

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA;
THE KENTUCKY STATE HISTORIC
PRESERVATION OFFICER; THE TENNESSEE STATE HISTORIC PRESERVATION
OFFICER; AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE PROCESS FOR COMPLIANCE WITH SECTION 106 OF THE
NATIONAL HISTORIC PRESERVATION ACT

FOR UNDERTAKINGS ON
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA
OF THE SOUTHERN REGION OF THE U.S.D.A. FOREST SERVICE**

WHEREAS, the U.S. Department of Agriculture, U.S. Forest Service, Land Between The Lakes National Recreation Area (LBL) has determined that some land management activities (undertakings) on LBL may affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, LBL has determined that consultation on undertakings that might affect unevaluated cultural resources and historic properties must be conducted in order for the Area Supervisor and other agency officials to take such effects into account in evaluating alternatives and in making decisions pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (80 Stat. 915 et seq.; 16 U.S.C. 470 et seq.); and

WHEREAS, LBL has consulted with and invited to participate as signatories pursuant to section 800.14 of the regulations (36 CFR 800) implementing Section 106 of the NHPA, the Advisory Council on Historic Preservation (ACHP) and the Kentucky and Tennessee State Historic Preservation Officers (SHPOs) and they have accepted that role and are collectively hereafter referred to as “signatories”; and

WHEREAS, LBL has consulted with and invited to participate as concurring parties pursuant to section 800.14(b) (2) (i) of the regulations (36 CFR 800) implementing Section 106 of the NHPA the Absentee-Shawnee Tribe of Indians in Oklahoma; the Cherokee Nation; the Chickasaw Nation; the Eastern Band of Cherokee Indians, the Eastern Shawnee, the Shawnee, the United Keetoowah Band of Cherokee, Fort Donelson National Battlefield (FODO); Between The Rivers, Inc. (BTR); the Trigg County Historical Society; and the Mayor of Stewart County, Tennessee, the Trigg County Kentucky, Judge Executive, and the Lyon County, Kentucky, Judge Executive and they have accepted that role and are collectively hereafter referred to as “concurring parties”; and

WHEREAS, LBL has consulted and invited to participate as concurring parties pursuant to section 800.14(b)(2)(i) of the regulations (36 CFR 800) implementing Section 106 of the NHPA the Choctaw Nation of Oklahoma who have deferred to the Chickasaw Nation, and the Seminole Tribe of Florida, the Lyon County Historical Society, and the Stewart County Historical Society who have chosen not to participate; and

WHEREAS, LBL, SHPOs, and ACHP have determined that LBL’s process for compliance with Section 106 of the NHPA and its implementing regulations, entitled "Protection of Historic

Properties" (36 CFR part 800) can be improved and streamlined through the implementation of a Programmatic Agreement (PA), as allowed by 36 part CFR 800.14(b); and

WHEREAS, a coordinated program created by this PA would improve consistency and accountability in the development and application of appropriate measures to inventory, evaluate, protect, interpret, enhance, and consult on the management of historic properties and unevaluated cultural resources within LBL; and

WHEREAS, a coordinated program may best be accomplished under a single PA which sets forth a process for consultation, coordination and cooperation among LBL, SHPOs, ACHP, and concurring parties and lays out the conditions under which LBL planning for undertakings can take place under uniform standards for inventorying, evaluating, protecting, enhancing, consulting, and managing historic properties and unevaluated cultural resources affected by the activities and programs administered and carried out by LBL; and

WHEREAS, LBL, SHPOs, and ACHP share a common desire and purpose to develop procedures that would satisfactorily take into account the effects of these undertakings where proper precautions are followed; reduce redundant documentation associated with recurring types of undertakings within areas having adequate prior identification, review, and consultation; and facilitate LBL's progress towards meeting National Historic Preservation Act (NHPA) Section 110 responsibilities;

NOW, THEREFORE, LBL, SHPOs, and ACHP agree that all undertakings by LBL shall be implemented in accordance with the following stipulations in order to take into account the effect of their undertakings on historic properties and unevaluated cultural resources; and when so administered, the processes specified in this PA for identification, documentation, evaluation, review, consultation, and public notification and participation will be followed, and these processes will satisfy LBL's NHPA Section 106 responsibilities for most aspects of its undertakings.

STIPULATIONS

LBL will ensure that the following measures are carried out:

I. SCOPE AND EFFECT

The purpose of this PA is to streamline compliance with the ACHP's regulations, *Protection of Historic Properties* (36 CFR Part 800), implementing Section 106 of the NHPA for undertakings. In order to do so, LBL will classify all undertakings into one of the following 5 categories which may proceed without further consultation, review and comment as long as LBL implements the proper precautions for each category (see Stipulation V and Appendices):

(A) Exempt Undertaking

The nature of the undertaking is such that it is unlikely to affect either unevaluated cultural resources or historic properties and is therefore exempt from further review and consultation (see Appendix 3); or

(B) No Unevaluated Cultural Resources or Historic Properties Found Undertaking

There are no unevaluated cultural resources or historic properties identified within an area of potential effect (APE);

(C) Unevaluated Cultural Resources and/or Historic Properties Found, Avoided and Protected Undertaking

Unevaluated cultural resources and/or historic properties are within an APE and will be managed and maintained in such a way that they are protected so that no adverse effects will result; or

(D) No Historic Properties Undertaking

Evaluated cultural resources exist within the APE and the SHPOs have concurred with the determination that they are not eligible for inclusion on the NRHP and are therefore exempt from the provisions of 36 CFR Part 800.

(E) Catastrophic Events/Storm Recovery/Dangerous Conditions Undertakings

For any LBL undertaking proposed as a direct result of and in response to a disaster in locations where field conditions are dangerous and hazardous, LBL will follow the protocols outlined in Appendix 5 for Catastrophic Events/Storm Recovery/Dangerous Conditions (see also Stipulation XI).

Only when none of the above undertaking categories are appropriate (i.e. adverse effects to historic properties cannot be avoided or LBL identifies other unusual conditions) or when an investigation is conducted by contractors, consultants, researchers, ARPA permittees and other non-LBL Heritage Professionals will LBL initiate the complete Section 106 process outlined in 36 CFR 800.

II. DEFINITIONS

Definitions applicable to this PA are found in Appendix 1.

III. CONSULTATION AND COORDINATION

(A) Consultation and Participation

1. LBL's NEPA scoping process shall continue to be used to inform Tribes about proposed undertakings and to provide Tribes with the opportunity to identify properties to which they may attach religious and cultural significance as well as the opportunity to voice any concerns about potential adverse impacts.
2. LBL shall continue to use its NEPA scoping process to provide individuals, organizations, or groups who were consulted during the development of this PA and those who were not an opportunity to comment on LBL Undertakings and to voice their concerns about effects from undertakings on unevaluated cultural resources and historic properties.
3. Where Tribes and/or any identified consulting parties specifically request information about traditional cultural use properties remain confidential, such records will be maintained in confidential files by LBL heritage staff. LBL will consult with the appropriate Tribe or other consulting party on what sensitive information may be released to the SHPOs on a case by case basis. However, only cultural resources more than 100 years old are protected by the Archaeological Resources Protection Act of 1979, as amended (ARPA) from the Freedom of Information Act (FOIA).

(B) Land Management Planning

1. LBL will provide the SHPOs, Tribes, and the ACHP with copies of LBL maps and the current LRMP and will share Geographic Information System (GIS) data layers when feasible and they do not contain confidential or sensitive information.
2. LBL will continue to review and update the LBL Heritage Resources Management Plan.

3. LBL will complete a Heritage Implementation Plan concurrently with this PA. Within five years of the signature date of this PA, the results of the Heritage Implementation Plan will be used to update the existing LBL HRMP.

3. LBL will make any necessary amendments to its LRMP to include this PA and the Heritage Resource Management Plan and/or Heritage Implementation Plan (whichever document is more current) within five years from the date of execution of this PA.

IV. STAFFING AND TRAINING

(A) Staffing and Qualifications

LBL shall maintain appropriate professional and technical staff to carry out the terms of this PA. LBL shall ensure that all heritage program work is conducted by Heritage Professionals as defined in FSM 2360. LBL shall ensure that heritage program activities conducted pursuant to this PA are implemented under the direct supervision of professionals trained as archaeologists, historians, architectural historians, or anthropologists and, at a minimum, meet the standards set forth in FSM 2360, OPM X118 (see Appendix 2 for specific heritage position qualifications).

(B) Training

1. LBL shall ensure that its Heritage Professionals are provided with appropriate training consistent with current Forest Service Manual and Handbook direction and the Secretary of the Interior's (SOI) Historic Preservation Professional Qualification Standards.

2. LBL Heritage Professionals are encouraged to attend professional meetings and continuing education courses.

3. LBL shall ensure that the Leadership Team, project planning staff and personnel maintain an up-to-date working knowledge of the requirements of the National Historic Preservation Act of 1966, as amended, the Section 106 regulations at 36 CFR Part 800, and the Secretary of the Interior's Standards for Historic Preservation.

4. LBL shall ensure that new Line Officers, Staff Officers, leadership team members, program managers, and other critical staff will receive training and instruction in the purpose, meaning, application, and implementation of this PA. Such training may be conducted with the assistance of the SHPOs on a schedule to be determined based on changes in staffing or at the recommendation of the Area Supervisor, Heritage Program Manager (HPM), or SHPOs.

V. REVIEW OF UNDERTAKINGS

(A) Exempt Undertaking

Management of LBL involves a number of routine and recurring undertakings whose potential effects on unevaluated cultural resources and historic properties are foreseeable and likely to be absent, negligible, or minimal. These types of undertakings will be categorized as Exempt Undertakings (EU) and they are listed in Appendix 3.

1. LBL's Heritage Professionals will determine whether a proposed undertaking meets the definition of an EU under the terms of this PA.

2. Documentation signed by a Heritage Professional determining the project is an EU will be kept in

the LBL heritage files and copies of the documentation will be placed in the NEPA project record.

3. A summary of EU projects will be included in the Annual Report (see Stipulation X (A)).
4. Any discovery of human remains or unevaluated cultural resources during the implementation of any EU will be treated in accordance with the protocol in Appendix 6.
5. LBL may revise, update, or refine, as needed, the list of EUs through recommendation in the Annual Report and following the amendment procedure outlined in Stipulation XII (A) 1.

(B) Catastrophic Events/Storm Recovery/Dangerous Conditions Undertakings

Dangerous and difficult field conditions following catastrophic events such as tornadoes, hurricanes, and ice storms make it difficult to conduct heritage fieldwork prior to undertakings proposed to relieve hazardous situations and conditions and clean-up ravaged areas. After consulting with the appropriate SHPO, any LBL undertaking proposed as a direct result of and in response to a disaster in locations where field conditions are dangerous and hazardous, LBL will follow the protocols outlined in Appendix 5 for Catastrophic Events/Storm Recovery/Dangerous Conditions (see also Stipulation IX).

(C) All other Undertakings

1. Delineate APE

For each LBL planned action that is not listed as an EU or a Catastrophic Event but meets the PA definition of "undertaking" (see definition in Appendix 1), the Heritage Professional shall establish the APE in accordance with 36 CFR 800.4 and taking into consideration potential effects that may be direct, indirect and/or cumulative.

2. Survey Strategies and Methods

LBL did not become an USFS unit until 1999 and the heritage program is in the early stages of developing effective survey strategies. Given this fact, it will take time to catch up to the level of heritage program management currently at other FS units. LBL Heritage staff has spent the last 4 years testing and continually refining the survey strategies and methods in Appendix 4 that were developed as a result of consultation with the Kentucky and Tennessee SHPOs. An analysis of their effectiveness or lessons learned will be included in the annual report along with any conclusions and recommendations. Based on those conclusions and recommendations, LBL may continue to revise, update, or refine their survey strategies and methods following the amendment procedure outlined in Stipulation XII (A) 1.

3. Identify Historic Properties and Unevaluated Cultural Resources.

LBL will make a reasonable and good faith effort to identify historic properties and unevaluated cultural resources within the APE, as required by Section 106 and Section 2363 of FSM 2360. Identification efforts will follow the ACHP's Section 106 Archaeology Guidance, the Secretary of the Interior's (SOI) Standards and Guidelines for Archaeology and Historic Preservation, the SOI's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act, Section 2363 of FSM 2360, applicable Handbook direction, LBL LRMP, both the HRMP and Heritage Implementation Plan, as they are revised and updated, and applicable LBL Survey Strategies and Methods found in Appendix 4.

For the purposes of this PA, identification of historic properties and unevaluated cultural resources within the APE may result in the identification of the following three possible cultural resource categories (see Appendix 1 for definitions):

Unevaluated Cultural Resource

**Not Eligible Cultural Resource
Historic Property**

The scope of identification efforts will depend on existing knowledge about cultural resources documented in the FS National INFRA Heritage Database and LBL Heritage GIS and other records, survey strategy and methods developed during project planning, and current management needs. Critical steps in the identification process include reviewing literature on previously conducted investigations, consultation (as appropriate), historical and archival research, and field survey.

4. Determine Undertaking Category and Implement Proper Precautions

(a) No Unevaluated Cultural Resources or Historic Properties Found Undertaking

Project may proceed when no unevaluated cultural resources or historic properties are identified in the area of potential effect for an undertaking, given the following conditions are followed:

- i. Documentation signed by a Heritage Professional determining the project is a No Unevaluated Cultural Resources or Historic Properties Found Undertaking will be kept in the LBL heritage files and copies of the documentation will be placed in the NEPA project record.
- ii. A summary and maps for all No Unevaluated Cultural Resources or Historic Properties Found surveys conducted during the year will be included in the Annual Report (see Stipulation X (A)).
- iii. Any discovery of unevaluated cultural resources during the implementation of any No Unevaluated Cultural Resources or Historic Property Found Undertaking will be treated in accordance with the protocol in Appendix 6.

(b) Unevaluated Cultural Resources and/or Historic Properties Found, Avoided and Protected Undertaking

Project may proceed if unevaluated cultural resources or historic properties are identified within the APE for an undertaking given the following minimum protection requirements are in place:

- i. No activities associated with an undertaking that may adversely affect the potential eligibility of an unevaluated cultural resource or the eligibility of an historic property shall occur. Portions of undertakings may need to be modified, redesigned, or eliminated to properly avoid unevaluated cultural resources and/or historic properties. Exclusion is most often achieved by modifying or altering the proposed project boundary for the undertaking which would also modify and alter the APE.
- ii. In order to protect and avoid unevaluated cultural resources and historic properties during the implementation of an undertaking, LBL Heritage staff will physically mark the boundary of the unevaluated cultural resource and/or historic property, usually with flagging. In some cases, in order not to attract attention to certain sensitive or vulnerable unevaluated cultural resources or historic properties, flagging may not be appropriate. As necessary, the Heritage Professional will advise and coordinate with law enforcement to reduce or prevent looting and vandalism of marked locations.
- iii. Marked unevaluated cultural resource and historic property boundaries will also

include buffer zones to extend the protection area where setting is an important attribute and the proposed activity may have an adverse effect on the setting's quality. The size of buffer zones will be determined by the Heritage Professional and staff on a case-by-case basis.

iv. LBL Heritage Professionals will ensure that all protected and avoided unevaluated cultural resources and historic properties are monitored within 60 days of the completion of an Undertaking and as needed during implementation.

v. If during monitoring any unevaluated cultural resources or historic properties are found to have suffered adverse effects, the HPM will consult the appropriate SHPO immediately.

vi. Documentation signed by a Heritage Professional determining the project is a Unevaluated Cultural Resources and/or Historic Properties Found, Avoided and Protected Undertaking will be kept in the LBL heritage files and copies of the documentation will be placed in the NEPA project record.

vii. A summary and maps for all Unevaluated Cultural Resources and/or Historic Properties Found, Avoided and Protected surveys conducted during the year will be included in the LBL Heritage Annual Report (see Stipulation X (A)).

viii. Any discovery of new unevaluated cultural resources during the implementation of a Unevaluated Cultural Resources and/or Historic Property Found, Avoided and Protected Undertaking will be treated in accordance with the protocol in Appendix 6.

(c) No Historic Properties Undertaking

Project may proceed when an acceptable survey has been conducted within the APE and any cultural resources that had been identified within the APE were evaluated and determined to be not eligible for listing on the National Register of Historic Places (NRHP) and the SHPOs concurred with the determination that they were not eligible for inclusion on the NRHP and are therefore exempt from the provisions of 36 CFR Part 800.

i. LBL's Heritage Professionals will determine whether a proposed undertaking meets the definition of a No Historic Properties Undertaking under the terms of this PA.

ii. Documentation signed by a Heritage Professional determining the project is a No Historic Property will be kept in the LBL heritage files and copies of the documentation will also be placed in the NEPA project record.

iii. A summary and maps of No Historic Properties Undertakings will be included in the LBL Heritage Annual Report (see Stipulation X (A)).

vi. Any discovery of an unevaluated cultural resource during the implementation of a No Historic Properties Found Undertaking will be treated in accordance with the protocol in Appendix 6.

5. Cultural Resource Site Recording

LBL has a backlog of known cultural resource sites that have been entered in the Heritage GIS but that have not yet been formally recorded. Except in the case of Catastrophic Events/Storm

Recovery/Dangerous Conditions Undertakings or prescribed burn undertakings where survey strategy and methods state otherwise (see Appendix 4), LBL will complete all necessary field cultural resource site recording prior to the start of an undertaking and submit final records to the appropriate SHPO as well as entry into the USFS National INFRA Heritage Database within 1 year of the start of the project. The highest priority will be given to standing structures and those cultural resources that are known to qualify as USFS Priority Heritage Assets (PHA) but that have not yet been recorded or designated.

6. Data Management

The Heritage Professionals will maintain cultural resource data in the Heritage GIS as well as the USFS National INFRA Heritage Database.

7. Evaluation of Historic Properties

Since LBL did not become an USFS unit until 1999, it is in the early stages of developing a comprehensive program that can systematically address heritage compliance and cultural resource stewardship and management. A high priority is completing cultural resource site recording for all sites currently entered in the Heritage GIS with the highest priority given to finding and recording remaining standing structures and developing management plans for them.

In the meantime, LBL will continue to treat all unevaluated cultural resources as eligible and will alter proposed project boundaries and/ or flag, avoid, and protect them from adverse effects during undertakings. If however, adverse effects cannot be avoided and/or agreed upon protection measures cannot be applied, LBL will follow the standard Section 106 process specified in Federal Regulations, "Protection of Historic Properties" (36 CFR part 800), including evaluation to determine significance and eligibility for listing on the National Register of Historic Places.

LBL will reassess heritage program priorities and include systematic evaluation of cultural resources when:

- (a) All standing structures are recorded.
- (b) All known PHA's have been designated to USFS standards.
- (c) The HRMP has been updated and includes a research design that provides a framework and guidance for evaluating sites at LBL.
- (d) There are fewer than 500 known but unrecorded cultural resource sites within the Heritage GIS.

8. Sharing Critical Location and Boundary Information

Historic property and unevaluated cultural resource location and boundary marking information shall be conveyed to appropriate LBL line officers, staff officers, program managers responsible for implementation of a proposed undertaking so pertinent information can be incorporated into planning and implementation documents and contracts (e.g., clauses or stipulations in permits) as well as during implementation of the undertaking.

VI. CURATION

LBL will include as one of the goals and tasks in the Heritage Implementation Plan, a requirement to develop a plan for collections that is consistent with 36 CFR Part 79 so that it can be incorporated into the revised HRMP. The plan will include a summary of known collections and their location, status of collections, and an outline and time frame of effort needed to enter artifact information into the

Assemblages module of the USFS National INFRA Heritage Database.

LBL will continue to trace the locations of collections and attempt to catalog and accession current artifact collections. While inventorying, cataloguing and accessioning artifacts, LBL Heritage Staff will store collections and associated records at LBL and manage them as heritage assets consistent with 36 CFR Part 79.

VII. MONITORING

LBL shall conduct monitoring as necessary to ensure that identified protection measures are effective. A permanent record such as a condition report shall be completed for each monitoring event and kept in the heritage files and will be documented and included in the annual report. Inspection by the SHPOs or Tribes may be performed during or after an undertaking with advance notice and arrangement between the SHPOs, Tribes, the HPM, and the Agency Official. If major changes are noted in the integrity, condition, or appearance of an unevaluated cultural resource or historic property or new information is uncovered, the site forms shall be updated accordingly and this information forwarded to be included in the statewide inventory. Properties monitored will also include those that are susceptible to looting and vandalism. USFS Heritage Program Managed to Standard Measures require that PHAs have a completed condition assessment every 5 years or less.

VIII. UNANTICIPATED DISCOVERIES

Any discovery of human remains or previously unrecorded cultural resources and/or an unanticipated effect during the implementation of an undertaking will be treated in accordance with the protocols outlined in Appendix 6.

IX. EMERGENCY ACTIONS

(A) Emergency situations are defined as an emergency declared by the President, the Governor, or the head of a local government. In addition, if LBL determines that there is an immediate threat to life or property then LBL may declare an emergency situation. Emergency situations may include, but are not limited to disasters such as hurricane, tornado, flood, landslide, windstorm, ice storm, insect infestation or wildfire.

(B) LBL will implement the protocols identified in Appendix 5 for emergency situations.

(C) Provisions for emergency situations will be implemented until such time as LBL determines that the emergency situation is over.

X. REPORTING

(A) Annual Report

1. LBL Heritage Staff will generate an Annual Report which will be submitted to all signatories and concurring parties for a 30-day review period each year.

2. The Annual Report will be used to document all undertakings assigned to one of the 5 categories outlined in Stipulation I and described in Stipulation V. As such, it will contain maps and adequate information to enable all parties to understand each Undertaking, its classification category and the basis for the classification.

3. The Annual Report will also include survey strategies and methods, and where applicable, summaries of protection and avoidance measures, monitoring results, analyses of methods, lessons learned, and any proposed recommendations for refinement of survey strategies and/or the list of EUs.

4. The Annual Report will also be used to report the progress on the Open Lands Survey and achieving goals and tasks outlined in the Heritage Implementation Plan.

5. Signatories and concurring parties will have 30 days to review the Annual Report. To be considered, all comments on the Annual Report and any recommendations made in it must be submitted to LBL in writing before the end of the 30 day review period.

(B) Other Reporting

All investigations conducted for an undertaking that does not fall under one of the 5 undertaking categories identified in Stipulation I A-E as well as those conducted by contractors, consultants, researchers, ARPA permittees and other non-LBL Heritage Professionals will follow the complete Section 106 process outlined in 36 CFR 800. This will include a full, stand-alone report that meets all applicable SHPO standards for reporting and which will be submitted to the appropriate SHPO and Tribe for the required 30-day review and comment period prior to signing the NEPA decision.

XI. MEETINGS

Any signatory or concurring party may request a meeting with LBL to discuss any issues arising from the implementation of this PA before the end of the 30 day review period following the submittal of the Annual Report. Such meetings may include field visits and face-to-face conferences.

XII. ADDITIONAL PROVISIONS

(A) Amendments to this PA

1. LBL may propose revisions, updates, or refinements to the list of EUs in Appendix 3 and the survey strategies in Appendix 4 in the Annual Report. Signatories and concurring parties may provide written comments on any proposals during the 30 day Annual Report review period. If no signatory has raised any objections, LBL will develop a revised list of EUs and/or the survey strategies which will be signed by all signatories and appended to this PA.

2. Any signatory can propose minor technical revisions to the PA that would correct errors or clarify the intent of stipulations. Such minor technical revisions will go into effect upon written agreement by all signatories. The FS will notify all parties regarding adopted revisions within 30 days of their adoption.

3. If a signatory to this PA determines the terms of the PA cannot be met, or believes change is necessary other than those changes provided under XII (A) 1 and 2 above, that party shall submit the request in writing to all signatories. Consultation and agreement to such an amendment will be executed in the same manner as the original PA.

(B) Dispute Resolution

Should a signatory make an objection to any actions that are taken as a result of this PA, LBL shall consult with the objecting party to resolve the objection. If LBL determines that the objection cannot be resolved, it will forward all documentation relevant to the dispute to the ACHP and notify the other signatories.

Within 30 days after receipt of all pertinent documentation, the ACHP will provide LBL with recommendations, which LBL will take into account in reaching a final decision regarding the dispute pursuant to 36 CFR 800.9.

LBL's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute will remain unchanged.

(C) Failure to Carry Out the Terms of the PA

In the event LBL is unable to carry out the terms of this PA, or following a notification from the ACHP made in consultation with the Area Supervisor, the SHPOs, and/or concurring parties, LBL should terminate this PA.

In the event a signatory is unable to fulfill their responsibilities pursuant to this PA, LBL shall consult with the ACHP on an appropriate course of action for implementing the terms of the PA.

(D) Termination

Should this PA be terminated, LBL will comply with 36 CFR part 800.3 through 800.7 for undertakings with the potential to affect historic properties under its jurisdiction.

XIII. DURATION

This Programmatic Agreement will be in full force and effect for 10 years from the date it is ratified by the required signatories (LBL, SHPOs, and ACHP). In the six-month period prior to the expiration of the Programmatic Agreement, LBL, the SHPO, and the ACHP will consult to consider amendment of this PA or development of a new PA.

1st DRAFT

Execution of this PA evidences that LBL has afforded the SHPOs and the ACHP a reasonable opportunity to examine and share their views on how it manages historic properties. Execution of this PA and implementation of its terms also evidences that LBL has satisfied their Section 106 responsibilities under the NHPA for all individual undertakings on LBL lands subject to the terms of this PA.

SIGNATORIES

USDA FOREST SERVICE, LAND BETWEEN THE LAKES NATIONAL RECREATION AREA

By: _____ Date: _____
William P. Lisowsky, Area Supervisor

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Mark Dennen, SHPO

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
E. Patrick McIntyre, Jr., SHPO

CONCURRING PARTIES

ABSENTEE –SHAWNEE TRIBE OF INDIANS IN OKLAHOMA

By: _____ Date: _____
Governor Scott Miller

CHEROKEE NATION OF OKLAHOMA

By: _____ Date: _____
Principal Chief Chadwick Smith

1st DRAFT

CHICKASAW NATION

By: _____ Date: _____
Governor Bill Anoatubby

EASTERN BAND OF CHEROKEE INDIANS

By: _____ Date: _____
Principal Chief Michell Hicks

EASTERN SHAWNEE

By: _____ Date: _____
Principal Chief Charles Enyart

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS

By: _____ Date: _____
Principal Chief George Wickliffe

BETWEEN THE RIVERS, INC.

By: _____ Date: _____
President Ray Parish

BETWEEN THE RIVERS PRESERVATION ORGANIZATION, INC.
“Rescue Our Cemeteries”

By: _____ Date: _____
President Lynn Lancaster

FORT DONELSON NATIONAL BATTLEFIELD

By: _____ Date: _____
Superintendent Steven A. McCoy

LYON COUNTY, KENTUCKY

By: _____ Date: _____
Judge Executive James Campbell

1st DRAFT

STEWART COUNTY, TENNESSEE

By: _____ Date: _____
Mayor Rick Joiner

TRIGG COUNTY, KENTUCKY

By: _____ Date: _____
Judge Executive Stan Humphries

TRIGG COUNTY HISTORICAL SOCIETY, KENTUCKY

By: _____ Date: _____
President Ken Oakley

Appendix 1 Definitions

The following definitions, and others included in 36 CFR 800.16, apply to this Programmatic Agreement.

Adverse Effect –an alteration that diminishes those characteristics of an historic property which qualify it for inclusion in the National Register of Historic Places. The specific process for determining adverse effect is found in 36 CFR Part 800.5(a-b). For the purpose of this PA, this definition is expanded to include an alteration that has the potential to diminish those characteristics of an unevaluated cultural resource that could qualify it for inclusion in the National Register of Historic Places, as determined by LBL Heritage Professionals.

Advisory Council, Council, or ACHP - the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council. The ACHP was created by the National Historic Preservation Act of 1966 as the Federal agency with the lead responsibility for developing and implementing regulations to carry out the Section 106 process.

American Indian - for the purposes of this agreement, all persons of Indian descent who are members of a Federally Recognized American Indian Tribe.

Archaeological Site - any location where human behavior has resulted in the deposition of artifacts or other evidence of purposive behavior at least 50 years of age. An archaeological site can be prehistoric, historic or both (multicomponent).

Archaeological Technician (GS-102 social science technician) A Heritage Program assistant who meets the Office of Personnel Management standards (X118) and participates in all facets of the Heritage Program under the direct supervision of a Heritage Professional. Archaeological technicians conduct field surveys of NFS lands, make recommendations for National Register eligibility and project effect determinations, compile and report information about the nature and extent of known cultural resources, assist in cultural resource data management, and participate in stewardship projects. The combination of responsibilities will change according to grade level.

Area of Potential Effect (APE) - the geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties and unevaluated cultural resources, if any such properties exist. The area of potential effects is influenced by the scale and nature of an Undertaking and may be different for different kinds of effects caused by the Undertaking.

Artifact- prehistoric or historic cultural objects or fragments of objects such as flakes, points (arrowheads), stone or bone tools, pottery, glass, metal, cut wood, nails, bottles, butchered and/or burnt bone, plant remains, cans, foundation stones, etc.

Consultation - the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in the section 106 process.

Contingency Area - An area adjacent to a wildland fire or a prescribed burn in which cultural resources are identified and protected as a precautionary measure in the unlikely event of a fire escape from intended control lines. These areas are selected on the basis of 1) likelihood of escape and 2) the risk of resource damage or loss in the event of an escape.

Concurring Party - A concurring party to a PA can be any person or group that was consulted with

(consulting party) or involved in the development of the PA. This could include federally recognized Tribes, local governments, groups or individuals with historical connections to the area, groups or individuals with economic connections to certain historic properties affected by the PA, state or locally recognized Tribes that attach religious and cultural significance to historic properties on the Forest, professional historic preservation or archaeological organizations in the area, avocational groups in the area, partners, etc. Signing a PA as a concurring party simply means that the group or individual concurs with the PA. Concurring parties do not have the authority in and of themselves to terminate or amend a PA. If an individual or group that was consulted with or involved in the development of the PA refuses to sign as a concurring party, it does not invalidate the PA. The Forest does, however, need to document why they refused to concur and demonstrate that their concerns were taken into consideration in the development of the PA.

Consulting Party - According to the Advisory Council on Historic Preservation’s regulations, an Agency Official “shall involve the consulting parties ... in findings and determinations made during the section 106 process” (36 CFR Part 800.2[c][1-5]). Depending on the Undertaking, consulting parties can include the State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer (THPO); Indian Tribes and Native Hawaiian organizations; representatives of local governments; and applicants for Federal assistance, permits, licenses and other approvals (36 CFR Part 800.2[c] [1-5]). Consulting parties may also include certain individuals and organizations with a demonstrated interest in the undertaking (i.e., legal, economic, professional, or advocacy). See also **Concurring Party** and **Signatory**.

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 religious or cultural properties. When used without any descriptive modifier in this document, 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. For the purposes of this PA, cultural resources have been classified into the following three categories (see alphabetical listing for specific definition):

Unevaluated Cultural Resource

Not Eligible Cultural Resource

Historic Property

Cut-and-hand-spray - felling, limbing and bucking trees into manageable lengths and hand spraying with pesticides.

Cut-and-leave – trees are felled by hand tools and felled trees are left in place.

Data Recovery - term generally meaning the detailed and large-scale excavation of an archaeological site.

Effect - alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register. For the purpose of this PA, this definition is expanded to include an alteration to the characteristics of an unevaluated cultural resource that could qualify it for inclusion in the National Register of Historic Places, as determined by LBL Heritage Professionals.

Eligible - for inclusion in the National Register of Historic Places includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register of Historic Places criteria (36 CFR 60).

Evaluation – process for determining whether a historic property meets the National Register criteria (36

CFR 60) and is significant and therefore eligible for inclusion in the National Register of Historic Places.

Exempt Undertaking - an undertaking that is exempt from Section 106 review or consultation under terms of this Programmatic Agreement (see Appendix 3).

Feature – usually a single portion or component of a cultural resource site, such as a depression or mound, a hearth, midden, or the building remains of a single structure at a prehistoric or historic cultural resource site where there are other remains or structures.

Federally Recognized American Indian Tribe - an American Indian Tribe that is included on the current list of Indian Entities recognized by the United States Bureau of Indian Affairs as published in the Federal Register, vol. 73, N066/April 4, 2008.

Hand pile-and-burn - piling trees or other vegetation and burning the piles. Only hand line is constructed.

Heritage Professional (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.

Heritage Program Manager (HPM) (i.e., Forest Archaeologist/Forest Historian – GS-193 or 170 series) - position on the Forest that is responsible for: directing, planning, and administering the Forest's complex and multi-faceted Heritage Program; providing professional and technical advice to the Forest Supervisor and District Rangers as decision-makers; directing the Heritage Program internally, and with external agencies, organizations, and the public; and planning and developing the Forest's heritage resource inventory, evaluation, and enhancement program. The HPM shall meet the professional standards established in the Forest Service's OPM X118 series for Forest Archaeologist/Historian.

Heritage Resource Management Plan (HRMP)- a broad and comprehensive overview of prehistory and history which focuses on an agency's Section 110 responsibilities to identify, define, and refine management standards, guidelines, initiatives, and heritage program goals.

Historic – After a written record exists; sometime around 1700 AD in this part of the United States. See **Prehistoric**.

Historic Context – the significance of historic properties is evaluated for the National Register of Historic Places within an historic context. The historic context is a narrative which identifies and evaluates the significant patterns that properties represent. Within the historic context, the importance of individual properties is compared, allowing significant properties to be recognized and enabling good management decisions to be made.

Historic Property - any prehistoric or historic district, site, building, structure, object or historical/cultural landscape included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, features, 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 per the definition in 36 CFR 800.16(1).

Historic Resource – an object or definite location of human activity, occupation or use greater than 50 years old and specifically related to the time period after a written record exists for a geographic area and that is identifiable through field survey, historical documentation, or oral evidence.

Identification - Identification is undertaken for the purpose of locating historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interviews, field survey and analysis.

Mitigation - Term meaning to alleviate or compensate for the adverse effects of project construction. Mitigation may take the form of data recovery (thereby obtaining the data contained in the site) or by avoidance (thereby not affecting the site at all).

Monitoring - an informal term used to describe the visual confirmation that specific pre-agreed upon tasks are undertaken regarding the protection of archaeological sites that are potentially and/or eligible for inclusion in the NRHP.

National Historic Preservation Act of 1966 (NHPA) – this act was created by Congress to establish a program for the preservation of additional historic properties throughout the Nation.

The purpose of the Act states that:

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

National Register (NRHP) - the National Register of Historic Places maintained by the Secretary of the Interior which was created by the NHPA.

National Register Criteria - the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

Not Eligible Cultural Resource – any prehistoric or historic district, site, building, structure, object or historical/cultural landscape which was evaluated for significance by Heritage Professionals following the

National Register criteria and determined not eligible for listing on the National Register of Historic Places maintained by the Secretary of the Interior and the SHPOs or the Keeper of the National Register has formally concurred with the not eligible determination. These cultural resources are released from management under NHPA but may be retained, protected, and managed for some other purpose by the agency.

Paraprofessionals (formerly known as Heritage Resource Technicians or HRTs) – an FS program where employees who have primary responsibilities in other FS resource programs 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 paraprofessional's work.

Priority Heritage Asset (PHA) - 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.
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.

Prehistoric – fluctuating time period in different parts of the country and the world but is represented as a time before any written records exist; in this part of the country, sometime before 1700 AD.

Prehistoric Resource – an object or definite location of human activity, occupation or use specifically related to the time period before a written record exists for a geographic area and that is identifiable through field survey, historical documentation, or oral evidence.

Section 106 – Section 106 (often referred to as the Section 106 Process) of the NHPA requires Federal agencies to take into account the effects of their undertaking on historic properties and afford the Advisory Council a reasonable opportunity to comment on those undertakings. The National Park Service is responsible for developing the regulations that govern the process by which agencies ensure that they meet their requirements. The regulations are defined in 36 Code of Federal Regulations (CFR) Part 800.

Signatory - The required signatories to a Section 106 PA in the USFS Southern Region are (1) the Forest/Area Supervisor; (2) the SHPO; and (3) the ACHP (if, after notified by letter, they choose to participate). Other required signatories include any person or organization agreeing to assume some sort of role or responsibility in the PA. A Forest may choose to include other seriously interested and involved parties as signatories to the PA. However, the Forest should keep in mind that each signatory has the authority to terminate or seek amendments to the PA.

Site – see **Archaeological Site, Cultural Resource**. Sites are groupings of artifacts and/or features within a defined geographic area. Sites can be prehistoric, historic or both (multicomponent).

Standing Structure – any structure 50 years or older that has enough structural integrity so that the original structure can be identified, documented, recorded, and potentially repaired and/or restored.

State Historic Preservation Officer (SHPO) - the official appointed or designated pursuant to section 101(b) (1) of the NHPA of 1966, as amended, to administer the State historic preservation program or representative designated to act for the State Historic Preservation Officer.

Survey - a systematic, detailed examination of an area designed to gather information about the number, location, condition, and distribution of historic properties and unevaluated cultural resources within an Undertaking's Area of Potential Effect.

Testing - a phase of archaeological investigation that assesses the horizontal and vertical extent of a particular site, its degree of preservation, and its potential for containing significant data.

Undertaking - a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a federal permit, license or approval per the definition in 36 CFR 800.16(y).

Unevaluated Cultural Resources-an unevaluated cultural resource is any prehistoric or historic district, site, building, structure, object or historical/cultural landscape are those resources which an LBL Heritage Professional has determined could potentially be eligible for listing on the National Register of Historic Places maintained by the Secretary of the Interior and which will be recorded and protected by Heritage Staff from adverse effects from Undertakings until they are evaluated following the NRHP criteria. The term includes artifacts, features, records, and remains that are related to and located within such resources as well as those resources of traditional religious and cultural importance.

Appendix 2 Staffing and Qualifications (FSM 2360)

(A) Staffing

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. These positions include the LBL Heritage Program Manager (HPM) and the LBL Archaeologist.

2. Archaeological Technician

(GS-102 social science technician) A Heritage Program assistant who meets the Office of Personnel Management standards (X118) and participates in all facets of the Heritage Program under the direct supervision of a Heritage Professional. Archaeological technicians conduct field surveys of NFS lands, make recommendations for National Register eligibility and project effect determinations, compile and report information about the nature and extent of known cultural resources, assist in cultural resource data management, and participate in stewardship projects. The combination of responsibilities will change according to grade level.

3. Paraprofessional

FS employees who have primary responsibilities in other FS 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 paraprofessional's work. The paraprofessional program is optional.

4. Consultants, Contractors and Partners

Professional consultants and/or partners who meet the professional standards of 36 CFR 296.8, or the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (48 FR 44738-44739). All actions conducted by consultants, contractors, and partners will adhere to Section 112 of the NHPA and will meet the professional standards under regulations contained in the SOI Standards and Guidelines for Archaeology and Historic.

(B) Qualifications

1. LBL will ensure that Heritage Program activities conducted pursuant to this PA are implemented under the oversight of Heritage Professionals trained as archaeologists, historians, architectural historians, or anthropologists and, at a minimum, meet the standards set forth in Forest Service Manual 2360. Activities supervised or conducted by such professionals will be within their areas of professional expertise.

2. Archaeological technicians (GS-102 series), paraprofessionals, student interns and volunteers shall only conduct work under the direct technical supervision of a Forest Service Heritage professional meeting the qualifications in Stipulation II (A). Only the LBL HPM will make Section 106 judgments, findings and determinations on "undertakings," "significance," "effect," "measures to resolve adverse effects," and "area of potential effect".

Appendix 3 Exempt Undertakings

The following Undertakings have little or no potential to affect historic properties or unevaluated cultural resources. As a result of their limited or no potential to affect historic properties or unevaluated cultural resources, under the provisions of this PA, these Undertakings are exempt from case-by-case Section 106 review and no further consultation with the SHPO, Tribes, other consulting parties, or the public is required. The decision to classify an Undertaking as an Exempt Undertaking will be made by the LBL Heritage Professional.

- a. Undertakings taking place in areas previously surveyed for cultural resources when the previous survey followed currently accepted survey and site recording methodologies and was appropriate for the level of intensity of the newly proposed Undertaking and where there are no known historic properties or unevaluated cultural resources.
- b. Research activities involving no destructive actions (demolition or dismantling are destructive actions) or ground disturbance;
- c. Placement of geophysical seismic monitoring equipment on the surfaced portion or within the prism (area clearly associated with road construction, from road surface to top of cut and/or toe of fill) of a regularly maintained road;
- d. Permits, easements, rights-of-way, and leases that do not authorize ground disturbance;
- e. Land acquisitions or transfers of administrative control to the Forest Service, where the historic properties received are not considered in exchange for any relinquished;
- f. Maintenance or alteration of existing structures or objects less than 50 years old within the existing disturbed footprint (i.e., administrative structures, recreation structures, boat launch ramps, campgrounds, cattle guards, fences, stock tanks);
- g. Transfer of use authorization from one authority to another when an action such as a boundary adjustment necessitates changing a right-of-way or easement from one authority to another (e.g., Forest Service Special Use Permit to a USFA Title V Right-of-Way);
- h. Withdrawal revocations (lands that return to Forest Service control from other Federal or State agencies);
- i. Installation, maintenance, or repair of sign and gate posts unless within the boundary of known historic properties or unevaluated cultural resources or when additional ground disturbance beyond digging a post hole is involved;
- j. Routine trail maintenance performed with hand tools of adequately surveyed trails and where there are no known historic properties or unevaluated cultural resources (does not include trail relocation);
- k. Routine maintenance or repair of existing fences and/or gates;
- l. Routine maintenance or repair of existing non-historic roads, culverts, and bridges;
- m. Non-ground disturbing broadcast seeding, no-till seeding and spreading mulch for establishment of

vegetation and all routine mowing;

n. Chainsaw/herbicide site preparation where actions consist of using chainsaws to fell remaining trees (cut and leave) and/or the application of herbicide to control undesirable vegetation and no ground disturbance.

o. Pesticide/Herbicide spray projects involving no ground disturbance;

p. Cut and leave hand thinning of timber stands provided there is no ground disturbance and there are no known historic properties or unevaluated cultural resources.

q. Timber hand cut, pile, and burn undertakings where the burn pile locations where there are no known historic properties or unevaluated cultural resources.

r. Hand and dibble (a tool used to prepare planting holes for seedlings) planting of trees in areas previously surveyed with no historic properties or unevaluated cultural resources.

Appendix 4 Survey Strategies and Methods

All strategies and methods outlined in this section provide additional guidance for investigations and are in addition to any stipulations in the Programmatic Agreement (PA).

- I. Prescribed Burn Undertakings
- II. Open Lands
- III. Timber

I. Prescribed Burn Undertakings

Pre-burn:

- Use historic maps, Tennessee Valley Authority (TVA) land acquisition maps, and information provided by former residents and other knowledgeable local people to identify former homesites and other historic sites (such as churches, schools, business, bridges, etc) since they are the most likely type of cultural resources to contain remains that could be adversely impacted by a moderate prescribed burn.
- Historic cultural resource data found on historic maps will be heads-up digitized into the Heritage Geographic Information System (GIS) database.
- Using global positioning system (GPS), all GIS-entered historic cultural resources will be verified in the field and their condition photographed and documented.
- Previously recorded but unevaluated cultural resources, historic properties, and cemeteries within the project area will be visited and their condition photographed and documented.
- Using TVA cemetery survey maps, Land Between The Lakes (LBL) Heritage Professionals will flag cemetery boundaries for all cemeteries within the actual burn boundary and any identified contingency areas.
- Cemetery protection measures will be developed by the LBL Fire Management Officer (FMO) and trained Fire Staff and implemented on a case-by-case basis.
- LBL Heritage Professionals will assess potential fire impacts to all other historic unevaluated cultural resources and historic properties within the actual burn and any identified contingency area. When they determine that any impacts to the resource from prescribed burning could result in the loss of significant information or a significant resource or property, the resource and/or property will be flagged and protected.
- Protection measures will be developed in consultation with the LBL FMO and implemented by Fire Staff with support from Heritage Staff.

Post-burn:

- Field visit, photograph, and complete prescribed burn condition assessments for all flagged and protected cultural resources and all cemeteries within 60 days of burn or before leaf-out, whichever is sooner, in order to monitor effectiveness of protection measures.
- Should any flagged and protected cultural resource be inadvertently adversely affected, LBL

Heritage Program Manager (HPM) will immediately consult with the appropriate State Historic Preservation Office (SHPO).

- If any cemetery is found to have been adversely impacted, the LBL HPM and FMO will immediately contact any known cemetery representatives.
- Within 6 months of the burn or before leaf-out, whichever is sooner, field recording of all newly identified cultural resource sites will be completed as well as any necessary site record updates for previously recorded cultural resource sites.
- Final cultural resource site records will be submitted to the SHPO's within 1 year of the date of the burn.
- A summary for all pre-burn projects performed during the year as well as any completed post burn monitoring will be included in the annual report.

II. Open Lands

This following section is taken directly from the report "*Open Lands Heritage Survey Plan, Land Between The Lakes*" R-137 that was written for an environmental analysis conducted for the continued maintenance of open lands at LBL in 2007. The results of future open lands surveys and accomplishments will be included in each Annual Report.

Answering the question of whether or not heritage sites will be impacted by continued maintenance of open lands at LBL is exacerbated by the lack of reliable data. However, based on historic land use, we suspect the same types of impacts have been happening at the same locations for many years.

What we really need to learn first is whether there are sites within open lands and if so, how much impact, if any, has occurred and is there anything that needs to be done to protect sites in the future. The survey plan address the following issues:

- Are there historic cemeteries within open land boundaries
 - Using overlay analysis in the Heritage GIS, identify cemeteries that may be within cemeteries
 - field visit all such cemeteries
 - If a cemetery is found to be within a maintained open land, the open lands project manager will be notified and the cemetery boundary will be defined including an adequate buffer and that portion of the open land will be removed from continued maintenance
- Are there sites within open land boundaries
 - Inventory (survey) open lands
 - record any new sites
 - field visit known sites
- Condition of sites and identification of impact agents if necessary
 - Site condition assessments and documentation
- Do sites need to be protected from future impacts
 - Site significance evaluation
- Do significant sites need management plans
 - Develop treatment/management plans for those sites that are significant and eligible for listing on the National Register or identified as PHA's and are found to be in poor condition or threatened

- What can we learn about the past use of open land areas
 - Continue to build relationships with former residents in order to understand their history and gain knowledge of past land use
 - Relate what we learn from historic research to the public
 - Incorporate knowledge into project planning when possible

We cannot protect, preserve or interpret resources we do not understand. The components in Table 4, below, reflect the need to start by developing a survey plan that addresses the most effective as well as feasible means of outlining and prioritizing the steps necessary for addressing impacts to cultural resources from any of the alternatives. The value of the plan is that it can be implemented at either a LBL open lands level or on a project-by-project basis during the usual Section 106 compliance process.

The first step is to identify the types of open lands, the treatment methods applied to each type, potential impacts given the treatment methods, and the types of sites that would be at risk from the identified potential impacts. Currently there are approximately 1333 individual open land fields on 6928 acres at LBL. Table 4, below, lists the current impact agent for each type of open land.

Cultivated Cover Types	Impact
Wildlife Plantings	Burn, disk
Croplands	Burn, till, no till drilling
Grassland Cover Types	Infrequent soil disturbance
Maintained open lands and warm season grasses	Burn, Infrequent disking
Hayfields	Burn
Old Fields	Burn

Open land types and current treatment methods.

By far, the most likely impact agents and their concomitant site types are:

- Prescribed burning and historic sites with wooden components, masonry, or other features or artifacts that could be impacted by moderate burning
- Ground disturbance (such as tilling and disking) and prehistoric sites

A comprehensive survey plan to address possible impacts to heritage sites due to open lands maintenance activities is outlined in Table 5, below. The plan prioritizes heritage survey actions by impact and sets minimum yearly accomplishment levels.

The plan also addresses two other events associated with LBL open lands that are likely to impact cultural resources: expansion of riparian corridors as required by new standards developed for the LRMP (specifically those returning to tree and shrub riparian corridor) and old fields that have been regenerating and returning to tree and shrub successional stages. As with all the other actions proposed for the Open Lands Survey Plan, surveying these locations offers the opportunity to learn a great deal about past land use in specific environments and locations as well as gather important site location data. For example, the old fields are intriguing; what are these “old fields”, where are they located and why, and what was their purpose? In addition, surveying the riparian corridors that will revert to tree and shrub environments allows us to survey for historic homesites along the streams as well as surveying exposed stream banks for prehistoric sites.

Open Lands Heritage Survey Plan					
Priority	Action	Purpose	Project Area	Time	Accomplishment (Minimum)
High	Pre-Burn and Post-Burn Surveys	Identify and protect sites at immediate risk, conduct survey under optimal surface visibility	Identified during prescribed burn planning	Annually	Pre-Burn: all areas Post-Burn: see Burn compliance process
High	Known Cemetery Condition Assessment	Locate and protect cemeteries at immediate risk	Known Cemetery locations	Immediate (FY07)	Completed in 2007
High	Recorded Site Condition Assessment	Locate and protect sites at immediate risk	Recorded site locations	Immediate (FY10-11)	
Medium	Site Evaluation	Evaluate site significance for eligibility for listing on the National Register	All identified site locations	Following identification, recording, and condition assessment	2 per year
Medium	Significant Sites (Priority Assets) Management Plans	For those sites that are significant and eligible for listing on the National Register, and are found to be in poor condition or threatened, develop treatment/management plan	Poor Condition or Threatened Significant Site Locations	Following site evaluation, Annually	1 per year
Medium	Walkover Survey	Conduct surveys to identify, record, and protect sites on high probability impact fields	Tilled and disked fields, Old fields, Shrub and tree riparian corridors	Following High Priority, Annually	100 acres per year
Medium	Review Historic Literature (maps, air photos, and other documentation)	Determine past human use	All open lands	Following High Priority, field by field	All surveyed fields per year
Medium	Locate Former Residents and/or Descendents	Determine past human use, record history of former residents and the land	All open lands	Following High Priority, field by field	All surveyed fields per year
Medium	Education/Interpretation Plan	Disseminate land use history to LBL employees/public	LBL-wide	2009	Plan completed
Low	Survey	Conduct surveys to identify, record, and protect sites on low impact/low visibility fields	All highly vegetated, no ground disturbance fields	Following Medium Priority, Annually	5 acres
Yearly Summary of activities and results in Annual Report					

III. Timber and Other Ground-disturbing Undertakings

Pre-Undertaking:

- Use historic maps, TVA land acquisition maps, and Heritage GIS data to identify all recorded and unrecorded cultural resources and cemeteries.
- Using the Heritage GIS Slope Model, identify potential shovel test (PST) areas (polygons) of high probability locations (where slope $\leq 15\%$ and acres > 0.2) within the project area of potential effect (APE). Overlay the PST polygon data onto the 7.5 minute USGS drg basemap and using the underlying topography, digitize PST transects within the PST polygons. Measure the transects and divide by 20 meters to get total number of potential shovel tests (all shovel test transects ≤ 20 meter interval and shovel test interval along transects ≤ 20 meters). Digitize PST points at least every 20 meters but also in a range of topographic locations along PST lines. Upload PST points to GPS to field check and lay out shovel test grids.
- Overlay open lands GIS data and add any fields within Undertaking APE to field maps.
- Visit all GIS identified cultural resources, document condition, photograph, and record or update unevaluated cultural resource data as necessary.
- Perform pedestrian survey of all open lands where visibility is $\geq 75\%$ using 10 meter transects.
- In forested areas where visibility is $\leq 75\%$ and slope is $\geq 15\%$ survey any trails, borrow pits, roads, including historic roads, road cuts, and other disturbed areas using random transects of likely terrain.
- Using GPS-loaded PST data, walk shovel test transects and lay out test grid.
- Perform shovel tests. Each shovel test will be ≥ 30 cm. in diameter and where bedrock not encountered sooner, at least 30 cm deep or to soil color change. All soils will be screened through $\frac{1}{4}$ inch mesh. Positive shovel tests will be further tested by radiating shovel tests out in 1 meter intervals from original shovel test. LBL shovel test forms will be filled out for each shovel test.
- Flag, avoid, and protect all unevaluated cultural resources, historic properties, and cemeteries.
- LBL Heritage Professionals will provide cultural resource identification training as needed to LBL or contract personnel so that they are aware a) of their obligation to report any discoveries (see Appendix 6), b) the reporting process, and c) the types of resources that may be discovered.
- In addition to training, all contracts will contain a mandatory United States Forest Service (USFS) discovery clause.
- If an unevaluated cultural resource or historic property cannot be flagged, avoided and protected, the Undertaking becomes a Section 106 Undertaking and that process will be followed.

During Undertaking:

- Monitor any flagged, avoided, and protected unevaluated cultural resource, historic property, or cemetery as necessary.

- Discovery procedures include immediately reporting any human remains or cultural resource materials to the Project Manager and stopping work in the vicinity of the find until the LBL Heritage Professional can assess the find (see Appendix 6).
- Should any flagged and protected unevaluated cultural resources or historic property be inadvertently adversely affected by the Undertaking, the LBL HPM will immediately consult with the appropriate SHPO.

Post-Undertaking:

- All flagged and protected cultural resources within the APE will be monitored and their condition assessed.
- All newly identified unevaluated cultural resources will be recorded and submitted to the appropriate SHPO within 1 year of Undertaking completion.
- A summary including the results of any monitoring will be included in that year's Annual Report as required by the PA.

Appendix 5

I. Catastrophic Events/Storm Recovery Protocol

II. Dangerous Conditions Survey Protocol

I. Catastrophic Events/Storm Recovery Protocol

1. Notify the appropriate State Historic Preservation Office (SHPO), Tribe, Advisory Council on Historic Preservation (ACHP), and other concurring parties as necessary.
2. Develop a communication plan for continuing communication and providing status reports to the SHPO and other parties contacted during step 1, as needed.
3. In the event of wildfire, once human lives are no longer at risk, the Fire Management Officer (FMO) will contact the Heritage Program Manager (HPM) at the earliest possible moment to determine whether there are historic properties that need to be protected from the wildfire and/or response activities.
4. Once damaged areas can be safely entered, identify and assess unevaluated cultural resources, historic properties, and cemeteries in affected areas, giving priority to those areas where proposed recovery activities have a high potential to (further) impact resources.
5. Complete condition assessments for each unevaluated cultural resource, historic property, and cemetery including any recommendations for any necessary protection, preservation, recovery, or stabilization efforts.
6. Develop priorities and plans for stabilization, repair, emergency data recovery, stabilization, protection efforts, etc.
7. Review all proposed response/ recovery projects to determine potential for affects to unevaluated cultural resources, historic properties, and cemeteries; identify types of potential impacts; and follow appropriate protocol measures outlined below.
8. Survey as needed and where and when possible and implement protection measures as necessary.
9. If dangerous conditions make survey impossible prior to response/ recovery activities, implement the Dangerous Conditions Survey Protocol described below.
10. The HPM will ensure all parties involved in recovery efforts are aware of the Unanticipated Discoveries Protocol so it can be followed (see Appendix 6).

II. Dangerous Conditions Survey Protocol

When field conditions within the area of potential effect (APE) of a proposed clean-up activity meant to relieve hazardous situations make it extremely dangerous and difficult to conduct heritage fieldwork the following measures will be followed:

Pre-Activity

1. Initiate or continue communication as described in steps 1 and 2 under Catastrophic Events/Storm Recovery, above.
2. Project maps will be reviewed to identify known historic properties, cemeteries, and areas of high probability for potential prehistoric and historic cultural resources based on the Heritage Geographic Information System (GIS) predictive model.
3. Where at all possible and feasible, if known unevaluated cultural resources, historic properties, and/or cemeteries are within the project APE the protection requirements outlined in Stipulation V(C)(4)(b) of the Programmatic Agreement (PA) will be followed.
4. Known unevaluated cultural resources, historic properties, cemeteries, and high probability areas will be discussed with the project manager and marked as necessary on project maps.
5. The LBL Heritage Professional will provide cultural resource identification training to LBL or contract personnel so that they are aware a) of their obligation to report any discoveries (see Appendix 6), b) the reporting process, and c) the types of resources that may be discovered.
6. In addition to training, all contracts will contain a mandatory United States Forest Service (USFS) discovery clause.

During Activity

7. As storm damaged areas are opened up allowing access to high probability areas, Heritage Professionals and appropriate project manager will visit those locations as a team. If any previously unidentified cultural resources are found within storm damaged areas, the team will develop a strategy to either exclude the area from impact activities or devise alternative low-impact clean-up procedures within the immediate vicinity of the resource.
8. Discovery procedures include immediately reporting any human remains or cultural resource materials to the Project Manager and stopping work in the vicinity of the find until the LBL Heritage Professional can assess the find (see Appendix 6).
9. Should any unevaluated cultural resources, historic properties or cemeteries be inadvertently adversely affected as a result of the clean-up activity, the LBL HPM will immediately consult with the appropriate SHPO and other consulting parties, as appropriate.

Post-Activity

10. Within 6 months of activity completion, all field unevaluated cultural resource site recording, condition assessments of unevaluated cultural resources, historic properties and cemeteries, including necessary repair, stabilization, and protection plans will be completed.
11. Completed cultural resource site records will be submitted to the appropriate SHPO within 1 year of the completion of the clean-up activity.
12. Summary reports for all activities will be included in the Heritage Annual Report for the life of the effort.

Appendix 6 Unanticipated Discoveries Protocol

The information below is the protocol for complying with Stipulation VII in the Programmatic Agreement (PA).

In the event of an unanticipated discovery during the implementation of an Undertaking or clean-up/recovery activities during and/or following catastrophic events, the following process will be followed:

(A) Human Remains

1. In the event human remains are uncovered during any activity at Land Between The Lakes (LBL), all ground disturbance shall cease and the Heritage Program Manager (HPM) will be notified immediately.
2. The HPM will contact LBL Law Enforcement and the appropriate County Coroner as required by law.
3. LBL shall comply with the provisions of appropriate state and local laws for human remains.
4. If the remains are determined to be Native American, the HPM will immediately contact the appropriate State Historic Preservation Office and Tribe and LBL will comply with the provisions of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) as outlined in 43 CFR 10.

(B) Unevaluated Cultural Resources

1. During Undertaking

- (a)*** If the Undertaking has not been completed at the time of the discovery, all activities in the immediate vicinity of the find shall cease and reasonable efforts shall be taken to avoid or minimize harm to it until the LBL Heritage Professional is contacted and can evaluate the discovery, assess the effects, determine what kind of treatment is warranted.
- (b)*** Within two days of the find, LBL will initiate consultation with the appropriate SHPO, Tribe, and other concurring party to develop an agreed upon response.
- (c)*** If agreement cannot be reached, the SHPO shall provide written comments to LBL who will then initiate consultation with the ACHP and request comment from them before making a decision on how to proceed with the Undertaking.
- (d)*** LBL will notify all parties consulted of its final decision.
- (e)*** The terms of the PA do not relieve or substitute LBL's responsibilities under ARPA and NAGPRA, or other authorities as appropriate.

2. After Undertaking

- (a)*** If the Undertaking has already concluded when an unevaluated cultural resource is discovered and it was inadvertently impacted by the Undertaking, LBL, the appropriate SHPO, Tribe, concurring party and the Council (should they choose) shall consult to develop

an agreed upon action which LBL must implement within 30 days.

- (b) LBL will notify and submit reports to all consulting parties when the agreed action is completed following the schedule outlined in step (c) below.

- (c) Within six months (or an alternate agreed upon schedule) of consultation, LBL shall provide all consulted parties with a final report describing the Undertaking, the circumstances and the cause, and resolution of the effects. This report must include information regarding: the type of cultural resource affected, its eligibility for listing on the National Register Historic Places, the nature of the effects, the date effects were identified, the location and condition of the unevaluated cultural resource, and other pertinent information, as well as document LBL's response to the discovery of the effects and the actions taken to address or resolve the effects.