

PROGRAMMATIC AGREEMENT
AMONG
THE U.S.D.A. FOREST SERVICE,
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA;
KENTUCKY STATE HISTORIC PRESERVATION OFFICER;
TENNESSEE STATE HISTORIC PRESERVATION OFFICER;
EASTERN BAND OF CHEROKEE INDIANS;
EASTERN SHAWNEE TRIBE OF OKLAHOMA;
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING UNDERTAKINGS AT THE
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA

WHEREAS, the U.S. Department of Agriculture, Forest Service, Land Between the Lakes National Recreation Area (LBL) in Tennessee and Kentucky conducts land management activities (Undertakings) in support of recreation, environmental education, and maintenance; and

WHEREAS, these Undertakings include land and vegetation management activities in support of LBL's recreation and environmental education mission; routine maintenance and improvements to roads, trails, facilities and other administrative areas; minor repair and improvements to infrastructure for public safety; and those activities needed to restore services and facilities following emergencies or disasters; and

WHEREAS, LBL has determined that these Undertakings may have an adverse effect on historic properties which are listed in, or eligible for, listing in the National Register of Historic Places, and has consulted with the Kentucky and Tennessee State Historic Preservation Officers (SHPOs) pursuant to 36 CFR Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, Appendix A to this agreement provides a summary of the types of existing historic properties and listed historic properties; and

WHEREAS, LBL has consulted with the Eastern Band of Cherokee Indians and the Eastern Shawnee Tribe of Oklahoma, for which historic properties within LBL have religious and cultural significance, and has invited each of the tribes to sign this agreement as an invited signatory; and

WHEREAS, LBL has consulted with the Absentee Shawnee Tribe of Oklahoma, the United Keetoowah Band of Cherokee Indians, the Cherokee Nation, and the Chickasaw Nation, for which historic properties within LBL have religious and cultural significance, and has invited each tribe to sign this agreement as concurring parties; and

WHEREAS, LBL has invited the Seminole Tribe of Florida, the Choctaw Nation, and the Muscogee Creek Nation to consult in the development of this agreement, and they declined; and

WHEREAS, LBL has consulted with the National Park Service, Fort Donelson National Battlefield (FODO); Judge Executive of Trigg County, Kentucky; Judge Executive of Lyon County, Kentucky; Mayor of Stewart County, Tennessee; Between the Rivers Preservation Organizations, Inc. (BRPO); and Between the Rivers, Inc. (BTR) regarding the effects of the Undertaking on historic properties and has invited them to sign this agreement as concurring parties; and

WHEREAS, LBL has invited the Lyon County (Kentucky) Historical Society and the Stewart County (Tennessee) Historical Society to consult in the development of this agreement, and they declined; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), LBL has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, LBL wishes to streamline the Section 106 review of the Undertakings and has proposed this agreement pursuant to 36 CFR § 800.14(b)(3); and

WHEREAS, terms used in this agreement retain their meanings as defined in 36 CFR § 800.16.

NOW, THEREFORE, the LBL, Kentucky SHPO, Tennessee SHPO, and ACHP agree that the Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

LBL shall ensure that the following measures are carried out:

I. ROLES AND RESPONSIBILITIES

A. The LBL Area Supervisor is the “federal agency official” as defined in 36 CFR § 800.2(a), having approval authority for an Undertaking and the ability to commit the Forest Service to take appropriate action for a specific Undertaking as a result of Section 106 compliance. The Area Supervisor shall maintain appropriate professional and technical staff to carry out the terms of this PA.

B. The LBL Heritage Program Manager is an individual who is certified by the Tennessee and Kentucky SHPOs and meets, at a minimum, the standards set forth in Forest Service Manual 2360, the provisions of the Operating Manual for Qualifications X-118, and /or the Secretary of the Interior’s *Standards and Guidelines for Archaeology and Historic Preservation, Professional Qualifications for Archeologists and/or Historians* (48 FR 190:44716-44742). He/she advises the Area Supervisor in the implementation of this Agreement and the Section 106 review process in general and directs appropriate professional and technical heritage staff who carry out the terms of this PA.

II. COORDINATION WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

A. LBL shall continue to combine Tribal consultation and Section 106 public input notification with NEPA scoping. LBL shall notify and involve the Tribes and public as required by the Council of Environmental Quality and Forest Service NEPA regulations (40 CFR 1501.7, 40 CFR 1506.6, 36 CFR 220.4(e) and FSH 1909.15 Chapter 10 Sec. 11). LBL shall use any combination of NEPA scoping notices, the LBL website (www.lbl.org), news releases, public workshops, NEPA Summary of Proposed Actions (SOPA) and scoping mailing list, or community meetings to share information about proposed projects, to request information and concerns about sacred sites and other heritage sites, and how to provide comment. Requests to be added to the LBL NEPA mailing lists are accepted at any time and open to anyone.

B. LBL shall use NEPA communications via e-mail and/or website at www.lbl.org/LRMPPProjects.html to notify Indian tribes of Undertakings and solicit their input on impacts or concerns related to traditional use and/or sacred sites.

C. LBL shall use NEPA communications via e-mail and/or website at www.lbl.org/LRMPPProjects.html to notify the public of Undertakings and solicit their input about historic preservation concerns. If a member of the public or representative of an agency or organization demonstrates interest in an Undertaking and its effects on historic properties as a result of NEPA communications, the Area Supervisor may invite that person to participate in the Section 106 review as a consulting party in accordance with 36 CFR § 800.2(c)(5) and 800.3(f)(3).

D. The Area Supervisor should complete one of the following prior to issuing a NEPA decision:

1. Make a finding that the Undertaking is exempt from review and include documentation of the finding in the NEPA administrative record (Stipulation III).
2. Make a finding of no historic properties present in the APE or no historic properties adversely affected by the Undertaking and complete the procedures in Stipulation IV.D.
3. Make a finding of historic properties adversely affected by the Undertaking and complete the procedures at 36 CFR § 800.6 or 7.

III. UNDERTAKINGS EXEMPT FROM REVIEW

- A. An Undertaking is exempt from Section 106 review if it is included in the following list:
1. Research activities involving no destructive actions (demolition or dismantling are destructive actions) or ground disturbance.
 2. 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.
 3. Permits, easements, rights-of-way, and leases that do not authorize ground disturbance or demolition, rehabilitation, restoration, and/or renovation of standing structures.
 4. Maintenance or alteration of existing standing structures or objects less than 50 years old as long as they lack any historic context or architecture that might contribute to their being considered significant and therefore eligible for listing on the National Register in spite of being less than 50 years old (i.e., administrative structures, recreation structures, boat launch ramps, campgrounds, cattle guards, fences, stock tanks).
 5. 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) when such transfer will not require ground disturbing activities.
 6. Withdrawal revocations (lands that return to Forest Service control from other Federal or State agencies).
 7. Installation, maintenance, or repair of sign and/or gate posts when additional ground disturbance beyond digging a post hole is not involved.
 8. Temporary road closures that involve installation of barriers such as gates, imported dirt/rock berms, or strategically dropped trees.
 9. Routine maintenance or repair of existing trails when performed with hand tools (does not include trail relocation).
 10. Routine maintenance or repair of existing fences and/or gates.
 11. Routine maintenance or repair of existing roads, culverts, and bridges.
 12. Non-ground disturbing broadcast seeding, no-till seeding, and spreading mulch for establishment of vegetation and all routine mowing.
 13. Wildlife stand improvement (WSI) where actions consist of cutting a slash in trees that range in size from 1"-6" in diameter (at breast height) to apply herbicide.
 14. Vegetation reclamation treatments for routine maintenance of open land fields including removal of fallen trees and/or grinding of above ground invasive species such as autumn olive from the perimeter and/or within the fields.
 15. Pesticide/Herbicide spray projects involving no ground disturbance.
 16. Timber stand improvement (TSI) and/or timber thinning where cutting is done by hand with a chainsaw and trees are left in place on the ground.
 17. Burning of brush piles in locations that do not contain or are adjacent to any historic properties.
 18. Hand and dibble (tool used to create holes for planting seedlings) vegetation planting.
- B. The Area Supervisor, with the advice of the Heritage Program Manager, may determine that an Undertaking not included in the exemption list is exempt from Section 106 review if either of the following are true:
1. The APE for the Undertaking has been adequately surveyed and no historic properties are present, or
 2. The APE for the Undertaking has been previously disturbed and presents no potential for historic properties to be present
- C. The Heritage Program Manager shall ensure that documentation of the finding that an Undertaking is exempt from review is included in the project file and NEPA administrative record and shall report on such findings in the Annual Report (Stipulation XII.A.1) in table format as shown in Appendix D.
- D. The signatories may add, alter, or remove Undertakings from the exemption list by mutual written consent (Stipulations XII.A.4 and XII.B).

IV. STREAMLINED REVIEW PROCESS

For convenience, Appendix B presents a flowchart illustrating the streamlined review process.

A. Decision to use the process.

With the advice of the Heritage Program Manager, the Area Supervisor may use the streamlined review process for individual Undertakings at LBL.

1. If the Area Supervisor determines that Section 106 documentation shall be prepared by non-federal contractors, consultants, researchers, ARPA permittees, or other applicants, he/she shall not use the streamlined process.
2. If the Area Supervisor determines that the Undertaking does not fit those identified in the second “Whereas” clause above, he/she shall not use the streamlined process.
3. If the Area Supervisor determines, in consultation with an Indian tribe, that an Undertaking may affect a historic property of religious and cultural significance to the Indian tribe, he/she shall not use the streamlined process.
4. If the Area Supervisor determines, in consultation with the SHPO or other consulting parties, that an Undertaking is likely to present controversy regarding its effects to historic properties, he/she shall not use the streamlined process.
5. If the Area Supervisor understands that another federal agency has Section 106 responsibilities for the same Undertaking, he/she may not use the streamlined process to satisfy the other agency’s responsibilities.
6. If the Area Supervisor determines for any reason and at any time during the process that an Undertaking is not appropriate for the streamlined process, he/she shall meet the requirements of the Section 106 review process defined in 36 CFR § 800.3 – 7.

B. Identification, Evaluation and Assessment of Effects.

1. The Area Supervisor, advised by the Heritage Program Manager, shall determine the scope of identification efforts in a manner consistent with 36 CFR § 800.4(a).
 - a. The Area Supervisor shall determine and document the Area of Potential Effects (APE). He/she shall ensure that any “contingency areas” are included in the APE. A contingency area is an area adjacent to a prescribed burn boundary which may be affected if the fire escapes from intended control lines.
 - b. The Heritage Program Manager shall ensure and oversee the implementation of the appropriate survey strategy or strategies for the Undertaking:
 - i. For all Undertakings:
 - (a) Conduct background research to identify known historic properties, previously listed or determined eligible for the National Register, and potential “cultural resource” locations in the APE. A cultural resource is 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. Cultural resources include the entire spectrum of resources for which the Heritage Program is responsible ranging from artifacts to cultural landscapes without regard to eligibility for listing on the National Register of Historic Places. (Forest Service Manual 2360 – Heritage Program Management, Section 2360.5 – Definitions, page 21). An existing cemetery is a cultural resource.
 - (b) Enter potential cultural resource locations in the APE in the LBL Geographic Information System (GIS).
 - (c) Make a reasonable and good faith effort to survey the APE; record any cultural resources observed with a global positioning system (GPS) device, notes and photographs; and update GIS with the results.
 - (d) Except for prescribed burns, efforts shall be made to record identified cultural resources with the appropriate state agency prior to assessment of effects. In

Kentucky, archaeological sites shall be recorded with the Kentucky Office of State Archaeology and above-ground resources should be recorded with the Kentucky Heritage Council. In Tennessee, archaeological sites shall be recorded with the Tennessee Division of Archaeology and above-ground resources should be recorded with the Tennessee Historical Commission.

ii. In addition, for Prescribed Burns:

(a) LBL Fire or Heritage staff shall call identified cemetery contacts to:

- (1) inform them of the planned prescribed burn Undertaking;
- (2) ask them to share the information with others who use, maintain, and visit the cemetery;
- (3) ask if funerals are planned during the prescribed burn Undertaking;
- (4) establish a communication tree in the event a funeral needs to be planned; and
- (5) discuss the potential for the prescribed burn to address vegetation maintenance in or adjacent to the cemetery.

(b) The Heritage Program Manager shall ensure that cemetery contact call documentation is included in the project file and the NEPA administrative record.

(c) Make every effort to record cultural resources identified during pre-burn survey within one year of implementation of the prescribed burn.

2. The Area Supervisor, with the advice of the Heritage Program Manager, shall determine if the APE contains any cultural resources or historic properties, previously determined eligible for or listed in the National Register of Historic Places.

3. The Area Supervisor, with the advice of the Heritage Program Manager, shall determine if there is a low probability that unidentified historic properties may be present in the APE considering:

- a. background research,
- b. consultation with Indian tribes and other consulting parties
- c. oral history interviews, and
- d. any past planning, research, or studies.

4. The Area Supervisor, with the advice of the Heritage Program Manager, shall determine if the following standard treatments can be implemented to avoid adverse effects to identified historic properties or cultural resources in the APE. The signatories can add, alter, or remove standard treatments by mutual written consent (Stipulations XII.A.4 and XII.B).

a. For prescribed burn Undertakings, the Area Supervisor can avoid adverse effects if he/she can ensure that the identified historic properties and cultural resources are mapped and treated as “exclusion zones” during the Undertaking. The Heritage Program Manager shall consult with the LBL Fire Management Officer (FMO) to develop and implement burn-specific exclusion zone protection measures.

b. For Undertakings involving the restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and/or provision of handicapped access to historic properties that are buildings or structures, the Area Supervisor may avoid adverse effects by ensuring the Undertaking is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, that the Undertaking is monitored, and progress is documented in the Annual Report (Stipulation XII.A).

c. For all other Undertakings, the Area Supervisor can avoid adverse effects if identified historic properties and cultural resources are mapped, flagged in the field with an appropriate buffer, treated as “exclusion zones”, and monitored by heritage staff, when necessary, during the Undertaking. The Area Supervisor shall inform LBL staff, contractors, or permittees that project activities are prohibited within exclusion zones and shall ensure that exclusion zones are identified on project maps and flagged in the field. Project activities include, but are not limited to, ground disturbance, material or equipment storage or staging areas, and demolition of or alterations to buildings or structures. The Area Supervisor shall also inform LBL staff, contractors, or permittees that intentional approval or implementation of activities in the exclusion zone shall be subject to review and potential prosecution pursuant to the Archaeological Resources Protection Act (ARPA).

The Heritage Program Manager shall ensure that exclusion zones are adequately mapped and flagged, provide appropriately trained heritage staff to act as monitors during project activities when necessary, educate on-site personnel about the exclusion zones and prohibited activities, evaluate, document the effectiveness of the standard treatments and monitoring to avoid adverse effects and make recommendations for any necessary revisions in the Annual Report (Stipulation XII.A), identify any previously unidentified cultural resources uncovered by the activities, and follow the post-review discovery procedures in Stipulation XI .

C. Effect Findings.

The Area Supervisor, with the advice of the Heritage Program Manager, shall make an effect finding for each Undertaking. The Heritage Program Manager shall ensure that documentation of an effect finding is included in the project file and NEPA administrative record. The Area Supervisor may not approve and implement an Undertaking until an effect finding is documented as follows:

1. If no identified historic properties or cultural resources are present in the APE and the potential for unidentified historic properties in the APE is low, then the Area Supervisor, with the advice of the Heritage Program Manager, may find that the Undertaking shall not affect historic properties.
2. If the Area Supervisor finds, with the advice of the Heritage Program Manager, that a historic property or cultural resource is in the APE or there is a potential for unidentified historic properties in the APE, and he/she can commit to implementing the standard treatments to avoid adverse effects and monitoring, when necessary (Stipulation IV.B.4.c), then he/she may find that the Undertaking shall not adversely affect historic properties.
3. The Heritage Program Manager shall transmit a report documenting the finding that the Undertaking may not affect (Stipulation IV.D.1) or may not adversely affect (Stipulation IV.D.2) historic properties for review to the appropriate signatories and any other consulting parties. The report shall meet the standards in Appendix C unless revised by mutual written consent of the signatories (Stipulation XII.B.2). The reviewing signatories and consulting parties may object to the finding of no historic properties adversely affected within 15 days of receipt of the documentation. If LBL receives no objections, LBL has completed the Section 106 review process. If LBL receives objections, then LBL ~~may~~ shall either consult with the objecting party to resolve the objections and, if needed, follow the dispute resolution process in Stipulation XIV or continue to Stipulation IV.D.4.
4. If the Area Supervisor finds that a historic property or cultural resource may be adversely affected by an Undertaking in accordance with the criteria of adverse effect at 36 CFR § 800.5(a) or that the standard treatments to avoid adverse effects and/or necessary monitoring cannot be implemented, the Area Supervisor shall withdraw the Undertaking from the streamlined review process and complete the Section 106 process by following the procedures at 36 CFR § 800.6 – 7.

V. EMERGENCY UNDERTAKINGS

A. Emergency Undertakings are Undertakings which respond to a disaster or emergency declared by the President or the Governor of a State or which respond to other immediate threats to life or property as designated by the Area Supervisor.

B. Examples of disasters or emergencies which may affect LBL include, but are not limited to, a hurricane, tornado, flood, landslide, windstorm, ice storm, insect infestation, or wildfire.

B. Immediate rescue and salvage operations conducted to preserve life or property are exempt from Section 106 review (Stipulation III).

D. For all other emergency Undertakings, LBL shall follow the Emergency situations procedures at 36 CFR § 800.12(b)(2).

VI. ONGOING IDENTIFICATION EFFORTS

LBL shall continue its efforts to survey, identify, and evaluate historic properties within LBL in accordance with the requirements of Section 110(a) of the National Historic Preservation Act and of Forest Service Manual (FSM) 2360. The LBL shall prioritize such efforts to:

- A. Document and evaluate buildings, structures, and archaeological sites. Consult with the appropriate SHPO(s), Indian tribe(s), and consulting parties to determine eligibility for the National Register.
- B. Assign management categories and develop management use plans for all Priority Heritage Assets (FSM 2360.5; 2362.3).
- C. Update the Heritage Resource Management Plan (hereafter called the Heritage Program Plan [HPP]) for LBL and include a context for the evaluation of properties identified in LBL (see also Stipulation VII.B).
- D. Update Priority Heritage Asset condition assessments on a five (5) year basis.

VII. LAND MANAGEMENT PLANNING

A. Information Sharing.

1. LBL shall provide the SHPOs and Indian tribes with:
 - a. LBL maps available at <http://www.lbl.org/VCMaps.html> or hard copy upon request.
 - b. The 2004 LBL *Land and Resource Management Plan* (LRMP) available at <http://www.lbl.org/LRMPPlanning.html>; existing LBL Heritage Resource Management Plan (HRMP) available at <http://www.lbl.org/Heritage.html> ; and existing LBL Fire Management Plan available at <http://www.lbl.org/NRMFireManagement.html> or hard copy upon request.
 - c. FSM 2360 *Heritage Program Management from Recreation, Wilderness, and Related Resource Management* available at www.fs.fed.us/im/directives/fsm/2300/2360.doc or hard copy upon request.
2. LBL shall share Geographic Information System (GIS) data layers with interested SHPOs and Tribes subject to the confidentiality provision of Section 304 of the NHPA and 36 CFR § 800.11(c). LBL shall coordinate with the appropriate GIS data managers to ensure compatibility and to resolve data exchange issues.

B. Plan Updates.

1. LBL shall continue consultation with the SHPOs, Indian tribes, and other consulting parties to update the existing HRMP within five (5) years of execution of this agreement.
2. Within one (1) year of the execution of this agreement, LBL shall update the Fire Management Plan to incorporate references to this agreement.
3. LBL shall incorporate references to this agreement if any updates to the LRMP are initiated during the term of this agreement.

VIII. TRAINING

A. The Area Supervisor shall ensure that he/she, Department Managers, and program and project planning staff at LBL maintain a working knowledge of the requirements of NHPA, the Section 106 implementing regulations at 36 CFR Part 800, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and this agreement.

B. The Area Supervisor shall ensure that he/she, Department Managers, and program and project planning staff do not authorize activities within LBL with the potential to affect historic properties without meeting the terms of this agreement. The Area Supervisor shall advise LBL staff that the intentional approval and implementation of activities that adversely affect historic properties without meeting the requirements of Section 106 shall be subject to review and potential prosecution pursuant to the Archaeological Resources Protection Act (ARPA).

IX. CONFIDENTIALITY

In accordance with Section 304 of the NHPA and 36 CFR §800.11(c), certain information about the location, character, or ownership of a historic property may be withheld from public disclosure when such disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.

In accordance with Section 304 of the NHPA, and 36 CFR §800.11(c)(1), the FS shall contact the Secretary of the Interior and request that he determine who shall have access to the GIS data regarding prehistoric and historic period archaeological sites, for which specific consulting parties have requested access. The FS shall implement the results of the Section 304 consultation process.

X. CURATION

LBL shall accession artifacts and store collections and associated records at LBL and in accordance with 36 CFR Part 79.

XI. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, LBL shall implement the procedures in 36 CFR § 800.13(b).

XII. PERFORMANCE OF THE AGREEMENT/COMMITMENT TRACKING

A. LBL shall submit an Annual Report by March 1 to each signatory and concurring party summarizing its efforts in the previous fiscal year (October 1-September 30) under this agreement. LBL shall also post the Annual Report to its website at www.lbl.org/Heritage.html. The report shall include:

1. A summary of Undertakings determined to be exempt from review (Stipulation III) in the format illustrated in Appendix D,
2. Documentation of evaluation of the effectiveness of standard treatment to avoid and monitoring carried out in the previous fiscal year.
3. Analyses of methods and lessons learned.
4. Any recommendations for revisions to the list of exempt Undertakings in Appendix D (Stipulation III.D), standard treatments to avoid (Stipulation IV.B.4), or the reporting standards in Appendix C (Stipulation IV.D.3).
5. A summary of efforts to meet the terms of this agreement for Stipulations V – X.

B. Each signatory or concurring party may provide recommendations for revisions to the list of exempt Undertakings, standard treatments to avoid, or the reporting standards and/or comments within 30 days of receipt of the Annual Report.

1. LBL shall provide copies of any received comments to signatories within 15 days of receipt.
2. LBL may update the list of exempt Undertakings, standard treatments to avoid, or reporting standards as recommended in the Annual Report if no objections are received. LBL shall provide signatories with a copy of the updated documentation and post it on its website at www.lbl.org/Heritage.html.

C. Any signatory may request that LBL convene a meeting to discuss concerns regarding the implementation of this agreement at any time. LBL shall make a reasonable and good faith effort to accommodate such requests in a timely manner. Such meetings may include field visits, face-to-face conferences, and telephone meetings.

XIII. DISPUTE RESOLUTION

Should any signatory to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, LBL shall consult with such party to resolve the objection. If LBL determines that such objection cannot be resolved, LBL shall:

A. Forward all documentation relevant to the dispute, including the LBL's proposed resolution, to the ACHP. The ACHP shall provide LBL with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, LBL shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories

and concurring parties, and provide them with a copy of this written response. LBL shall then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) days, LBL may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, LBL shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the agreement, and provide them and the ACHP with a copy of such written response.

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

D. Concurring party objections concerning the manner in which the terms of this agreement are implemented should be submitted to LBL for consideration and resolution.

XIV. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XV. TERMINATION

If any signatory to this agreement determines that its terms shall not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIV, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories.

Once the agreement is terminated, the Forest Service shall meet the requirements of the Section 106 review process defined in 36 CFR § 800.3 – 7 for each Undertaking at the LBL.

XVI. DURATION

This Programmatic Agreement shall be in full force and effect for 10 years from the date it is ratified by the signatories. In the six-month period prior to the expiration of the Programmatic Agreement, the signatories shall consult to consider amendments to the PA, renewal, or development of a new PA.

In the event that the agreement expires, LBL shall comply with the regulations contained in 36 CFR Part 800.

Execution of this agreement by the Forest Service, Kentucky SHPO, Tennessee SHPO, and the ACHP and implementation of its terms evidence that the Forest Service has taken into account the effects of its Undertakings at LBL on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

**USDA FOREST SERVICE
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA**

Tina Tilley
Area Supervisor

DATE

KENTUCKY HERITAGE COUNCIL

Craig A. Potts
Kentucky State Historic Preservation Officer

DATE

TENNESSEE HISTORICAL COMMISSION

E. Patrick McIntyre, Jr.
Tennessee State Historic Preservation Officer

DATE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler
Executive Director

DATE

EASTERN BAND OF CHEROKEE INDIANS

Michell Hicks
Principal Chief

DATE

EASTERN SHAWNEE TRIBE OF OKLAHOMA

Glenna J. Wallace
Principal Chief

DATE

CONCURRING PARTIES

**NATIONAL PARK SERVICE
FORT DONELSON NATIONAL BATTLEFIELD**

Brian McCutchen
Superintendent

DATE

ABSENTEE-SHAWNEE TRIBE OF INDIANS IN OKLAHOMA

Edwina Butler-Wolfe
Governor

DATE

CHEROKEE NATION OF OKLAHOMA

Bill John Baker
Principal Chief

DATE

CHICKASAW NATION

Nothing contained in this Agreement shall be construed to waive the sovereign rights of the Chickasaw Nation, its officers, employees, or agents

Bill Anoatubby
Governor

DATE

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS

George Wickliffe
Principal Chief

DATE

BETWEEN THE RIVERS, INC.

David Nickell
President

DATE

BETWEEN THE RIVERS PRESERVATION ORGANIZATION, INC.

Lynn Lancaster
President

DATE

TRIGG COUNTY HISTORICAL SOCIETY

David Shore
President

DATE

LYON COUNTY, KENTUCKY

Wade White
Judge Executive

DATE

TRIGG COUNTY, KENTUCKY

Hollis Alexander
Judge Executive

DATE

STEWART COUNTY, TENNESSEE

Rick Joiner
Mayor

DATE

APPENDIX A: SUMMARY OF HISTORIC PROPERTIES AT LBL

In 2006, LBL had approximately 114 known and recorded sites, including 3 National Register properties. Since that time, Forest Service management began implementing systematic compliance with Section 106 regulations of the National Historic Preservation Act of 1966, as amended (NHPA) and developing a comprehensive heritage program to meet Section 110 land managing responsibilities as stewards of some of our nation's cultural resources.

Systematic investigations have resulted in the identification of physical evidence (often substantiated by archival documents in the case of historic sites) for 2320 cultural resource sites:

- 139 Prehistoric Sites
- 2181 Historic Sites

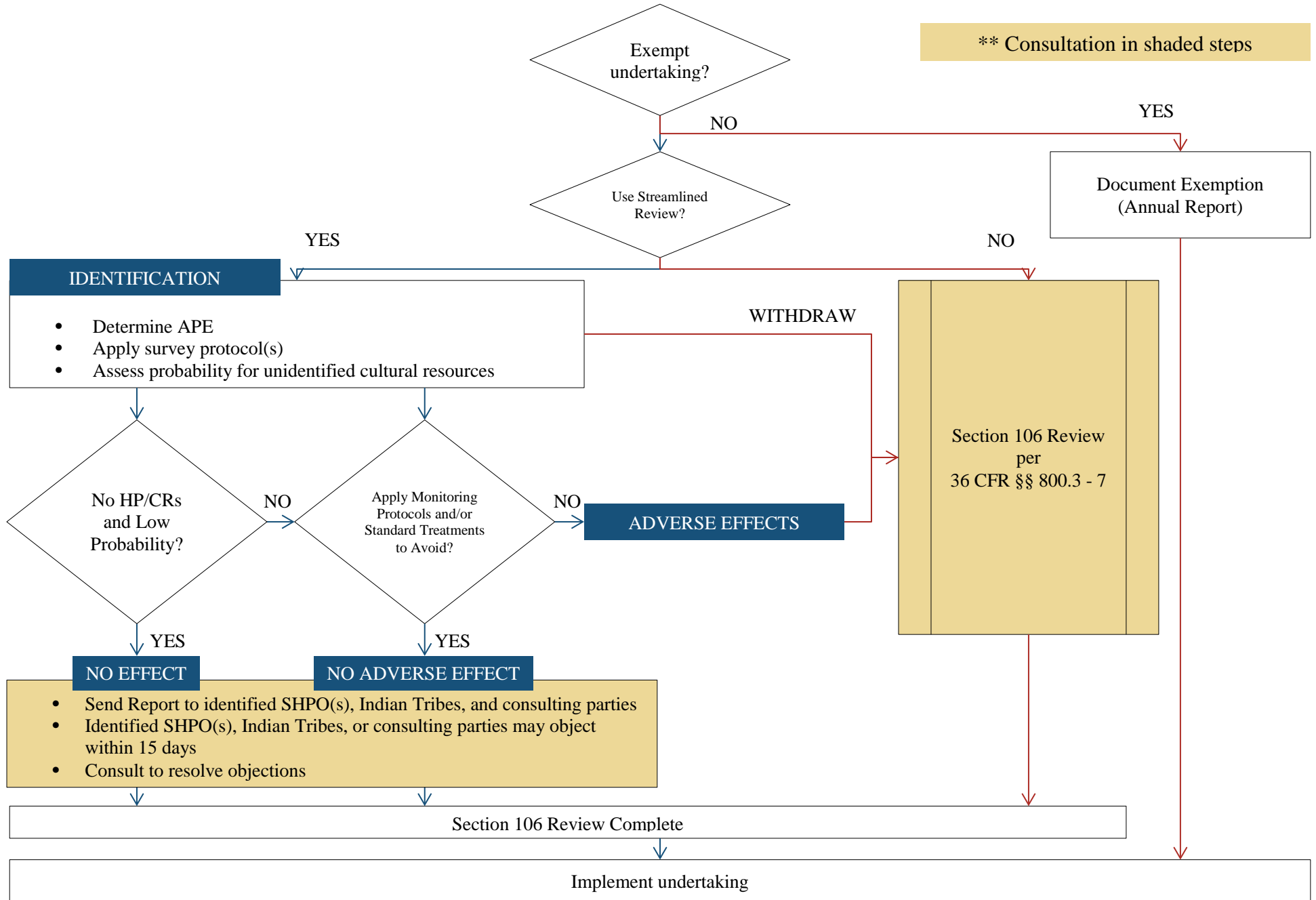
Three of LBL's cultural resources sites are listed on the National Register of Historic Places: Center Furnace, Great Western Furnace, and Ft. Henry. Since the nomination forms were completed in the 1970s by the former land manager, Tennessee Valley Authority (TVA), standards for National Register site documentation have changed and updates of the nominations are needed. In particular, the boundaries for the properties need to be defined and expanded. Based on our increased knowledge the three properties need to be recorded as historic districts with contributing and non-contributing features identified.

The US Forest Service has designated Priority Heritage Assets (PHAs) as those heritage assets that are, or should be, actively maintained. To date, LBL has designated the following 6 sites as PHAs: Center Furnace, Great Western Furnace, Ft. Henry Civil War site, St. Stephen Church and Cemetery, Will Flora Historic Cabin, and Chinese Cemetery.

However, many sites have not yet been officially recorded. For example, of the 2320 known sites at LBL only 507 have been officially recorded. Known historic sites such as the Cleo Griffin house, CCC-era structures and features including two of LBL's remaining fire towers, Empire Farm, Star Lime Works Historic District, over 260 cemeteries and prehistoric sites including hunting camps, villages, mounds, agricultural sites, and stone box grave sites all need to be recorded and may also be designated as PHAs. Additional work includes the need to not only identify whether LBL contains any traditional cultural properties, sacred sites, cultural landscapes, or historic districts but record any known or identified during survey such as the Star Lime Works Historic District.

As baseline site recording progresses, historic themes and contexts will be better understood and can be developed to help establish a framework for evaluating and nominating sites to the National Register.

APPENDIX B: STREAMLINED REVIEW PROCESS FLOWCHART



APPENDIX C: FINDING OF NO EFFECT OR NO ADVERSE EFFECT REPORT STANDARDS

In accordance with Stipulation IV.D.3., the Heritage Program Manager shall submit LBL's finding of no effect or no adverse effect made in the streamlined review process to the appropriate SHPO or SHPOs, Indian tribes, and any identified consulting party along with a report to substantiate the finding for 15-day review. The Heritage Program Manager shall ensure that the report meets the following standards:

a. The report shall include:

1. Title page with title, author, date, and any identifying project numbers.
2. Table of Contents
3. List of Figures
4. Report Abstract
5. Introduction to the Project and APE including project description, size of project area (in acres), definition of APE, and color illustration of APE on 7.5 minute USGS topographic quadrangle map.
6. A table summary of previous investigations and known cultural resources within and adjacent to the APE.
7. A description of the field methods used.
8. A summary of the finding, its basis, a description of standard treatments to avoid adverse effects and/or any necessary monitoring, if warranted.

c. The report is expected to be 5 or 6 pages in length.

d. Reports will be submitted either by mailed hard copy or electronically as requested by recipients. The Heritage Program Manager will send an email to provide advance notice to hard copy recipients that a report has been mailed. The 15-day review period for a mailed report will commence upon receipt of the hard copy.

APPENDIX D: TABLE OF EXEMPT UNDERTAKINGS FORMAT FOR ANNUAL REPORT

State	Project Name	Exemption #	Other Exempt		Notes
			Survey & No HPs	Disturbed & No Potential	
KY or TN			Yes/No	Yes/No	