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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Agreement Between the Advisory Council on Historic Preservation and the Narragansett Indian Tribe for the Assumption by the Narragansett Tribe of Certain Responsibilities Pursuant to the National Historic Preservation Act

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of execution of agreement with the Narragansett Indian Tribe.

Authority: 16 U.S.C. 470a(d)(5).

SUMMARY: The Advisory Council on Historic Preservation is publishing the agreement executed with the Narragansett Indian Tribe through which the Tribe assumes certain responsibilities pursuant to the National Historic Preservation Act, including the review of federal undertakings under their own, tribal historic preservation regulations instead of under the regulations promulgated by the Advisory Council.

DATES: The agreement became effective on November 27, 2000.

FOR FURTHER INFORMATION CONTACT: If you have questions about the agreement, please contact Valerie Hauser, Native American Program Coordinator, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. (202) 606-8505. The agreement and tribal procedures will be posted on our web site at <http://www.achp.gov>.

SUPPLEMENTARY INFORMATION: Section 101(d)(5) of the National Historic Preservation Act of 1966, as amended, provides that the Advisory Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the

Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

16 U.S.C. 470a(d)(5). Section 106 requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings.

In accordance with the provisions of section 101(d)(5), the Advisory Council and the Narragansett Indian Tribe entered into the agreement titled "Agreement between the Advisory Council on Historic Preservation and the Narragansett Indian Tribe Pursuant to section 101(d)(5) of the National Historic Preservation Act" ("Agreement"). Through it, the Narragansett Indian Tribe takes charge of the section 106 historic preservation review of federal undertakings that affect historic properties located on their tribal land, and subjects such review to the provisions of the Narragansett Indian Tribe's Procedures and Rules for the Registration and Protection of Tribal Properties, January 7, 1999 ("tribal regulations").

After negotiating and developing a draft agreement, on January 27, 1999 the Advisory Council published in the **Federal Register** a notice of intent to execute the Agreement with the Narragansett Indian Tribe for the Tribe to assume certain responsibilities pursuant to the National Historic Preservation Act (64 FR 4067). The notice invited public comment on the agreement and tribal historic preservation regulations by February 26, 1999. The Council also directly mailed a copy of the notice, along with the agreement and tribal regulations, to all Federal Preservation Officers and the State Historic Preservation Officers of Rhode Island, Connecticut and Massachusetts. The Council received approximately 12 comments on the proposed agreement and tribal regulations.

Generally, commenters supported the overall objective of the agreement for the Tribe's assumption of section 106 review responsibilities on their tribal lands. However, strong objections were

raised regarding a provision for the application, by mutual consent of the Tribe, the State Historic Preservation Officer and the Federal agency, of the agreement and tribal historic preservation regulations to Federal undertakings off tribal lands but within the Tribe's ancestral homelands. It was argued that the statute limited the substitution to tribal lands. Other comments also expressed concerns regarding overlapping ancestral lands of different tribes.

Additionally, concerns were raised regarding the absence of a role for the Keeper of the National Register when there is a dispute about a property's eligibility for listing in the National Register of Historic Places. Finally, concerns were raised over the use and definition of the term "tribal lands."

In response to these concerns, the Council and the Narragansett Indian Tribe revised the agreement and deleted the provision for substitution of the tribal historic preservation regulations for the Council's regulations off tribal lands. A role for the Keeper of the National Register was added to the agreement when there is a dispute regarding eligibility of a property for listing in the National Register of Historic Places.

However, the term "tribal lands" and its statutory definition were retained in the agreement. The National Historic Preservation Act authorizes the Council to enter into such agreements for substitution of the Council's regulations on tribal lands. Tribal lands are defined in the National Historic Preservation Act as "all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities." 16 U.S.C. 470w(14). The Council is bound by statute to apply this term and its definition. Further clarification of the boundaries of an Indian reservation or of the meaning of "tribal lands" may be sought from the Department of Interior, Bureau of Indian Affairs.

The Advisory Council and Narragansett Indian Tribe also added clarifications to the Agreement including statements that (1) this is an agreement between two sovereign governments; (2) the reservation has been surveyed for historic properties; (3) the provisions of Section 101(d)(2) of the National Historic Preservation Act apply; (4) the Tribe agrees to provide

equivalent consideration to historic properties that are not of importance in Tribal history; and, (5) that Federal agencies have an affirmative responsibility to involve other consulting parties in the review process. The agreement also clarifies that a consulting party that raises an objection has the option of pursuing tribal administrative and judicial remedies, but that Federal agencies must also seek the Advisory Council's comments when there is a failure to agree.

At its business meeting on November 17, 2000, the Advisory Council approved the Agreement by a unanimous vote of 18 to 0, with two abstentions. The Agreement was thereafter signed by the Tribal Historic Preservation Officer of the Narragansett Indian Tribe on November 24, 2000, and by the Executive Director of the Advisory Council on November 27, 2000.

The Advisory Council has sent copies of the Agreement and tribal regulations to all Federal Preservation Officers, and the Rhode Island State Historic Preservation Officer.

The Agreement is reproduced below. You may obtain copies of the tribal regulations by contacting Valerie Hauser, Native American Program Coordinator, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. (202) 606-8503.

Agreement Between the Advisory Council on Historic Preservation and the Narragansett Indian Tribe Pursuant to Section 101(d)(5) of the National Historic Preservation Act (16 U.S.C. 470)

Whereas, the Narragansett Indian Tribe is a sovereign nation recognized and acknowledged under treaties and laws of the United States; and,

Whereas, this agreement is executed between two sovereign governments, the government of the Narragansett Indian Tribe, acting by and through the Narragansett Indian Tribal Historic Preservation Office, and the United States, acting by and through the Advisory Council on Historic Preservation; and,

Whereas, the Narragansett Indian Tribe is uniquely suited to insure the integrity of historic properties on their tribal lands; and,

Whereas, enhancing the role of Indian Tribes in the national historic preservation partnership will result in a stronger and better national effort to identify and protect historic and cultural resources for future generations; and,

Whereas, Section 101(d)(5) of the NHPA provides that the Advisory Council on Historic Preservation (hereinafter the Council or Council) may enter into agreement with an Indian Tribe to permit undertakings on tribal lands to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council, "Protection of Historic Properties" (36 CFR Part 800); and,

Whereas, for the purposes of this Assumption of Responsibilities Agreement (hereinafter Agreement), tribal lands, as defined by section 301(14) of the NHPA, means all lands within the exterior boundaries of the Narragansett Indian Reservation and all dependent Indian communities; and,

Whereas, the Narragansett Indian Tribe has assumed those functions of the State Historic Preservation Officer (hereinafter SHPO) with respect to its tribal lands under section 101(d)(2) of the NHPA; and,

Whereas, in accordance with section 101(d)(2)(B) of the NHPA, the Narragansett Indian Tribe has designated a tribal preservation official to serve as Tribal Historic Preservation Officer (hereinafter THPO) and to administer the tribal historic preservation program; and,

Whereas, in accordance with section 101(d)(2)(C) of the NHPA, the Tribe has provided to the Secretary of the Interior the Narragansett Indian Tribe's plan that describes how the tribal preservation official's function will be carried out; and,

Whereas, Narragansett tribal lands have been surveyed and historic properties have been identified and evaluated pursuant to the Tribal and National Registers; and,

Whereas, the Council has the unique responsibility under section 101(d)(5) of the NHPA to review proposed substitute regulations and to ensure that they afford historic properties equivalent consideration to that provided under the Council's regulations; and,

Whereas, the Council has consulted with the Rhode Island SHPO in the development of this agreement as required by section 101(d)(5) of the NHPA; and,

Whereas, the Council has determined that the Narragansett Indian Tribe's Procedures and Rules for the Registration and Protection of Tribal Properties, January 7, 1999 (hereinafter Tribal Historic Preservation Regulations), along with the Stipulations of this Agreement, will afford historic properties consideration equivalent to those afforded by the Council's regulations; and

Whereas, the Council urges the Narragansett THPO, the applicable SHPOs and Federal agencies to work in partnership to identify and protect historic properties of significance to the Narragansett Indian Tribes that are not located on tribal lands, and that they do so in a manner respectful of Narragansett traditional cultural practices and their special knowledge of their history; now, therefore,

The Advisory Council on Historic Preservation and the Narragansett Indian Tribe Do Hereby Agree as Follows:

1. The Narragansett Indian Tribe assumes responsibility pursuant to section 101(d)(5) of the NHPA for reviewing undertakings on Narragansett tribal lands, as defined by section 301(14) of the NHPA, under its Tribal Historic Preservation Regulations in place of review under regulations promulgated by the Council to govern compliance with section 106 of the NHPA (36 CFR Part 800).

2. The provisions of section 101(d)(2)(D)(iii) of the NHPA apply.

3. Nothing in this agreement is meant to abridge the rights and authority afforded the Narragansett Indian Tribe under other authorities.

4. If, after exhausting the Tribal Historic Preservation Regulations, there remains a dispute among consulting parties as to the National Register eligibility of a historic property, the Federal agency shall seek a determination of eligibility from the Keeper of the National Register.

5. The Narragansett Indian Tribe agrees to afford equivalent review and consideration to historic properties on tribal lands that are eligible for the National Historic Register whether they are or are not of significance to the Tribe. The Narragansett Indian Tribe may turn to other parties, including the relevant SHPO to assist in reviewing and protecting properties of no significance to the Tribe.

6. In carrying out the requirements of the Tribal Historic Preservation Regulations, Federal Agencies shall involve consulting parties, as defined in 36 CFR Part 800, in findings and determinations and, where appropriate, provide notification to the public.

7. In the event that questions are raised by a consulting party regarding the interpretation of the Tribal Historic Preservation Regulations, the consulting party raising the objection shall exhaust all tribal administrative and judicial remedies. If, after pursuing a resolution through tribal administrative and judicial procedures the matter cannot be resolved, the matter may be brought for

de novo review before the Federal district court.

8. In the event that consultation between the Federal agency and the THPO ends in a failure to agree, the Federal agency shall, in addition to meeting any other the obligations arising from its government-to-government relationship with the Tribe, seek the comments of the Council pursuant to section 800.7 of the Council's regulations.

9. The Narragansett Indian Tribe, acting by and through the THPO, may terminate this Agreement for any reason by providing the Council sixty days written notice of such termination. The Council may terminate this Agreement upon determining that the Narragansett Indian Tribe has not carried out its responsibilities in accordance with the Agreement, the NHPA, or any other applicable federal statute or regulation. Upon termination, Federal agencies shall again follow the Council's regulations governing compliance with section 106 of the NHPA, as codified at 36 CFR Part 800, for undertakings carried out on the tribal lands of the Narragansett Indian Tribe.

10. This Agreement may be amended by the mutual consent of the Narragansett Indian Tribe, acting by and through the THPO, and the Council.

11. This Agreement shall become effective upon signature by the Executive Director of the Council or his designee, whose signature shall not occur until after the THPO of the Narragansett Indian Tribe has signed the Agreement. (Signature lines and dates of the Agreement are omitted.)

Dated: December 18, 2000.

John M. Fowler,
Executive Director.

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DEPARTMENT OF AGRICULTURE

Forest Service

Gold/Boulder/Sullivan; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an Environmental Impact Statement (EIS) for the Gold/Boulder/Sullivan Project to disclose the effects of vegetative management using timber harvest and prescribed fire, and road management including road reconstruction, temporary construction,

and decommissioning. The Gold/Boulder/Sullivan Decision Area encompasses the Gold Creek, Boulder Creek, and Sullivan Creek drainages, approximately 12 miles southwest of Eureka, Montana.

Wildfire suppression policies over the past 80 years have resulted in vegetative conditions in low elevation stands which include higher-than-normal tree densities and fuels levels. These increase the risk of insect and disease infestations and stand replacement wildfire. Three wildfires occurred in the Decision Area during August 2000, resulting in significant tree mortality and contributing to increased fuel loads.

The proposed activities are considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.23). The purpose and need for action is to achieve desirable and sustainable conditions in forest stands, reduce fuels, improve big game winter range conditions, contribute to natural recovery processes to reduce impacts to soil and water resources, maintain and enhance scenic quality, and provide goods and services.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan, as amended, and the Final Environmental Impact Statement and Record of Decision of September 1987, which provides overall guidance for forest management of the area.

DATES: Written comments and suggestions should be received on or before January 22, 2001.

ADDRESSES: The Responsible Official is Bob Castenada, the Kootenai National Forest Supervisor, 1101 U.S. Highway 2 West, Libby, MT 59923. Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 U.S. Highway 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Contact Ron Komac, Acting NEPA Coordinator, Rexford Ranger District, Phone: (406) 296-2536.

SUPPLEMENTARY INFORMATION: The Decision Area contains approximately 40,100 acres, and has a favorable climate and good site conditions for forest vegetation. Proposed activities within the Decision Area include portions of the following areas: T34-36N; R28-30W.

Average annual precipitation ranges from 14 to 100 inches. At higher elevations, most precipitation falls as snow. The Decision Area contains a combination of open-grown ponderosa pine and Douglas-fir in the lower

elevations, adjacent to Lake Kocanusa. Upland areas contain multistoried western larch/Douglas-fir intermixed with lodgepole pine, as well as uniform lodgepole pine stands.

Wildfire historically played a role in interrupting forest succession and creating much of the vegetative diversity that is apparent on the landscape today. Since the early 1900's, a policy of wildfire suppression has been in place on National Forest lands, interrupting the natural vegetation cycle. Stands of tress in the lower elevations of the Decision Area have a higher stocking level than occurred naturally, and are dominated by Douglas-fir, which is susceptible to bark beetles and root disease when stressed. Lodgepole pine stands in the upper elevations have experienced a high level of mortality due to mountain pine beetles, and are not contributing toward a desired condition of forest health.

A portion of the Decision Area is highly visible from the Tobacco Valley as well as the Scenic Byways (State Highway 37 and Forest Development Road #228). A portion of the Mount Henry Inventoried Roadless Area is included within the Decision Area. There are no treatments proposed for this area.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individually delineated management areas (MAs). Most of the proposed timber harvest activities encompass five MAs: 11, 12, 15, 16, and 17. Briefly described, MA 11 is managed to maintain or enhance the winter range habitat effectiveness for big game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big game species and produce a programmed yield of timber. MA 15 focuses upon timber production using various silvicultural practices while providing for other resource values. MA 16 is managed to produce timber while providing for a pleasing view. MA 17 is managed to maintain or enhance a natural appearing landscape and produce a programmed yield of timber. Minor amounts of timber harvest and/or other proposed activities such as prescribed burning are found in other MAs including 2 (semi-primitive non-motorized recreation); 5 (viewing areas); 10 (big game winter range); 13 (old growth), and 21 (research natural area).

Purpose and Need: The purpose and need for the project is to: (1) Achieve desirable and sustainable conditions in forest stands by reducing stand densities, maintaining and enhancing