



**FSM 2300 – RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT**

**CHAPTER 2360 – HERITAGE PROGRAM MANAGEMENT**

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**Approved:** GLORIA MANNING  
Associate Deputy Chief

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**Posting Instructions:** Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 2300-2007-1 to FSM 2320.

<b>New Document</b>	2360	83 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2360.1-2361.32d (Amendment 2300-90-4, 06/21/1990)	25 Pages
	2361.4-2363.5 (Amendment 2300-90-5, 06/21/1990)	22 Pages
	2361.24 Exhibit01 (Amendment 2300-90-1, 06/01/1990)	1 Page

**Digest:**

This amendment converts the format and style of this Forest Service manual (FSM) chapter to the new FSM template using the agency’s current corporate word processing software. The separate documents are now merged into a single chapter document.

2360 – Changes chapter title from “Special Interest Areas” to “Heritage Program Management”, updates and clarifies program direction and requirements to line officers.

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## **2360.1 – Authority**

### **2360.11 – Laws**

Organic Act of 1897 (Title 16, United States Code (U.S.C.), section 473-478, 479-482, 551) is the original organic act governing the administration of National Forest System (NFS) lands. It is one of several Federal laws under which the Forest Service operates. Under this act, the Secretary of Agriculture may make regulations and establish services necessary to regulate the occupancy and use of National Forest System lands and preserve them from destruction. Persons violating the act or regulations adopted under it are subject to fines or imprisonment. The Organic Act is one authority used to issue Permits for Archaeological Investigations.

Antiquities Act of 1906 (16 U.S.C. 431) provides for permits, for misdemeanor-level penalties for unauthorized use, and for presidential designation of national monuments for long-term preservation. The Archaeological Resources Protection Act has replaced the Antiquities Act as the authority for special use permits if the resource involved is 100-years-old or greater. Uniform regulations at 43 Code of Federal Regulations (CFR) part 3 implement the act.

Historic Sites Act of 1935 (16 U.S.C. 461) declares national policy to “preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.” The act authorizes the National Park Service’s National Historic Landmarks Program. The National Historic Landmarks Program is implemented by regulations at 36 CFR part 65.

National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470), as amended extends the policy in the Historic Sites Act to State and local historical sites as well as those of national significance, expands the National Register of Historic Places, establishes the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and requires agencies to designate Federal Preservation Officers.

1. NHPA Section 101(d)(2) establishes criteria for designating Tribal Historic Preservation Officers to assume the functions of a State Historic Preservation Officer on Tribal lands.
2. NHPA Section 106 directs all Federal agencies to take into account the effects of their undertakings (actions, financial support, and authorizations) on properties included in or eligible for the National Register. Advisory Council on Historic Preservation regulations at 36 CFR part 800 implement NHPA Section 106.
3. NHPA Section 110 establishes inventory, nomination, protection, and preservation responsibilities for federally owned historic properties.

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National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4346) establishes national policy for the protection and enhancement of the environment. Part of the function of the Federal government in protecting the environment is to “preserve important historic, cultural, and natural aspects of our national heritage.” The act is implemented by the Council on Environmental Quality (CEQ) regulations at 40 CFR 1500-1508.

The Archeological and Historic Preservation Act of 1974 (AHPA) (16 U.S.C. 469) is also known as the Archeological Recovery Act and the Moss-Bennett Bill. AHPA amended and expanded the Reservoir Salvage Act of 1960 and was enacted to complement the Historic Sites Act of 1935 by providing for the preservation of historical and archaeological data which might be lost or destroyed as the result of the construction of a federally authorized dam or other construction activity. This greatly expanded the number and range of Federal agencies that had to take archeological resources into account when executing, funding, or licensing projects. AHPA also allows for any Federal agency responsible for a construction project to appropriate a portion of project funds for archaeological survey, recovery, analysis, and publication of results.

Federal Land Policy and Management Act of 1976 (FLPMA), (43 U.S.C. 1701), directs the Forest Service to manage National Forest System (NFS) lands on the basis of multiple use, in a manner that “recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands” and that will “protect the quality of ...historical...resources, and archeological values.” The act provides for the periodic inventory of public lands and resources, for long-range, comprehensive land use planning, for permits to regulate the use of public lands, and for the enforcement of public land laws and regulations. FLPMA compels agencies to manage all cultural resources on public lands through the land management planning process.

National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1600) directs the Forest Service to develop renewable resource plans through an interdisciplinary process with public involvement and consultation with other interested governmental departments and agencies.

Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa *et seq.*), as amended, provides criminal penalties (felony and misdemeanor) and civil penalties for the unauthorized excavation, removal, damage, alteration, defacement, or the attempted unauthorized removal, damage, alteration, or defacement of any archaeological resource, more than 100 years of age, found on public lands or Indian lands. The act includes National Forest System lands in its definition of public lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained from public lands or Indian lands in violation of any provision, rule, regulation, ordinance, or permit under the act, or under any Federal, State, or local law. No distinction is made regarding National Register of Historic Places eligibility. The act establishes permit requirements for removal or excavation of archaeological resources from Federal and Indian lands. The act further directs Federal land managers to survey land under their control for archaeological resources and create public awareness programs concerning archaeological resources. Uniform regulations and departmental regulations at 36 CFR part 296 implement ARPA.



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Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001) provides a process for museums and Federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional excavation and unanticipated discovery of Native American cultural items on Federal and Tribal lands, and penalties for noncompliance and illegal trafficking. The act requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation. Permits for the excavation and/or removal of “cultural items” protected by the act require Tribal consultation, as do discoveries of “cultural items” made during activities on Federal or Tribal lands. The Secretary of the Interior’s implementing regulations are at 43 CFR part 10.

Federal Lands Recreation Enhancement Act of December 8, 2004, (REA) (16 U.S.C. 6801-6814) permits Federal land management agencies to charge modest fees at recreation facilities that provide a certain level of visitor services. REA also permits fees for specialized recreation permits necessary when recreation activities require exceptional visitor safety measures, extraordinary natural and cultural resource protection, or dispersal of visitors to ensure that good experiences are sustainable. REA includes provisions that require the use of Recreation Resource Advisory Committees to provide the public with information about fees and how fee revenues will be used. The primary goal of REA is to enhance visitor facilities and services to provide a quality recreation program.

Other Acts such as Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (17 U.S.C. 1600-1674)) include authorities that establish national forest management direction and thereby may affect Heritage Program activities.

### **2360.12 – Executive Orders**

Executive Order 11593 - Protection and Enhancement of the Cultural Environment, issued May 13, 1971, directs Federal agencies to inventory cultural resources under their jurisdiction, nominate all federally owned properties that meet the criteria to the National Register of Historic Places, use due caution until the inventory and nomination processes are completed, and assure that Federal plans and programs contribute to preservation and enhancement of non-federally owned properties.

Executive Order 13007 - Indian Sacred Sites, issued May 24, 1996, directs Federal land management agencies, to the extent permitted by law, and not clearly inconsistent with essential agency functions, to accommodate access to and use of Indian sacred sites, to avoid affecting the

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physical integrity of such sites wherever possible, and, where appropriate, to maintain the confidentiality of sacred sites. Federal agencies are required to establish a process to assure that affected Indian tribes are provided reasonable notice of proposed Federal actions or policies that may affect Indian sacred sites.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, issued November 6, 2000, directs Federal agencies to establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. Public Law (P.L.) 108-199 and 108-477 added language that directed the Office of Management and Budget and all Federal agencies to consult with Alaska Natives and Alaska Native Corporations on the same basis as Indian tribes under E.O. 13175.

Executive Order 13287 – Preserve America, issued March 3, 2003, establishes Federal policy to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal government. The order encourages agencies to seek partnerships with State, Tribal, and local governments, and the private sector to make more efficient and informed use of historic properties for economic development and other recognized public benefits. The order requires Federal agencies to review and report on their policies and procedures for compliance with National Historic Preservation Act, Section 110 and 111, improve Federal stewardship of historic properties, and promote long-term preservation and use of those properties as Federal assets contributing to local community economies.

The order requires the head of each agency to designate a Senior Policy Official. In addition, it directs the Secretary of Commerce, working with other agencies, to use existing authorities and resources to assist in the development of local and regional heritage tourism programs.

Executive Order 13327 – Federal Real Property Asset Management, issued February 4, 2004, establishes the Federal Real Property Council to develop guidance for each agency’s asset management plan. The Senior Real Property Officer of each agency is required to develop and implement an agency asset management planning process that meets the form, content, and other requirements established by the Federal Real Property Council. In relation to cultural resources, the Senior Real Property Officer shall incorporate planning and management requirements for historic properties under E.O. 13287 – Preserve America. E.O. 13327, para. 2(a) defines “Federal real property” as any real property owned, leased, or otherwise managed by the Federal Government, both within and outside the United States, and improvements on Federal lands.

### **2360.13 – Regulations and Federal Guidelines**

The principal regulations for the administration of the Forest Service Heritage Program are:

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Protection of Historic Properties (36 CFR part 800). These regulations implement National Historic Preservation Act (NHPA) Section 106 and define how Federal agencies meet the statutory responsibility to take into account the effects of their undertakings on historic properties. The regulations identify consulting parties as State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations (including Tribal Historic Preservation Officers), representatives of local governments, applicants for Federal assistance, and additional consulting parties. The Advisory Council on Historic Preservation issues these regulations and oversees the operation of the National Historic Preservation Act, Section 106 process. The regulations identify the goal of consultation, which is “to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize or mitigate any adverse effects on historic properties” (36 CFR 800.1).

National Register of Historic Places (36 CFR part 60). These regulations establish the National Register of Historic Places (referred to as the National Register for the remainder of this chapter) as a planning tool to help Federal agencies evaluate cultural resources in consultation with State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Advisory Council). 36 CFR 60.4 provides the criteria for determining whether cultural resources are eligible for listing on the National Register of Historic Places.

Protection of Archaeological Resources Uniform Regulations (36 CFR part 296). These regulations implement the Archaeological Resources Protection Act by establishing the uniform definitions, standards, and procedures for Federal land managers to follow in providing protection for archaeological resources located on public lands and Indian lands. The regulations define the prohibited acts, which include excavating, removing, damaging, or otherwise altering or defacing archaeological remains; and selling, purchasing, exchanging, transporting, or receiving any archaeological resource that was removed from Federal land in violation of Archaeological Resources Protection Act or any other Federal law. The regulations also provide requirements for issuing permits under the authority of the Archaeological Resources Protection Act to any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands.

Native American Graves Protection and Repatriation Regulations (43 CFR part 10, Subpart B – Human Remains, Funerary Objects, Sacred Objects, or objects of Cultural Patrimony From Federal or Tribal Lands). These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990. The regulations establish a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. The regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are in Federal possession or control or in the possession or control of any institution of State or local government receiving Federal funds. The regulations pertain to these objects whether they are inadvertently discovered or excavated intentionally under a permit issued under the authority of the Antiquities Act or Archaeological Resources Protection Act.

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Curation of Federally-owned and Administered Archaeological Collections (36 CFR part 79).

These regulations establish definitions, standards, procedures, and guidelines for Federal agencies to preserve collections of prehistoric and historic material remains, and associated records recovered under the authority of the Antiquities Act, Reservoir Salvage Act, National Historic Preservation Act, and Archaeological Resources Protection Act.

Planning (36 CFR part 219). These regulations set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System and prescribe how land and resource management planning is to be conducted on National Forest System lands.

Statement of Federal Financial Accounting Standards 29, Heritage Assets and Stewardship Land, July 7, 2005, (SFFAS 29). The Federal Accounting Standards Advisory Board issued this statement, which changes the classification of information reported for heritage assets and stewardship land provided by SFFAS 8. SFFAS 29 reclassifies all heritage assets and stewardship land information as basic except for condition information, which is reclassified as required supplementary information. This standard requires additional reporting disclosures about stewardship policies and an explanation of how heritage assets and stewardship land relate to the mission of the agency.

### **2360.2 – Objectives**

The Congress in 1966 declared it to be our national policy that the Federal government will “administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.”

To this end, the Forest Service will provide leadership in preserving America’s heritage through responsible stewardship activities that recognize, preserve, protect, enhance, and use cultural resources for the greatest public benefit.

### **2360.3 – Policy**

It is the policy of the Forest Service to:

1. Establish and maintain effective relationships with Federal, State, Tribal, and local governments and historic preservation organizations at all levels of the agency to ensure protection of cultural resources and to promote Heritage Program efficiencies.
2. Fully integrate opportunities for preservation, protection, and utilization of cultural resources into land use planning and decisions.
3. Manage cultural resources through a process of identification, evaluation, and allocation to appropriate management categories that protect cultural resource values and benefit the public.

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4. Recognize cultural resources through National Register of Historic Places nomination, National Historic Landmark recommendation, and other special designations.
5. Provide opportunities for public use and enjoyment of cultural resources through education and outreach programs that promote resource stewardship.
6. Facilitate scientific research of cultural resources to increase understanding of past human cultures and environments.
7. Use cultural resource data to increase scientific understanding of the evolution and condition of ecosystems and to benefit Forest Service land management practices.
8. Protect cultural resources from the effects of Forest Service or Forest Service-authorized undertakings, unauthorized use, and environmental damage.

**2360.4 – Responsibility**

See 2360.4, exhibit 01 for a table of delegated authorities.

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**2360.4 - Exhibit 01**

**Table of Delegated Authorities<sup>1</sup>**

Key: RF = Regional Forester; FS = Forest Supervisor; DR = District Ranger;

X = Authority, Y = May be delegated to this level

<b>2360 – AUTHORITY</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Designation of Federal Preservation Officer	X 2360.42 (1)			
Designation of Senior Policy Official	X 2360.42 (2)			
Response to Congressional and Executive historic preservation issues	X 2360.42 (4)	Y		
Government-to-government Tribal consultation concerning Heritage Program issues	X 2360.42 (5)	X 2360.46 (3)	X 2360.47 (3) 2361.22	
Coordination with Office of Tribal Relations and Tribal Government Relations Program	X 2360.45 (5)	X 2360.46 (4)		
Implementation of Heritage Program training		X 2360.46 (5)	X 2360.47 (9)	
<b>2361 – COORDINATION &amp; CONSULTATION</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Program Coordination for NHPA Section 110	X 2360.45 (1) 2361.1	X 2361.1	X 2361.1	Y
NHPA Sec 106 Consultation	X 2364.11 (10) 2364.12	X 2360.46 (2) 2361.2	X 2360.47 (3, 4) 2361.2	Y
NAGPRA inventories and summaries		X 2361.3	Y	
NAGPRA planned excavations, unanticipated discoveries			X 2361.3 2364.13	

<sup>1</sup> Table includes only line officers with decision-making authority. Heritage Professionals at each level advise line officers.

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**2360.4 - Exhibit 01--Continued**

<b>2362 - PLANNING</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Agency strategic plans	X 2360.45 (1) 2362.2	Y	Y	
Forest and Grassland plans			X 2360.47 (3) 2362.2	
Landscape-watershed plans			X 2362.2	Y
Other FS program plans			X 2362.2	Y
Heritage program planning	X 2362.3	X 2362.3	X 2362.3	
Historic property plans			X 2362.4	Y
<b>2363 – IDENTIFICATION, EVALUATION, ALLOCATION TO MANAGEMENT CATEGORIES</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Cultural resource identification			X 2363.1	Y
Cultural resource evaluation			X 2363.2	Y
Allocation of cultural resources to management categories			X 2363.3	Y
<b>2364 – PROTECTION &amp; STEWARDSHIP</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
NHPA Section 106 standard procedures			X 2364.11	
Alternate procedures	X 2364.12	X 2364.12		
Programmatic agreements		X 2364.12	X 2364.12	
Memorandum of agreement, resolution of adverse effect	X 2364.11 (10)	X 2364.11 (16)	X 2364.11 (16)	
Unanticipated discoveries			X 2364.13	
ARPA investigations			X 2630.47 (8) 2364.21, 22	Y

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**2360.4 - Exhibit 01--Continued**

<b>2364 – PROTECTION &amp; STEWARDSHIP (continued)</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Monitoring program			X 2364.31	
Administrative and direct protection measures			X 2360.47 (7) 2364.35, 36	Y
National Register nominations	X 2364.41a	Y		
NHL and World Heritage Site recommendations	X 2360.42 (3) 2364.41b, c			
Conservation and maintenance			X 2364.42	Y
Study and use of cultural resources			X 2364.43	Y
<b>2365 – PUBLIC EDUCATION &amp; OUTREACH</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Windows on the Past program development			X 2360.47 (2) 2365.02 (1)	Y
Windows on the Past projects (PIT, Heritage Expeditions, and so on) planning and executing				X 2360.48 (2) 2365.2
Standards for acquisition, storage, preservation, and access for archaeological collections	X 2366.03 (3)	X 2366.03 (3)		
Curatorial strategies		X 2366.03 (4)	Y	
NAGPRA collection repatriation	X 2366.03 (6) 2366.12	Y		
<b>2367 – PERMITS, AGREEMENTS, &amp; CONTRACTS</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Permit Issuance			X 2360.47 (6) 2367.1	Y <sup>2</sup>
Agreement Issuance			X 2360.47 (4) 2367.2	Y
Contract Issuance and Administration			X 2360.47 (5) 2367.3	Y

<sup>2</sup> Authority may be delegated to the district ranger only for uses authorized for five (5) years or less.



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**2360.4 - Exhibit 01--Continued**

<b>2368 – INFORMATION MANAGEMENT &amp; REPORTING</b>	<b>CHIEF</b>	<b>RF</b>	<b>FS</b>	<b>DR</b>
Protocols and standards for data entry, accuracy, and security	X 2368.03 (1) FSH 6509.11k 57.62 (4a)			
Track heritage activities in GIS and Infra			X 2368.03 (2)	
Infra and GIS database updates		X 2368.03 (3) FSH 6509.11k 57.62 (4d)	Y	
Secretary of the Interior's Annual Report to Congress on the Federal Archeology Program	X 2368.03 (4)	Y		

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### **2360.41 – Secretary of Agriculture**

The Secretary of Agriculture reserves the authority to designate an Assistant Secretary or an officer having major departmentwide or agencywide responsibilities to be a representative member on the Advisory Council on Historic Preservation.

### **2360.42 – Chief**

The Chief reserves the authority to:

1. Designate an agency Federal Preservation Officer under the National Historic Preservation Act, Section 110(c).
2. Designate a Senior Policy Official as directed by E.O. 13287 – Preserve America, Section 3(e).
3. Submit National Historic Landmarks and World Heritage Sites to the Secretary of the Interior for official designation.
4. Respond to congressional, executive, and other national historic preservation initiatives.
5. Conduct government-to-government consultation with American Indian and Alaska Native tribes and Native Hawaiian organizations on Heritage Program national policy and issues.

### **2360.43 – Senior Policy Official**

E.O. 13287 – Preserve America states that the Senior Policy Official shall be an Assistant Secretary, Deputy Assistant Secretary, or the equivalent as appropriate to the agency organization. In the Forest Service, this designation is usually a deputy chief or a staff director. The Senior Policy Official has the authority and responsibility to:

1. Ensure that E.O. 13287 – Preserve America goals and objectives are integrated in the Forest Service Heritage Program and are reflected in the agency's mission and direction.
2. Seek ways for the agency to coordinate and integrate E.O. 13287 – Preserve America efforts with Preserve America Communities and other agencies.
3. Ensure that the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary of the Interior for that position and that the Federal Preservation Officer has access to adequate expertise and support to carry out the duties of the position.

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### **2360.44 – Director of Recreation, Heritage, and Volunteer Resources**

The Director of Recreation, Heritage, and Volunteer Resources staff, Washington Office has the authority and responsibility to:

1. Oversee policy, budget, and implementation of the Forest Service Heritage Program.
2. Ensure that the agency's responsibility as stewards of historic properties is coordinated with other Forest Service program areas.
3. Provide guidance to regional staff directors with Heritage Program responsibility on the national Heritage Program priorities.

### **2360.45 – Federal Preservation Officer**

National Historic Preservation Act, Section 110(c) requires that the head of each agency designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this act. In the Forest Service, this designation is usually assigned to the National Heritage Program Leader. The Federal Preservation Officer has the responsibility to:

1. Represent the Chief in national programmatic consultation with the Advisory Council on Historic Preservation, the National Trust for Historic Preservation, the National Conference of State Historic Preservation Officers, and other historic preservation organizations to establish national priorities and program efficiencies.
2. Advise the Chief through the Director of Recreation, Heritage, and Volunteer Resources Staff, Washington Office on professional, technical, and regulatory matters relating to the Heritage Program.
3. Coordinate with other Federal bureaus, agencies, and departmental offices regarding cultural resource issues and opportunities.
4. Review and approve for the Chief's signature, National Historic Landmark and World Heritage Site nominations.
5. Coordinate with the Forest Service Office of Tribal Relations, which oversees the Tribal Government Relations Program, to ensure that government-to-government consultation related to cultural resources is consistent with direction provided in FSM 1563.

### **2360.46 – Regional Foresters, Station Directors, and Area Director**

Regional foresters, station directors, and Area Director have the authority and responsibility to:

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1. Implement and evaluate the Heritage Program within their area of authority including the identification of regional Heritage Program priorities.
2. Develop and execute programmatic agreements with the Advisory Council on Historic Preservation, State Historic Preservation Officers, and where appropriate, with Indian tribes and other historic preservation organizations to establish regional program efficiencies.
3. Conduct government-to-government consultation with American Indian and Alaska Native tribes as related to regional Heritage Program policies and issues.
4. Coordinate with the Tribal Government Relations Program to ensure that government-to-government consultation related to cultural resources is consistent with direction provided in FSM 1563.
5. Implement cultural resource awareness training for agency employees and provide technical direction to Forest Service Heritage Program personnel.

**2360.47 – Forest and Grassland Supervisors**

Forest and grassland supervisors have the authority and responsibility to:

1. Implement and maintain the Heritage Program within their area of authority, including staffing.
2. Develop public education and outreach programs under Windows on the Past.
3. Consult on forest and grassland plans and projects with State Historic Preservation Officers, Tribal, State, and local governments.
4. Execute forest and grassland-level programmatic and project agreements in compliance with National Historic Preservation Act.
5. Authorize contracts and agreements to accomplish Heritage Program work.
6. Issue Permits for Archaeological Investigations.
7. Implement protection and stewardship measures to safeguard, maintain, and use cultural resources.
8. Coordinate with Forest Service Law Enforcement and Investigations (LEI) to investigate and prosecute, if appropriate, unauthorized use, damage, alteration, or disturbance of cultural resources.

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9. Implement cultural resource awareness and technical training for forest and grassland employees.

**2360.48 – District Ranger**

District rangers have the authority and responsibility to:

1. Implement and maintain the Heritage Program within their area of authority, including staffing.
2. Implement Windows on the Past public education and outreach programs.

**2360.5 – Definitions**

To remain consistent with legislative language and other Federal and State agencies and historic preservation organizations, the following terms and acronyms occur throughout this chapter and are critical to understanding the following sections (ex. 01).

Agency Official. The line officer responsible for legal compliance and land management decisions. Refer to section 2360.4, exhibit 01 for the agency official responsible for specific Heritage Program activities.

Cultural Resources. An object or definite location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, places, or objects and traditional cultural properties. In this chapter, cultural resources include the entire spectrum of resources for which the Heritage Program is responsible from artifacts to cultural landscapes without regard to eligibility for listing on the National Register of Historic Places.

Heritage Assets. A Federal accounting term defined by the Federal Accounting Standards Advisory Board, as “property, plant, and equipment that are unique for one or more of the following reasons: historical or natural significance; cultural, educational, or artistic (for example, aesthetic) importance; or significant architectural characteristics.” This definition applies to all Federal accounting. The Forest Service has further defined Priority Heritage Assets as those heritage assets of distinct public value that are or should be actively maintained and meet one or more of the following criteria:

1. The significance and management priority of the property is recognized through an official designation such as listing on the National Register of Historic Places or on a State register.
2. The significance and management priority of the property is recognized through prior investment in preservation, interpretation, and use.

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3. The significance and management priority of the property is recognized in an agency-approved management plan.
4. The property exhibits critical deferred maintenance needs and those needs have been documented. Critical deferred maintenance is defined as a potential health or safety risk or imminent threat of loss of significant resource values.

Heritage Professional. A Forest Service staff or advisory position with education and expertise in archaeology, history, cultural resource management, or related disciplines. Heritage professionals are in the GS-170-History, GS-190-General Anthropology, and GS-193-Archaeology job series. They provide professional recommendations and services to help land managers meet their Heritage Program responsibilities.

Heritage Program. The comprehensive Forest Service program of responsibilities related to historic preservation. The purpose of the Heritage Program is to manage prehistoric and historic cultural resources for the benefit of the public through preservation, public use, and research.

Historic Properties. 36 CFR 800.16 defines historic properties as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

Indian Tribe. NHPA defines Indian tribe as “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.”

Inventory. The record of cultural resources known to occur within a defined geographic area. An inventory includes a compilation and synthesis of existing information and field surveys for evidence of past human activity. In areas where the ground surface is difficult to see, field survey may include subsurface probing to determine the presence or absence of cultural material.

Native Hawaiian Organization. NHPA defines Native Hawaiian organization as “any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to native Hawaiians.”

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Sacred Site. E.O. 13007 – Indian Sacred Sites, defines an Indian Sacred Site as “any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Indian tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”

Significant/Significance. Terms with legal and regulatory application in the National Historic Preservation Act and at 36 CFR part 60, which mean that a cultural resource meets the eligibility criteria for listing on the National Register of Historic Places because of its significance at the local, State, or national level.

Traditional Cultural Property. A cultural resource that is eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community. The entity evaluated for eligibility for inclusion in the National Register of Historic Places must be a tangible property; that is, a district, site, building, structure, or object as defined in 36 CFR 64.4.

Undertaking. National Historic Preservation Act, Section 301(7) defines undertaking as “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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal Agency.”

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**2360.5 – Exhibit 01**

**List of Abbreviations and Acronyms**

Abbreviations and Acronyms	Term
Advisory Council	Advisory Council on Historic Preservation
ARPA	Archaeological Resources Protection Act
GIS	Geographic Information System
Infra	Infrastructure. FS Integrated Data Management System
NAGPRA	Native American Graves Protection Act
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
NFS	National Forest System
NHL	National Historic Landmark
NHPA	National Historic Preservation Act
NPS	National Park Service
National Register	National Register of Historic Places
PIT	Passport in Time
SHPO	State Historic Preservation Officer
TCP	Traditional Cultural Property
THPO	Tribal Historic Preservation Officer



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### **2360.6 – Heritage Program Activities**

The study of cultural resources provides a broader understanding of past human interaction with the land. It helps guide actions that affect resources and the people who depend on them, and creates a sense of time and place for all who enjoy and depend on National Forest System (NFS) lands.

Heritage Program activities address three broad areas of responsibilities to:

1. Protect historic properties,
2. Share their values with the American people, and
3. Contribute relevant information and perspectives to natural resource management.

The agency official shall implement a program that addresses all three responsibilities and is carried out in consultation and cooperation with Federal and State agencies, Indian tribes, local governments, and other publics. Sections 2360.61 through 2360.64 describe, in general, the activities that guide agency officials in meeting these Heritage Program responsibilities.

#### **2360.61 – Coordination, Consultation, and Planning**

Coordination with communities, organizations, and individuals interested in historic preservation enables the agency to leverage support for mutually beneficial activities that protect and enhance cultural resources on NFS lands and encourage community economic development through heritage tourism.

Consultation with State, Tribal, and local governments and historic preservation organizations ensures that Federal agencies apply consistent criteria to protect cultural resources on lands they administer.

Consultation and coordination with cultural groups helps the Forest Service manage areas of traditional importance in a manner that honors and protects the Nation's cultural diversity.

Planning at all levels from strategic agency plans to individual historic property planning engages stakeholders through consultation and coordination to recommend the best treatment of historic properties that protects the resource and benefits the public.

#### **2360.62 – Identification, Evaluation, and Allocation to Management Categories**

Identification, evaluation, and allocation to management categories are the steps to:

1. Locate cultural resources;

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2. Evaluate their scientific, historical, or cultural significance; and
3. Recommend allocation of cultural resources to appropriate management categories that maximize their scientific and public benefits.

### **2360.63 – Protection and Stewardship**

Once historic properties have been identified and evaluated, protection measures eliminate, reduce, or mitigate harm to those properties that result from natural processes, illegal activities, overuse, and effects of Forest Service or Forest Service-authorized activities.

Stewardship is the recognition of cultural resources through official designations such as National Historic Site (listing on the National Register); National Historic Landmark (NHL); or other State, Tribal, and local designations. Implementation of Windows on the Past public education and outreach projects to interpret historic properties and provide public access to sites and information is part of cultural resource stewardship.

Stewardship results in tangible benefits such as a restored lookout tower, a stabilized and interpreted archaeological site, or a historic guard station now open as a visitor center.

### **2360.64 – Management of Heritage Collections and Information**

Field survey and testing result in collections of artifacts and archaeological materials that require proper preparation, storage, and management. Collections also include historic documents, photographs, maps, journals, and other Forest Service cultural resource records. It is important to ensure the long-term protection of these collections and their continued access and use by the Forest Service, other agencies, universities, Indian tribes, and the public. Annual upward reporting of Heritage Program accomplishments and heritage asset conditions is an internal accounting requirement. It provides Congress with Forest Service Heritage Program accomplishments through the Secretary of the Interior's Annual Report to Congress on the Federal Archaeology Program, which helps to secure necessary program funding and resources.

### **2360.7 – Program Funding Structure**

Identification, evaluation, allocation, protection, and stewardship are on-going activities necessary to appropriately care for and manage cultural resources for public benefit. This work is done under the authority of NHPA Section 110, ARPA, and the Historic Sites Act and is funded by the Forest Service Heritage Program.

When agency or agency-authorized undertakings have the potential to affect cultural resources, the focus of identification, evaluation, allocation, and protection narrows to the area of potential effect. Such project-driven work is done under the authority of NHPA Section 106 and is funded by the program that is proposing or authorizing the undertaking.

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## **2360.8 – Program Relationships**

### **2360.81 – Forest Service Tribal Government Relations Program**

The Forest Service Heritage and Tribal Government Relations Programs have areas of distinct and complementary legal responsibility. The Heritage Program is responsible for compliance with Federal historic preservation laws, executive orders, regulations and policy, including the protection, management, and stewardship of cultural resources and permitting of archaeological activities. The Forest Service Tribal Government Relations Program maintains responsibilities in the development, maintenance, and assurance of Forest Service and Tribal government-to-government relationships, cultural interests, sovereignty, treaty rights, self-determination, consultation, religious freedom, and other areas of Tribal concern (FSM 1563, FSH 1509.13).

Areas of separate but overlapping program responsibility include, but may not be limited to:

1. The identification and protection of Traditional Cultural Properties (TCPs) and Sacred Sites (E.O. 13007).
2. Compliance with different requirements in Native American Graves Protection Act (NAGPRA).
3. Archaeological and ethnographic research.
4. Forest Service activities that may affect cultural resources on a broad-scale such as fire management and burned-area emergency recovery.

Coordination between the Heritage and Tribal Government Relations Programs may occur during development or implementation of policy affecting either program.

### **2360.82 – Other Forest Service Programs**

Other agency programs and activities have the potential to affect cultural resources, which triggers the NHPA Section 106 consultation process described in FSM 2364.1. This relationship is one of heritage support to other resource programs and the goal is to avoid or minimize damage to historic properties as the result of agency activities.

Information derived from cultural resource survey, excavation, and other studies may provide baseline environmental data and temporal perspective important in agency land use analyses. Archaeological information about past fire regimes and changes in climate, flora, and fauna may provide essential contributions to understanding past and modern ecosystems. The Heritage Program also contributes significantly to the Forest Service Recreation and Conservation Education Programs through its interpretive, volunteer, and educational programs focused on cultural resources.

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## **2360.83 – External Relationships**

### **2360.83a – National Park Service**

The NPS under delegated authority from the Secretary of the Interior authorizes the National Register and the NHL programs, establishes regulations for State historic preservation programs and curation, and approves the designation and appointment of the State Historic Preservation Officer (SHPO) by the Governor of a state. The NPS establishes standards for, among other things, professional qualifications, historic structure restoration and rehabilitation, treatment of historic properties, and Federal agency responsibilities under NHPA Section 110. The NPS also gathers data from all Federal agencies and produces the Secretary of the Interior’s Annual Report to Congress on the Federal Archaeology Program, commonly referred to as “the DOI report.”

### **2360.83b – Advisory Council on Historic Preservation**

Established by NHPA, the Advisory Council is an independent Federal agency headquartered in Washington, DC, that promotes the preservation, enhancement, and productive use of the Nation’s cultural resources and advises the President and Congress on national historic preservation policy. By statutory authority, the USDA has a member seat on the Advisory Council. The Advisory Council conducts regular business review of NHPA responsibilities within Federal agencies, including, but not limited to, resource stewardship, public education, heritage tourism, Tribal relations, resource protection, and implementation of E.O. 13287 – Preserve America. NHPA Section 106 review disputes that cannot be resolved between the SHPO and the Federal agency are presented to the Advisory Council.

### **2360.83c – State Historic Preservation Officer**

Established by NHPA, the SHPO is the appointed official in each State responsible for fostering historic preservation programs at the local government level, nominating cultural resources to the National Register, creating preservation ordinances, and providing funds and technical assistance for preservation activities.

In compliance with NHPA, Federal agencies must seek the views of the appropriate SHPO when identifying historic properties and assessing effects of an undertaking on historic properties. Agencies also consult with SHPOs when developing both programmatic and project-specific memoranda of agreement. The SHPO and supporting professional staff are usually an agency within each State government.

### **2360.83d – Tribal Historic Preservation Officer**

The Tribal Historic Preservation Officer (THPO) is the Tribal official appointed by an Indian tribe’s chief governing authority or designated by a Tribal ordinance who has assumed the responsibilities of the SHPO for purposes of NHPA Section 106 compliance *on* Tribal lands in accordance with NHPA Section 101(d)(2). When Federal actions occur on reservation lands, the agency official consults the THPO rather than the SHPO.

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The THPO is not necessarily the primary Tribal contact for government-to-government consultation during NHPA 106 consultation on NFS lands, but may function as such if so indicated by the Indian tribe's governing authority. The agency official consults with both the THPO and the SHPO in such cases.

When an Indian tribe does not have a THPO designated under NHPA Section 101(d)(2) or chooses not to make their THPO the primary NHPA Section 106 point of contact, they designate Tribal representatives for that purpose. Those representatives may be cultural resource coordinators, cultural committees, or other designated Tribal representatives. Indian tribes may use the title "Tribal historic preservation officer" for their NHPA Section 106 point of contact, but that is not to be confused with THPOs designated per NHPA Section 101(d)(2).

Throughout this chapter, the term "Indian tribe" implicitly includes the representative designated by the appropriate tribal authority to be the point of contact for NHPA Section 106. That representative may be the THPO or other designated tribal representative as described above.

### **2360.83e – National Trust for Historic Preservation**

The National Trust for Historic Preservation is a private, nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest, and to further the national interest in historic sites. The National Trust for Historic Preservation has a member seat on the Advisory Council. Through the Public Lands Initiative, the National Trust for Historic Preservation supports Federal stewardship of cultural resources on public lands by educating the public about the importance of these resources, identifying ways to increase funding for their identification and protection, and ensuring compliance with existing historic preservation regulations and policies. The National Trust for Historic Preservation may conduct formal audits of Federal historic preservation programs.

### **2360.9 – Qualifications and Training**

#### **2360.91 – Forest Service Heritage Personnel**

Heritage Program personnel serve at all levels of the agency. They must meet the core competencies of the position for which they are hired in Agency Standard Position Descriptions.

1. Heritage Professionals (GS-170 historian, GS-190 anthropologist, and GS-193 archaeologist) serve in a staff or advisory capacity and provide professional recommendations and services to assist land managers in meeting their Heritage Program responsibilities including cultural resource identification (inventory), evaluation, allocation, protection, stewardship, curation, and reporting. Only heritage professionals may make management recommendations and review and recommend approval of heritage work done by archaeological technicians, paraprofessionals, contractors, cooperators, and volunteers.

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2. Archaeological technicians (GS-102 social science technician) may participate in all facets of the Heritage Program under the direct supervision of a heritage professional. The combination of responsibilities will change according to grade level.

3. Paraprofessionals are Forest Service employees who have primary responsibilities in other Forest Service resource programs and are assigned Heritage Program work as collateral duties on an as-needed basis. A Standard Agency Position Description does not exist for paraprofessionals. Paraprofessionals must have completed an in-house training and certification program. They may conduct field surveys under the direct supervision of a heritage professional or archaeological technician. A heritage professional must assign specific duties, approve reports, and accept professional responsibility for the paraprofessionals' work. The paraprofessional program is optional.

### **2360.92 – Non-Government Personnel**

Contractors, partners, cooperators, and consultants may conduct field surveys and make recommendations related to eligibility of cultural resources to the National Register.

The agency official retains responsibility for consultation with Indian tribes, THPO, SHPO, or the Advisory Council. Contractors, partners-cooperators, and third-party consultants must meet the professional qualifications standards in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

## **2361 – COORDINATION AND CONSULTATION**

### **2361.02 – Objectives**

The Forest Service objectives related to consultation and coordination are to:

1. Provide national leadership and direction in response to cultural resource and historic preservation policy, legislation, initiatives, issues, and partnership opportunities.
2. Improve management efficiency and effectiveness in response to regional cultural resource issues through consultation and coordination with State agencies, Tribes, historic preservation organizations, and other interested parties.
3. Increase and improve the protection and management of cultural resources on NFS lands through consultation and collaboration with Indian tribes, SHPOs, local communities, State and local governments, and other interested parties.

### **2361.03 – Policy**

It is the policy of the Forest Service to:

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1. Establish collaborative partnerships through formal agreements with national, regional, Tribal, and State organizations to improve preservation efforts and deliver public benefits.
2. Solicit Tribal, SHPO, local government, and public participation in development or revision of forest and grassland plans, project plans, and Heritage Program plans.
3. Identify heritage issues and opportunities in forest and grassland landscape, and Heritage Program plans through consultation with the SHPO, Indian tribes, local governments, applicants for Federal assistance, and other interested parties.
4. Develop national and regional programmatic agreements with the Advisory Council, SHPO, Indian tribes, and other interested parties to increase efficiency and consistency in cultural resource management.
5. Notify and consult directly with the SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, and additional parties with a demonstrated interest in the undertaking, under NHPA Section 106 or alternative procedures. This responsibility may not be assigned or delegated to a non-Federal party.
6. Cooperate with other Federal agencies to designate a lead Federal agency for NHPA Section 106 compliance for undertakings involving more than one Federal agency.
7. Maintain signatory status on any agreement involving NFS lands where another Federal agency has been designated the lead for NHPA Section 106 compliance on undertakings involving more than one Federal agency.

### **2361.1 – Program Coordination**

Programs are coordinated at the national, regional, and forest levels to implement the historic preservation activities outlined in NHPA Section 110. NHPA Section 110 requires Federal agencies to develop a program that ensures:

1. Historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register.
2. Historic properties are maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values.
3. Historic properties not under the jurisdiction or control of the agency, but potentially affected by agency or agency-authorized activities, are fully considered during planning.



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4. The agency's preservation-related activities are carried out in coordination with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector.
5. The agency's procedures for compliance with NHPA Section 106 follow the implementing regulations at 36 CFR 800.

The agency official may execute memoranda of understanding and cooperative agreements with partners to increase the capacity, visibility, efficiency, and effectiveness of the Forest Service Heritage Program including education and outreach initiatives. Partners may include, but are not limited to, the Advisory Council; National Trust for Historic Preservation; National Conference of SHPOs; National Association of THPOs; Indian tribes; Federal, State, and local governments and communities; and universities.

### **2361.2 – NHPA Section 106 Consultation**

When agency or agency-authorized undertakings have the potential to affect cultural resources, the focus of identification and evaluation of historic properties narrows to the area of potential effect. In such cases, NHPA Section 106 guides consultation.

36 CFR 800.2(c)(1-5) identifies consulting parties in the NHPA Section 106 process as:

1. The SHPO.
2. Indian tribes and Native Hawaiian organizations (including THPOs designated per NHPA Section 101(d)(2)).
3. Representatives of local governments.
4. Applicants for Federal assistance.
5. Additional consulting parties.

The Advisory Council oversees the operation of the NHPA Section 106 process and consults directly with agencies in certain situations.

### **2361.21 – Consultation With the State Historic Preservation Officer**

The agency official shall consult with the SHPO when:

1. Seeking review and comments for forest and grassland projects and programs in accordance with NHPA Section 106.



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2. Seeking a consensus determination of National Register eligibility for cultural resources in accordance with NHPA Section 106.
3. Developing program alternatives, such as substitute NHPA Section 106 compliance procedures and standards, through a programmatic agreement.
4. Addressing issues of mutual interest and concern such as data sharing protocols, historic preservation advocacy, and public education.

**2361.22 – Consultation With Indian Tribes**

36 CFR 800.2(c)(2) states that “consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty (...) and must recognize the government-to-government relationship between the Federal Government and Indian tribes. (...) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, Federal agencies must consult with such Indian tribes and Native Hawaiian organizations in the NHPA Section 106 process.” The term “Indian tribe” includes Alaska native corporations (see definitions at 2360.5). The appropriate Tribal contact for consultation may include:

1. Officials of federally recognized Tribal governments and Native Hawaiian organizations.
2. Tribal Historic Preservation Officers designated under NHPA Section 101(d)(2).
3. Staff members of Indian tribes and Native Hawaiian organizations such as resource specialists, cultural program managers, cultural committees, or other Tribal representatives designated by the appropriate Tribal authority as contacts for NHPA Section 106 purposes.
4. Traditional cultural or religious leaders and practitioners identified by officials of Tribal governments and Native Hawaiian organizations.

In some cases, it may also be appropriate to consult with individuals not currently affiliated with federally recognized Tribal governments. Individuals or groups with historic ties to the lands in question including those who are no longer locally resident, often have knowledge of traditional and cultural properties on NFS lands.

For Forest Service or Forest Service authorized undertakings occurring on or affecting historic properties on Tribal lands, the agency official shall consult with:

1. THPOs designated under NHPA Section 101(d)(2) in lieu of the SHPO, or

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2. A representative designated by an Indian tribe (in the case the tribe has not assumed SHPO functions under NHPA Section 101(d)(2)). In this case, the consultation will be in addition to the SHPO.

**2361.23 – Consultation With Representatives of Local Governments**

The agency official may consult with representatives of local governments that have jurisdiction over the area in which the effects of a Federal undertaking may occur.

**2361.24 – Consultation With Land Use Applicants**

The agency official may invite land use applicants (applicants for Federal assistance, permits, licenses, and other approvals) and their authorized representatives to participate in the NHPA Section 106 review process. The agency official may authorize a land use applicant and their authorized representatives to initiate the NHPA Section 106 process on behalf of the agency. In either case, the agency official retains responsibility for:

1. NHPA Section 106 consultation with the SHPO, Indian tribes, and other interested parties.
2. NHPA Section 106 consultation when an undertaking will have an adverse effect on cultural resources or where there is the potential for a foreclosure situation or anticipatory demolitions specified in NHPA Section 110(k) and 36 CFR 800.9.
3. Resolving disagreements between the applicant, licensee, or their representatives and the SHPO, Indian tribes, or other interested parties regarding identification, evaluation, or determination of effects.
4. Addressing objections from consulting parties or the public regarding findings and determinations, the implementation of agreed upon provisions, or their involvement in a NHPA Section 106 review.
5. Review, approval, and distribution of inventory reports and other documents prepared by applicants, licensees, or their representatives.

A Permit for Archaeological Investigations is required for consultants (contractors) working on NFS lands under contract with a land use applicant.

The agency official has final regulatory responsibility for compliance with and successful completion of NHPA Section 106 consultation.

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**2361.25 – Consultation With the Public and Other Interested Parties**

The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking, the likely interest of the public, confidentiality concerns of individuals or businesses, and any relationship to the Federal undertaking. This applies to individual undertakings as well as those addressed under a programmatic agreement.

The agency official shall:

1. Identify the appropriate points in the consultation process for notifying the public of proposed actions and for seeking public input.
2. In consultation with SHPO, identify and invite any other consulting parties entitled to participate in the NHPA Section 106 process.
3. Provide an opportunity for members of the public to express their views related to project effect findings and resolution of adverse effects. Depending on the nature and complexity of the undertaking, this may be a Federal Register Notice, public meeting, or informal consultation.

**2361.26 – Consultation With the Advisory Council on Historic Preservation**

The agency official shall notify the Advisory Council on Historic Preservation when:

1. An undertaking will have an effect upon a historic property and
2. The agency is beginning consultation to resolve adverse effects.

The agency official shall consult with the Advisory Council when:

1. The SHPO, an Indian tribe or Native Hawaiian organization, or any other consulting party invites the Advisory Council and the Council agrees to participate in the consultation; or
2. The Advisory Council elects to enter consultation on its own behalf.

The agency official shall invite the Advisory Council to consult when:

1. The Forest Service is proposing and developing program alternatives for compliance with NHPA Section 106 under 36 CFR 800.14 (FSM 2364.11);
2. The agency cannot reach agreement with the SHPO, Indian tribes, or other consulting parties on the effects on historic properties; or
3. Resolution of adverse effect involves a NHL.

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### **2361.27 – Termination of Consultation**

The agency official may decide to terminate consultation only after the agency has made a good faith effort to provide opportunities for all interested parties and Indian tribes to consult in the NHPA Section 106 process and the agency official determines that further consultation will not be productive. If the agency official decides to terminate consultation, the Chief or another official with major departmentwide or agencywide responsibilities must request the Advisory Council comment on the termination. The Advisory Council has 45 days to respond, after which the Chief shall consider Advisory Council comments and document the rationale for the agency's proposed actions in response to the comments.

### **2361.3 – Native American Graves Protection and Repatriation Act Consultation**

NAGPRA provides a process for the repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations. It does not address reinterment of repatriated items. For issues regarding reinterment, the responsible official should coordinate with the Tribal Government Relations Program (FSM 1563 and FSH 1509.13).

In NAGPRA, Congress explicitly recognizes the special information and expertise available from American Indian and Alaska Native tribes, Native Hawaiian organizations, traditional American Indian religious leaders, and lineal descendants. The agency official shall conduct government-to-government consultation with Indian tribes and Native Hawaiian organizations related to NAGPRA in accordance with 43 CFR part 10. NAGPRA consultation includes:

1. Inventories and summaries of existing collections.
2. Notifying Indian tribes of planned activities that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony.
3. Unanticipated discoveries of human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Consulting parties under NAGPRA include:

1. Known lineal descendants and Indian tribe officials.
2. Indian tribes on whose aboriginal lands the planned activity will occur or where the unanticipated discovery has been made.
3. Indian tribes and Native Hawaiian Organizations that are, or are likely to be, culturally affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony.

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4. Indian tribes and Native Hawaiian Organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

### **2361.4 – Protecting Sensitive Information**

See FSM 2368.1. Consultation commonly results in sharing culturally sensitive information. Several laws provide for protection of sensitive information from public disclosure.

The Freedom of Information Act allows the public to seek disclosure of Federal agency information, but also requires agencies to protect some classes of material from disclosure including documents that are not formal products of the agency or official correspondence (5 U.S.C. 552(b)(3)).

NHPA Section 304(a) states: “[Agency officials] after consultation with the Secretary of the Interior, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic property if [they] determine that disclosure may cause a significant invasion of privacy, risk harm to the historic resource, or impede use of a traditional religious site by practitioners.”

ARPA, Section 9 prohibits the release of information about the nature and location of archaeological resources unless the Federal land manager determines that disclosure would both further the purposes of the act and would not create a risk of harm to the resources. ARPA also provides for the sharing of such information with State governments upon written request and the provision of adequate protection of such resources.

### **2361.5 – Compensation**

The Forest Service is not required to compensate any entity for consultation required by law, regulation, or other authorities, where the consultation is part of administrative processes designed to protect the interests of the consulting entity. The agency official should accommodate participation when and wherever possible by holding meetings at locations convenient to interested parties such as on or near Indian reservations or tribal offices.

The agency official may compensate individuals and groups including Indian tribes if the agency is requesting information for which they would normally pay, such as information obtained through consultants about site-specific archaeological or ethnographic data. Such data is obtained to aid in evaluating cultural resource significance and determining potential project effects. For specific direction related to acceptable forms of compensation, see FSH 1509.13.

### **2362 – PLANNING**

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## **2362.02 – Objectives**

The Forest Service objectives related to planning are to:

1. Integrate Forest Service Heritage Program priorities with Federal, State, Tribal, and local government historic preservation and heritage tourism planning, and with other Federal agencies and historic preservation organizations.
2. Integrate cultural resource issues and opportunities in all facets of land use planning on NFS lands.
3. Implement Heritage Program planning to benefit the long-term management of Priority Heritage Assets and other historic properties on NFS lands.

## **2362.03 – Policy**

It is the policy of the Forest Service to:

1. Coordinate with Federal agencies and historic preservation organizations to inform and influence Federal historic preservation planning policies, goals, initiatives, and strategies.
2. Incorporate Forest Service Heritage Program goals, objectives, priorities, and opportunities in National and Regional strategic plans.
3. Implement Heritage Program planning on all NFS lands in order to:
  - a. Identify priority heritage assets,
  - b. Recommend allocation of cultural resources to management categories,
  - c. Develop historic preservation (management) plans, and
  - d. Guide implementation of compliance, protection, and stewardship activities.
4. Incorporate Heritage Program goals, objectives, desired outcomes, and standards and guidelines in forest and grassland landscape-watershed, and project planning.
5. Solicit the views of the SHPO, Advisory Council, Indian tribes, other Federal agencies, State, and local governments, concerned ethnic groups, and other interested parties in forest and grassland, landscape-watershed, project, and Heritage Program planning.

Implement cultural resource monitoring for all levels of land use and project planning.

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### **2362.1 – External Planning Coordination**

The agency official should coordinate with historic preservation planning efforts of other Federal agencies, Tribal, Federal, State, and local governments, as well as special interest groups such as historical societies. The agency official should identify partnership opportunities to achieve planning efficiencies and cost savings. Traditional partners include the Advisory Council, National Trust for Historic Preservation, SHPOs, and Indian tribes.

The agency official should also include organizations such as the Resource Advisory Committees, State and local special interest groups, and certified local governments.

### **2362.2 – Heritage Program Integration Into Forest Service Planning**

1. Agency Strategic Plans. The Federal Preservation Officer, regional Heritage Program leaders, and heritage professionals should provide information to support Heritage Program priorities, directives, and initiatives in agency strategic plans.
2. Forest and Grassland Plans. Development or revision of a forest and grassland plan involves heritage professionals, SHPO, Advisory Council, Indian tribes, local governments, and other interested parties as appropriate. The development and revision of a Forest Cultural Resource Overview is usually a critical part of forest and grassland planning.
3. Landscape-Watershed Plans. Landscape-Watershed Plans should identify all known cultural resources within the plan area and identify their management potential (FSM 2363.3). Cultural resource data may contribute to the understanding of historic land use and vegetation patterns within the plan area. Heritage information pertinent to landscape planning includes a synthesis of existing cultural resource information (Cultural Resource Overviews); Tribal, State, or local inventories; and may include some level of field survey (FSM 2363.13).
4. Forest Service Program Plans. Other program planning may include activities or projects with the potential to affect cultural resources, including, but not limited to recreation, facilities, range, vegetation, and wilderness management. Program managers have the responsibility to notify the heritage professional of such planning activities and ensuing projects to ensure timely NHPA Section 106 support. Cultural resource management goals, objectives, and compliance requirements should be included in these other program plans where there is the potential to affect cultural resources.
5. Forest Service Project (Undertaking) Plans. Cultural resource information required for project plans includes inventory (existing record review and usually a field survey), and consultation with SHPO, Indian tribes, local governments, land use applicants, and other interested parties (36 CFR 800.2(c)). FSH 1909.15 describes the data required under NEPA. The decision maker should have adequate cultural resource information to consider potential effects of the proposed undertaking on historic properties.

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### **2362.3 – Heritage Program Planning**

Heritage Program planning occurs at the national, regional, forest, and, in some cases, ranger district levels and should establish goals, objectives, and desired outcomes for the Forest Service Heritage Program in three primary areas: cultural resources stewardship, public service, and facilitating natural resource management.

Heritage Program planning for NFS lands should include:

1. A synthesis of known cultural resources, traditionally known as a Cultural Resource Overview.
2. A synthesis of projected cultural resource numbers, types, and locations based on predictive modeling, site identification strategies, and known cultural resources.
3. Goals and objectives for managing cultural resources with projected annual accomplishments through preservation, research, education, interpretation, and tourism.
4. Annual monitoring targets to assess site conditions and to measure success of treatment or mitigation measures.
5. Protocols for responding to unanticipated discovery of cultural resources or human remains, as required by NAGPRA.
6. Protocols for responding to damage to or theft of cultural resources.
7. Direction for the protection of cultural resources that are vulnerable to catastrophic fires or other natural or human-caused damage.

### **2362.4 – Historic Property Plans**

Heritage professionals should prepare historic property plans for highly significant historic properties with an emphasis on Priority Heritage Assets. These plans document:

1. The existing resource condition.
2. Management goals, objectives, and desired future condition.
3. Maintenance standards and guidelines.
4. Needed actions.
5. Proposed budget.
6. Timeframes and schedules.



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Plan development may require an interdisciplinary process to ensure that management standards and guidelines comply with NHPA, NEPA (see FSH 1909.15), and other applicable laws.

### **2362.5 – Heritage Program Monitoring**

The agency official is responsible for:

1. Ensuring compliance with cultural resource standards and guidelines in forest and grassland plans.
2. Assessing the quality and effectiveness of Heritage Program activities, including compliance with stipulations in programmatic agreements.
3. Evaluating the effectiveness of project field methods and cultural resource treatments and/or mitigation.

## **2363 – IDENTIFICATION, EVALUATION, AND ALLOCATION TO MANAGEMENT CATEGORIES**

### **2363.02 – Objectives**

When identifying, evaluating, and recommending management of cultural resources, the Forest Service objectives are to:

1. Identify and document cultural resources that are historically important and that represent the history and cultural diversity of the United States.
2. Evaluate cultural resources to determine their scientific, historical and/or cultural values; eligibility for inclusion on the National Register; and potential for National Historic Landmark status or other special designations.
3. Recommend allocation of cultural resources to management categories that preserve and protect those attributes that make them archaeologically, historically, or culturally significant and that maximize their agency and public benefit.

### **2363.03 – Policy**

It is the policy of the Forest Service to:

1. Develop and implement a program and schedule to complete an inventory of cultural resources on all NFS lands in accordance with NHPA, ARPA, and E.O. 11593.

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2. Use landscape sensitivity, cultural resource probability, or similar predictive models or methods to assess cultural resource potential for land use and cultural resource planning and management.
3. Complete the appropriate level of cultural resource identification (inventory) during agency planning and for all agency and agency-permitted projects following regional guidelines or protocols and standards in programmatic agreements.
4. Inventory and document areas that may be affected by agency or agency-permitted undertakings by the methods and at a level commensurate with the nature of the proposed undertaking and its likely effects on cultural resources.
5. Complete National Register eligibility evaluations in conjunction with inventory or at the earliest stages of land use planning.
6. Communicate with appropriate cultural groups about cultural resources and areas of religious or traditional importance as part of the identification and evaluation process.
7. Recommend allocation of cultural resources to management categories that protect their scientific, historical, and cultural significance, and that maximize their existing or potential agency and public benefit.

### **2363.1 – Cultural Resource Identification**

The agency official is responsible for identification of historic properties on any NFS lands likely to contain cultural resources and on NFS lands subject to the effect of Forest Service or Forest Service-authorized undertakings.

NHPA Section 110, ARPA Section 14, and E.O. 11593 direct Federal agencies to identify historic properties under the jurisdiction or control of the agency. ARPA refers to archaeological resources specifically and requires the agency official to develop a schedule for survey of lands likely to contain the most scientifically valuable archaeological resources.

NHPA Section 106 and the implementing regulations at 36 CFR part 800 direct Federal agencies to identify historic properties within the area of potential effect of a Forest Service or Forest Service-authorized undertaking.

The following identification procedures are based on 36 CFR part 800, but are also applicable to identification of all historic properties as directed by NHPA, ARPA, and E.O. 11593.

#### **2363.11 – Determining Identification Needs**

The agency official shall make a good faith effort to identify (inventory) historic properties on NFS lands. The level of effort required to identify historic properties within a planning or project area varies and, at a minimum, must be sufficient to implement plans or activities without damage to historic properties and to meet SHPO requirements for NHPA Section 106 review.

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At the earliest feasible stage of land use planning or environmental review, the heritage professional shall determine what information and measures are necessary to adequately identify historic properties in the planning area or the undertaking's area of potential effect.

The sources of cultural resource information include, but are not limited to:

1. Cultural resource field survey and site record databases (Infra, GIS).
2. Cultural Resource Overview.
3. Local environmental, archaeological, and historical information.
4. Landscape sensitivity-predictive models and site identification strategies.
5. Information from American Indian and Alaska Native tribes.
6. Information from interested persons familiar with the planning area.
7. SHPO consultation and record searches.

The heritage professional should develop landscape sensitivity-predictive models or site identification strategies to help inform NFMA and NEPA planning responsibilities and NHPA compliance requirements. Predictive models, aerial photography, satellite imagery, and similar technologies increase planning efficiency and effectively target areas for field survey. The use of landscape sensitivity-predictive models to comply with NHPA Section 106 in the absence of field surveys must be considered on a project-basis in consultation with the SHPO.

### **2363.12 – Existing Data Review**

An existing data review, sometimes referred to as a literature search, is a compilation of existing information from the Cultural Resource Overview, previous surveys/inventories, site records, historic land use maps, and other documents specific to a planning or project area.

An existing data review is part of the initial phase of land use planning and the first step in determining if a proposed undertaking has received adequate field investigation in the past or if additional survey is needed.

### **2363.13 – Field Survey**

Depending on cultural resource identification needs under NHPA Section 110 or ARPA Section 14 and/or the type and scope of land use planning or undertaking triggering NHPA Section 106 compliance, different intensities of field survey are appropriate.

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Forest Service heritage professionals, archaeological technicians, and paraprofessionals under appropriate supervision conduct field surveys. Qualified contractors or cooperators may also conduct field surveys according to a design developed or approved by the heritage professional.

The heritage professional shall determine the intensity of field survey appropriate to meet the needs of the program or activity triggering the survey.

**2363.13a – Reconnaissance Survey**

The heritage professional may implement a non-statistical, special-purpose reconnaissance survey to:

1. Develop recommendations about field survey needs in previously un-surveyed areas.
2. Check the adequacy of previous surveys.
3. Verify assumed conditions that warrant a waiver of more intensive survey.
4. Locate architectural or other high-profile properties.

Reconnaissance survey is appropriate as part of landscape assessments that NFMA requires.

**2363.13b – Sampling Survey**

The heritage professional may implement a statistically based sampling survey of less than 100 percent of the area of potential effect defined for a project to:

1. Aid in characterizing the probable density, diversity, and distribution of cultural resources.
2. Develop and test predictive models.
3. Answer appropriate research questions.

Sampling survey is the initial step in a phased program of existing data review and field survey to evaluate alternatives for a project area undergoing NEPA analysis.

**2363.13c – Intensive Survey**

The heritage professional may implement a complete pedestrian examination of an entire project area of potential effect to locate and record all cultural resources. Survey methods vary from State to State but should conform to the prevailing professional standards for the region involved and/or comply with the requirements of a forest and grassland cultural resource inventory or site identification strategy.

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Intensive survey of the selected alternative is usually the final phase of cultural resource identification for projects undergoing NEPA analysis, documentation, and public review.

**2363.14 – Subsurface Probing During Field Survey**

Heritage professionals and archaeological technicians may employ trowel, shovel, auger, or other subsurface probing methods as an essential element of field survey to determine the presence or absence of cultural resources in areas obscured by dense vegetation, rapid soil accumulation, dune activity, or other natural processes or human-caused disturbances.

Subsurface probing is a standard cultural resource discovery technique in some Regions. Where probing is a standard survey practice, the agency official shall ensure that an unanticipated discovery protocol is in place (FSM 2362.3) should human remains be encountered, and that cultural resource materials recovered are treated in accordance with regional or forest and grassland field collection standards.

In contrast to subsurface probing, which is intended to determine the presence or absence of cultural material, test excavation is intended to evaluate the significance of known cultural resources (FSM 2362.2). Test excavations may be done in conjunction with standard field surveys when site evaluations are stipulated in a programmatic agreement, as part of project-level inventory, in a program of agency-sponsored archeological investigations, or in conjunction with a Permit for Archaeological Investigations.

**2363.15 – Conditions Under Which Field Survey May Be Waived or Modified**

The agency official, in consultation with the SHPO and Indian tribes as appropriate, may modify or waive field survey requirements when any one of the following conditions is present:

1. Past natural or human-caused ground disturbance has modified the surface so extensively that the likelihood of finding evidence of cultural resources is negligible.
2. Existing inventory data and landscape-sensitivity-predictive models are sufficient to indicate that the specific environmental situation did not support human occupation or use to a degree that would make further field survey information useful or meaningful.
3. The type of undertaking or the environmental setting is exempted from field survey under the terms of a programmatic agreement. Protocols in programmatic agreements may require some type of documentation for projects where field survey has been waived for any specified reason.

**2363.16 – Survey Documentation**

The heritage professional shall complete documentation of a field survey, including at a minimum:

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1. Existing data review.
2. Description of field survey methods.
3. Description of identified cultural resources (including site record forms).
4. Survey coverage and cultural resource maps.
5. Photographs.
6. Oral histories if available, including Traditional Cultural Property and Sacred Site information as appropriate.
7. Artifact collections and catalogues.

**2363.17 – Identifying Traditional Cultural Properties and Sacred Sites**

Sacred sites and Traditional Cultural Properties (TCPs) both have religious and/or traditional importance to individuals or cultural groups. Both may be difficult to identify using standard field survey methods and both require consultation with cultural groups. The difference is not in their importance, but rather under which authority they are managed and how they are identified. See FSM 2360.5 for TCP and sacred site definitions.

TCPs are managed under the authority of the NHPA. They are, by definition, eligible for listing on the National Register and must be a tangible property – that is, a district, site, building, structure, or object as defined in 36 CFR 64.4. To identify TCPs, the agency official should seek the advice of cultural groups that may ascribe significance to a place and coordinate with the Tribal Government Relations Program in the case of TCPs important to Indian tribes. Once listed on the National Register, information about a TCP becomes public.

Sacred sites important to Indian tribes are managed under the authority of E.O. 13007 – Indian Sacred Sites. It is the responsibility of an Indian tribe or an Indian individual to identify sacred sites. The Forest Service Tribal Government Relations Program has the lead on identification of Sacred Sites and the responsible official may seek the advice of heritage professionals. See FSM 1563.

Sacred sites must be specific, narrowly delineated locations, but unlike TCPs, sacred sites do not necessarily have to have tangible features. The National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible. See FSM 1563 for guidance on the identification of sacred sites and considerations regarding management actions that may affect sacred sites.

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Sacred sites and TCPs are not mutually exclusive. The definition of sacred site is broader than that for TCP as it does not specify that there be a tangible property. A sacred site that does include a tangible property that is eligible for the National Register is both a sacred site and a TCP. In this case, the agency official should manage the property under both NHPA and E.O. 13007 and ensure appropriate protection measures.

### **2363.2 – Cultural Resource Evaluation**

The agency official is responsible for evaluating cultural resources for National Register eligibility on a systematic and timely basis. When feasible, the heritage professional should complete evaluations during inventory or shortly thereafter (36 CFR part 60) to avoid creating a backlog of unevaluated cultural resources. During project planning, evaluation of National Register eligibility is the basis for determining project effects in accordance with 36 CFR 800.5 and will ensure that the each historic property's physical characteristics, content, and significance are clearly understood for project or long-term management purposes.

#### **2363.21 – Evaluation Procedures**

Forest Service heritage professionals or qualified contractors or cooperators shall complete cultural resource evaluations according to an evaluation design, plan, or strategy developed or approved by the heritage professional. The agency official should adequately plan, schedule, and fund evaluations that involve standard archaeological and historical research methods.

The agency official shall submit a Determination of Eligibility Statement for evaluated cultural resources to the SHPO through consensus procedures in 36 CFR part 800 or the Keeper of the National Register through procedures in 36 CFR part 63.

#### **2363.22 – Unevaluated Cultural Resources**

The agency official shall treat all cultural resources as National Register-eligible properties until a formal evaluation of significance is completed and the SHPO and/or Keeper of the National Register have been provided the opportunity to review and comment.

#### **2363.23 – Cultural Resources Not Eligible to the National Register**

If the SHPO or Keeper of the National Register formally concurs that a cultural resource is not eligible for listing on the National Register, the agency official may release it from management under NHPA or choose to retain, protect, and manage it for some other purpose (FSM 2363.31d).

#### **2363.24 – Evaluating Traditional Cultural Properties and Sacred Sites**

1. Traditional Cultural Property. A heritage professional should evaluate a TCP for eligibility for the National Register and may request the assistance of a Tribal Government Relations Program specialist in making that determination. A TCP may be eligible for the National Register because of its association with cultural practices or

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beliefs of a living community that (1) are rooted in that community's history, and (2) are important to maintaining the continuing cultural identity of the community. TCPs are specific, definite places that figure directly and prominently in a particular group's cultural practices, beliefs, or values, when they:

- a. Are shared widely within the group,
  - b. Have been passed down through the generations,
  - c. Have served a recognized role in maintaining a group's cultural identity for the last 50 years, and
  - d. Are eligible for listing on the National Register.
2. Sacred Sites. Sacred Sites are not subject to the regulatory provisions of NHPA unless they are associated with a historic property (FSM 2363.17). See FSM 1563 for guidance on the evaluation of sacred sites and considerations regarding management actions that may affect sacred sites.

### **2363.3 – Allocation of Cultural Resources to Management Categories**

Cultural resources do not all share equal value, nor do all historic properties share the same significance or management potential. The purpose of allocation of cultural resources to management categories is to identify the unique values and recommend management that protects and enhances those values for agency and public benefit. It is not an action, but rather a recommendation for the best use and treatment of a cultural resource to realize its greatest scientific, traditional, historical, and management potential.

The agency official shall recommend allocation of cultural resources, including Priority Heritage Assets (FSM 2368), to one or more of the following management categories.

When making an allocation recommendation, the agency official should consider management feasibility and all facets of the cultural resource, including but not limited to its location, condition, sensitivity to cultural groups, and vulnerability to natural or human-caused damage.

The agency official should re-evaluate and revise cultural resource management allocation recommendations as appropriate when circumstances change and new information becomes available.

#### **2363.31 – Management Categories**

Management categories reflect the primary value of a cultural resource (cultural/traditional, scientific, interpretive, or continued use).



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Generally, cultural resources recommended for allocation to a management category are eligible for listing on the National Register. However, it is possible to recommend management of a cultural resource that is not eligible. For example, the agency official may choose to interpret a homestead cabin in an area frequently visited by hikers, even though the cabin is not eligible for listing on the National Register. In this case, the agency official would recommend allocation of the cabin to the “Enhancement” management category.

**2363.31a – Preservation**

Preservation is appropriate for cultural resources whose primary value warrants protection in place. The management focus of cultural resources in this category is preservation and protection. This category includes, but is not limited to:

1. Properties or areas that are important to a specific group’s traditions or religions (TCP and Sacred Site).
2. Cultural resources that are exceptionally unique or extraordinarily valuable.
3. Cultural resources that may have future scientific potential.

**2363.31b – Enhancement**

Enhancement is appropriate for cultural resources that have the potential to provide public educational, informational, or recreational benefits above all other uses. The management focus is sustainable use (historic administrative sites), adaptive reuse (historic cabin and lookout rentals), interpretation, and other development that benefits agency management and public use of cultural resources.

**2363.31c – Scientific Investigation**

Scientific investigation is for cultural resources whose primary value is in their ability to reveal information about past human cultures and environments above all other uses. This category includes cultural resources suitable for data extraction through various research methods and experimental studies that have broader management benefit. The management focus is preservation, protection, and research.

**2363.31d – Release From Management Under NHPA**

The agency official may release those cultural resources that have negligible scientific, historic, cultural, or interpretive value and that are not eligible to the National Register. This includes:

1. Cultural resources whose research potential is effectively exhausted as soon as they have been documented.

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2. Historic properties that have had their salient information collected and preserved through mitigation.
3. Historic properties destroyed by any natural event or human activity.

Cultural resources released from management under NHPA may still be protected from theft, vandalism, disturbance, and unauthorized uses under both 36 CFR part 261 and ARPA (for archaeological resources over 100 years old).

**2363.32 – Management Prescriptions [Reserved]**

**2364 – PROTECTION AND STEWARDSHIP**

**2364.02 – Objectives**

The Forest Service objectives related to cultural resource protection and stewardship are to:

1. Protect cultural resources in a manner consistent with their National Register qualities and management allocations.
2. Avoid or minimize the effects of Forest Service or Forest Service-authorized land use decisions and management activities on cultural resources.
3. Safeguard cultural resources on NFS lands from unauthorized or improper uses and environmental degradation.
4. Mitigate adverse effects to historic properties when it is impossible or impractical to maintain them in a non-deteriorating or threatened condition.
5. Recognize archaeologically, historically, or culturally significant properties and landscapes through formal National Register, NHL, and other special designations.
6. Develop, interpret, and use cultural resources for the public benefit under the framework of Windows on the Past.

**2364.03 – Policy**

1. Protection. It is the policy of the Forest Service to:
  - a. Ensure that land use decisions and management practices do not have an inadvertent adverse effect on the characteristics that qualify cultural resources for listing on the National Register or on the uses determined appropriate through the evaluation and allocation processes.

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- b. Determine whether proposed Forest Service or Forest Service-permitted undertakings will have effects on National Register listed or eligible properties and take those effects into account in land use decisions, following the procedures set forth in 36 CFR part 800, or national, regional, or State programmatic agreements that are applicable to the undertaking proposed.
  - c. Consult with the SHPO, Indian tribes, Advisory Council, and the interested public about proposed land use decisions and their potential effects on cultural resources, in accordance with 36 CFR part 800 or national, regional, or State programmatic agreements that are applicable to the undertaking proposed.
  - d. Monitor, assess, and document the physical conditions of and human or environmental threats to National Register eligible or listed historic properties on a frequent and systematic basis.
  - e. Implement management treatments that protect, conserve, stabilize, rehabilitate, restore, and enhance cultural resources based on their National Register qualities and values, their importance to cultural groups, and their recommended management allocation.
  - f. Integrate law enforcement in cultural resources monitoring, protection, and investigation of human-caused disturbance, destruction, or theft.
  - g. Create public education and awareness programs under the Windows on the Past program and pursuant to ARPA Section 10(c).
  - h. In coordination with the Tribal Government Relations Program, treat American Indian human remains recovered from public lands in strict accordance with the requirements of NAGPRA and 43 CFR part 10, and any applicable State laws. Coordinate with the Tribal Government Relations Program to implement requests for reburial of remains on NFS lands (FSM 1563.3).
  - i. Follow State law or the “Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects,” for reburial of non-Indian remains.
2. Stewardship. It is the policy of the Forest Service to:
- a. Complete National Register and NHL nominations and seek other special designations as appropriate for historic properties in collaboration with State and local governments, other agencies, Indian tribes, and interested historic preservation organizations.

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- b. Develop and implement preservation-related programs to recognize, enhance, restore, interpret, and use National Register eligible or listed properties in accordance with their management allocations.
- c. Conduct stewardship-related activities in consultation and involvement with other Federal, State and local agencies, Indian tribes, historic preservation organizations, interested parties, and the private sector.
- d. Develop historic property plans (FSM 2362) for National Register-eligible or listed historic districts, properties, or property types to establish short- and long-term stewardship goals (desired conditions), proposed treatments, funding needs, and work schedules.
- e. Establish partnerships with the public and private sector to achieve stewardship goals and enhance capacity to meet public education and outreach goals (FSM 2365).

**2364.1 – Protection From the Effects of Agency and Agency-Authorized Actions**

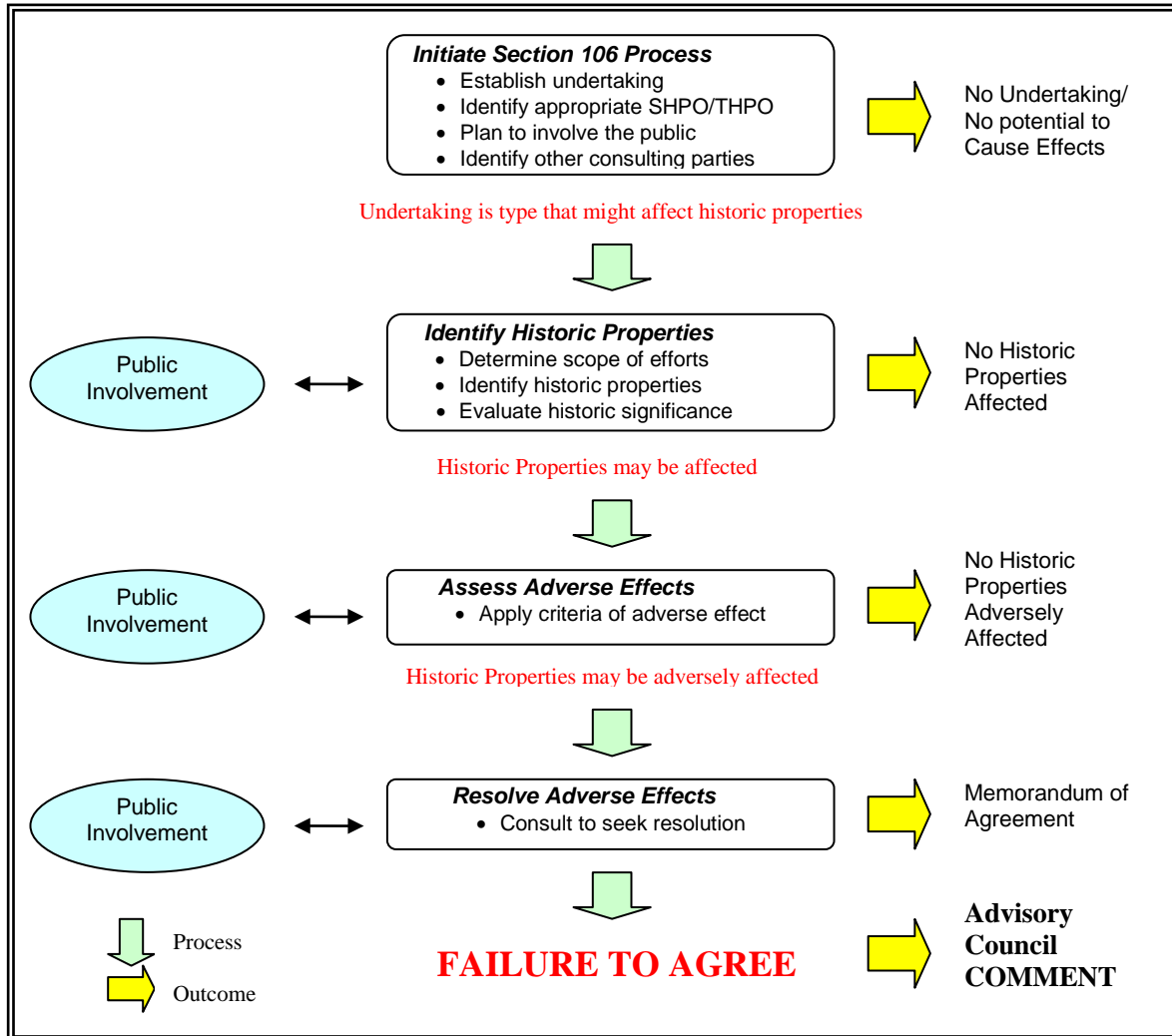
NHPA Section 106 requires that “the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.” Compliance with NHPA Section 106 is a Federal agency responsibility that cannot be delegated or transferred to a non-Federal party.

The primary participants in the NHPA Section 106 review process are the agency official (forest supervisor), SHPO, Indian tribes, representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; and additional consulting parties including the public. The Advisory Council oversees the process and intervenes in certain situations (ex. 01). 36 CFR 800.2 defines all the roles. See also FSM 2361.2.

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**2364.1 – Exhibit 01**

**NHPA Section 106 Compliance and Review Process Flow Chart**



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**2364.11 – NHPA Section 106 Standard Procedures**

The agency official will ensure that the heritage professional in consultation with the SHPO, Indian tribes, and other consulting parties identifies, evaluates, and assesses the effects of proposed Forest Service or Forest Service-authorized actions on cultural resources as follows:

1. Determine whether a proposed action meets the definition of an undertaking in NHPA Section 301(7) and whether the undertaking has the potential to affect historic properties.
2. Determine the undertaking's geographic area of potential effect.
3. Review existing cultural resource information and seek additional information as necessary to assess the effects of the proposed undertaking on cultural resources that may be present in the area of potential effect.
4. Make a reasonable and good faith effort to identify cultural resources that may be affected by the undertaking, taking into account the nature of the undertaking and the nature and degree of potential effects. Identification efforts (archival research, informant interviews, existing record searches, and field surveys) should be scaled to the potential impact of the proposed project and may be carried out in phases beginning early in the planning process.
5. Evaluate the eligibility of identified cultural resources within the area of potential effect for listing on the National Register, in accordance with criteria in 36 CFR 60.4.
6. Document negative findings through standard NHPA Section 106 consultation with the SHPO or according to procedures in programmatic agreements. If no historic properties are identified and documented, and the SHPO and other consulting parties agree with the documentation, NHPA Section 106 compliance requirements have been met.
7. Apply the Criteria of Adverse Effect in 36 CFR 800.5(1) to National Register-eligible or listed historic properties within the project area of potential effect.
  - a. No historic properties affected: When National Register listed or eligible properties within the area of potential effect will not be affected by the proposed undertaking, this finding is documented and provided to the SHPO, Indian tribes, and other consulting parties as appropriate, under NHPA Section 106 or procedures in a programmatic agreement.
  - b. Historic properties affected: If a historic property(s) will be affected, or if the SHPO or Advisory Council objects to the finding of no effect, apply the Criteria of Adverse Effect in 36 CFR 800.5(1) to determine whether the effect of the undertaking should be considered adverse.

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8. A finding of no adverse effect is appropriate if, during consultation with the SHPO, the effect of the undertaking on historic properties is found not to be adverse because the criteria of adverse effect do not apply, the undertaking is modified to avoid adverse effects, or conditions are imposed that would avoid adverse effects. Notify all consulting parties and provide documentation of finding. Implement the undertaking if the SHPO agrees or there are no objections raised within 30 days of receipt of documentation.
9. If the effect of the undertaking on historic properties is found to be adverse and if the agency official decides to proceed with the undertaking, consult with the SHPO and other consulting parties to develop, evaluate, and implement treatments to avoid, reduce, or mitigate the adverse effects. The agency official shall notify the Advisory Council. The Advisory Council will decide if it will participate according to 36 CFR part 800, Appendix A.
10. If there is adverse effect to a National Historic Landmark, the agency official shall notify the Secretary of the Interior and invite the Secretary and the Advisory Council to participate in consultation.
11. The SHPO or any of the consulting parties may request the Advisory Council to participate in consultation on adverse effects. The Advisory Council must notify the agency official within 15 days whether or not it will participate.
12. When a proposed undertaking or an existing land use has the potential to adversely affect a National Register eligible or listed historic property, the agency official shall ensure that appropriate treatments are:
  - a. Forest Service-formulated or Forest Service-approved.
  - b. Commensurate with the nature and significance of the cultural resources involved and the extent of possible impacts, and
  - c. Substituted for standardized treatments in programmatic agreements for specific property types, when applicable.
13. When avoidance through redesign of the undertaking is imprudent or infeasible, the agency official should consider a range of physical and administrative conservation measures. Physical conservation measures that maintain the historic property's integrity are preferable to relocation and data recovery.
14. When cultural resources that are significant for research purposes cannot be preserved in place, data recovery may reduce the loss of research potential. Heritage professionals shall prepare data recovery plans in accordance with the Secretary of the Interior's Standards for Historic Preservation.

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15. When a historically significant building, structure, or ruin cannot be preserved in place, full documentation may be required in accordance with Historic American Building Survey (HABS) or Historic American Engineering Record (HAER) or alternative standards in a programmatic or project-specific agreement.

16. The agency official's decision to implement treatment, including data recovery or site documentation, requires consultation with the SHPO, and as appropriate, with Indian tribes and other consulting parties in accordance with 36 CFR part 800. Resolution of adverse effect through specific treatments must be documented in a Memorandum of Agreement between the Forest Service and the SHPO, and, if appropriate, include the Advisory Council, Indian tribes, and other interested parties. Execution of a Memorandum of Agreement (MOA) constitutes completion of the NHPA Section 106 process. 36 CFR 800.7 addresses failure to reach agreement with the SHPO, Advisory Council, Indian tribes, or other consulting parties regarding project effect or treatments.

17. NHPA Section 106 should be completed prior to issuance of a NEPA or other land use decision unless following the phased identification procedures in 36 CFR 800.4 or an alternative process in a programmatic agreement.

**2364.12 – Alternatives for Compliance With NHPA Section 106**

The Forest Service may elect to pursue a program alternative to replace the standard NHPA Section 106 compliance procedures and tailor the process to the needs of the agency. The intent of program alternatives is to increase consistency and efficiency in agency cultural resource management. The five program alternatives included in 36 CFR 800.14 are:

1. Alternate procedures.
2. Programmatic agreements.
3. Exempted categories.
4. Standard treatments.
5. Program comments.

The agency official must develop program alternatives in collaboration and consultation with the Advisory Council, SHPOs, and Indian tribes when appropriate.

Programmatic agreements may be negotiated and executed at the national, regional, State, or forest levels. All other program alternatives may only be developed and executed at the national or regional level.



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Programmatic agreements generally include monitoring, documentation, and reporting requirements to demonstrate that the actions taken under the agreement meet the intent of NHPA Section 106.

Failure to follow stipulations in a programmatic agreement may result in cancellation of the agreement by any of the consulting parties and a requirement to return to standard NHPA Section 106 procedures.

### **2364.13 – Unanticipated Discovery**

If discovery of cultural resources or human remains occurs during the implementation of an undertaking, the agency official should take prudent and reasonable steps to ensure that the undertaking does not harm newly discovered properties or affect human remains. The agency official should treat such discoveries in accordance with the unanticipated discovery protocols developed in accordance with NHPA Section 106 and NAGPRA (FSM 2362.3). If such protocols are not in place, NAGPRA implementing regulations at 43 CFR 10.4 require a 30-day shutdown to allow for consultation with affected Indian tribes. During that time, the agency official should make reasonable efforts to avoid or minimize harm to a discovered property until:

1. The property has been assessed for National Register eligibility and appropriate uses.
2. Treatment measures have been carried out consistent with any treatment plan developed for the undertaking as a whole.
3. The requirements of NAGPRA or State burial laws are met as applicable.

### **2364.2 – Protection From Unauthorized Use and Environmental Damage**

It is unlawful to remove any cultural resource from NFS lands unless authorized or permitted. For specific requirements for issuing a Permit for Archaeological Investigations, see FSM 2367.1 and FSM 2700.

### **2364.21 – Investigation of Cultural Resource Violations**

The agency official is responsible for protecting cultural resources from unauthorized uses. The agency official should ensure that the heritage professional, law enforcement officers, and other appropriately trained Forest Service employees:

1. Integrate cultural resource protection into enforcement plans and patrol schedules on NFS lands.
2. Investigate and document in a timely manner any unauthorized use, damage, alteration, or disturbance of cultural resources and describe the violation in an Incident Report or other documents as requested by law enforcement.

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3. In accordance with the guidelines and criteria in ARPA and its implementing regulations at 36 CFR 296.1, prepare a Site Damage Assessment to establish the amount of damage to cultural resources.
4. Properly conserve and store artifacts recovered during criminal or civil investigations immediately following a completed investigation and legal proceedings. Following legal proceedings, return Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to the legally recognized Indian tribe in accordance with NAGPRA Section 3(c).
5. Apply criminal or civil monetary restitution for damages under ARPA, or as otherwise provided in any other pertinent legal statute, directly to the affected archaeological resource(s) as necessary in accordance with a site-specific treatment plan and according to 16 U.S.C. 579(c).

**2364.22 – Damage Claims and Penalty Assessments Under ARPA**

The forest supervisor is the Federal land manager under ARPA and retains the authority and responsibility to:

1. Develop damage claims and make penalty assessments against individuals, as based on the Site Damage Assessment, and in accordance with ARPA or NAGPRA, which set penalties for the illegal trafficking of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.
2. Assess civil penalties against any person who has violated any prohibition contained in 43 CFR 7.4 or who has violated any term or condition included in a permit issued in accordance with ARPA and 43 CFR part 7. Before civil penalties are assessed, the agency official must ensure that such assessments do not interfere or jeopardize any criminal investigation or prosecution.

**2364.23 – Metal Detecting**

Metal detectors may be used on NFS lands in areas that do not contain or would not be reasonably expected to contain archaeological or historical resources. Metal detectors must be used for lawful purposes and must not violate ARPA or 36 CFR 261.9.

**2364.24 – Treasures Troves**

Buried or lost treasures (“treasure troves” under the 1870 abandoned property statute, 40 U.S.C. 310) on NFS lands are considered to be cultural resources protected by ARPA, NAGPRA, and NHPA. For further direction on permitting the search for treasure trove, see FSM 2724.44a.

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### **2364.25 – Geocaches**

GPS-locatable geocaches may be allowed on NFS lands for recreational purposes provided they do not cause harm, or have the potential to cause harm, to cultural resources. Hiding a geocache within a prehistoric rock cairn or inside a historic building has the potential to harm cultural resources both during its placement and upon its discovery. A geocache recreation event may require issuance of a Special Use Permit. The agency official should consider the potential effect of the geocache event on cultural resources prior to permit issuance.

### **2364.3 – Long-term Protection**

The agency official is responsible for systematic monitoring of cultural resources, evaluating and documenting their condition and vulnerability to human-cause or environmental degradation, and implementing necessary long-term protection measures.

### **2364.31 – Cultural Resource Monitoring**

Monitoring the condition of cultural resources and Priority Heritage Assets is a component of Infra and Forest Service upward reporting and may be a requirement of programmatic and project-specific agreements. The agency official shall develop and implement a program to systematically monitor cultural resources and all designated Priority Heritage Assets on a routine basis to:

1. Assess overall environmental and human-caused effects to cultural resources.
2. Evaluate the adequacy and accuracy of methods, techniques, and strategies used to identify and protect cultural resources on NFS lands.
3. Assess the adequacy of protection or mitigation treatments to cultural resources affected by Forest Service and Forest Service-authorized undertakings.

### **2364.32 – Cultural Resource Condition Assessments**

Heritage professionals are responsible for documenting and maintaining cultural resource condition assessments to standard in the Forest Service Infra heritage database and in Heritage Program records. Periodic monitoring and condition assessments are the basis for applying protective measures and treatments to vulnerable, deteriorating, or threatened cultural resources.

### **2364.33 – Wildfire Preparedness and Response**

The agency official is responsible for protecting cultural resources to the extent feasible from the effects of wildland fire, fire suppression, and recovery events.

The agency official should:

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1. Where feasible and as a part of cultural resource protection, create defensible space and apply other fire prevention or abatement measures to highly significant and fire-vulnerable cultural resources.
2. Ensure that heritage professionals are qualified as necessary to participate as resource advisors and/or archaeologists in wildland fire suppression, post-suppression, and burned area emergency rehabilitation (BAER) activities (FSM 2523.2).
3. Ensure that heritage Infra and GIS databases are current so that cultural resource information is readily available for consideration during emergency contingency planning for wildland fire incidents and recovery.
4. Develop cultural resource emergency contingency protocols (FSM 2362.32f) that include protection priorities and protocols for use by incident command teams during wildland fire incidents and recovery efforts.

Ensure the short and long-term condition of cultural resources exposed in wildfire recovery areas is monitored to prevent vandalism and destruction from unauthorized activities and natural processes such as flooding and erosion.

#### **2364.34 – Other Natural Disasters and Emergency Response**

The agency official is responsible for evaluating damage to cultural resources and developing emergency protection and rehabilitation plans in the aftermath of severe windstorms, hurricanes, earthquakes, floods, and other natural events and disasters affecting NFS lands.

The agency official should ensure that heritage professionals are appropriately trained and qualified to participate in emergency response.

The agency official should ensure that cultural resource emergency response plans include:

1. Compilation of cultural resource data within the emergency response area.
2. Damage assessments for affected cultural resources.
3. Procedures for notification and consultation with SHPOs and Indian tribes concerning cultural resource damage and emergency response-recovery plans.
4. Short- (emergency) and long-term protection, rehabilitation, reconstruction, or restoration plans for historic properties adversely affected by a natural disaster.
5. Protocols for completing NHPA Section 106 work in support of recovery and restoration actions (for example, timber salvage, trail reconstruction, and stream restoration).

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### **2364.35 – Administrative Protection Measures**

The agency official may implement administrative measures to protect cultural resources from human-caused and environmental damage. These measures include, but are not limited to:

1. Requesting withdrawal of lands from the general land and mining laws.
2. Closure to public and motor vehicle access.
3. Special area designation.
4. Land acquisition, transfer, and easements.
5. Supplementary rules.
6. Cooperative law enforcement (surveillance, patrols, investigation).
7. Public education and awareness programs.

The specific legal and administrative requirements for implementing these administrative measures are found in 36 CFR 212.52, FSM 2718.2, FSM 2822.22, and FSM 5420-5450.

### **2364.36 – Direct Protection Measures**

Contingent on the vulnerability or risk to the cultural resources, the agency official may implement the following direct protection measures to reduce or eliminate natural and human-caused adverse effects.

1. On-site administrative signing.
2. Fencing, gating, and other on-site physical barriers.
3. Erosion control and stabilization.
4. Vegetation treatments (fuel abatement, defensible space).
5. Stabilization, rehabilitation, restoration, and interpretation.
6. Relocation.
7. Burial and camouflage.
8. Adaptive reuse.

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9. Recordation and data recovery.
10. Monitoring, detection devices, and patrols.

Consultation with the SHPO, Indian tribes, and other interested parties is usually required if these direct protection measures modify the affected cultural resource in any way.

#### **2364.4 – Stewardship Responsibilities and Actions**

Cultural resource stewardship consists of systematic, responsible management actions to recognize, maintain (conserve), and use historic properties for agency and public benefit.

Consultation with the SHPO, Indian tribes, and other interested parties may be necessary if stewardship projects modify or affect the values of National Register eligible or listed properties.

#### **2364.41 – Official Designations to Publicly Recognize Cultural Resources**

NHPA Section 110 requires that historic properties under the jurisdiction or control of the agency be nominated to the National Register. The agency official should consider the benefit of National Register nomination and other official designations for cultural resources (individual historic property, set of properties, district, or landscape) in land management planning. The agency official should submit cultural resources for appropriate official designations to the Secretary of the Interior.

#### **2364.41a – National Register of Historic Places**

NHPA Sections 106 and 110 require Federal agencies to maintain programs to nominate historic properties that they own or control to the National Register. In the Forest Service, this responsibility is delegated to regional foresters. Nominating a Historic Property to the National Register does the following:

1. Identifies the property for planning, allocation, management, and stewardship purposes.
2. Defines the property's historical associations, context, and integrity.
3. Identifies features and qualities that entitle the property for National Register listing.
4. Provides public recognition and understanding of the property.
5. Assists in determining treatments for historic properties by identifying the values and qualities that make them significant.

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Properties eligible for or listed on the National Register should be maintained in accordance with National Park Service standards (FSM 2364.42) or property-specific standards and guidelines in Historic Property Plans.

### **2364.41b – National Historic Landmarks**

NHLs are nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States. The NHL criteria, while similar to the National Register criteria, set substantially higher thresholds for significance. NHLs are designated in accordance with 36 CFR 65.4 and National Register Bulletin No. 16. The NPS maintains the NHL inventory.

Evaluation and listing of a cultural resource as a NHL is the prerogative of the National Park System Advisory Board. The Forest Service does not need to apply the NHL criteria when evaluating cultural resources.

With the concurrence of the SHPO and the recommendation of the Forest Service Federal Preservation Officer, a site may be submitted to the National Register staff for review as a potential NHL. If the National Register staff concurs in the property's national significance, the nomination is referred to the NHL staff for consideration. A NHL is maintained and protected through standards and guidelines in a NHL cultural resource management plan prepared by the NPS with the assistance of the Forest Service, Indian tribes, and other interested parties.

### **2364.41c – World Heritage Sites**

The Convention Concerning the Protection of the World Cultural and Natural Heritage established the World Heritage List, which was adopted at the 17th General Conference of UNESCO. The Convention publishes a World Heritage List of cultural and natural properties that are submitted by State Parties and considered of outstanding universal value.

### **2364.41d – Congressional and Presidential Designations**

The Congress through legislation, and the President through Executive proclamation, may designate places that are distinguished for their historical importance. National Historic Trails and National Monuments are two examples. Such areas are managed according to the particular requirements in the legislation or proclamation that designated them.

### **2364.41e – State, Local, and Tribal Designations**

Properties designated as historically or culturally significant by non-Federal entities, such as State and local governments or Indian tribes, do not automatically attain National Register eligibility status because of such designations.

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### **2364.41f – Cultural Landscapes**

The NPS Historic Landscape Initiative promotes the identification, recognition, and maintenance of cultural landscapes. The NPS defines a cultural landscape as a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic value.

A cultural landscape may be a valley bottom rich in prehistoric American Indian rock art or a mountain pass that was the scene of continuous human travel for thousands of years. Identification of a cultural landscape may require a multi-disciplinary approach and culminates in a cultural landscape management and treatment plan.

### **2364.42 – Conservation and Maintenance of Cultural Resources**

The agency official shall meet the Secretary of the Interior's Standards for Historic Preservation for National Register eligible or listed properties on NFS lands. Maintenance measures will differ depending on the primary value of the cultural resource and the recommended management category to which it is allocated (FSM 2363.31). Following are general considerations for long-term maintenance of historic properties.

#### **2364.42a – Preservation**

Preservation is the application of measures to sustain the form and extent of a structure or ruin essentially in the existing state. Its purpose is to halt further deterioration and provide structural stabilization and safety but does not include significant rebuilding.

#### **2364.42b – Rehabilitation**

Rehabilitation is the process of returning a structure to a state of efficiency by major repairs or alterations so that it will serve a useful purpose. It provides that portions of the structure (external, internal, or in combination), which are important in illustrating cultural values, are preserved or restored.

#### **2364.42c – Restoration**

Restoration is the process of accurately recovering, by the removal of later work and the replacing of missing original work, the form and details of a site, structure, or part of a structure, together with its setting, as it appeared at a particular period of time. Restoration may be full or partial and may be combined with rehabilitation.

### **2364.43 – Study and Use of Historic Properties**

The agency official should employ the tools of scientific investigation, public interpretation, and adaptive reuse of historic properties whenever feasible to maintain and realize the values that make a historic property significant.



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### **2364.43a – Scientific Investigation**

The Forest Service has a stewardship responsibility to protect and conserve cultural resources for scientific study and investigation. Cultural resources may be “banked” for future scientific study when new data recovery, laboratory, and analytical methods are available. The agency official may allow for scientific research and investigation including experimental studies, for a specific cultural resource, or class of resources, provided that it:

1. Derives a tangible agency or public benefit.
2. Receives appropriate Tribal, SHPO, or other interested party review and consultation.
3. Is legally permitted and authorized.
4. Is completed and documented in a professional and timely manner.

This potentially consumptive use of cultural resources must foster understanding and appreciation of past human cultures and environment and/or enhance the stewardship of cultural resources on NFS lands.

### **2364.43b – Adaptive Reuse**

Prior to constructing, acquiring, or leasing buildings for agency use, and prior to conveyance or decommissioning of historic properties, the agency official should consider continued use or adaptive reuse of historic properties. The agency official should consider these options during facilities master planning as a way to maintain historic properties and meet agency and public needs (FSH 7309.11).

Adaptive reuse should serve administrative, recreational, educational, economic, social, or other purposes essential to the mission of the Forest Service, in accordance with these guidelines:

1. Designated use is consistent with the affected historic property’s management allocation and the goals and objectives in an approved historic property plan.
2. Feasibility analyses and/or future use determinations have been adequately completed by forest or grassland heritage, engineering, lands, recreation, and other program staffs.
3. Necessary building or structural alterations do not compromise the integrity of the features that make the property historically significant and are done in accordance with the Secretary of the Interior’s Standards and Guidelines.
4. NHPA Section 106 consultation with the SHPO, Advisory Council, and other interested parties is successfully completed, unless alternative procedures are followed under a programmatic agreement.

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5. Rehabilitation and use complies with all other Forest Service laws, policies, and/or regulations in design, construction, use, and maintenance.
6. Adaptively reused buildings and structures are managed as an agency asset (“Federal real property”) in accordance with the requirements of E.O. 13327.

**2364.43c – Cultural Resource Interpretation**

The agency official shall identify cultural resources that are suitable for public use and interpretation. Interpretation is one aspect of the agency’s Windows on the Past program (FSM 2365) and may involve the construction or use of trails, buildings, signs and kiosks, and exhibits.

Interpretation that directly involves cultural resources should:

1. Comply with laws, policies, and/or regulations such as the Americans with Disabilities Act in design, construction, use, and maintenance.
2. Be aesthetically and functionally appropriate to the environmental, cultural, or recreational setting in which it is located, for example, the Recreation Opportunity Spectrum.
3. Be historically accurate and culturally sensitive.
4. Provide tangible educational, recreational, economic, or other public benefits.

Heritage interpretive facilities should be managed as an agency asset (“Federal real property”) in accordance with the requirements of Executive Order 13327–Federal Real Property Asset Management.

**2365 – PUBLIC EDUCATION AND OUTREACH**

**2365.02 – Objectives**

The Forest Service objectives related to Heritage Program public education and outreach are to:

1. Develop and promote interpretive and educational programs and projects under the national framework of Windows on the Past.
2. Reduce threats to cultural resources through education, interpretation, and public involvement that promote resource stewardship.
3. Manage cultural resources as assets with economic, social, cultural, and environmental values.

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4. Meet the intent of ARPA, Section 10(c), which states “Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources.”

### **2365.03 – Policy**

It is the policy of the Forest Service to:

1. Implement a national program for heritage public education and outreach under the framework of Windows on the Past.
2. Coordinate with the Office of Communication at the national and regional levels to ensure that heritage information is included in the agency’s public outreach and media.
3. Coordinate with Forest Service Interpretive Services (FSM 2390) at the national, regional, and local levels to include history, prehistory, and cultural information in public programs.
4. Incorporate archaeology and history in the Forest Service Conservation Education Program to improve public understanding of the relationship between humans and the natural environment.
5. Foster private-public initiatives and investment in the sustained use, adaptive reuse, rehabilitation, and enhancement of cultural resources.
6. Promote community economic development through cooperative partnerships focused on heritage education and tourism with State, local, and Tribal governments; local communities and historic preservation organizations; businesses; schools; and others.
7. Involve local community and Tribal representatives in the formulation of interpretive plans and products, particularly when the interpretive presentation involves description of a living local community or Indian tribe and/or its archaeological, historical, cultural, artistic, and ethnic heritage.

### **2365.1 – Criteria for Heritage Public Education and Outreach**

NHPA Section 110, ARPA Section 10(c), and Executive Order 13287 – Preserve America require that Federal agencies promote and invest in cultural resource public education and outreach programs.

The agency official should ensure that Forest Service public education and outreach programs and products implemented under the framework of Windows on the Past are well conceived, broadly focused, and achieve one or more of the following benefits:

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1. Cultural resource stewardship. Enhance and promote cultural resource stewardship and conservation through volunteer programs that expand Heritage Program capacity, visibility, and delivery.
2. Natural resource stewardship. Enhance and promote natural resource stewardship and conservation through inclusion of natural resource information in heritage education and outreach programs such as Passport in Time (PIT).
3. Educational travel and tourism. Address the growing demand for educational and resource-based travel and volunteer vacations by providing opportunities for the public to actively engage in and contribute to cultural resource conservation and management on NFS lands.
4. Economic. Provide opportunities for local communities to benefit economically from heritage tourism and public education programs either directly through partnerships to jointly provide interpretive venues or programs or indirectly through visitors to Forest Service cultural resource public education program using local amenities during their visit.
5. Recreational and inspirational. Enhance the recreation experience of forest or grassland visitors by providing cultural resource information, displays and exhibits, tours and hikes, and other programs.
6. Public relations. Build stronger public relationships through exposure to archaeology and history and Forest Service land management.
7. Educational and socio-cultural. Increase public understanding and knowledge of past human cultures and environments, improve awareness of minority group history, and provide a greater appreciation for multicultural perspectives.

### **2365.2 – Windows on the Past**

Windows on the Past is the umbrella program for Forest Service heritage public education and outreach activities and projects. Forest Service units should tailor Windows on the Past programs and products to meet local management priorities and community interests and needs. The agency official should ensure that the heritage professional implements Windows on the Past projects, which may include, but are not limited to:

#### **2365.21 – Passport in Time**

Passport in Time (PIT) engages volunteers in stewardship projects that benefit cultural resources and comply with NHPA, ARPA, and other Federal historic preservation legislation. Volunteer involvement through PIT exposes the public to a broad range of natural and cultural resource

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issues and fosters public awareness and support of Federal land management. There is no fee for involvement in PIT. Forest units have latitude in the design and implementation of PIT projects, but they must adhere to national PIT guidelines.

### **2365.22 – Heritage Expeditions**

Heritage Expeditions are fee programs that provide forest or grassland visitors with a unique educational experience through guided tours of cultural resources with trained interpreters and guides (Forest Service employees, cooperators, contractors or volunteer). The fees fund on-going cultural resource stewardship and heritage public education and outreach. Heritage Expeditions must comply with Forest Service fiscal policies.

### **2365.23 – Heritage Excursions**

Heritage Excursions are fee programs that provide the public and agency heritage professionals a unique international opportunity for cultural exchange. Heritage professionals and volunteers travel to another country to participate in archaeological projects and individuals from the host country participate in Forest Service projects. The purpose is technology exchange and learning alternate approaches to historic preservation and public participation. Interagency agreements with technical exchange stipulations related to cultural resource study and management are the basis for the excursions. Resulting fees fund on-going stewardship and partnership development. Heritage Excursions must comply with Forest Service fiscal and International Programs policies.

### **2365.24 – Recreation Rental Program**

Many of the agency's recreation rental facilities (cabins, guard stations, lookouts) are historic properties that have been restored or rehabilitated, frequently by PIT or local volunteers and with private or public sector partnerships. The agency official should seek opportunities to include suitable historic buildings in the Recreation Rental program to provide a unique outdoor recreation and learning experience. Such adaptive reuse of historic buildings helps to extend their use-life and earn revenue for on-going restoration, rehabilitation, maintenance, and interpretation.

### **2365.25 – Volunteer Site Steward Program**

The Site Steward Program involves trained public volunteers in routine monitoring of significant and/or vulnerable cultural resources on NFS lands. In some cases, Site Stewards may serve as on-site interpreters. The agency official may elect to recruit Site Stewards through the PIT program. Site Stewards are often effective advocates for cultural resource awareness and protection in local communities. Forest Service Site Steward Programs may be coordinated with state stewardship programs to identify priority cultural resources for monitoring.

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### **2365.26 – Cultural Resource Interpretation Program**

Interpretation represents a wide array of programs and products that deliver heritage information to the public, including but not limited to live programs and events, guided hikes, brochures, interpretive signing, archaeology trunks for school classes, kiosks, and visitor centers.

Programs may be on-going or one-time presentations and some may include fees. Forest Service employees, cooperators, and contractors may all present or help to present interpretive programs. To ensure quality and consistency, programs and products should adhere to fiscal policies and conform to national, regional, forest, or grassland standards and guidelines.

### **2365.27 – Conservation Education**

Inclusion of cultural resource information in conservation education programs provides the direct link between people and their natural environment by demonstrating humans' dependence on natural resources for survival, the effect humans have had on natural resources through time and vice versa, and different cultural attitudes toward natural resources.

Such information can contribute to the improvement of natural resource conservation in the future – learning from the past to improve the future. Heritage professionals should seek ways to include heritage and cultural resource information in conservation education programs.

### **2365.28 – Research and Education**

The publication and dissemination of archaeological and historical information resulting from research and management of cultural resources on NFS lands is an important public education and outreach goal. Products should meet demands of both professional and lay audiences. Use current technologies and Web-based media when appropriate. Revenue may be generated through the sale of some types of publications. To ensure quality and consistency, programs and products should conform to departmental, national, regional, forest or grassland standards or guidelines.

### **2365.29 – Civil Rights**

The Forest Service supports special emphasis programs to educate the public about the accomplishments of America's diverse, minority populations. Heritage public education programs can contribute to these efforts through projects that explore cultural resources related to minority groups such as PIT projects to locate and record Basque tree carvings, Underground Railroad features, or early agrarian sites in the Southwest. Heritage public programs can also contribute by drawing in minority populations as volunteers or visitors to heritage interpretive projects and developments that highlight a group's contribution to the Nation's history.

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### **2365.3 – Management Considerations for Public Use of Cultural Resources**

When considering a cultural resource for public education and outreach, the agency official should:

1. Consider the “niche” that heritage interpretation fills in the forest’s or grassland’s local mission and its recreation, interpretive, and conservation education strategies.
2. Consider the interests of the surrounding and gateway communities when disseminating of historical information, locating of interpretive facilities, and coordinating opportunities with local events.
3. Give priority to those programs or products that achieve the broadest array of public benefits.
4. Be culturally sensitive and historically accurate in all public interpretation.
5. Determine if it is appropriate to disseminate information about properties with religious or cultural importance to Indian tribes or other cultural groups.
6. Work with Indian tribes or other cultural groups when developing interpretive programs, projects, or media that deal with subjects of interest to those groups.
7. Look for opportunities that provide for self-sustaining stewardship of historic properties. Consider recreation rentals and heritage projects under the Recreation Enhancement Act (REA) where fees can be retained for historic property operations and maintenance.
8. Consult the Recreation Opportunity Spectrum and ensure that developments are compatible with the natural environment and the desired visitor experience when considering interpretive developments.

### **2365.4 – Heritage Tourism**

Archaeology and history have a tremendous public appeal. The private tourism industry often depends on public lands and NFS lands for opportunities for resource-based travel and communities increasingly depend on tourism to boost economic development. The Forest Service at all levels should partner with private industry whenever possible, including Tribal enterprises, to provide public opportunities that encourage cultural resource stewardship and help local economies through heritage tourism development.

Exhibit 01 shows a small sample of the range of possibilities for public education and outreach—from volunteerism to fee programs and from Forest Service programs to those run in partnership with private industry and by private industry alone.

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**2365.4 - Exhibit 01**

**Range of Public Education and Outreach Opportunities**

	FS Operation	FS in Partnership with Tribes	FS in Partnership with Private Enterprise	Private Enterprise
Free to the Public	Passport in Time, Volunteer Site Stewards	Passport in Time, Brochures	Passport in Time in partnership with non-profit	NA
Small to Mid-range Fee to the Public	Recreation Cabin Rentals; Heritage Expeditions	Heritage Expeditions	Heritage Expeditions in partnership with non-profit	Earthwatch, Smithsonian Expeditions
Relatively High Fee to the Public	NA	Heritage Expeditions	Heritage Expeditions in partnership with outfitter-guide	Chartered History Tours



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## **2366 – MANAGEMENT OF HERITAGE COLLECTIONS**

### **2366.02 – Objectives**

The Forest Service objectives related to management of heritage collections are to:

1. Preserve heritage collections for the benefit of future generations.
2. Preserve, store, and manage heritage collections in agency, university, State, Tribal, or other professional curatorial facilities that provide proper protection from unauthorized use, theft, fire, floods, and other threats.
3. Provide appropriate access and use of heritage collections in support of research, public education, and agency management activities.
4. Manage collections containing human remains and associated materials according to standards and guidelines in NAGPRA and its implementing regulations.

### **2366.03 – Policy**

It is the policy of the Forest Service to:

1. Acquire artifacts and related materials according to regional or forest and grassland standards and guidelines, only in support of agency compliance requirements with well-defined research, educational, or management objectives, and only if funds and facilities are available to properly care for them in the short- and long-term.
2. Acquire private collections from NFS lands only when the acquisitions are unrestricted gifts and bequests accompanied by proof of title from the current owner(s) and are not in violation of ARPA.
3. Develop and implement national and Regional standards and guidelines for acquisition, storage, preservation, and access of archaeological collections in a designated curatorial facility that meets the standards in 36 CFR part 79 - Curation of Federally-Owned and Administered Archaeological Collections.
4. Develop State, regional, and/or forest and grassland curatorial strategies that address repository space, curatorial costs, and short- and long-term collection management guidance.
5. Manage heritage collections as Priority Heritage Assets with appropriate documentation in the Infra heritage corporate database.

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6. Consult with Indian tribes on current collections or proposed acquisition to identify human remains and associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony.
7. Retain final responsibility for curation and compliance with NAGPRA for collections acquired under the authority of the Antiquities Act or ARPA for compliance or research projects.
8. Retain ownership of collections obtained through research or compliance projects by universities, contractors, cooperators-partners, or land use applicants under a Permit for Archaeological Investigations.

### **2366.1 – Types of Collections**

The agency official is responsible for maintaining, protecting, and managing the following types of Heritage Program collections.

#### **2366.11 – Archaeological Collections**

All artifacts removed from NFS lands remain Federal property and must be managed according to 36 CFR part 79. Archaeological collections include artifacts and associated records (catalogues, photographs) and may be:

1. Materials systematically acquired as a result of Heritage Program activities under NHPA Section 106 or 110, including those collected by contractors, cooperators, and volunteers.
2. Artifacts and records acquired as the result of ARPA investigations.
3. Materials collected prior to NHPA and ARPA.

#### **2366.12 – NAGPRA Collections**

NAGPRA Collections are comprised of remains and/or objects that meet the definitions of American Indian human remains, funerary objects, sacred objects, and objects of cultural patrimony as defined in NAGPRA. If cultural affiliation is determined through NAGPRA procedures, such collections are repatriated to the appropriate Indian tribe or Native Hawaiian organization and do not remain in Forest Service custody.

#### **2366.13 – Archival Collections**

Archival Collections are comprised of historic records, including documents, manuscripts, photographs, audio and video recordings, and microfilm records. Many forest or grassland archival collections (with some exceptions) are not official records as defined by the National Archives and Records Administration (44 U.S.C. 3301), because they are made or acquired for reference or exhibition.

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### **2366.14 – Heritage Program Collections**

Heritage Program collections are cultural resource inventory and evaluation records, documents, maps, photographs, field notes, and electronic data and images derived from both NHPA Section 106 and Section 110-initiated activities and from ARPA investigations.

### **2366.15 – Forest Service History Collections**

Forest Service History Collections are comprised of historic tools, uniforms, medals, framed pictures or paintings, and other memorabilia obtained from agency employees and other sources documenting the history of the agency.

### **2366.2 – Curatorial Standards**

The agency official shall ensure that repositories containing artifacts and records from NFS lands meet the standards specified in 36 CFR part 79.

### **2366.3 – De-accessioning Collections [Reserved]**

## **2367 – PERMITS, AGREEMENTS, AND CONTRACTS**

### **2367.02 – Objectives**

The Forest Services objectives for permits, agreements, and contracts are to:

1. Administer special use permits, cooperative agreements, and contracts to further cultural resource knowledge in the public interest, to protect cultural resources, and to facilitate compliance with NHPA, ARPA, and related Federal statutes.
2. Consider the rights and interests of American Indians in authorizing access to or use of historic properties with religious or cultural significance to American Indians.

### **2367.03 – Policy**

It is the policy of the Forest Service to:

1. Authorize appropriate scientific use of cultural resources, consistent with applicable law and established objectives for specific historic properties or property types.
2. Issue and administer Permits for Archaeological Investigations in accordance with 36 CFR Part 251 Subpart B – Special Uses.
3. Execute programmatic agreements in accordance with 36 CFR 800.14(b) to facilitate and streamline compliance and consultation required in NHPA Sections 106 and 110.

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4. Enter into cooperative agreements and procurement contracts to achieve Heritage Program goals in accordance with legal requirements and guidelines in FSM 1580 and FSM 6320.
5. Meet national requirements to enter special use permit, cooperative agreement, and contract information into Forest Service corporate databases for timely and accurate tracking, analysis, and reporting.

### **2367.1 – Permit for Archaeological Investigations**

The Permit for Archaeological Investigations is a special use permit for cultural resources on NFS lands and may be issued under the authority of the Antiquities Act, ARPA, or the Organic Act depending on the activity being permitted and the age of the cultural resources involved.

FSM 2724.4, FSH 2709.11, and Uniform Regulations for ARPA at 36 CFR part 296 include specific permit procedures for cultural resources.

Permit issuance is not in itself an undertaking subject to NHPA Section 106, but certain activities permitted are subject to NHPA Section 106.

### **2367.11 – Uses Authorized**

The following archaeological activities require a Permit for Archaeological Investigations:

1. Inventory and cultural resource recordation.
2. Subsurface testing and/or collection.
3. Excavation and/or removal (data recovery).
4. Site conservation work (such as ruin restoration involving excavation).
5. Any combination of the above.

### **2367.12 – Permitting Under ARPA**

ARPA, as amended, and its implementing regulations at 36 CFR part 296, supercede the 1906 Antiquities Act for permitting and regulating archaeological investigations for archaeological resources 100 years or older.

Archaeological investigations that involve subsurface testing to evaluate cultural resources, excavation (data recovery), ruin stabilization, or conservation work must be permitted under ARPA as amended and its implementing regulations at 36 CFR part 296.

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The agency official shall notify Indian tribes 30 days prior to issuing a permit under the authority of ARPA if the permitted activity may result in harm to, or destruction of, any Indian tribal religious or cultural site on NFS lands, as determined by the Federal land manager, in accordance with ARPA Section 4(c) and the Uniform Regulations at 36 CFR part 296.7.

The agency official shall take reasonable steps to determine whether the permitted activity may result in excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in NAGPRA, notify appropriate Indian tribes, and write a plan of action for such discoveries to be included in the permit (43 CFR 10.3).

**2367.13 – Permitting Under the Organic Act**

Archaeological investigations that involve cultural resource inventory, including pedestrian survey, remote sensing, and subsurface probing to determine the presence or absence of cultural resources on a landscape, are permitted under the Organic Act.

For non-disturbing uses permitted under the Organic Act, the agency official may:

1. Issue a permit for a multi-year period not to exceed 5 years.
2. Issue a permit on multiple Forest Service units where the permitted activity crosses Forest Service administrative unit boundaries.

Tribal consultation is not a permit issuance requirement under the Organic Act.

**2367.14 – Permitting Under the Antiquities Act**

The Antiquities Act is the proper authority to permit archaeological and historical investigations that involve cultural resources less than 100 years old. The Antiquities Act also remains applicable to paleontological research conducted on NFS lands (43 CFR part 3).

The following exhibit summarizes the three authorities.

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**2367.14 – Exhibit 01**

**Table of Permitting Authorities**

<b>Authority</b>	<b>Resource</b>	<b>Activity</b>
Antiquities Act	Less than 100 years old	Field survey, testing, excavation, research
Organic Act	Over 100 years old	Non-disturbing: Examples: Field survey, remote sensing, probing or testing for the presence or absence of cultural materials
ARPA	Over 100 years old	Disturbing: Examples: Evaluative testing, data recovery, ruin stabilization involving excavation and artifact removal, surface collecting

**2367.15 – Who Must Have a Permit for Archaeological Investigations**

Except in the limited circumstances described in 2367.16, any person proposing to excavate and/or remove archaeological resources from public lands must first obtain a permit.

The agency official may issue a Permit for Archaeological Investigations to qualified (36 CFR 296.8) applicants, provided that the work proposed:

1. Would further knowledge in the public interest;
2. Would not be inconsistent with any approved management plan, objective, or established policy applicable to the public lands or resources concerned; and
3. The archaeological materials excavated remain property of the United States (FSM 2366.11).

A Permit for Archaeological Investigations is required for:

1. Academic researchers affiliated with universities, museums, archaeological societies, Indian tribes, consulting firms, or similar private or public institutions.
2. Consultants working on NFS lands under contract with a land use applicant.
3. Individuals and institutions working under a cooperative (partnership) agreement on NFS lands.

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4. Consultants who are under a contract with the Forest Service to carry out official agency duties pertaining to the management of cultural resources on NFS lands. The permit may be in addition to the contract or the permit requirements may be added as stipulations to the contract (36 CFR 296.4(c)).
5. Forest Service employees or employees of another agency proposing to do off-duty research on NFS land.
6. Employee(s) from another Federal agency proposing to conduct archaeological testing or excavations or related work (for example, activities authorized under ARPA) on NFS lands.

### **2367.16 – When a Permit is Not Required**

A Permit for Archaeological Investigations is not required for:

1. Agency employees carrying out official agency duties under the Federal land manager's direction, that are associated with the management of archaeological resources.
2. Ethnographic studies that do not involve fieldwork, archival, and historical work pertaining to NFS lands, and review of archaeological collections and records in a designated curatorial facility, do not require a permit when the work is being done by qualified persons under the supervision of the facility curator or designated staff.
3. Employee(s) from another Federal agency proposing to conduct non-disturbing cultural resource work for example activities authorized under the Organic Act such as field survey in Federal or State highway rights-of-way. Authorization to complete such work should be included in a written agreement and approval is subject to the same considerations in the permit review process.
4. Consultants working on non-NFS lands under Forest Service requirements. The Forest Service is responsible for the quality of work done to satisfy NHPA Section 106 requirements.
5. Persons conducting activities on NFS lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources.

### **2367.17 – Permit Fees**

Permits for Archaeological Investigation are subject to cost recovery fees (36 CFR 251.58), and a land use fee of \$2 per professional workday for actual fieldwork or the regional minimum fee, whichever is greater (FSM 2715).

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All or part of land use and cost recovery fees for a Permit for Archaeological Investigations may be waived by the authorized officer in accordance with 36 CFR 251.57 and 251.58, respectively.

### **2367.18 – Permit Compliance and Termination**

The agency official should specify performance standards in the permit and develop performance ratings to evaluate the holder's performance, including timely delivery of the service, product, or document resulting from the permitted activity. The performance rating is one basis for determining whether the holder will be permitted to do future archaeological fieldwork on NFS lands.

The agency official shall monitor permitted activities to verify compliance with permit terms and conditions. Permits for Archaeological Investigations may be terminated through agreement with the holder or when a condition or term of the permit that provides for termination is met (FSM 2716.2).

### **2367.2 – Agreements**

The agency official may enter into an agreement to facilitate NHPA compliance and when there is an opportunity to enhance Heritage Program capacity, performance, visibility, and output.

### **2367.21 – NHPA Agreements**

The agency official may execute an agreement to meet legal compliance under NHPA, and its implementing regulations in 36 CFR part 800. Refer to 2360.4 - Exhibit 01.

### **2367.21a – Programmatic Agreement**

A Programmatic Agreement is created when an agency official has developed substitute procedures to implement NHPA Section 106 in whole or in part, and its implementing regulations. It is a legally binding document. The agency official and the SHPO, Indian tribes, Advisory Council, and interested individuals as appropriate, are signatories to a programmatic agreement in accordance with 36 CFR 800.14(b) (FSM 2364.11).

### **2367.21b – Memorandum of Agreement**

A Memorandum of Agreement ensures that the agency official carries out the undertaking in accordance with the stipulated treatments that avoid, minimize, or mitigate the adverse effects caused by an agency or agency-permitted project, in accordance with 36 CFR 800.6(c). The agency official, SHPO, and Advisory Council are the usual signatories. When appropriate, Indian tribes, land use applicants, local governments, and other interested parties may also be invited or concurring signatories.



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## **2367.22 – Partnership Agreements**

The agency official may execute partnership (cooperating, assistance) agreements with other Federal agencies, State and local governments, Indian tribes, academic institutions, and other historic preservation partners in accordance with FSM 1580. Partnership agreements must be of mutual interest and benefit to both the Forest Service and cooperator. Agreements should include stipulations or clauses describing the specific services, products, and documents the cooperator shall deliver to the Forest Service according to a specific timeframe or schedule, and causes for agreement default or termination.

A Permit for Archaeological Investigations is required for certain archaeological activities such as testing or excavation authorized under a partnership agreement (FSM 2367.1)

Agreements commonly executed on behalf of the Heritage Program include, but are not limited to, memoranda of understanding, challenge cost-share and participating agreements, and inter-agency agreements.

### **2367.22a – Memorandum of Understanding**

A Memorandum of Understanding (MOU) provides a general cooperative framework for partnerships but is not a fund-obligating instrument. A MOU would be used to clearly define a long-term working relationship with a local Indian tribe or historic preservation group.

### **2367.22b – Challenge Cost-Share and Participating Agreements**

These types of agreements provide the legal basis for partnership projects and are fund-obligating instruments. These agreements may be used to assist in the completion of a specific Forest Service project, such as an archaeological testing program on NFS land being completed by a university field school for student training.

### **2367.22c – Inter-Agency Agreements**

This agreement type allows for transfer of funds, materials, supplies and services to serve a public purpose as authorized by law. An inter-agency agreement would enable Bureau of Land Management (BLM) archaeologists to assist with time-critical fire recovery activities on NFS land.

## **2367.3 – Federal Procurement and Contracts**

The agency official shall use Federal procurement and contracting authority to acquire necessary skills, technical expertise, work capacity, and/or products to complete compliance and stewardship work. Contracting is most appropriate for:

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1. Preparation of Forest cultural resource overviews and ethnographies.
2. Large-scale, logistically complex, or time-critical field surveys.
3. Extensive subsurface site testing and evaluation programs.
4. Technically complex building or structure rehabilitation and renovation.
5. Intensive/extensive mitigation of adverse effects (data recovery-excavation, Historic American Building Survey and Historic American Engineering Record documentation).
6. Specialized studies and analyses (for example, radiocarbon dating, pollen analysis, geochemical sourcing of artifacts).

**2367.31 – Contracting Roles and Responsibilities**

A Forest Service contract is implemented under the Federal Acquisition Regulations and Agriculture Acquisition Regulations. The agency official shall ensure that Heritage Program personnel are qualified to participate in the Federal contracting process.

**2368 – INFORMATION MANAGEMENT AND REPORTING**

**2368.02 – Objectives**

The Forest Service objectives for Heritage Program information management and reporting are:

1. To ensure that cultural resource data and data management systems meet standards for Heritage Program management objectives, financial audits, and reporting requirements (FSH 6509.11k).
2. To share information among Forest Service administrative units, Indian tribes, SHPOs, universities, and other qualified institutions to the fullest extent possible without compromising information protected under FOIA, ARPA, and NHPA.

**2368.03 – Policy**

It is the policy of the Forest Service to:

1. Maintain and revise, as necessary, national agency protocols and standards for data entry, accuracy, and security.
2. Use GIS and the heritage module of Infra to track heritage resource activities, accomplishments, and to maintain a record of heritage data to satisfy agency compliance requirements.

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3. Complete Infra and GIS database updates annually to meet upward reporting deadlines for the Performance and Accountability, Deferred Maintenance reports, and the Secretary of the Interior's Annual Report to Congress on the Federal Archaeology Program.
4. Complete the Secretary of the Interior's Annual Report to Congress on the Federal Archaeology Program in a timely manner in response to the National Park Service's annual request.

**2368.1 – Confidentiality**

Secure electronic data in the corporate information management environment through role-level security that restricts access to appropriately designated personnel. Electronic and hardcopy cultural resource information including inventory and evaluation records, maps, raw data, and reports may be withheld from disclosure from the public in order to prevent inadvertent or intentional damage to cultural resources. Both the Freedom of Information Act and ARPA provide direction for the confidentiality of cultural resource records.