

PROGRAMMATIC AGREEMENT

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

THE LANDOWNER INCENTIVE PROGRAM IN TEXAS

AMONG THE FISH AND WILDLIFE SERVICE, REGION 2, U.S. DEPARTMENT OF THE INTERIOR;

THE TEXAS STATE HISTORIC PRESERVATION OFFICE;

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION;

AND

THE TEXAS PARKS AND WILDLIFE DEPARTMENT

WHEREAS, the United States Fish and Wildlife Service, Region 2 (FWS) provides funding and other assistance to the Texas Parks and Wildlife Department (TPWD) to administer the TPWD Landowner Incentive Program, which provides funds and assistance for the restoration, enhancement, and creation of wildlife habitats to benefit rare species and habitat on private lands within the state of Texas; and

WHEREAS, the FWS is the lead agency with the authority and responsibility to comply with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470f) as amended and the regulations of the Advisory Council on Historic Preservation (ACHP), 36 CFR Part 800, for FWS's assistance to the Landowner Incentive Program; and

WHEREAS, the NHPA directs the FWS to identify, evaluate, protect, and preserve properties included in or eligible for inclusion in the National Register of Historic Places (historic properties) (16 U.S.C. 470-270t, 110); and

WHEREAS, the FWS, in consultation with ACHP, the Texas State Historic Preservation Officer (SHPO), and TPWD, has determined that certain of its projects in the Landowner Incentive Program may affect historic properties; and

WHEREAS, the parties to this Agreement recognize that a streamlined process for compliance with Section 106 of NHPA is appropriate and desirable, and FWS has consulted with the ACHP, SHPO, and TPWD pursuant to 36 CFR 800.14 of the regulations implementing Section 106 of the NHPA; and

NOW, THEREFORE, the FWS, the TPWD, the ACHP, and the SHPO agree that the TPWD Landowner Incentive Program shall be administered and implemented in accordance with the following stipulations in order to satisfy FWS's NHPA Section 106 responsibilities.

STIPULATIONS

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

I. RESPONSIBILITIES OF TPWD

The TPWD shall:

- A. Protect historic properties from damage by project activities through site identification and evaluation, project design, protection, and avoidance measures.
- B. Ensure that its actions and authorizations are considered in terms of their effects on historic properties regardless of the land status and consistent with the intent of the National Historic Preservation Act.
- C. Enter into any necessary agreements with appropriate state agencies to provide for the exchange of information regarding the location of previously identified historic property locations and previously surveyed ground.

II. CULTURAL RESOURCE PROGRAM

A. PERSONNEL

1. For the purposes of this Agreement and compliance with the NHPA, the FWS Regional Director is the responsible Agency Official.
2. The FWS Regional Director may delegate responsibility for the consultation process to the TPWD Executive Director (ED), but the legal requirement to comply with the NHPA remains the responsibility of the FWS.
3. The TPWD Executive Director (ED) is the signatory agent that will be accountable for TPWD's compliance with this Agreement in Texas
4. The ED may delegate responsibility for the consultation process and for carrying out activities agreed to herein to other TPWD personnel consistent with the provisions of this Agreement.

B. TRAINING

The TPWD Preservation Officer (TPO), a person who meets the professional qualification standards for archeology as described in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*, shall provide training to TPWD Landowner Incentive Program project leaders, managers, and field personnel sufficient to enable them to properly carry out the specified terms of this Agreement. Training shall include how to define TPWD Landowner Incentive Program project Areas of Potential Effects consistent with 36 CFR Section 800.3 and 800.16(d), how to identify historic and prehistoric artifacts and features, how to identify landforms likely to contain intact archeological deposits, how to apply Lists 1 and 2 (Appendix A of this Agreement), and how to complete required forms and documentation specified in this Agreement. This training shall include field tours of project areas and archaeological sites geographically similar to areas where those particular TPWD personnel will work.

III. TRIBAL CONSULTATION AND PUBLIC PARTICIPATION

A. TRIBAL CONSULTATION

During the development of this Programmatic Agreement (PA), FWS solicited the views of federally recognized Indian tribes, pursuant to 36 CFR 800.2 (c) (2) and 800.14. For individual TPWD Landowner Incentive Program projects, tribal consultation will be carried out as outlined in Stipulations IV.G. and H. and Stipulation V., below.

B. PUBLIC PARTICIPATION

Pursuant to 36 CFR 800.2 (d), TPWD shall consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, and confidentiality concerns of private individuals and businesses.

IV. TPWD LIP PROGRAM PROJECT PROCEDURE FOR CULTURAL RESOURCES

Note that the following procedure is a sequential and step-wise review process outlined in steps A through H below. The vast majority of LIP projects will need to be reviewed in accordance with the first few steps of this process only. Terms in bold are defined in Appendix B of this Agreement. Post-review discovery provisions are set forth in Stipulation V. of this Agreement.

- A. Landowner applying for LIP grant and TPWD project leader meet and draft conservation plan and agreement. Landowner signs project agreement/management plan, which includes permission to conduct **Cultural Resources Preliminary Assessment**. If all project activities are on List 2 (Appendix A) of this agreement, no further actions are required unless cultural resources are discovered during LIP project implementation (see Stipulation V. of this Agreement).
- B. On projects that require ground-disturbing activities, one or more activities enumerated in List 1 (Appendix A of this Agreement), or one or more activities not on the List 2 (Appendix A of this Agreement), the TPWD project leader shall provide a description of the project (draft conservation plan), mark the LIP project **Area of Potential Effect** on USGS 7.5 minute topographic map, describe how the Area of Potential Effect was determined, and submit a copy to the professional archeologist contracted by TPWD Wildlife Division. In defining the **Area of Potential Effect**, the TPWD will apply the pertinent sections of 36 CFR Sections 800.2-800.4 and 36 CFR Section 800.14(d). The professional archeologist will send a letter report to TPWD noting whether the LIP project area contains recorded cultural resources and/or locations where unrecorded cultural resources are likely to be found, and recommended actions regarding the identification of cultural resources.
- C. TPWD project leader will work with Landowner to plan LIP project. Whenever possible, TPWD project leader will limit activities to List 2 (Appendix A of this Agreement), which do not require excavation below previous ground disturbance or damage structures greater than 50 years old. Using the archaeologist's information in step B., above, and all other information available, the TPWD project leader will attempt to avoid recorded cultural resources and locations where unrecorded cultural resources are likely to be found. If all project activities are on List 2 (Appendix A of this Agreement) and all recorded cultural resources and areas likely to contain cultural resources are avoided, no further actions are required unless cultural resources are discovered during LIP project implementation (see Stipulation V. of this Agreement).

D. Conduct of a Cultural Resources Preliminary Assessment:

1. A TPWD project leader must conduct **Cultural Resources Preliminary Assessment** when a LIP project may:
 - involve one or more activities on List 1 (Appendix A of this Agreement); or
 - cause new ground disturbance below previous ground disturbance, or any other activity not included on List 2 (Appendix A of this Agreement); or
 - affect possible unrecorded or recorded archeological sites; and/or
 - damage structures greater than 50 years old.
 2. TPWD project leader must complete TPWD LIP program cultural resources training before conducting a **Cultural Resources Preliminary Assessment**. Also, in conducting the **Cultural Resources Preliminary Assessment**, the TPWD project leader must make use of the cultural resources information and recommendations provided by the professional archaeologist in step B., above. Any artifacts found remain the property of Landowner. TPWD project leader documents the field investigation on the **Cultural Resources Preliminary Assessment Report** form and submits it to the TPWD Wildlife Facilities Coordinator (WFC) for potential inclusion in LIP Program annual report described in stipulation VIII, below.
- E. If the TPWD project leader completing the **Cultural Resources Preliminary Assessment** finds no archeological sites or historic structures greater than 50 years old in LIP project **Area of Potential Effect**, and all project activities of the LIP project are on List 2 (Appendix A of this Agreement), no further actions are required beyond sending the Assessment Report to the WFC unless cultural resources are discovered during LIP project implementation (see Stipulation V. of this Agreement).
- F. If the TPWD project leader completing the **Cultural Resources Preliminary Assessment** finds possible archeological remains or sites or structures greater than 50 years old in LIP project **Area of Potential Effect**, TPWD project leader should alter the project to avoid them. If a revised **Area of Potential Effect** extends into areas not considered originally, the TPWD project leader will follow the review steps outlined in Step B, above. When redesigned project avoids all recorded and unrecorded cultural resources and all project activities are on List 2 (Appendix A of this Agreement), no further actions are required beyond sending the Assessment Report and notification that all cultural resources were avoided to the WFC unless cultural resources are discovered during LIP project implementation (see Stipulation V. of this Agreement).
- G. LIP projects requiring SHPO consultation regarding further actions to identify and evaluate cultural resources, such as the conduct of a Cultural Resource Survey:
1. LIP projects require consultation with the SHPO, likely a cultural resources survey by a professional archeologist, and possibly other steps as outlined in this Agreement when they may:
 - affect recorded archeological sites or structures greater than 50 years old; or
 - affect unrecorded archeological sites, features, or structures greater than 50 years old discovered during the **Cultural Resources Preliminary Assessment**; or
 - involve one or more activities on List 1 (Appendix A of this Agreement); and/or
 - cause new ground disturbance below previous ground disturbance, or any other activity not included on List 2 (Appendix A of this Agreement).

2. When a LIP project requires consultation with the SHPO, TPWD will offer the Landowner two options:
 - If Landowner has not accepted any federal funding, they may request that TPWD withdraw assistance and that no cultural resources are reported to SHPO; or
 - When Landowner accepts federal funding or assistance, they must allow TPWD to consult with SHPO to determine whether LIP project will damage cultural resources and take the further steps outlined in this review process. The Landowner may require that TPWD keep his/her identity anonymous, or may choose to participate in consultation.
3. When the Landowner accepts LIP funding for a project that requires consultation with the SHPO, WFC will inform the SHPO about LIP project by letter, including project description, map showing **Area of Potential Effect**, explanation of how that area was determined, the TPWD project leader's **Cultural Resources Preliminary Assessment**, and archaeologist's letter report (see step B., above), and other information that may be useful.
4. When the TPO and SHPO concur that further actions to identify cultural resources are necessary, TPWD will ensure that a professional archeologist who meets federal qualifications conducts a **Cultural Resource Survey** (e.g., pedestrian inventory and assessment of cultural resources in the LIP project **Area of Potential Effect**, or other identification effort). The archeologist must provide a report of findings to SHPO and TPO. SHPO and TPO will then consult to determine whether cultural resources are eligible for listing in the **National Register of Historic Places** in accordance with 36 CFR Section 800.4. The Landowner may participate in this consultation. When human remains, graves, and/or associated funerary objects that may be of concern to Indian tribes are or may be within the LIP project **Area of Potential Effect**, the TPO and FWS will consult with federally recognized Indian tribes that may attach religious and cultural significance to them in accord with *National Park Service Bulletin 38* and 36 CFR Part 800. Differences of opinion on the eligibility of cultural resources for listing in the National Register shall be resolved by FWS requesting determinations of eligibility from the Keeper of the National Register of Historic Places whose determination shall be final.
5. When the SHPO and TPO concur that all cultural resources in LIP project **Area of Potential Effect** are not eligible for listing in **National Register of Historic Places**, no further actions are required. When the SHPO and TPO concur that any cultural resources in LIP project **Area of Potential Effect** are eligible for **National Register** listing and the LIP project is redesigned to avoid or protect those resources, no further actions are required.

H. LIP projects that may adversely affect or otherwise damage historic properties:

When the SHPO and the TPO concur that a LIP project may adversely affect or otherwise damage historic properties (e.g., cultural resources that are included in or eligible for **National Register** listing) from step G above, the TPO and FWS will consult with the SHPO, Landowner, and recognized Indian tribes that may attach religious and cultural significance to the historic properties in order determine measures to be taken to avoid, minimize, or mitigate the adverse effects of the LIP project on such historic properties. The portion of the project near the historic property cannot proceed until an agreed-upon treatment or mitigation plan has been implemented. In developing a mitigation or treatment plan, if agreement among the consulting parties is not reached, the FWS, as the lead agency, shall consult with the ACHP in accordance with 36 CFR Section 800.6 (b) (1) (v). The private Landowner shall be invited to participate in this process, and may participate at his option. The development and implementation of mitigation or

treatment plans must meet the standards outlined in stipulation VI below.

V. POST-REVIEW DISCOVERY SITUATIONS

- A. If cultural resources are discovered during conduct of a LIP project, work in that part of the project will cease immediately and the project leader will contact the WFC and TPO as soon as possible. The TPO will inform the SHPO and FWS about cultural resources discovery by both telephone and letter within 24 working hours of discovery, including providing a project description, map showing Area of Potential Effect, explanation of how that area was determined, and details about the discovery. The SHPO and TPO will consult to determine whether there is sufficient information to determine whether discovered cultural resources are eligible for listing in National Register of Historic Places. When human remains, graves, or associated funerary objects that may be of religious and cultural significance to recognized Indian tribes are discovered during conduct of a LIP project, the TPO and FWS will consult with federally recognized Indian tribes that may attach religious and cultural significance to them. Landowner may participate in this consultation. If the information on cultural resources is not sufficient to determine National Register eligibility, a professional archeologist who meets federal qualifications must conduct an inventory and assessment, and provide a report of findings to SHPO and TPO.
- B. When SHPO and TPO concur that newly discovered cultural resources are not eligible for listing in National Register of Historic Places, no further actions are required. When SHPO and TPO concur that newly discovered cultural resources are eligible for National Register listing, and the LIP project is redesigned to avoid or protect those resources, no further actions are required. When the SHPO and TPO concur that LIP project will damage or adversely affect newly discovered cultural resources that are eligible for National Register listing, TPO and FWS will consult with the SHPO, ACHP, the Landowner, and federally-recognized Indian tribes that may attach religious and cultural significance to the discovery to determine the extent of measures to be taken to avoid, minimize, or mitigate the adverse effects to the discovery caused by the LIP project. These measures may involve investigations conducted by a professional archeologist who meets federal qualifications. The SHPO, FWS, and ACHP shall expedite the review of discoveries and shall respond to requests within 5 working days from the date of receipt of the request. At any point in these consultations, the Landowner may require that TPWD keep his/her identity anonymous and shall have the option of participating in any or all consultations regarding the discovery. The portion of the project near newly discovered historic property cannot proceed until the agreed-upon treatment plan is implemented.

VI. PROFESSIONAL STANDARDS AND QUALIFICATIONS

All actions related to historic properties, including efforts to identify and evaluate historic properties, conditions to ensure that historic properties will not be adversely affected, measures to minimize or mitigate adverse effects, and mitigation or treatment plans shall be developed and implemented by appropriate professionals meeting the *Secretary of the Interior's Professional Qualifications Standards*. Such conditions, measures, and treatment plans shall be developed and implemented in accordance with the standards and guidelines contained in the *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44717-44742), the ACHP's *Treatment of Archeological Properties: A Handbook* (1980 and future other versions), *National Park Service Bulletin 38*, and guidelines and standards of the SHPO.

VII. ADDITIONAL CONSIDERATIONS IN THE CONDUCT OF THE TPWD LIP PROGRAM REGARDING IDENTIFICATION OF CULTURAL RESOURCES.

- A. If large wetland restoration projects located in floodplains are determined to require cultural resources survey, this survey should:
1. focus on areas with the potential to contain cultural resources;
 2. focus on areas to be impacted by ground disturbing activities such as; dam construction/borrow area, dam tie in areas, floodplain rises within the impoundment area, previously recorded sites within the impoundment area, and the terrace edge if impoundment will be to the level of this edge and may cause wave action erosion;
 3. disregard hydric floodplain soils with the low potential to contain intact deposits.
- B. Negative Cultural Resource Surveys by professional archeologists. When a survey report described in stipulation IV.G.4. indicates that no cultural resources are located within the APE, the undertaking may proceed without further consultation with the SHPO. The TPO shall be responsible for the review of all surveys and completion of reports as agreed upon in consultation with the SHPO. Reports of negative findings shall be included in the annual report pursuant to stipulation VIII.A. of this Agreement.
- C. Positive Cultural Resources Preliminary Assessments, Positive Cultural Resource Surveys, and Post-Review Discoveries: If an undertaking on private land results in the identification of cultural resources, TPWD will notify the Landowner that the following options exist at that time:
1. The landowner may request that TPWD withdraw assistance to the project, provided that they haven't accepted any federal funding, or
 2. The landowner must allow TPWD to report the cultural resource and carry out the terms of this Agreement. The landowner may require that TPWD keep his/her identity anonymous but may also choose the option of participating in the consultation process.
- D. TPWD shall provide final survey reports to the SHPO prior to construction in all cases of positive survey results where the landowner did not opt out under IV. G. 2. or VII. C. above.
- E. TPWD shall provide a summary of all cultural resource survey reports in the annual report called for in Stipulation VIII. of this Agreement.

VIII. DOCUMENTATION AND REPORTING REQUIREMENTS

- A. By December 1 of each year following the execution of this Agreement, the TPWD shall provide an annual report to the FWS, the SHPO, the ACHP, and to federally recognized Indian tribes on request. The annual report will contain the following information:
1. A county list and description of all undertakings under the Landowner Incentive Program covered by this Agreement carried out during the previous fiscal year (September 1 through August 31);
 2. For each undertaking, notation of whether consultation was required with SHPO under the terms of this Agreement and the status of any required consultation (completed, ongoing, etc.);
 3. For each undertaking, a summary of the results of efforts to identify and evaluate historic properties;
 4. For each undertaking, a description of cultural resources identified and their eligibility for

National Register listing;

5. For each undertaking, a description of the determination of project effects on historic properties.
 6. For each undertaking that involved identified cultural resources, include a description of the consultation process and a summary of the resolution.
 7. A description of any undertakings resulting in discoveries of cultural resources during project implementation and how these were resolved.
 8. A description of the LIP training program, including curriculum, number of training sessions conducted, and the number of TPWD personal trained during the previous year.
 9. A description of benefits and problems encountered in the implementation of this Agreement and suggestions on how to remedy such problems.
- B. This annual report will be compiled by the WFC and reviewed by the TPO, and submitted to the SHPO, FWS, and ACHP, and to federally recognized Indian tribes on request. Documentation prepared under the terms of this Agreement shall be retained by TPWD for two years.
- C. Information specifying the location of cultural resources shall not be released to the public. The TPO may at his/her discretion release limited portions of location data to field offices to ensure proper consideration of currently recorded sites during the planning phase.

IX. ACHP PARTICIPATION

- A. The FWS, TPWD, the SHPO, and Indian Tribes or other consulting parties may request the ACHP to consult on any undertaking.
- B. The TPWD and FWS shall afford the ACHP an opportunity to comment under the following conditions:
1. When SHPO and TPWD do not agree or there is a question as to whether an undertaking requires consultation with the SHPO or meets List 1 or List 2 (Appendix to this Agreement).
 2. When SHPO and TPWD do not agree or there is a question as to the need for or adequacy of efforts to identify and evaluate historic properties.
 3. When SHPO and TPWD do not agree as to the nature of an effect of an undertaking on a historic property.
 4. When the TPWD determines that data recovery at affected properties is not feasible or that stabilization or rehabilitation of a historic structure cannot be carried out in compliance with the *Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
 5. When the SHPO and TPWD do not agree regarding the adequacy or scope of measures to avoid, minimize, or mitigate adverse effects on historic properties or regarding measures to ensure that historic properties will not be adversely affected.

X. DISPUTE RESOLUTION

- A. Should the SHPO, FWS, ACHP, Indian Tribes, Landowners, or other consulting parties object to the adequacy of carrying out any specifications or actions pursuant to this Agreement, the TPWD will inform the FWS. The FWS and TPWD will consult with the objecting party to resolve the objection. If, within 30 days following receipt of the objection, the TPWD and/or FWS determines that the objection cannot be resolved, the TPWD shall forward to the FWS and the ACHP all documentation relevant to the dispute. The ACHP shall either:

1. Provide the FWS and TPWD with recommendations which the FWS and TPWD shall take into account in reaching a final decision regarding the dispute; or
 2. Notify the FWS and TPWD that it will comment pursuant to 36 CFR 800.7. In response to such ACHP comment, the FWS and TPWD will take into account the comments of the ACHP and respond pursuant to 36 CFR 800.7.
- B. If a Landowner, member of the public or other interested party objects to the manner of implementation of any aspect of this Agreement, the TPWD shall notify the FWS, SHPO and ACHP, consult with the objecting party, and as needed with the FWS, SHPO, or the ACHP.

XI. MONITORING, AMENDMENTS AND TERMINATION

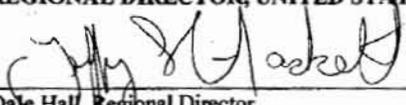
- A. The ACHP or the SHPO may monitor activities carried out pursuant to this Agreement to determine the accuracy of the field inspections in identifying cultural resources and the success with which identified cultural materials are avoided during implementation of the practice. TPWD shall cooperate with the ACHP and the SHPO in carrying out their monitoring and reviewing responsibilities.
- B. Any party to this Agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR 800.14 to consider such an amendment.
- C. Agreement Duration: This Agreement shall be in effect from the date of final signature for a period of 10 years.
- D. Termination: This Agreement may be terminated at any time by any signatory party, provided that at least 45 days notice of intent to terminate is given to all other signatories, and the reasons for considering termination are given to all concerned parties. The parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Should TPWD or FWS not carry out the terms of this Agreement or should the Agreement be terminated, FWS and TPWD shall comply with Section 106 in accordance with 36 CFR Part 800 for all individual undertakings covered by this Agreement.

XII. LIMITATIONS

- A. Nothing in this Agreement shall be construed as limiting or affecting the authority or legal responsibility of the TPWD or SHPO, to perform beyond the respective authority of each.
- B. Each provision of this Agreement is subject to the laws and regulations of the respective states of Texas and of the United States of America.
- C. Execution and implementation of this Agreement evidences that the FWS has satisfied its Section 106 requirement for all TPWD undertakings that fall under the terms of the Agreement. This Agreement becomes effective on the date of the last signature below.

**PROGRAMMATIC AGREEMENT
FWS/LIP PROGRAM**

REGIONAL DIRECTOR, UNITED STATES FISH AND WILDLIFE SERVICE, REGION 2



Dale Hall, Regional Director

7/7/04
Date

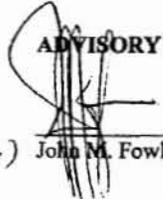
EXECUTIVE DIRECTOR, TEXAS PARKS AND WILDLIFE DEPARTMENT



Robert L. Cook, Executive Director

6/29/04
Date

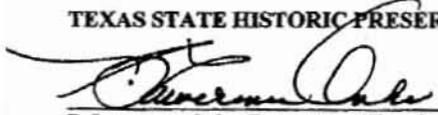
ADVISORY COUNCIL ON HISTORIC PRESERVATION



John M. Fowler, Executive Director

7/15/04
Date

TEXAS STATE HISTORIC PRESERVATION OFFICER



F. Lawrence Oaks, Texas State Historic Preservation Officer

6/28/04
Date

APPENDIX A

List 1: Examples of general categories of agency actions that are subject to consultation with the SHPO to determine if efforts to identify historic properties are necessary.

Note that these are examples of general categories; this is not an all-inclusive list.

- A. Road construction
- B. Changes to fence lines and boundaries which involve blading or heavy equipment-assisted brush clearing in areas that have not been bladed or cleared in the past, or which lead to concentrations of livestock in a confined area (corrals).
- C. Revegetation and plantings that penetrates below the depth of previous ground/soil preparation or otherwise causes new ground disturbance.
- D. Impoundments, dams, and levees
- E. Wetland construction
- F. Moist soil management
- G. Vegetation removal and root plowing/raking that penetrates below the depth of previous ground/soil preparation or otherwise causes new ground disturbance.
- H. Borrow sites for fill materials
- I. Sediment excavation
- J. Erosion control, including stream bank stabilization, restoring degraded bank areas, head or side channel
- K. Cuts and sloping, watershed terraces, and riprap
- L. Pipelines, canals, and ditches
- M. Well drilling, tanks, and windmills
- N. Shoreline protection, construction, and rehabilitation
- O. Deposited silt and sand removal from floodplains
- P. Any work conducted within a USACE designated navigable waterway

List 2: Activities that do not require consultation with the SHPO so long as they are completed as described.

Note that activities not meeting the prescribed conditions below will require consultation with the SHPO to determine if an identification effort is necessary in accordance with the Programmatic Agreement (PA).

- A. Revegetation or planting in areas which have been previously leveled, disked, tilled, or constructed, so long as plantings, revegetation, and ground/soil preparation do not penetrate below the depth of previous ground/soil preparation or otherwise cause new ground disturbance.
- B. Farming of existing fields with planting and soil/ground preparation within the same depth of previous soil/ground preparation.
- C. Continued routine maintenance of existing wetlands and existing farm fields within flood zones or plow zones, so long as such activities are within already disturbed ground and no new ground or deeper ground will be disturbed.
- D. Fencing which does not involve blading or heavy equipment-assisted brush clearing, or which restricts blading or heavy equipment-assisted brush clearing to areas that have been bladed or cleared in the past. Such fencing must not lead to concentrations of livestock in a confined area (corrals).
- E. Installation of signposts and monuments that are not within known historic properties.
- F. Installation of signs, markers, guardrails, gates, posts, and cattle guards within or alongside existing roadways or trails.
- G. Replacing, maintaining, or enhancing small water control structures (including but not limited to fish screens or barriers, culverts, pumps, power poles, weirs) in existing facilities (including, but not limited to road surfaces, dikes, or ditches), so long as no additional ground disturbance is required and where the facility itself is less than 50 years of age or has been determined to be "not eligible" for the National Register of Historic Places in consultation with the SHPO.
- H. Activities within the active stream channel, including removing blockages of bush, trees, and sediment, emplacement of in-stream structures (e.g., Gabion dams, boulders, stumps, logs, plantings), or construction of fish-cover devices or spawning gravels. However, related construction work on terraces or cutbanks or areas otherwise outside the active stream channel, including but not limited to staging areas, borrow, or work to facilitate access, does require consultation with the SHPO. Moreover, any work done in a navigable waterway does require consultation with the SHPO to determine if any historic shipwrecks may be present (see List 1).
- I. Use of borrow sources where no lateral expansion of the source site will occur.
- J. Use of dredged and fill materials from existing facilities and spreading of the fill material on another surface so long as the dredging, fill removal, and spreading of fill has been reviewed in accordance with PA.
- K. Maintaining, repairing, removing, or modifying existing facilities or infrastructure that are less than 50 years of age or that have been previously determined to be "not eligible" for the National Register of Historic Places in consultation with the SHPO and where no ground disturbance is required.
- L. Removing, refurbishing, relining, or replacing small water impoundments or conveyance structures such as dikes, levees, weirs, or dams where no ground disturbance beyond the impoundment or

conveyance structure is required and the facility itself is less than 50 years of age or has been determined to be "not eligible" for the National Register of Historic Places in consultation with the SHPO.

- M. Prescribed burns where no firebreaks are created or where firebreaks are limited to mowing, blacklines, wetlines or scraping/disking to a depth not to exceed 3 inches.
- N. Drilling of wells and placement of windmills, pump structures, above-ground conveyance pipe, water guzzlers, and storage tanks where no modifications of the ground disturbance are necessary and such facilities will not cause cattle to congregate nearby.
- O. Removing vegetation by use of hand implements or herbicides, or by mechanical shearing or chopping at ground level in any setting.
- P. Mechanical removal of brush and shallow roots by grubbing or dozing or wetland restoration projects involving excavations provided soil disturbance does not exceed 3 feet within the floodplains of the following major rivers: Sulphur, Sabine, Trinity, Brazos, Colorado, Guadalupe, San Antonio, Nueces, and Rio Grande. This includes floodplains along the lower reaches of major tributaries of these rivers, when it is apparent that recent Holocene alluvium is likely to exceed 3 feet in depth.
- Q. Wetland restoration projects confined to current or abandoned rice fields.
- R. TPWD personnel who have successfully completed the cultural resources training specified in stipulation II. B. may conduct identification efforts for water lines that are up to 2 inches in diameter, and buried to a depth of up to 6 inches (base of plow zone), in lieu of hiring a professional.

APPENDIX B

TPWD Landowner Incentive Program Programmatic Agreement - Definitions

ACHP – Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Area of Potential Effect – geographic area within which an undertaking may directly or indirectly alter the character or use of historic properties, if any such properties exist, consistent with 36 CFR Section 800.3 and 800.16(d). The Area of Potential Effect is influenced by the scale and nature of an undertaking and may include areas where different kinds of effects will be caused by the undertaking.

Cultural resources – historic resources and traditional cultural properties that may or may not meet the criteria for listing in the National Register of Historic Places. Cultural resources include historic districts, archeological sites, buildings, structures, objects, historic and cultural landscapes, vistas, and American Indian traditional use areas.

Cultural Resource Survey – pedestrian inventory and assessment of cultural resources in the Area of Potential Effect of an undertaking, conducted by a professional archeologist who meets the professional qualification standards for archeology in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. Cultural Resource Surveys will be conducted in accord with those Guidelines and the *Archeological Survey Standards for Texas* (November 2002).

Cultural Resource Survey Report – report of a Cultural Resource Survey prepared by a professional archaeologist or other historic preservation professional who meets the *Secretary of the Interior's Professional Qualifications*.

Cultural Resources Preliminary Assessment – examination of the Area of Potential Effect of an undertaking to locate and document the presence or absence of cultural resources, conducted by TPWD project leaders who have completed cultural resources classroom and field training on:

- defining Areas of Potential Effect;
- applying Lists 1 and 2 in Appendix A of this Agreement;
- identifying landforms in the project region that are likely to contain intact archeological deposits;
- identifying historic and prehistoric artifacts and features typical of the project region; and
- completing the required forms and documentation specified in this Agreement.

Cultural Resources Preliminary Assessment Report – required documentation for Cultural Resources Preliminary Assessments conducted under TPWD LIP Programmatic Agreement. Cultural Resources Preliminary Assessment Reports are included in TPWD annual report on the LIP program submitted to the SHPO, unless the Landowner requests that TPWD withdraw federal assistance. These reports include:

- section of USGS 7.5 minute topographic map showing project location and Area of Potential Effect;
- project summary including extent and depth of ground disturbance and how Area of Potential Effect was determined. Detailed information on location and depth of areas of new ground disturbance, and locations of structures greater than 50 years old;
- identification of TPWD project leader who conducted field investigation, date(s) of investigation, and field conditions that limited the ability to identify cultural resources;
- methods of field investigation, including time spent, areas examined, and percentage of ground surface visible; and
- results of field investigation, including written descriptions of cultural resources observed. Drawings and digital photographs are recommended for distinctive artifacts, features, and structures greater than 50 years old or of uncertain age.

FWS – designated representative of U. S. Fish and Wildlife Service, Region 2. FWS is the lead agency with the authority and responsibility to comply with federal laws and regulations related to assistance to the Landowner Incentive Program.

Historic property – any prehistoric or historic district, site, building, structure, object, cultural landscape, or traditional cultural place that is listed in or determined to be eligible for listing in the National Register of Historic Places.

National Register of Historic Places – federal list of districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and that have been determined through consultation between federal agencies and SHPO to meet the following criteria for significance in American history, architecture, archeology, engineering and/or culture:

- a. association with events that have made a significant contribution to the broad patterns of American or traditional history;
- b. association with the lives of persons significant in the past;
- c. characteristic of a type, period, or method of construction; representative of the work of a master; possessing high artistic value; and/or representative of a significant and distinguishable entity whose components may lack individual distinction; and/or
- d. having yielded or being likely to yield information important in historic or prehistory.

Some cultural resources are not usually considered to be eligible for listing in the National Register: cemeteries, graves of historical figures, moved structures, properties belonging to or used by religious institutions, reconstructions, and/or properties that have attained historical significance in the last 50 years.

State Historic Preservation Officer (SHPO) – official designated under the National Historic Preservation Act to administer a state historic preservation program. In Texas, the State Historic Preservation Officer is the Executive Director of the Texas Historical Commission.

TPWD Preservation Officer (TPO) – person who meets the professional qualifications for archeology in the U.S. Secretary of the Interior Standards and Guidelines for Archeology and Historic Preservation. Under the TPWD LIP Programmatic Agreement, the TPO provides training to project leaders, managers, and field personnel to enable them to carry out the terms of the Agreement, including identification of historic and prehistoric artifacts, and landforms likely to contain intact archeological deposits. The TPO reviews annual LIP program reports to SHPO and consults with SHPO.

Undertaking – project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of Federal agencies like the U.S. Fish and Wildlife Service. Undertakings include any project, activity or program that:

- is carried out by or on behalf of a Federal agency;
- is financed in whole or part with federal financial assistance or technical assistance (like the Landowner Incentive Program);
- requires a federal permit, license, or approval, including a Federal agency's authority to disapprove or veto the project, activity, or program; and/or
- is subject to state or local regulation administered pursuant to a delegation of authority or approval by a Federal agency.

Undertakings include new and continuing projects, technical assistance related to provision of federal assistance (like the Landowner Incentive Program), or activities, programs, renewals, or re-approvals of such assistance, approvals or programs.

Wildlife Facilities Coordinator (WFC) – official TPWD Wildlife Division contact with SHPO, designated under TPWD Memorandum of Understanding with the Texas Historical Commission.