-  
38 out”) must occur in accordance with Step 8 below.  
39

40 **H. Step 3: APE**

- 41 1. Has BLM, in consultation with the SHPO, defined the APE?  
42 a. If yes, proceed to Step 4.  
43 b. If no, BLM defines the APE in consultation with SHPO.  
44

45 **I. Step 4: Identification**

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- 1 1. Has BLM determined that adequate efforts to identify Historic Properties  
2 consistent with the procedures described in *Appendix C: Methods to*  
3 *Inventory the APE* have been completed within the APE?
  - 4 a. If yes, proceed to Step 5.
  - 5 b. If no, BLM will implement or direct the implementation of methods detailed  
6 in *Appendix C: Methods to Inventory the APE* to conduct the appropriate  
7 level of effort to identify Historic Properties within the APE of the Project.  
8

9 **J. Step 5: Preliminary APE Assessment**

- 10 1. Has BLM determined that identification efforts have resulted in the  
11 identification of potential Historic Properties within the APE?
  - 12 a. If yes, proceed to Step 6.
  - 13 b. If no, proceed to Step 7.

14 **K. Step 6: Evaluation**

- 15 1. Has BLM determined that potential Historic Properties identified within the  
16 APE have been evaluated for NRHP eligibility?
  - 17 a. If yes, proceed to Step 7.
  - 18 b. If no, the BLM will evaluate potential Historic Properties in the APE of the  
19 Project for NRHP eligibility (NRHP Bulletin 15).
    - 20 i. BLM will concurrently consult with FWS on all determinations of  
21 eligibility (DOEs), and with Indian Tribes on DOEs concerning potential  
22 Historic Properties of religious and cultural significance prior to  
23 submitting them to SHPO for concurrence.
      - 24 1. FWS will have thirty (30) days to review and respond to  
25 determinations submitted by BLM. If FWS does not offer comment  
26 within the review period, then BLM will presume agreement with the  
27 DOE(s).
      - 28 2. Indian Tribes will have thirty (30) days to review and respond to  
29 determinations submitted by BLM. If an Indian Tribe(s) does not  
30 offer comment within the review period, then BLM will presume  
31 agreement with the DOE(s).
    - 32 ii. Additional time to review a BLM submittal of a DOE(s) may be  
33 requested by FWS and/or Indian Tribes, up to thirty (30) days per  
34 submittal.
    - 35 iii. After the review period for FWS and Indian Tribes has elapsed,  
36 including any extensions requested, BLM will submit the DOE to  
37 SHPO, who will have thirty (30) days to review the DOE(s). If SHPO  
38 does not offer comment within the review period, then BLM will  
39 presume the SHPO agrees with BLM's DOE(s) and may proceed to  
40 Step 7.
      - 41 1. BLM may combine the DOE submittal to SHPO with a finding of  
42 effect determination and request for concurrence as outlined below  
43 in Step 7.  
44

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- 1 iv. Additional time to review a BLM submittal of a DOE(s) may be
- 2 requested by SHPO, up to thirty (30) days per submittal.
- 3 v. If agreement cannot be reached on a DOE between BLM and SHPO,
- 4 then the BLM shall follow the procedures outlined at 36 CFR §
- 5 800.4(c)(2).
- 6 1. Additionally, pursuant to 36 CFR § 800.4(c)(2), if an Indian Tribe
- 7 disagrees with BLM's DOE regarding a property of religious and
- 8 cultural significance, it may ask the Council to request that the BLM
- 9 obtain a determination from the Secretary of the Interior, as
- 10 delegated to the Keeper of the NRHP.
- 11 vi. Once BLM completes the required NRHP evaluations in the APE, BLM
- 12 may then proceed to Step 7.
- 13

14 **L. Step 7: Assess Effects**

- 15 1. Has BLM determined there are Historic Properties in the APE?
- 16 a. If yes, BLM will apply the criteria of adverse effect (36 CFR 800.5[a]),
- 17 which shall include consultation with Signatories and Consulting Parties.
- 18 i. If BLM makes a finding of “no adverse effect” (36 CFR 800.5[b]), BLM
- 19 shall notify Signatories and Consulting Parties of the finding and
- 20 provide them with documentation supporting this finding.
- 21 1. If SHPO concurs with the BLM's determination, BLM shall
- 22 document SHPO concurrence to the Project file.
- 23 2. If SHPO does not concur, and resolution cannot be reached
- 24 through consultation, BLM shall follow the procedures outlined at
- 25 36 CFR 800.5(c)(2-3).
- 26 ii. If BLM makes a finding of “adverse effect” (36 CFR 800.5[d][2]) then
- 27 BLM shall request the lessee or applicant propose methods to avoid,
- 28 minimize, and/or mitigate adverse effects.
- 29 1. Upon receipt of the applicant's proposed methods to avoid,
- 30 minimize, and/or mitigate adverse effects, BLM shall reapply the
- 31 criteria of adverse effect in consultation with Signatories and
- 32 Consulting Parties, and if necessary, revise their finding of effect.
- 33 iii. If BLM, in consultation with Signatories and Consulting Parties
- 34 determines that an applicant's proposed methods to avoid, minimize,
- 35 and/or mitigate adverse effects will still result in adverse effects to
- 36 Historic Properties, the process shall revert to the standard Section
- 37 106 procedures at 36 CFR 800.6.
- 38
- 39 b. If no, BLM will make a finding of “no historic properties affected” (36 CFR
- 40 800.4[d][1]) and submit to SHPO for concurrence. SHPO shall have thirty
- 41 (30) days to review the BLM's determination. BLM shall also provide
- 42 notice to the Signatories and Consulting Parties of this finding in
- 43 accordance with 36 CFR 800.4(d)(1).

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- 1 i. If SHPO concurs with the BLM's determination, BLM shall document
- 2 SHPO concurrence to the Project file.
- 3 ii. If SHPO does not concur, and resolution cannot be reached through
- 4 consultation between SHPO and BLM, BLM shall follow the
- 5 procedures outlined at 36 CFR 800.4(d)(1)(ii-iv).

6 **M. Step 8: Decision regarding Undertaking**

- 7 1. BLM will not authorize a Project until BLM has completed Steps 1-7, as
- 8 applicable, and BLM has documented the appropriate finding of effect and
- 9 resolution efforts, as required, to the Project file.
- 10
- 11 2. Alternatively, if BLM has determined that a separate Section 106 process and
- 12 agreement document ("kick-out") is required for an APD or Reclamation
- 13 Project (see Step 2), BLM may authorize an APD or Reclamation Project
- 14 subject to this PA only after the separate Section 106 review has been
- 15 completed, and if necessary, the appropriate agreement document (e.g.,
- 16 Memorandum of Agreement or Programmatic Agreement) has been executed
- 17 for the Project.

18 **N. Step 9: Reporting**

- 19 1. BLM will include a summary of all Projects reviewed under this PA in the
- 20 previous year in the annual PA report [Stipulation XII]. The summary will
- 21 include a synopsis for each project, including at minimum:
- 22 a. A description of the Project;
- 23 b. Delineation of the APE;
- 24 c. Identification efforts within the APE;
- 25 d. NRHP eligibility of known properties within the APE;
- 26 e. BLM's finding of effect for the Project; and,
- 27 f. The Qualifications of the Individual who conducted the PA Compliance
- 28 Review.

- 29
- 30
- 31 2. BLM will submit reports associated with identification, evaluation, and
- 32 assessments of effect that were used to support BLM findings of effect to the
- 33 SHPO.

34 BLM may append reports associated with identification, evaluation, and

35 assessments of effect that were used to support BLM finding to the annual PA

36 report, provided they do not contain sensitive information regarding Historic

37 Properties.

38

39 **VI. Methods to Inventory APE**

- 40 A. The BLM shall produce a draft of *Appendix C: Methods to Inventory the APE*
- 41 within six (6) months of execution of the PA. BLM may request additional time to



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1 complete this draft; however, BLM must submit this request in writing to the  
2 Signatories for concurrence.

3  
4 B. BLM shall distribute the draft to Signatories and Consulting Parties for a 60-day  
5 comment.

6  
7 C. BLM will consider timely comments received and revise the draft accordingly.  
8 Multiple drafts may be required, and a final draft will be sent out for review no  
9 later than one year from the execution of the PA.

10  
11 D. Consulting Parties shall be offered the opportunity to comment on, at a minimum,  
12 the first draft and the final draft concurrent with Signatory review.

13  
14 E. BLM, FWS, and SHPO must approve of the draft *Appendix C: Methods to*  
15 *Inventory the APE* before it is considered final.

16  
17 F. Drafts cannot be used as interim guidance. If a project needs to move through  
18 Step 4 of this PA prior to finalization of *Appendix C: Methods to Inventory the*  
19 *APE*, then the appropriate level of effort and methods will be determined through  
20 consultation among BLM, FWS, and SHPO on a case-by-case basis.

21 **VII. Standards**

22 A. Professional Qualifications:

23 1. For work not performed by BLM or FWS professional staff, BLM and FWS  
24 shall ensure that all work carried out pursuant to this Agreement shall be  
25 done by or under the direct supervision of a qualified historic preservation  
26 professionals who meet the (SOI) Professional Qualifications Standards (48  
27 Federal Register 44716-44742). The BLM and FWS, through review of permit  
28 applications or other means, shall ensure that consultants retained for  
29 services pursuant to the Agreement meet these standards.

30  
31 2. A “qualified historic preservation professional” is a person who meets the  
32 relevant standards outlined in the Archeology and Historic Preservation: (SOI)  
33 Standards and Guidelines [As Amended and Annotated]  
34 ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm) ) or revised  
35 equivalent.

36  
37 3. BLM acknowledges that Indian Tribes possess specialized expertise in  
38 identifying and assessing the eligibility of Historic Properties that may  
39 possess religious or cultural significance to Indian Tribes (36 CFR  
40 800.4(c)(1), and as such, do not need to meet the SOI standards regarding  
41 identifying and evaluating Historic Properties of religious or cultural  
42 significance to them.

43  
44 B. Professional Standards:

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- 1 1. As required by Section 112 of the NHPA (54 USC 306131), the BLM shall  
2 ensure that all work conducted as a result of this PA not otherwise done by  
3 BLM or FWS professional staff is performed in accordance with the SOI  
4 Standards for Archeology and Historic Preservation (Standards and  
5 Guidelines) (48 Fed. Reg. 44716-44742).  
6
- 7 2. BLM shall require that persons supervising and conducting work on the behalf  
8 of lessees hold the appropriate BLM permits and/or authorizations as  
9 appropriate for inventory, monitoring, and other investigations, and meet the  
10 Standards and Guidelines, as well as the SOI Professional Qualification  
11 Standards (36 CFR 61) for the applicable discipline. BLM shall also ensure  
12 that persons supervising and conducting work on the behalf of lessees  
13 comply with the NAGPRA POA.  
14
- 15 3. Investigations associated with Program activities will be conducted in  
16 accordance with *Appendix C: Methods to Inventory the APE*, and will meet  
17 the standards presented in BLM Manual 8110  
18 ([https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanu](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8110_0.pdf)  
19 [al8110\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanu)).  
20
- 21 4. Reports regarding Historic Properties shall meet the standards outlined in the  
22 SOI Standards for Archeology and Historic Preservation (Standards and  
23 Guidelines) (48 Fed. Reg. 44716-44742), BLM permit stipulations and  
24 guidance (i.e., BLM Manual 8110), and Alaska Office of History and  
25 Archaeology guidelines.

26 **VIII. Unanticipated Discoveries**

- 27 A. During the entire implementation of this Undertaking, BLM will ensure that the  
28 Signatories and Consulting Parties are informed of unanticipated discoveries  
29 within the Undertaking's APE during lessees or their contractor related activities  
30 associated with the BLM's oil and gas leasing program.  
31
- 32 B. Lessees or their contactors will not take any actions that would adversely affect  
33 the discovery which may be eligible for listing in the NRHP without written  
34 approval from BLM.  
35
- 36 C. Upon the unanticipated discovery , the following steps listed below will be  
37 undertaken. If the unanticipated discovery includes human remains, burials, or  
38 funerary items, the additional steps listed in Stipulation IX shall be followed.  
39
- 40 1. The lessee will ensure that their operator or contractor will halt all activity in  
41 the area of the find and an appropriate buffer surrounding the area where  
42 further subsurface finds can be reasonably expected to occur, to be no less  
43 than fifty (50) feet, and will notify the BLM within one business day;  
44

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- 1           2. The BLM shall require the suspension of activity within the established buffer,  
2           and shall notify the Signatories and Consulting Parties within two business  
3           days of the discovery;
- 4  
5           3. The BLM or a SOI-qualified archaeologist approved by them will inspect the  
6           property as soon as possible and collect enough information to determine (if  
7           possible):
  - 8           a. The extent of cultural materials associated with the inadvertent discovery  
9           or effect;
  - 10           b. The degree of integrity; and
  - 11           c. The cultural affiliation of the materials (if possible).
- 12  
13           4. Within five (5) business days, BLM shall provide a summary of the information  
14           collected at the discovery to Signatories and Consulting Parties, which will  
15           include BLM's preliminary assessment of the NRHP eligibility of the  
16           discovery.
- 17  
18           5. Within 14 days of the BLM's distribution of the information regarding the  
19           discovery, the BLM, in consultation with the Signatories and Consulting  
20           Parties, will determine whether the discovery encountered is eligible for listing  
21           in the NRHP.
  - 22           a. If the BLM determines that the discovery is ineligible for listing in the  
23           NRHP and SHPO concurs, BLM shall authorize the lessee to continue  
24           activities in the area of the discovery.
  - 25           b. If the BLM determines the discovery is eligible for listing in the NRHP and  
26           SHPO concurs, BLM will direct the lessee to prepare a plan for its  
27           avoidance, protection, or recovery of information in consultation with BLM,  
28           Signatories and Consulting Parties, as appropriate.
    - 29           i. Within five (5) business days of receipt, BLM shall distribute copies of  
30           the proposed plan to Signatories and Consulting Parties for review and  
31           comment.
    - 32           ii. Signatories and Consulting Parties shall have seven (7) days to review  
33           the proposed plan and provide comments to BLM.
    - 34           iii. BLM shall take into consideration timely comments received on the  
35           proposed plan and make a determination to either approve or request  
36           revisions to the proposed plan.
      - 37           A. In the event that BLM requests revisions to the plan, BLM shall  
38           redistribute the revised plan under the same timelines as above,  
39           and Signatories and Consulting Parties shall have the same period  
40           of review.
  - 41  
42           6. Work in the established buffer will not proceed until either:
    - 43           a. BLM approves plan and requires its implementation; or
    - 44           b. The BLM determines that the discovery is not eligible for the NRHP, and  
45           the SHPO concurs with this determination.
  - 46

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- 1 D. BLM will address any disputes over the evaluation or treatment of unanticipated  
2 discoveries as provided in Stipulation XIII of this PA.

3 **IX. Unanticipated Effects**

- 4 A. If BLM, in consultation with Signatories and Consulting Parties, determines that  
5 unanticipated effect(s), including cumulative effects, have occurred to a Historic  
6 Property, BLM, in consultation with Signatories and Consulting Parties, will  
7 assess the effect(s), develop a plan to address the unanticipated effect(s), and  
8 avoid, minimize, and/or mitigate the unanticipated effect(s). BLM will attempt to  
9 complete this process within 180 days of the recognition of the unanticipated  
10 effect(s).  
11  
12 B. BLM will address any disputes over the resolution of unanticipated effects as  
13 provided in Stipulation XIII of this PA.

14 **X. Treatment of Human Remains, Funerary Objects, Sacred**  
15 **Objects, and Objects of Cultural Patrimony**

- 16 A. The APE exists entirely on federally-managed lands, and the BLM shall ensure  
17 that any Native American burials, human remains, and/or related items  
18 discovered on federal lands during implementation of the terms of the Agreement  
19 will be treated with dignity and respect, and that all procedures guiding the  
20 treatment of human remains, funerary objects, sacred objects, or objects of  
21 cultural patrimony comply with Section 3 of NAGPRA (43 CFR 10.4).  
22  
23 B. As surface manager of the APE, FWS is the managing agency for any and all  
24 human remains and NAGPRA materials.  
25  
26 C. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
27 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
28 state laws six (6) months after the execution of this PA. Upon completion, the  
29 Human Remains and NAGPRA POA shall be incorporated into this PA as  
30 *Appendix D*. At minimum, the POA shall contain:  
31 1. Notification Procedures and Protocols;  
32 2. Chain of Custody Procedures; and,  
33 3. Contact information for Law Enforcement, Tribal Representatives, and  
34 Agency personnel.  
35  
36 D. In the event that any Native American burials, human remains, or funerary items  
37 are inadvertently encountered during any Program activity, the activity shall  
38 immediately cease, the area shall be secured from further disturbance, and the  
39 permittee, lessee or agency shall immediately notify the BLM of the discovery.  
40 1. Upon notification, the BLM shall follow the procedures described in the  
41 NAGPRA POA (*Appendix D*).

42 **XI. Curation**

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- 1 A. Archaeological materials not falling under jurisdiction of NAGPRA recovered  
2 during any activities associated with the Undertaking are property of FWS as  
3 surface manager of the APE and will be curated in accordance with 36 CFR 79,  
4 *Curation of Federally-Owned and Administered Archaeological Collections* under  
5 FWS' existing agreement with the University of Alaska Museum of the North  
6 (UAMN).  
7  
8 B. The Permittee, and any contractors hired on their behalf, will be responsible for  
9 submitting all materials recovered from federal lands to the UAMN within six  
10 months following approval of a final report, within one year following completion  
11 of the fieldwork that generated the collection, or other period of time as specified  
12 in the ARPA permit. All collections will be curation-ready, as determined by the  
13 UAMN. Prior to disposition, the Permittee, and any contractors hired on its  
14 behalf, will safeguard all materials from theft or damage by providing adequate  
15 interim storage facilities and conservation actions, consistent with the  
16 requirements in 36 CFR 79. Within thirty (30) days following disposition, the  
17 Permittee will provide BLM with all accession records and documentation  
18 associated with the transfer and curation of materials. BLM will share the  
19 documentation with the FWS. Information will be shared with the other  
20 Signatories and Consulting Parties as appropriate.  
21  
22 C. Pursuant to 36 CFR 79.7(b), the Permittee will assume all costs associated with  
23 the curation of any materials that are collected during the implementation this PA,  
24 in perpetuity. Curation costs may include, but are not limited to, curation fees  
25 charged by approved institutions, acquisition of archival materials, shipping,  
26 cleaning, rehousing, and any other conservation action.  
27  
28 D. BLM and FWS shall manage materials determined to be subject to NAGPRA as  
29 described above in Stipulation IX and in the NAGPRA POA (Appendix D).  
30  
31 E. Nothing shall prevent the FWS, as surface manager of the APE, from consulting  
32 with Indian Tribes or other Consulting Parties to arrange for long-term loans or  
33 other transfers of artifacts recovered from the APE to local communities or  
34 facilities to support and enhance cultural ties to the APE.

Commented [DEJ8]: Stipulation IX doesn't say anything about NAGPRA materials. Perhaps the intent here is reference to Stipulation X?

35 **XII. Annual PA Meeting and Reports**

- 36 A. Annual Meetings: BLM shall invite Signatories and Consulting Parties to a two-  
37 day annual meeting concerning this PA within one (1) year of the PA execution,  
38 and each succeeding year by that approximate same date, thereafter. The  
39 meeting will consist of: an initial day where Consulting Parties and Signatories  
40 meet to discuss (1) the activities conducted under the PA, (2) activities scheduled  
41 for the upcoming year, (3) verify/update contact information for Consulting  
42 Parties, (4) ensure the Human Remains and NAGPRA Plan of Action is current,  
43 (5) cumulative effects, and (6) any other topics necessary to ensure the PA is  
44 functioning to all parties benefit. The second day of meetings shall be held by the  
45 Signatories to consider the input received by Consulting Parties, discuss the PA's

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1 implementation, required amendments (as necessary), and other business  
2 related to the application of the PA terms.

- 3 1. BLM shall hold the meeting in Anchorage at the Alaska Office of History and  
4 Archaeology, or at another location by consensus of the Signatories. The  
5 parties may participate by telephone if they so desire.
- 6 2. The BLM will distribute meeting minutes to the meeting participants within  
7 thirty (30) days of the meeting, and meeting participants will provide  
8 comments to the BLM within fifteen (15) days of receipt. The BLM shall  
9 amend the minutes as a result of comments and distribute finalized minutes  
10 within another fifteen (15) days.
- 11 3. Additional Meetings: If a Signatory or Consulting Party identifies in writing to  
12 BLM that a meeting is necessary outside of the regularly scheduled annual  
13 meeting, the Signatories and Consulting Parties will consider their request.  
14 BLM, taking into consideration the results of consultation, shall decide  
15 whether to convene additional meetings.

16  
17 B. Annual PA Report:

- 18 1. Thirty (30) days prior to the annual meeting, BLM will provide the Signatories  
19 and Consulting Parties with a draft copy of that year's annual report that  
20 describes the completed and upcoming activities associated with the  
21 stipulations of this agreement. The report will include the following  
22 information, as appropriate:
  - 23 a. Number of leases issued;
  - 24 b. Activities BLM reviewed under this PA in accordance with Stipulation IV;
  - 25 c. Consultation activities undertaken;
  - 26 d. Maps of areas leased, surveyed, or otherwise investigated; and
  - 27 e. Upcoming/Planned activities.
- 28 2. Signatories and Consulting Parties may provide comments to BLM at or  
29 before the Annual meeting regarding the content of the Annual Report.
- 30 3. Thirty (30) days after the annual meetings have concluded, BLM will prepare  
31 and submit a Final Annual Report to Signatories and Consulting Parties.

32  
33 **XIII. Dispute Resolution**

- 34 A. Should any of the Signatories or Consulting Parties who have become  
35 Concurring Parties to this PA have insight, improvements, or objections  
36 regarding the manner in which the terms of this PA are implemented, the BLM  
37 will consult with such party to determine if the inclusion, suggestion,  
38 recommendation, or objection may be addressed to the satisfaction of the party,  
39 which may include presenting a proposed amendment to this PA in accordance  
40 with Stipulation XV.
- 41  
42 A. If BLM cannot resolve the conflict with the individual party or parties, BLM shall  
43 notify the Signatories of the dispute, and seek input from Signatories to resolve

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1 the dispute.

- 2
- 3 B. If the Signatories determine that an objection cannot be resolved, the BLM will:
- 4 1. Forward all documentation relevant to the dispute, including the BLM's
- 5 proposed resolution, to the ACHP. The ACHP will provide the BLM with its
- 6 advice on the resolution of the objection within thirty (30) calendar days of
- 7 receiving adequate documentation. Prior to reaching a final decision on the
- 8 dispute, BLM will prepare a written response that takes into account any
- 9 timely advice or comments regarding the dispute from the ACHP, Signatories,
- 10 and Consulting Parties, and provide them with a copy of this written response.
- 11 BLM will then proceed according to its final decision.
- 12
- 13 2. If the ACHP does not provide its advice regarding the dispute within the thirty
- 14 (30) calendar-day time period, BLM may make a final decision on the dispute
- 15 and proceed accordingly. Prior to reaching such a final decision, BLM will
- 16 prepare a written response that takes into account any timely comments
- 17 regarding the dispute from the Signatories and Consulting Parties to the PA
- 18 and provide them and the ACHP with a copy of such written response.
- 19
- 20 3. Regardless of the results of the dispute resolution measures described
- 21 above, the BLM's responsibility is to carry out all other actions subject to the
- 22 terms of this PA that are not the subject of the dispute.

23 **XIV. Duration**

- 24 A. The date the ACHP signs this PA is the ratification date, which officially executes
- 25 the PA.
- 26
- 27 B. This PA will remain in effect for ten (10) years after its execution.
- 28
- 29 C. Prior to such time, BLM will consult with the Signatories and Consulting Parties to
- 30 reconsider the terms of the PA and amend it in accordance with Stipulation XV
- 31 below no later than six (6) months prior to expiration of the agreement. If
- 32 appropriate, the Signatories may execute a new agreement or amend to extend
- 33 the duration of the current agreement.

34 **XV. Amendments**

- 35 A. The Signatories may amend this PA at any time when such amendment is
- 36 agreed to in writing by all Signatories. The amendment will be effective on the
- 37 date a copy signed by all of the Signatories is filed with the ACHP.
- 38
- 39 B. BLM will distribute any amendments made to the PA to all Consulting Parties. All
- 40 amendments will be attached to the PA in *Appendix E: PA Amendments*.
- 41
- 42 C. In the event that another federal agency not initially a party to or subject to this
- 43 PA receives an application for funding/licensing/or permitting an Undertaking in

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1 the 1002 area as described in this PA, that agency may fulfill its Section 106  
2 responsibilities by stating in writing it concurs with the terms of this PA and  
3 notifying the Signatories and Consulting Parties that it intends to do so. Such  
4 agreement shall be evidenced by execution of a signature page signed by an  
5 authorized individual for that agency, distribution of said page to all Signatories  
6 and Consulting Parties, filing this page with the ACHP, and implementation of the  
7 terms of this PA.  
8

- 9 D. The Signatories agree that Appendix B to this PA may be updated as necessary  
10 to reflect changes in personnel or contact information without requiring the PA to  
11 be amended in accordance with the procedures described above.

12 **xvi. Termination**

13 A. If any Signatory to this Agreement determines that its terms will not or cannot be  
14 carried out, that party shall immediately consult with the other Signatories to  
15 attempt to develop an amendment or agreement on other actions that would  
16 avoid termination of the PA. If after thirty (30) calendar days from the initiation of  
17 such consultation (or another time period agreed to by all Signatories) an  
18 amendment or agreement on other actions that would avoid termination cannot  
19 be reached, any Signatory may terminate the Agreement upon written notification  
20 to the other Signatories.  
21

22 B. In the event that a Signatory terminates this PA, and prior to further Program  
23 actions, the BLM must either (a) execute a Memorandum of Agreement (MOA)  
24 pursuant 36 CFR § 800.6 or (b) request, take into account, and respond to the  
25 comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories  
26 as to the course of action it will pursue.

27 **xvii. Emergency Situations**

28 A. The BLM shall attempt to notify within one (1) business day the Signatories and  
29 Consulting Parties of an emergency situation, which represents an imminent  
30 threat to public health or safety or creates a hazardous condition, that also has  
31 potential to harm Historic Properties or the subsequent response has potential to  
32 harm Historic Properties and the measures taken to respond to the emergency or  
33 hazardous condition. Should the Signatories or Consulting Parties desire to  
34 provide technical assistance to the BLM, they shall submit comments to BLM  
35 within seven (7) calendar days from notification, if the nature of the emergency or  
36 hazardous condition allows for such coordination.  
37

38 B. If the APE of the emergency situation has been surveyed for Historic Properties  
39 and none is within the APE, then BLM will request concurrence on a  
40 determination of “no Historic Properties affected” from the SHPO within five (5)  
41 calendar days from the initial notification.  
42



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- 1 C. If the APE has not been surveyed for potential Historic Properties, then  
2 emergency actions will be monitored by a SOI qualified professional or the APE  
3 will be inventoried by a SOI-qualified professional no later than one (1) year after  
4 the emergency action is completed. BLM will require that a monitoring report or  
5 inventory report will be submitted to Signatories and Consulting Parties within  
6 thirty (30) days of the end of fieldwork.  
7
- 8 D. If a previously known or unknown Historic Property is adversely affected by  
9 emergency actions the BLM will consult with Signatories and Consulting Parties  
10 to resolve the adverse effect pursuant 36 CFR § 800.6.

11 **XVIII. Anti-Deficiency Provision**

- 12 A. Any obligation of the federal agencies set forth in this PA is subject to and  
13 dependent on appropriations by Congress and allocation of sufficient funds for  
14 that purpose. The federal agencies shall make reasonable and good faith efforts  
15 to secure the necessary funds to implement this PA in its entirety. If compliance  
16 with the Anti-Deficiency Act alters or impairs the federal agencies' ability to  
17 implement the stipulations of this agreement, the federal agencies shall consult in  
18 accordance with the amendment and termination procedures found at  
19 Stipulations XV and XVI of this agreement.

20 **EXECUTION** of this PA by the Signatories, and implementation of its terms, evidences  
21 that the BLM and FWS have taken into account the effects of the Undertaking on  
22 Historic Properties and have afforded the ACHP an opportunity to comment.  
23

DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

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

DRAFT

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ALASKA STATE HISTORIC PRESERVATION OFFICER

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

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

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DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**INVITED SIGNATORY**

DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

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

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**DRAFT PROGRAMMATIC AGREEMENT**

Among the  
United States Department of the Interior, Bureau of Land Management  
United States Department of the Interior, Fish and Wildlife Service  
Alaska State Historic Preservation Officer  
and  
Advisory Council on Historic Preservation  
Regarding the  
Coastal Plain Oil and Gas Leasing Program

**CONSULTING PARTIES**

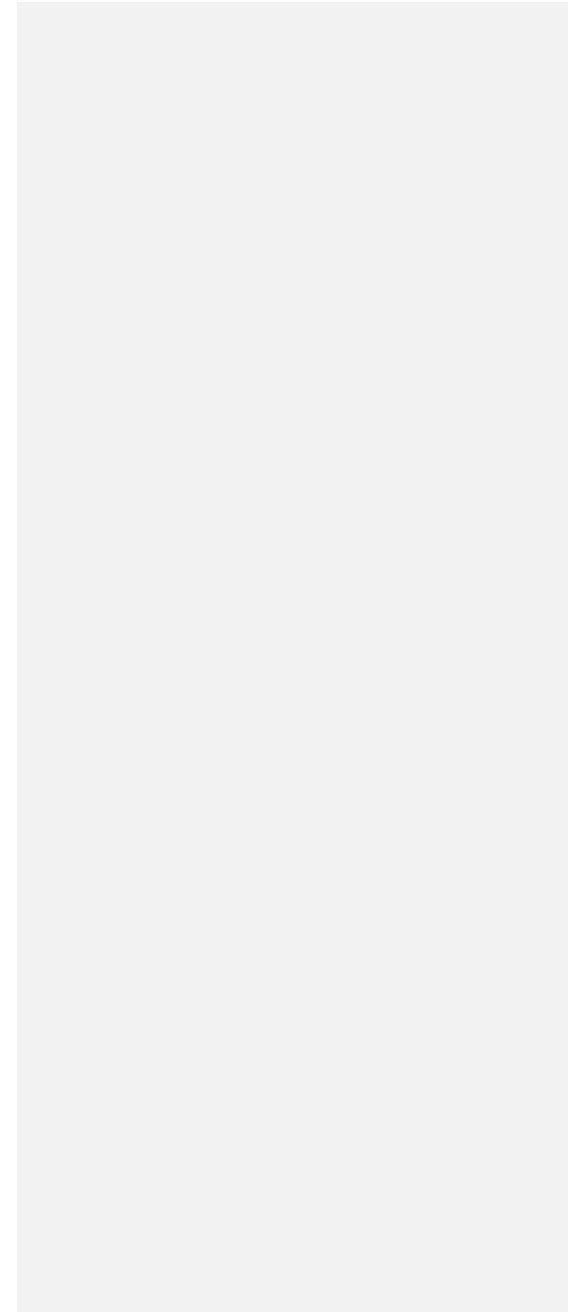
**[ORGANIZATION NAME PLACEHOLDER]**

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

DRAFT

1 **Appendix A: Area of Potential Effects**  
2

DRAFT

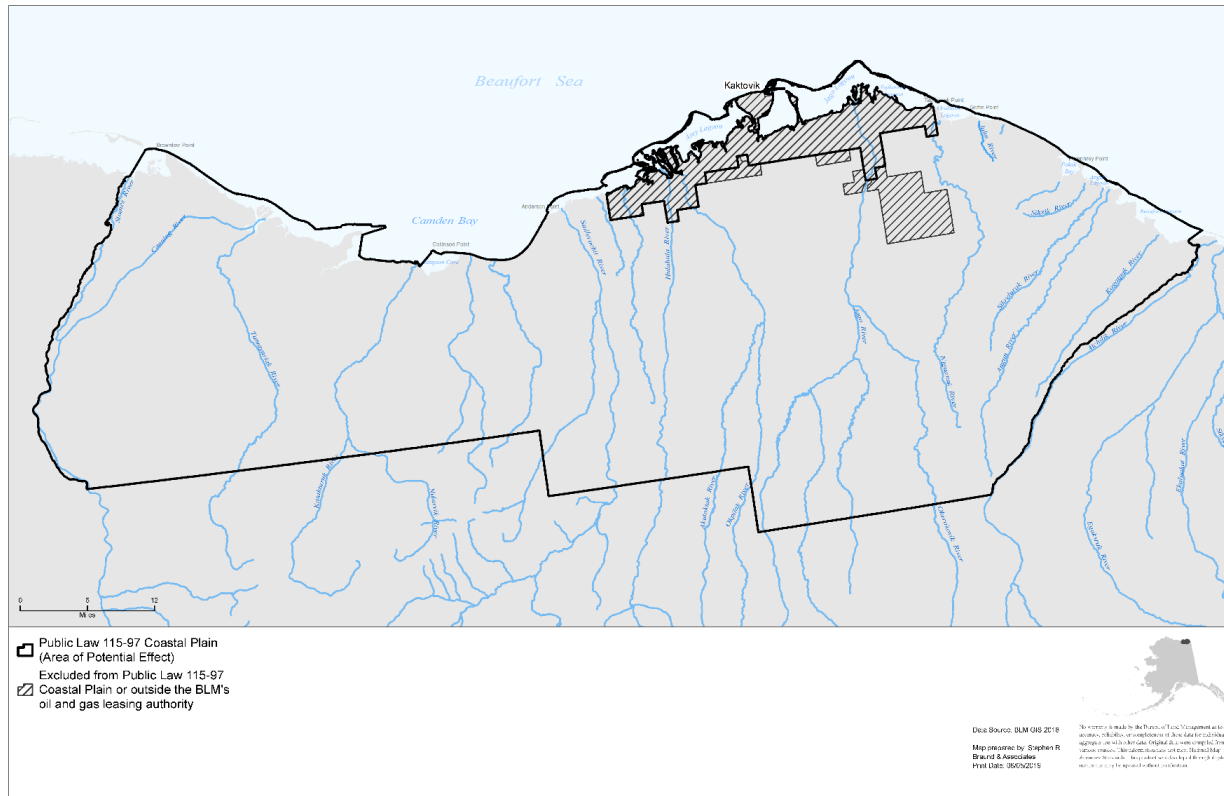




# DRAFT Programmatic Agreement – Coastal Plain Oil and Gas Leasing Program

Appendix A: Area of Potential Effect

U.S. DEPARTMENT OF THE INTERIOR | BUREAU OF LAND MANAGEMENT | ALASKA



1  
2

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1 **Appendix B: Consulting Parties**

2

3 List of Federally Recognized Tribes, Alaska Native Claims Settlement Act Corporations, and local  
 4 governments invited or requested to participate in consultation (\*indicates a response that they will  
 5 participate). It is incumbent upon the consulting party to ensure BLM has up to date contact information.

Organization	E-mail
Arctic Village Council*	Av_council@hotmail.com
Beaver Village Council*	rpitka@beavercouncil.org
Birch Creek Tribal Council	
Chalkyitsik Village Council	
Circle Tribal Council	
Gwichyaa Zhee (Native Village of Fort Yukon)	
Iñupiat Community of the Arctic Slope (ICAS)*	Frederick.brower@inupiatgov.com
Naqsrarmiut Tribal Council	
Native Village of Barrow Iñupiat Traditional Government*	Doreen.leavitt@nvbarrow.net
Native Village of Eagle	
Native Village of Kaktovik*	nvkaktovik@gmail.com
Native Village of Nuiqsut	
Native Village of Stevens	
Native Village of Venetie Tribal Government*	tonyagarnett@hotmail.com
Venetie Village Council*	pjhanson@hotmail.com
Arctic Slope Regional Corporation*	timm@asrc.com
Doyon Limited*	obeds@doyoncom
Kaktovik Iñupiat Corporation*	nvkaktovik@gmail.com
City of Kaktovik*	office@cityofkaktovik.org
North Slope Borough*	<a href="mailto:Kevin.fisher@north-slope.org">Kevin.fisher@north-slope.org</a>
Council of Athabascan Tribal Governments	donna.thomas@catg.org

1 **Appendix C: Methods to Inventory the APE**  
2

3 **Excerpt from Stipulation VI: Methods to Inventory APE above**

4 A. The BLM shall produce a draft of Appendix C: Methods to Inventory the APE  
5 within six (6) months of execution of the PA. BLM may request additional time to  
6 complete this draft; however, BLM must submit this request in writing to the Signatories  
7 for concurrence.

DRAFT

1 **Appendix D: NAGPRA Plan of Action**  
2

3 **Excerpt from Stipulation X Treatment of Human Remains, Funerary Objects,**  
4 **Sacred Object, and Objects of Cultural Patrimony above:**

- 5 A. BLM shall develop, in consultation with FWS, SHPO, and Indian Tribes, a Human  
6 Remains and NAGPRA POA that complies with 43 CFR 10.5 and applicable  
7 state laws six (6) months after the execution of this PA. Upon completion, the  
8 Human Remains and NAGPRA POA shall be incorporated into this PA as  
9 *Appendix D*. At minimum, the POA shall contain:  
10 1. Notification Procedures and Protocols;  
11 2. Chain of Custody Procedures; and,  
12 3. Contact information for Law Enforcement, Tribal Representatives, and  
13 Agency personnel.  
14  
15 B. In the event that any Native American burials, human remains, or funerary items  
16 are inadvertently encountered during any Program activity, the activity shall  
17 immediately cease, the area shall be secured from further disturbance, and the  
18 permittee, lessee or agency shall immediately notify the BLM of the discovery.

19 Upon notification, the BLM shall follow the procedures described in the NAGPRA POA  
20 (*Appendix D*).

1 **Appendix E: PA Amendments (reserved)**

2 [PLACEHOLDER]

3 ACHP Amendment Template:

4 [https://www.achp.gov/sites/default/files/2018-06/MOA\\_PA\\_Amendment\\_Template.pdf](https://www.achp.gov/sites/default/files/2018-06/MOA_PA_Amendment_Template.pdf)

5

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1 **Appendix F: DRAFT PA Tracking Sheet**

2

Document Date	Document Name	Section(s) Revised	Parties Distributed To	Description of Revisions
11/28/18	EMP18 Draft PA Bullet Outline 11 28 18	n/a	Consulting Parties	n/a
1/16/19	EMP18 Draft PA 1 16 18	All	Signatories	Incorporated Signatory Comments
2/13/19	EMP18 Draft PA 2 13 19	All	Signatories	Incorporated BLM Edits
2/20/19	EMP18 Draft PA 2 21 19	All	Signatories	Incorporated Signatory Comments
3/6/19	EMP18 Draft PA 3 7 19	All	Signatories	Revised PA based on Sig. Meeting
3/25/19	EMP18 Draft PA 3 25 19	All	All Parties	Draft PA for Consulting Party Review

3

4

DRAFT

**From:** [Bill Marzella](#)  
**To:** [Marino, Eugene](#)  
**Cc:** [Hayes, Miriam \(Nicole\) N](#); [Decleva, Edward J](#); [Tom McCulloch](#); [Judith E. Bittner](#); [Meitl, Sarah J \(DNR\)](#); [King, Robert \(Bob\)](#); [Loya, Wendy M](#); [Steen, Debbie DS](#); [Christopher Wilson](#); [Capron, Patricia \(Ranel\) R](#)  
**Subject:** RE: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response  
**Date:** Thursday, July 11, 2019 7:35:22 AM  
**Importance:** High

---

Eugene—Thank you for your message. I certainly understand the FWS perspective and hopefully we can discuss later this afternoon with the BLM to reach a satisfactory solution for all parties.

Best,

**Bill Marzella**  
Program Analyst/BLM Liaison  
(202) 517-0209

Register TODAY for the [Section 106 Practitioners Workshop](#) on August 6-7 or the [Agreements Seminar](#) on August 8 in Cheyenne, WY!

**From:** Marino, Eugene [mailto:[eugene\\_marino@fws.gov](mailto:eugene_marino@fws.gov)]  
**Sent:** Thursday, July 11, 2019 7:00 AM  
**To:** Bill Marzella  
**Cc:** Hayes, Miriam (Nicole); Decleva, Edward; Tom McCulloch; Katharine R. Kerr; Judith E. Bittner; Meitl, Sarah J (DNR); Robert (Bob) King; Wendy Loya; Debbie Steen; Christopher Wilson; Ranel Capron  
**Subject:** Re: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response

Hi Bill;

I apologize for my delay in responding. Thank you for the information you sent. While I understand the differences between Invited and Signatory are minor, the fact that FWS is the APE manager (has control of land) and has specific Section 106 related review responsibilities (page 5 of the PA) confirms to me that Signatory is the more logical role for the FWS. When you can, please adjust the PA accordingly and provide a copy.

Thank you  
Eugene

On Tue, Jul 9, 2019 at 3:47 PM Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)> wrote:

Eugene,

Below is some general guidance we have produced regarding Signatories and Invited Signatories in Section 106 agreements.

[https://www.achp.gov/executing\\_agreement\\_documents](https://www.achp.gov/executing_agreement_documents)

<https://www.achp.gov/digital-library-section-106-landing/frequently-asked-questions-about-lead-federal-agencies>

Generally, it is up to the federal agencies involved in a given undertaking as to whether to designate a lead federal agency for Section 106 compliance. If an agency does not wish to designate another as a lead for a given undertaking, they are individually responsible for complying with Section 106. There is an alternate means by which two agencies may develop a co-lead agreement and both sign as Signatories, which I remarked in my comments on the March 25 draft of the PA. The BLM responded that, as they were mandated by Congressional action to be the lead for the leasing program, there is no possibility for a co-lead agreement to be implemented in this case. The Section 106 agreement applies only to compliance with Section 106—i.e., it should not alter a federal agency's responsibility for compliance with other laws and regulations such as ARPA or NAGPRA.

Again, happy to discuss at everyone's convenience. I am available later tomorrow afternoon and for the remainder of the week if you or the BLM would like to set up a call.

Thank you,

**Bill Marzella**

Program Analyst/BLM Liaison  
(202) 517-0209

Register TODAY for the [Section 106 Practitioners Workshop](#) on August 6-7 or the [Agreements Seminar](#) on August 8 in Cheyenne, WY!

**From:** Marino, Eugene [mailto:[eugene\\_marino@fws.gov](mailto:eugene_marino@fws.gov)]

**Sent:** Tuesday, July 09, 2019 9:00 AM

**To:** Bill Marzella

**Cc:** Hayes, Miriam (Nicole); Decleva, Edward; Tom McCulloch; Katharine R. Kerr; Judith E. Bittner; Meitl, Sarah J (DNR); Robert (Bob) King; Wendy Loya; Debbie Steen

**Subject:** Re: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response

Bill;

Thank you for that offer. I would appreciate it.

Eugene

On Wed, Jul 3, 2019 at 5:39 PM Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)> wrote:

Ed and Nicole,

Thank you for bringing this matter to our attention. I am out of the office now and for the



remainder of the week but I would be happy to discuss with Mr. Marino and share our guidance regarding lead federal agencies and signatories for Section 106 agreements when I return next week. I will be checking email the next couple of days if you'd like to arrange a specific time to discuss.

Thanks and happy Fourth,

Bill

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---

**From:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>

**Sent:** Wednesday, July 3, 2019 5:26:53 PM

**To:** Decleva, Edward

**Cc:** Eugene Marino; Tom McCulloch; Katharine R. Kerr; Judith E. Bittner; Meitl, Sarah J (DNR); Robert (Bob) King; Wendy Loya; Debbie Steen; Bill Marzella

**Subject:** Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response

Hi Ed,

You are correct this was a change based off a lengthy discussion at our last meeting, and it was determined that an invited signatory was actually the appropriate role for FWS. I discussed it with Wendy but apologize for failing to follow up with you directly. That would be great if Eugene Marino discusses the matter with the ACHP, as it was their recommendation that invited signatory was in fact the appropriate role. I am happy to pull together a call after their discussion to ensure we are all on the same page.

Thanks and again I apologize for not communicating this directly earlier.  
Nicole

**Nicole Hayes**

Project Coordinator  
Bureau of Land Management  
222 W. 7th Avenue #13  
Anchorage, Alaska 99513  
Desk: (907) 271-4354  
Cell: (907) 290-0179

On Wed, Jul 3, 2019 at 8:06 AM Decleva, Edward <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)> wrote:

Good morning Nicole,

Regarding the subject (EMP18\_Draft\_PA\_6\_10\_19\_SRBA) you provided on June 13, 2019: U.S. Fish and Wildlife Service (USFWS) comments are provided within the attached document.

Of particular the change from Signatory status to Invited Signatory status.

Early in the development of this Programmatic Agreement (PA), the Bureau of Land Management (BLM) identified USFWS as an Invited Signatory, according to BLM at the suggestion of the Alaska State Historic Preservation Office (AK SHPO). I disputed this, arguing that because USFWS has jurisdiction on the cultural resources within the Arctic National Wildlife Refuge, including control of recovered cultural resources and compliance responsibilities associated with the Archeological Resource Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA), USFWS would need to have and agree to roles/responsibilities for such in the PA. Otherwise, perhaps BLM should take control of cultural resources and full responsibility for ARPA and NAGPRA compliance on matters related to BLM approval of oil and gas leasing and operation within the Arctic National Wildlife Refuge - an approach that may make more sense.

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**From:** [Bill Marzella](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#); [Marino, Eugene](#)  
**Cc:** [Decleva, Edward J](#); [Tom McCulloch](#); [Judith E. Bittner](#); [Meitl, Sarah J \(DNR\)](#); [King, Robert \(Bob\)](#); [Loya, Wendy M](#); [Steen, Debbie DS](#); [Christopher Wilson](#); [Capron, Patricia \(Ranel\) R](#)  
**Subject:** RE: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response  
**Date:** Monday, July 15, 2019 12:06:10 PM  
**Importance:** High

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All—As promised during the call today, I have compiled some brief guidance prepared by the ACHP to inform the development of agreement documents for Section 106 undertakings, specifically the designation of lead federal agencies and Signatories vs. Invited Signatories, as follows:

1. Our regulations at 36 CFR § 800.2(a)(2) allow for one or more agencies to designate a lead to act on their behalf and fulfill their collective Section 106 responsibilities. Although the regulations do not address the role of multiple federal Signatories explicitly, they do state that where no lead agency designation exists, each agency remains individually responsible for compliance, suggesting each would follow its own process under § 800.3-800.6.
  - a. Lead agency designations occur at the discretion of the agencies involved and in relation to whichever has the greater degree of involvement in the undertaking. There are no special considerations for surface management status in our guidance. In this case, I understand Congress designated BLM to act as the lead in implementing this program and therefore there is no flexibility on this point.
2. Following the passage of FAST Act of 2015 and the release of EO 13807 implementing the “One Federal Decision” in 2017, the ACHP reconsidered its own guidance regarding lead federal agencies as a means to encourage and assist agencies in designating leads for Section 106 compliance for major infrastructure projects (including energy development) to support review coordination and efficiency.
3. This guidance on lead agencies, which is also reflected in our “Guidance on Agreement Documents,” states:
  - a. Signatories to an MOA or Project PA are the lead agency, SHPO/THPO, and ACHP (if participating).
  - b. A non-lead federal agency is *not* required to sign an MOA or PA for an undertaking to complete the Section 106 process. The lead agency signs the Section 106 agreement on behalf of the non-lead agencies to fulfill their collective responsibilities for the undertaking.
  - c. However, non-lead agencies should sign the MOA or PA if they have been assigned responsibility for certain actions in the implementation of that agreement. In this case, the non-lead agencies should sign the MOA or PA as invited signatories. These actions could include, for example, non-lead agencies agreeing to carry out the work to identify historic properties, host consultation meetings, or provide other administrative support to the lead federal agency.
  - d. If the non-lead agencies would like to sign an MOA or PA in which they have not been assigned any specific responsibilities, they may sign as a concurring party.
  - e. Agreements executed prior to ~2017 may not reflect the release of this recent guidance. The complete text of these pages from our website is included in links in the email thread below.

4. Once the document is executed, Signatories and Invited Signatories share the same rights and responsibilities of amending and terminating an agreement, in addition to completing whatever additional responsibilities the Stipulations provide for.
5. There is an alternate means by which two agencies may develop a co-lead agreement and both sign as Signatories, which I understand was not pursued for this case.

I note that this guidance from the ACHP is advisory and I encourage the BLM and FWS to reach a mutually agreeable solution amongst their respective State and Regional Directors.

Please let me know if you have any questions regarding the above.

Thanks,

**Bill Marzella**

Program Analyst/BLM Liaison  
(202) 517-0209

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**Sent:** Thursday, July 11, 2019 12:29 PM

**To:** Eugene Marino

**Cc:** Bill Marzella; Decleva, Edward; Tom McCulloch; Katharine R. Kerr; Judith E. Bittner; Meitl, Sarah J (DNR); Robert (Bob) King; Wendy Loya; Debbie Steen; Christopher Wilson; Ranel Capron

**Subject:** Re: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response

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**Sent:** Tuesday, July 09, 2019 9:00 AM  
**To:** Bill Marzella  
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**Subject:** Re: [EXTERNAL] Re: Draft Final Programmatic Agreement, Coastal Plain Oil & Gas Leasing Program - USFWS Response  
**Date:** Thursday, July 11, 2019 8:29:17 AM  
**Importance:** High

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Please feel free to contact me directly anytime to discuss further.

Thank you,  
Nicole

**Nicole Hayes**

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**From:** [Hayes, Miriam \(Nicole\) N](#)  
**To:** [Loya, Wendy M](#)  
**Cc:** [Marino, Eugene](#); [Decleva, Edward J](#)  
**Subject:** Re: Draft Final Programmatic Agreement- COMMENTS DUE 7/12/19  
**Date:** Wednesday, July 10, 2019 1:29:44 PM  
**Importance:** High

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Hi Wendy,

You're correct. I think the WHEREAS clauses, and Section II (Scope of the PA) make it clear this is for BLM 106 responsibilities as a result of implementation of the oil and gas leasing program (PL 115-97 ONLY) so the PA would not apply for those activities that are related to FWS Refuge management responsibilities. Please let me know if you have some specific suggestions to make this more clear.

Thank you-

Nicole

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On Wed, Jul 10, 2019 at 12:47 PM Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)> wrote:

Hi Nicole,

I have no expertise in Sec 106 Programmatic Agreements. However, one element that I have concern about is the project type of "Inventory, Research and Monitoring (IRM) Activities", as described in i) Section IV (Page 6, Line 11); ii) Section V.F.1.b (Page 8, line 10); and Section V.G.3 (Page 8, line 31). I feel that this project type needs to be further clarified as there have been and will continue to be IRM activities conducted by the FWS and other entities that are solely for the other purposes of the Arctic National Wildlife Refuge or for both the other purposes of the Refuge as well as the oil and gas purpose (e.g. hydrologic mapping; contaminants baseline, groundwater investigations, fish habitat assessments).

- It seems like it should **not** be BLM's role to do Sec 106 evaluation/consultation on IRM activities being done by the FWS or its contractors/partners that informs broader Refuge management considerations (including USGS, BLM or academic researchers); that should be FWS role. The PA as written does not make that distinction and may be confusing for the consulting parties.
- It does seem appropriate for BLM to approve IRM activities proposed by lessees/industry or

their contactors for IRM activities solely intended to inform oil and gas exploration and development, such as those listed in support of the other projects types (e.g. snow surveys to support geophysical exploration; bathymetric measurements by a contractor to support a lessee's APD or in planning infrastructure or water use permits).

I apologize if this was discussed and appeared to be resolved among the parties at previous meetings. Nevertheless, I think further clarification is needed. As you know, we have had similar discussions with the Arctic District Office on this question for types of approvals.

Thank you,

Wendy

Dr. Wendy M. Loya

Arctic Program Coordinator

US Fish and Wildlife Service, Office of Science Applications

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**From:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>

**Sent:** Wednesday, July 10, 2019 10:50 AM

**To:** Monty Rogers <[culturalalaska@gmail.com](mailto:culturalalaska@gmail.com)>; [janet.cadzow@fortyukon.org](mailto:janet.cadzow@fortyukon.org); Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>; amy lewis <[amy.lewis@empsi.com](mailto:amy.lewis@empsi.com)>; Tiffany Yatlin <[tiffany\\_tritt\\_99722@hotmail.com](mailto:tiffany_tritt_99722@hotmail.com)>; Rob Rosenfeld <[robrosey@gmail.com](mailto:robrosey@gmail.com)>; Ray Atos <[ray.atos@inupiatgov.com](mailto:ray.atos@inupiatgov.com)>; [imatt@achp.gov](mailto:imatt@achp.gov); [gordon.brower@north-slope.org](mailto:gordon.brower@north-slope.org); City of Kaktovik - City Clerk <[office@cityofkaktovik.org](mailto:office@cityofkaktovik.org)>; Martineau, Faith C (DNR) <[faith.martineau@alaska.gov](mailto:faith.martineau@alaska.gov)>; Kathy Ahgeak <[kathy.ahgeak@north-slope.org](mailto:kathy.ahgeak@north-slope.org)>; Charlene Stern <[charlenestern@gmail.com](mailto:charlenestern@gmail.com)>; patrick hanson <[p\\_jhanson@hotmail.com](mailto:p_jhanson@hotmail.com)>; Robert (Bob) King <[r2king@blm.gov](mailto:r2king@blm.gov)>; Frederick Brower <[frederick.brower@inupiatgov.com](mailto:frederick.brower@inupiatgov.com)>; [Tomlohman2@aol.com](mailto:Tomlohman2@aol.com); Chad Ricklefs <[chad.ricklefs@empsi.com](mailto:chad.ricklefs@empsi.com)>; Rhonda Pitka <[rpitka@beavercouncil.org](mailto:rpitka@beavercouncil.org)>; Joseph Keeney <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)>; Jake Anders <[jake.anders@srbak.com](mailto:jake.anders@srbak.com)>; Bittner, Judith E (DNR) <[judy.bittner@alaska.gov](mailto:judy.bittner@alaska.gov)>; Charleen Fisher <[charleen.fisher@catg.org](mailto:charleen.fisher@catg.org)>; Doreen Leavitt <[doreen.leavitt@nvbarrow.net](mailto:doreen.leavitt@nvbarrow.net)>; [fenton.rexford@north-slope.org](mailto:fenton.rexford@north-slope.org); Nichelle (Shelly) Jones <[njones@blm.gov](mailto:njones@blm.gov)>; Jacqueline Carroll <[jacqueline.carroll@fortyukon.org](mailto:jacqueline.carroll@fortyukon.org)>; Matthew Newman <[mnewman@narf.org](mailto:mnewman@narf.org)>; Arlene Pitka <[apitka@beavercouncil.org](mailto:apitka@beavercouncil.org)> <[apitka@beavercouncil.org](mailto:apitka@beavercouncil.org)>;

Sarah LaMarr <[slamarr@blm.gov](mailto:slamarr@blm.gov)>; Myra Thumma <[myethumma@yahoo.com](mailto:myethumma@yahoo.com)>; Eugene Marino <[eugene\\_marino@fws.gov](mailto:eugene_marino@fws.gov)>; Fannie Sopluf <[sopluf82@gmail.com](mailto:sopluf82@gmail.com)>; Roy Varner <[rvarner@nybarrow.net](mailto:rvarner@nybarrow.net)>; Sarah Obed <[obeds@doyon.com](mailto:obeds@doyon.com)>; Matthew Rexford <[nvkaktovik@gmail.com](mailto:nvkaktovik@gmail.com)>; Tommy Nageak <[tommy.nageak@north-slope.org](mailto:tommy.nageak@north-slope.org)>; Teresa Imm <[timm@asrc.com](mailto:timm@asrc.com)>; Stephen Braund <[stephen.braund@srbak.com](mailto:stephen.braund@srbak.com)>; [ida.angasan@ilisagvik.edu](mailto:ida.angasan@ilisagvik.edu); Kevin S. Fisher <[kevin.fisher@north-slope.org](mailto:kevin.fisher@north-slope.org)>; Donna Thomas <[donna.thomas@catg.org](mailto:donna.thomas@catg.org)>; Tyler Janowski <[tjanowski@asrc.com](mailto:tjanowski@asrc.com)>; Edward Decleva <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)>; Paul Lawrence <[paul.lawrence@srbak.com](mailto:paul.lawrence@srbak.com)>; Tom McCulloch <[tmcculloch@achp.gov](mailto:tmcculloch@achp.gov)>; Tonya Garnett <[tonyagarnett@hotmail.com](mailto:tonyagarnett@hotmail.com)>; [norajane.burns@north-slope.org](mailto:norajane.burns@north-slope.org); Bill Marzella <[bmarzella@achp.gov](mailto:bmarzella@achp.gov)>; [dale.hardy@fortyukon.org](mailto:dale.hardy@fortyukon.org); Wesley Furlong <[wfurlong@narf.org](mailto:wfurlong@narf.org)>; Meitl, Sarah J (DNR) <[sarah.meitl@alaska.gov](mailto:sarah.meitl@alaska.gov)>; coastalplainAR <[coastalplainAR@empsi.com](mailto:coastalplainAR@empsi.com)>; Serena Sweet <[ssweet@blm.gov](mailto:ssweet@blm.gov)>; Arctic Village Council <[av\\_council@hotmail.com](mailto:av_council@hotmail.com)>

**Subject:** Reminder: Comments due this week!

Please call me directly if you have any questions.

Thank you!

**Nicole Hayes**

Project Coordinator

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On Thu, Jun 13, 2019 at 9:18 AM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

Good afternoon,

Attached is the DRAFT Final Programmatic Agreement (PA) based on the comments received on the March 25, 2019 draft.

In addition to content changes, you will see structural changes were made to the PA to:

- 1) Ensure the PA is in conformance with the 36 CFR Part 800 regulations written by the Advisory Council on Historic Preservation (ACHP);
- 2) Take into account the ACHP's written guidance on how to appropriately write PAs and what their contents should be, etc. (e.g., coordination processes between FWS and BLM were taken out of the PA);
- 3) Create a PA that does not include stipulations that were inappropriate per the ACHP's regulations and guidance;
- 4) Improve wording, eliminate redundancies, and bring better focus to the PA, thus making it more understandable to everyone; and
- 5) Ensure the document is reflective of the PA objective: Trying to plan for events and corresponding actions to be taken in the future, yet recognizing the lack of total certainty of what may happen in the future requires the need for the PA to be reasonable, workable, and provide adequate flexibility.

The attached version (dated June 12), thoroughly considers all of the comments received to date. If you would like to see the response to comments and/or set up an individual meeting to discuss the response to your comments prior to the next consulting parties meeting, please let me know.

Comments on the attached draft final PA are **due by close of business July 11th**. Our next consulting parties meeting will **be July 16th**. Will send out meeting invite in the next couple of weeks.

Please feel free to contact me directly anytime to discuss further.

Thank you,

Nicole

**Nicole Hayes**

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**From:** [Marino, Eugene](#)  
**To:** [Loya, Wendy M](#)  
**Subject:** Re: FWS response to signatory status change, ID of signatory  
**Date:** Friday, July 26, 2019 4:33:18 AM  
**Importance:** High

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Hi;

I had no comments on the PA. I think it has been laid out well.

I really appreciate your help with this.

Thank you

Eugene

On Tue, Jul 23, 2019 at 1:55 PM Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)> wrote:

Hi Nicole,

Eugene presented the information provided by BLM and ACHP on signatory roles for the Sec 106 PA for the Coastal Plain leasing EIS to Greg Siekaniec today. Given that it appears to be standard for one federal agency to be the lead and signatory, and that is clearly BLM with regards to the oil and gas program, FWS agrees to be an invited signatory. It was our perception that the appropriate person to sign would be Greg Siekaniec given the importance and long-term timeline for enacting the PA.

It looks like you are looking for any final comments by this Friday July 26<sup>th</sup>, so Eugene and I can review the documents provided on 7/19/19 as Ed is out of the office through the end of the month. Given that Ed had no previous significant concerns with the content, I don't anticipate further comments from FWS but will confirm by Friday. Unless on jury duty, Ed should be able to review the final PA for final review between Aug 5-13<sup>th</sup>.

Thank you, let me know if you have any questions.

Wendy

Dr. Wendy M. Loya

Arctic Program Coordinator

US Fish and Wildlife Service, Office of Science Applications

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**From:** Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)>

**Sent:** Monday, July 15, 2019 9:32 AM

**To:** Wendy Loya <[wendy\\_loya@fws.gov](mailto:wendy_loya@fws.gov)>

**Subject:** Follow-up to our meeting

Hi Wendy,

I wanted to follow-up to our discussion to make sure that we are in agreement as to the technical advice from the ACHP and the next steps on the Coastal Plain Oil and Gas Program Programmatic Agreement:

1) ACHP has advised that there be one federal agency as the "signatory" and any other federal agency with a significant role (FWS) an "invited signatory".

- Signatories are primarily the lead federal agency, SHPO and ACHP (total of 3)
- The only time they ever recommend there be more than one signatory is if there is a co-lead agency agreement which is not the case here;
- This is consistent with the recommendations of the SHPO;
- This does not change or diminish the authority that the FWS would have under a signed agreement; and
- The main value to being a signatory would be if FWS is not in agreement with the content and wishes to ensure it is not signed until they are in agreement with the content (if there is concern on this point I have messages from Ed supportive of substantive changes)

2) After you coordinate with Eugene, the RD will be briefed and FWS will inform BLM as to what role they wish to have (signatory vs invited signatory). This will be done by DATE(?)

3) I will brief leadership as to the discussion, and pending FWS follow-up will coordinate a meeting with our SD and FWS RD if a change from invited signatory to signatory is requested.

Let me know if I have missed anything.

Thank you,

Nicole

**Nicole Hayes**

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**From:** [Decleva, Edward J](#)  
**To:** [Hayes, Miriam \(Nicole\) N](#)  
**Cc:** [Keeney, Joseph W](#); [Jake Anders](#); [Loya, Wendy M](#); [Berendzen, Steve](#)  
**Subject:** Re: Outline for BLM/USFWS Roles  
**Date:** Wednesday, March 20, 2019 2:30:50 PM  
**Importance:** High

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Hi Nicole,

I get it.

Here's how I understand it:

I provided a draft of the process. I think it is in BLM's court to work on the process.

Given my other responsibilities to USFWS, please do not expect that I will be doing anything further on this at this point, except for providing review.

If that's a problem, and BLM needs me to devote more attention to this right now, then our agency leaders will need to intervene.

Im not trying to be nasty, I'm just trying to point out that I am very busy with other high priority, politically driven work matters.

Edward J. DeCleva  
Regional Historic Preservation Officer  
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Anchorage, AK 99503

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907-786-3399

On Wed, Mar 20, 2019 at 1:40 PM Hayes, Miriam (Nicole) <[mnhayes@blm.gov](mailto:mnhayes@blm.gov)> wrote:

We (BLM and FWS) need to provide this information to Jake to plug into that section of the PA.

**Nicole Hayes**

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On Wed, Mar 20, 2019 at 1:15 PM Decleva, Edward <[edward\\_decleva@fws.gov](mailto:edward_decleva@fws.gov)> wrote:

Thank you Joe,

Good job. It's making sense to me.

I'm also swamped. Would it be possible for you to ask your PA contractor to work up a step-by-step outline based on the two documents you and I have created? Incidentally, the step-by-step is attached here.

It was good meeting you in person today. Thanks for dropping by.

Ed

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On Tue, Mar 19, 2019 at 6:15 PM Keeney, Joseph <[jkeeney@blm.gov](mailto:jkeeney@blm.gov)> wrote:  
Hi Nicole, Jake, and Ed,

Here is what I was able to put together from Ed and my discussion a week and a half ago. At this point, this is a rough outline of the basic responsibilities broken up by permitting scenario and the three entities involved in permitting (BLM state office, Arctic District Office, and USFWS Arctic Refuge Manager/Regional Historic Preservation Officer).

Ed also began drafting a more procedural, step-by-step outline, although I have not had a chance to work the roles outline into that format. I am hoping that this can be a living document. Ed, Perhaps you can take a crack at plugging this into your procedural outline? That seems like a good format that fits better in the PA, but I needed to have all the pieces to work with, provided here. One thing to keep in mind is that even though one of Bob King's roles as the Deputy Preservation Officer is being the POC for archaeological permitting, I have been informed by my management that they prefer I act as the POC when it comes to such permitting for the Coastal Plain.

I got stuck in an IAP workshop all last week, and this week has been back to back meetings most of yesterday and today, with training in ANC starting tomorrow through Friday. I have been and will continue to be pretty swamped, so I won't be able to get back to this until next week, but this should hopefully help get things started.

Please let me know if anyone has specific questions about this and I'll do my best to respond while I'm out.

Joe

--  
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