

**PROGRAMMATIC AGREEMENT  
AMONG THE U.S. FISH AND WILDLIFE SERVICE,  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE,  
THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION, THE BLACKFEET TRIBAL HISTORIC PRESERVATION OFFICE  
AND ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING  
RESOLUTION OF ADVERSE EFFECTS ASSOCIATED WITH THE MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FORESTED  
STATE TRUST LANDS HABITAT CONSERVATION PLAN**

**WHEREAS** in order to support the long-term conservation of at-risk species under the Endangered Species Act (ESA), the U.S. Fish and Wildlife Service (USFWS) is assisting the Montana Department of Natural Resources and Conservation (DNRC) in the development of a Habitat Conservation Plan (HCP) and associated Incidental Take Permit (Permit) for certain state trust lands in western Montana; and

**WHEREAS** all parties to this agreement understand that the permitted activities under the HCP and Permit may have the potential to impact known and presently unknown Historic Properties; and

**WHEREAS** the lands associated with the HCP and Permit are owned by the State of Montana and the action associated with issuing the Permit is a Federal action which engages section 106 of the National Historic Preservation Act (NHPA); and

**WHEREAS** all parties to this agreement understand that the conservation measures described in this HCP are designed to protect the habitat of the HCP species on approximately one half million HCP acres of state school trust lands so the DNRC may have more flexibility with forest management activities in order to generate adequate revenue for schools from those lands; and

**WHEREAS** all parties to this agreement understand that the permitted activities will not alter forest management practices over most of the HCP acres; however, the HCP will make more accessible for forest management, an area of Stillwater State Forest (SSF) currently known as the Grizzly Bear Security Core (Stillwater Core) that is presently managed in accordance with the Administrative Rules of Montana for Forest Management (ARM 36.11.401 through 450); and

**WHEREAS** all parties to this agreement understand that the USFWS has determined the portion of the Area of Potential Effect (APE) where Adverse Effects may occur as a result of the implementation of the permitted activities is in the Stillwater Core; and

**WHEREAS** the USFWS, DNRC, Blackfeet Tribal Historic Preservation Office (THPO), and Montana State Historic Preservation Office (SHPO) have consulted on the avoidance of Adverse Effects under the HCP and have agreed that a strategy similar to Kootenai National Forest's (KNF) Site Inventory Strategy is an appropriate model to structure a program to avoid Adverse Effects in the Stillwater Core;

**NOW, THEREFORE** the above parties will carry out the following stipulations to mitigate the potential Adverse Effects during implementation of the HCP and satisfy the USFWS's section 106 responsibilities.

**Stipulations:**

**Project Review.** The DNRC will ensure that a cultural resources specialist (CRS) meeting the Secretary of Interior's Professional Qualification Standards (36 CFR 61) will administer all work associated with the documentation of any cultural resources-related actions in the area currently identified as Stillwater Core on SSF.

The CRS will determine if the proposed action is an "Undertaking" pursuant to the definition provided in section 301(7) of the NHPA and 36 CFR 800.2(o). If the proposed action meets the definition of an Undertaking, the APE will be determined by the CRS, pursuant to the definition provided at 36 CFR 800.2(c). The CRS will review the undertaking in accordance with the standard Section 106 process (36 CFR 800). The CRS will review and determine the Finding of Effect, for all Undertakings. The CRS will design fieldwork in accordance with KNF's Site Inventory Strategy, or a similar strategy agreed upon by the signatories. The project level identification effort may include up to 640 acres of inventory annually. If the identification effort exceeds this threshold the USFWS may assist the DNRC in this effort. Prior to initiation of onsite field inspections in the area covered by the programmatic agreement, the CRS will notify the Blackfeet THPO of the proposed dates and location of scheduled surveys. Site recording, determinations of eligibility, and other decisions related to fieldwork will be the responsibility of the CRS. The CRS will report all correspondence associated with any cultural resources-related actions (including No Effect determinations) to the Montana SHPO, Blackfeet THPO Representative, and USFWS. This documentation will meet the Secretary of Interior's Standards for historical and archaeological documentation and will be acceptable to Montana SHPO.

**Transfer of Properties.** Any properties within the area currently identified as Stillwater Core that are transferred into or outside of the boundaries of the HCP will result in a requirement for cultural resources-related consultation with the Blackfeet THPO, USFWS, and Montana SHPO. Any land transfer-related consultation will include a map and legal description for the properties.

**Tribal Responsibilities.** Tribal signatories will be asked to consult with the USFWS and DNRC concerning existing TCPs or tribal traditional use within SSF. Should the tribe(s) share such information, it will be conveyed in a manner that is culturally appropriate and acceptable to the Tribe(s) while allowing the DNRC and USFWS enough knowledge to protect the resource. Any information acquired under this agreement will be protected from public access and will be available to any outside entities only through formal request through the participating Tribes. Signatory Tribes will define a tribal representative who will be the initial contact for any issues related to this agreement.

**Review of Reports.** As per section 106 of NHPA, all reviewing parties to this Programmatic Agreement will have thirty (30) days to review the consultation reports issued by the DNRC. Failure of reviewing parties to provide comment in accordance with this stipulation may be taken

to indicate acceptance of the pertinent report by the reviewing party. The CRS will provide results of the state's surveys to the Blackfeet THPO, and if requested, arrange a follow-up meeting to go over the results and solicit any additional concerns.

**Additional Tribal Consultation.** Should any action under this agreement require additional consultation with the participating tribes concerning accidental discoveries of archaeological sites or aboriginal human remains, Traditional Cultural Properties or other tribal concerns, the USFWS will conduct consultation with the participating tribes until these issues are resolved.

**Inter-relatedness of the HCP and This Agreement.** Any changes or amendments to the HCP and associated Permit that may have effects on the cultural resources-related issues will require consultation between the signatories. This includes the ESA listing or de-listing of species covered under the agreement as it relates to the ESA. If, for any reason, the Permit is not issued or is withdrawn, this agreement will be considered null and void.

**Dispute Resolution.**

Should any signatory to this agreement object to the adequacy of carrying out any specifications or action pursuant to this agreement, the USFWS shall confer with the objecting party to resolve the objection. If, within 30 business days following receipt of the objection in writing, the USFWS determines that the objection cannot be resolved, the USFWS will forward to the Advisory Council on Historic Preservation (ACHP) all documentation relevant to the dispute. The ACHP will either:

1. Provide the USFWS with recommendations which the USFWS will take into account in reaching a final decision regarding the dispute; or
2. Notify the USFWS that it will comment pursuant to 36 CFR 800.6, and proceed to comment, whereupon the USFWS will respond pursuant to 36 CFR 800.6.

**Agreement Dissolution.**

Should any signatory to this agreement decide they are unable to meet the requirements of the agreement, dissolution may be sought by formal notification in writing to all of the signatories. Signatories will be liable for the agreement for 30 days after the formal announcement at which time the agreement is officially dissolved.

**Five Year Review.** Every five years, as of the ratification of this agreement, the parties will consult on the adequacy of the agreement to identify Historic Properties and Traditional Cultural Properties and mitigate Adverse Effects prior to initiation of a DNRC sponsored project in the area currently identified as Stillwater Core.

Execution of this Programmatic Agreement and implementation of its terms stand as evidence that the USFWS has resolved the Adverse Effects of this undertaking and has complied with section 106 of the Act.

BLACKFEET TRIBAL HISTORIC PRESERVATION OFFICE

By: [Signature], THPO Date: 4/6/11  
Tribal Representative

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: [Signature] Date: 4/13/11  
Director

U.S. FISH AND WILDLIFE SERVICE

By: Margaret A. Van Ness Date: 2 August 2011  
Regional Archaeologist, Region 6

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 4/12/2011

~~ADVISORY COUNCIL ON HISTORIC PRESERVATION~~

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

~~Cultural Resources Coordinator~~

See attached letter from ACHP  
on 17 May 2011.  
Mann

## APPENDIX A

### Definitions.

- X **Historic Properties** - Those remains of human activities, occupation or endeavor, reflected in districts, sites, structures, buildings, objects, artifacts, ruins, works of art, architecture, and natural features important in human events, included in, or eligible for inclusion in, the National Register of Historic Places (NRHP).
- X **Undertaking** - Any project or activity or program that can result in changes in the character or use of historic properties. Under NHPA, the project and/or activity must either be funded, sponsored, performed, licensed or have received assistance from the Federal government. In the case of this agreement, all DNRC sponsored activities within the Grizzly Bear Core Area are permitted actions.
- X **Section 106** - Section 106 of the National Historic Preservation Act of 1966, as amended, and related to regulations and executive orders.
- X **Federally Recognized Tribes** - Tribal entities which are included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR Part 54.
- X **Traditional Cultural Properties** - The term used to define a historic property whose eligibility for inclusion in the NRHP is derived from its significant role in the traditional, but often continuing lifeways of an aboriginal community.
- X **Tribal Consultation** - The act of formally seeking the advice of or conferring with Federally Recognized Tribes.
- X **Cultural Resources - Related Actions** - This is any activity that may alter a Historic Property or limit the access to or quality of a Traditional Cultural Property.
- X **Determinations of Effect** - This is a term defined under section 106 of NHPA that establishes whether or not a project or activity has the ability to degrade a Historic Property.



*Preserving America's Heritage*

May 17, 2011

Brant Loflin  
Zone Archaeologist  
Bozeman Fish Technology Center  
4050 Bridger Canyon Road  
Bozeman, MT 59715

Ref: *Proposed Habitat Conservation Plan for State Lands in Various Counties  
Western Montana*

Dear Mr. Loflin:

The Advisory Council on Historic Preservation (ACHP) has received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Programmatic Agreement (PA), developed in consultation with the Montana State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the PA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require further assistance, please contact John T. Eddins, Ph.D., at 202 606-8553 or at [jeddins@achp.gov](mailto:jeddins@achp.gov).

Sincerely,

LaShavio Johnson  
Historic Preservation Technician  
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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