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**PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING THE MANNER IN WHICH BLM  
WILL MEET ITS RESPONSIBILITIES UNDER  
THE NATIONAL HISTORIC PRESERVATION ACT**

**STATE PROTOCOL**

Between

The Bureau of Land Management Wyoming State Director  
and

The Wyoming State Historic Preservation Officer

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## **Preamble**

This Protocol supplements the *Programmatic Agreement among the Bureau of Land Management, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* [hereinafter the national Programmatic Agreement (nPA)]. It describes the manner in which the Wyoming State Historic Preservation Officer (SHPO) and the Bureau of Land Management (BLM) Wyoming will interact and cooperate under the nPA. As a condition of the nPA, the BLM, the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs (NCSHPO) mutually agreed that the BLM will meet its responsibilities under Sections 106, 110 (f) and 111 (a) of the National Historic Preservation Act (NHPA) through the implementation of the mechanisms agreed to in the nPA rather than by following the procedure set forth in the ACHP's regulations (36 CFR Part 800). The goal of the nPA and this State Protocol (Protocol) is to forge a more meaningful and productive historic preservation partnership between the BLM and SHPO that will enhance the management of historic properties under the BLM's jurisdiction.

**The Bureau of Land Management.** The BLM, consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA)( P.L. 94-579, as amended), is charged, among other things, with managing public lands in Wyoming in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” and “that will provide for outdoor recreation and human occupancy and use.”

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other resources that may be affected by its actions, in compliance with the National Environmental Policy Act (NEPA)(P.L. 91-190, as amended), the National Historic Preservation Act of 1966 (NHPA)(P.L. 89-665, 16 U.S.C. 470, et seq.) and implementing regulations of Section 106 of the NHPA at 36 CFR Part 800, the Archaeological Resources Protection Act (ARPA)(P.L. 96-95, as amended), the Native American Graves Protection and Repatriation Act (NAGPRA)(P.L. 101-601) and implementing regulations at 43 CFR Part 10, the Historic Sites Act of 1935 (P.L. 74-292, as amended), the Antiquities Act of 1906 (P.L. 59-209, as amended), the American Indian Religious Freedom Act (AIRFA)(P.L. 95-341, as amended), Executive Order (EO) 13007 (“Indian Sacred Sites”), EO 13287 (“Preserve America”), EO 13175 (“Consultation and Coordination with Indian Tribal Governments”), and related authorities.

In carrying out its responsibilities specific to the NHPA, the BLM has:

1. developed policies and procedures through its directives system (BLM Manual Sections 8100-8170);
2. executed an nPA in 1997 and revised it in 2012 to help guide the BLM's planning and decision making as defined in the NHPA; and
3. assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with the BLM's statutory authorities.

In addition, under Section 110(a)(2)(D) and Section 110(a)(2)(E) of the NHPA, Federal agencies are required to consult with the SHPO to identify and evaluate historic properties for listing in the National Register of Historic Places (NRHP), and on the development and implementation of Memoranda of Agreement (MOA) and Programmatic Agreements (PA) regarding the means by which adverse effects on such properties will be considered.

**State Historic Preservation Officers.** The State Historic Preservation Officer (SHPO) has responsibilities under Section 101(b) of the NHPA that include:

1. “advise and assist, as appropriate, Federal and State agencies and local Governments in carrying out their historic preservation responsibilities;” and
2. “identify and nominate eligible properties to the National Register and otherwise administer applications for listing the historic places on the National Register;” and
3. “in cooperation with Federal and State agencies, local Governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;” and
4. “consult with the appropriate Federal agencies in accordance with [the NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

**Advisory Council on Historic Preservation.** Pursuant to the NHPA (16 USC 470) and the regulations implementing Section 106 of the NHPA (36 CFR Part 800), the ACHP has the responsibility to:

1. administer the process implementing Sections 106, 110(f), and 111(a) of the NHPA; and
2. to comment with regard to Federal undertakings subject to review under Sections 106, 110(f), and 111(a) of the NHPA in accordance with its implementing regulations (36 CFR Part 800); and
3. “review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out” under Section 202(a)(6) of the NHPA; and
4. act at times in lieu of the SHPO ((36 CFR 800.3(c)(4)).

**Indian Tribes.** This Protocol is entered into pursuant to the NHPA (16 USC 470), which specifically requires that Federal agencies consult with federally recognized tribes as defined in that Act so that these Indian tribes may:

1. identify their concerns about historic properties, including those of traditional religious and cultural significance to them; and
2. advise agencies on the identification and evaluation of historic properties; and
3. articulate their views on the potential effects of an undertaking; and
4. participate in resolving adverse effects.

The BLM consults with Indian tribes on a Government-to-Government basis consistent with the Department of the Interior’s tribal consultation policy.

While the BLM may initiate consultation under multiple authorities at one time, this Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other treaty, trust, and consultation responsibilities to Indian tribes under multiple other authorities.

**Consulting Parties.** In addition to SHPO, ACHP and Indian tribes, consulting parties under NHPA may include representatives of local Governments, applicants, landowners, and certain organizations or individuals with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties (36 CFR 800.2(c)(3-5)). In consultation with the SHPO, the BLM will identify consulting parties and invite them to participate in Section 106 consultation and shall consider all written requests of individuals and organizations to participate as consulting parties (36 CFR 800.3(f)). This Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other responsibilities to consulting parties under other authorities.

**The Public.** The views of the public are essential to inform Federal decision-making, and the BLM shall seek and 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 BLM must also provide the public with information about an undertaking and seek public comment and input, except where appropriate to protect confidentiality concerns of affected parties (36 CFR 800.2(d)(2)). Pursuant to 36 CFR 800.2(d)(3), the BLM may use its procedures to involve the public as described in this document or through its established NEPA procedures. This Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other responsibilities to the public under other authorities.

Through the nPA, the BLM, NCSHPO, and the ACHP—in consultation with Indian tribes, consulting parties and the public—ensure that the BLM will organize its programs to operate efficiently and effectively, according to the spirit and intent of Section 106 of the NHPA, and in a manner consistent with 36 CFR Part 800. The BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM and the SHPO intend to streamline and simplify procedural requirements, and emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

### ***Basis for Protocol***

Proceeding from these responsibilities, goals, and objectives, the BLM and SHPO acknowledge the following basis for agreement:

WHEREAS, the BLM's management of public lands and resources may affect historic properties as defined by the NHPA; and

WHEREAS, among other things, the BLM's historic preservation program, established in response to Section 110(a)(2) of the NHPA and related authorities, provides a systematic basis for:

(1) identifying, evaluating, and nominating historic properties under the BLM's jurisdiction or control to the NRHP; (2) managing and maintaining properties listed in or eligible for the NRHP in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in consultation with Indian tribes, local Governments, applicants, consulting parties, and the interested public; and (3) giving special consideration to the preservation of such values in the case of properties designated as having national significance; and

WHEREAS the BLM's program is also intended to ensure that its preservation-related activities will be carried out in consultation with Indian tribes, SHPO, other Federal agencies, local Governments, consulting parties, and the public; and

WHEREAS the BLM's program also is intended to: (1) ensure that the BLM's procedures for compliance with Section 106 of the NHPA are consistent with current regulations issued by the ACHP pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"); (2) provide a process for the identification and evaluation of historic properties for listing in the NRHP and the development and implementation of agreements, in consultation with SHPOs, Indian tribes, local Governments, consulting parties, and the public, as appropriate, regarding the means by which adverse effects on such properties will be considered and resolved; and

WHEREAS the SHPO has an interest in continuing its cooperative relationship with the BLM to facilitate a more effective and efficient Section 106 consultation process, and promote activities of mutual benefit; and

WHEREAS the BLM acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them in accordance with 36 CFR 800.4(c)(1); and

WHEREAS the BLM's programs benefit from consultation with Indian tribes in the identification and management of properties of religious and cultural significance and the BLM will ensure that its NHPA Section 106 procedures recognize the interests of Indian tribes in historic properties potentially affected by agency decisions and will afford tribes participation in the process leading up to a BLM decision, in accordance with 36 CFR Part 800; and

WHEREAS this Protocol does not apply to proposed BLM undertakings located on or affecting historic properties on tribal lands, with respect to which the BLM will comply with the regular Section 106 process under 36 CFR 800.3 through 800.7, the process under 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14; and

WHEREAS the parties intend that efficiencies in the NHPA Section 106 process, realized through this Protocol, should enable the staffs to devote a larger percentage of their time and energies to focus on: (1) complex and priority undertakings; (2) analysis and synthesis of data accumulated through decades of Section 106 compliance; (3) historic property identification where information is needed; (4) long-term preservation planning; (5) NRHP nominations; (6) planning and historic property management; (7) creative public education and interpretation; (8) more effective tribal and public engagement; and (9) other activities that will contribute to readily recognizable tribal and public benefits; and

WHEREAS, historic properties and cultural resources on public lands administered by the BLM are managed according to the FLPMA, NHPA, ARPA, NEPA, AIRFA, and NAGPRA, applicable regulations (e.g., 36 CFR Parts 60, 63, and 800; and 43 CFR Parts 7 and 10), applicable Executive Orders (e.g., 13007, 13175, and 13287), and the BLM 8100 Manuals, and these have been considered during consultation for this Protocol; and

WHEREAS, the BLM continues to consult with Indian tribes, consulting parties and the public regarding ways to ensure that the BLM's planning and management will be more fully integrated and consistent with the above authorities, requirements, and objectives; and

WHEREAS, due to their previous and ongoing demonstrated interest in historic preservation in Wyoming, the BLM and SHPO have solicited comment and input on this Protocol from the Alliance for Historic Wyoming (AHW), the Oregon-California Trails Association (OCTA), Tracks Across Wyoming (TRACKS), the Wyoming State Historical Society (WSHS), Certified Local Governments (CLGs), Wyoming Association of Professional Archaeologists (WAPA), Wyoming Archaeological Society (WAS), the Northern Arapaho Tribe, the Eastern Shoshone Tribe, the Ute Tribe of the Uintah and Ouray Reservation, the Northern Cheyenne Tribe, the Standing Rock Sioux Tribe, the Oglala Sioux Tribe, the Lower Brule Sioux Tribe, the Yankton Sioux Tribe, the Shoshone-Bannock Tribe, the Nez Perce Tribe, the Ft. Peck Assiniboine/Sioux, the Blackfeet Tribe, the Crow Tribe, the Santee Sioux Tribe, the Three Affiliated Tribes, the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Rosebud Sioux Tribe, the Sisseton-Wahpeton Oyate Tribes, National Trust for Historic Preservation (NTHP), American Rock Art Research Association (ARARA), and the Utah Rock Art Research Association (URARA); and

WHEREAS, throughout this process, the BLM and SHPO have held public meetings and have had public comment periods regarding this Protocol and received comments from various interest groups and industries.

NOW, THEREFORE, the BLM and the SHPO mutually agree that the BLM, consistent with the provisions of this Protocol, will meet its responsibilities under the NHPA as provided for in 36 CFR 800.14(b) rather than by following the procedure set forth in 36 CFR 800.3 through 800.7. Certification of Field Offices allows them to use this Protocol rather than 36 CFR 800.3 through 800.7. The BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management.

The BLM shall ensure that the following stipulations are carried out:

### ***Stipulations***

#### **I. APPLICABILITY**

##### **A. Relationship to Other Agreements**

This Protocol supersedes the 2006 Protocol. No existing informal or formal agreements between the BLM and an Indian tribe or tribes will be altered by this agreement. Other PAs and MOAs may

be developed when specific agreement documents are needed to define procedures that are not covered under the nPA or this Protocol. Any agreement document still in effect and negotiated under the previous Protocol are listed in *Appendix A*. New agreement documents negotiated under this Protocol will be added to *Appendix A* when signed, and will be clearly differentiated from documents executed under the previous Protocol.

## **B. When to Use the 36 CFR Part 800 Regulations**

The Regulations at 36 CFR 800.3 through 800.7, 36 CFR 800.8(c) and 800.14 will be followed in lieu of this Protocol in the following situations:

- i. Whenever the ACHP formally participates in the resolution of adverse effects for an undertaking the BLM will follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve those adverse effects;
- ii. For all multi-state projects;
- iii. Undertakings involving lands on the Wind River Indian Reservation;
- iv. When there are adverse effects to National Historic Landmarks (NHLs);
- v. If a field or district office is decertified;
- vi. The development and approval of program alternatives, including project-specific PAs, will follow 36 CFR 800.14;
- vii. If the BLM or the SHPO terminates this Protocol;
- viii. If the nPA is terminated or suspended for any reason;
- ix. If SHPO disagrees with BLM's effect determinations (see section V.D.vii) the BLM will follow the process at 36 CFR 800.4(d)(1)(ii) through (iii); or 36 CFR 800.5(c)(2)(i) through (iii);
- x. In the case of complex or controversial projects, such as major infrastructure projects, the BLM and SHPO will consult to determine if the regulations would be the appropriate mechanism for compliance.

## **II. ADMINISTRATIVE INTERACTION/ANNUAL MEETINGS**

Two meetings will be held annually by the end of the second quarter of the calendar year to discuss issues related to this Protocol. One meeting will include the BLM Field, District, and State Office cultural resource staff and the SHPO and applicable SHPO staff. The SHPO and Deputy Preservation Officer (DPO) will meet to determine the appropriate BLM management participants. The BLM and SHPO will jointly develop an agenda. A primary purpose of this meeting will be to discuss and review Section 110 activities and Section 106 compliance processes, and will include identifying

issues to forward to management for resolution. Mutually identified training sessions may occur during these annual meetings.

The second meeting will be an executive management meeting consisting of a briefing by the DPO and SHPO to the BLM Leadership Team, and will specifically discuss procedures, policies, amendments to the Protocol, or other matters as requested.

Any Indian tribe or other consulting party is welcome to raise a concern by letter or email regarding any Section 106 or 110 activities involving the BLM to either the BLM State Director or to the SHPO by January 1. These items will be included in the agenda for the Executive Management Meeting, and the SHPO or BLM will reply via letter within 60 days after the Executive Management Meeting has occurred with a summary of the discussion.

### **III. The BLM CONSULTATION RESPONSIBILITIES WITH SHPO UNDER THIS PROTOCOL**

#### **A. BLM Project Planning**

To facilitate broader and more proactive participation by SHPO in the BLM's activities relating to the management of cultural resources, the BLM will provide the following opportunities:

Each Field Office is responsible for preparing land use planning and NEPA documents; including Environmental Impact Statements (EISs), Resource Management Plans (RMPs), RMP amendments, RMP revisions, high level/controversial Environmental Assessments (EAs), and cultural resource project plans at the regional or local level. Field Offices will, when beginning a planning effort, invite the SHPO to participate in scoping for the purpose of identifying issues that should be addressed in the plan, and, as appropriate, will invite SHPO to participate as a cooperating agency. The BLM will formally invite the SHPO to comment on any cultural resource use allocations for the BLM surface, whether they are made in regional, local, or project-specific plans. Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO in electronic format or will provide paper copies upon request.

In preparing planning documents, the BLM will utilize all relevant information tools including, but not limited to such things as, Federal cultural resource records, the SHPO web site, the BLM General Land Office (GLO) documents, municipal and county records, and other electronic databases and data sources as appropriate. The SHPO will provide comments as appropriate and within the timeframe specified for review of the planning documents.

#### **B. General Consultation**

- i. Project Notification: Field managers shall provide written notification to the SHPO about upcoming projects likely to adversely affect known historic properties. This notification should include those undertakings likely to affect historic properties [e.g. NHLs, National Historic Trails (NHTs) and traditional cultural properties (TCPs)] and known cultural resources that have not been fully documented or evaluated for inclusion in the NRHP (e.g.

from previous seismic surveys) The preferred method of notification is by email and should occur as early as possible in the planning process. Field managers should use their best judgment in determining what projects should be brought to the SHPO's attention early in the process. The agency official should plan notifications appropriate to the scale of the undertaking and the scope of Federal involvement.

- ii. Other Meetings and Informal Consultation: The SHPO and the BLM (State Office, District Manager, Field Manager and/or staff) may meet at any time to discuss annual work plans, specific undertakings, outreach efforts, or other topics/issues related to the BLM's management of cultural resources. Both parties will make every effort to arrange such meetings in a timely manner and to provide any information requested. The SHPO and Field Office personnel may informally discuss specific undertakings or any aspect of BLM's cultural resource management program. Any meetings proposed by a Field Office specifically designed to discuss agreement documents should be coordinated with the BLM State office cultural resources staff. Any BLM Field Office correspondence with the ACHP will be coordinated with the BLM State office cultural resources staff.
- iii. Special Conditions: Under special conditions, such as staffing shortages, unforeseen events, or non-discretionary actions, specified time frames for SHPO review may be extended or shortened through consultation among SHPO, the relevant BLM District, Field Office and the BLM State Office. Changes in review timeframes will be documented in writing, usually via email and will be sent by the BLM to all consulting parties, including the applicant.
- iv. Project Segmentation: The BLM may determine that some very large projects (e.g., linear rights-of-way that cross more than one BLM Field Office) can be more efficiently completed if segmented. If a project is to be segmented, the SHPO shall be notified by letter in advance. The notification will include a brief description of the overall project. SHPO and the BLM tracking numbers shall be referenced by the BLM and SHPO in all subsequent documentation relating to all segments of the project. Segmentation of geophysical projects does not require advance SHPO notification.
- v. Field Tours: The BLM Field Offices will notify the SHPO, by email, of all formal field tours relating to planning and NEPA efforts that may affect historic properties, particularly when the project applicant, the public, or consulting parties are invited to participate. Field tours do not include routine on-site inspections.

### **C. Formal Consultations**

Formal consultation shall occur between the SHPO and the BLM as outlined in the procedures in Sections V through VI of this document. Formal consultations are initiated by the use of standardized forms in CRMTracker or by a formal letter on the BLM letterhead. The purpose of formal consultation is to afford SHPO the opportunity to comment and for the BLM to make informed decisions, while building an administrative record for the undertaking. SHPO's formal

response will be on SHPO letterhead, and will include the SHPO review number. Unless otherwise specified, all formal consultation shall be with the SHPO's Cheyenne office. Circumstances in which documentation should be submitted directly to the SHPO's Wyoming Cultural Records Office (WYCRO) in Laramie are specified below.

#### **D. Undertakings Requiring Formal Consultation**

At a **minimum**, the BLM will consult with SHPO and seek concurrence on determinations of eligibility and effect in the following situations:

- i. Non-routine interstate and/or interagency projects or programs that necessitate agreements among affected agencies to clarify roles and responsibilities;
- ii. Undertakings adversely affecting properties listed on, or eligible for listing, on the NRHP and/or NHLs;
- iii. Land exchanges or land sales affecting historic properties, which after sale or exchange, will no longer remain under the BLM ownership or management;
- iv. Anytime the BLM notifies the ACHP; and
- v. Undertakings that are determined by the BLM or the SHPO to be subject to unusual public attention or involve strongly opposing viewpoints.

#### **IV. BLM CONSULTATION WITH OTHER ENTITIES UNDER THIS PROTOCOL**

In order to allow an opportunity for interested parties to comment on the BLM undertakings subject to Section 106 review, the BLM will maintain an online database containing basic information about upcoming projects. This database is called the NEPA Register and it is found at <http://www.wy.blm.gov/nepa/search/index.php>. Interested parties should contact the Field Office to discover additional information about an undertaking that they may have an interest in. Each Field Office has a webpage that includes a phone number and email address for public contact.

#### **A. Advisory Council on Historic Preservation**

The BLM will invite the ACHP to participate in consultation following the guidelines at 36 CFR 800.11(e) when undertakings meet the thresholds listed below and will follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in the resolution of adverse effects for an undertaking.

Thresholds for ACHP Notification:

- i. At a minimum, the BLM will request the ACHP's participation in the following classes of undertakings:

- a. Non-routine interstate and/or interagency projects or programs;
  - b. Undertakings adversely affecting NHLs;
  - c. Undertakings that the BLM determines to be highly controversial;
  - d. Undertakings that will have an adverse effect on historic properties and with respect to which disputes cannot be resolved through formal agreement between the BLM and SHPO, such as a MOA or PA;
  - e. The development and approval of program alternatives, including project-specific PAs;
  - f. The BLM and SHPO may choose to consult to identify additional circumstances and conditions that, when met, call for the ACHP's notification;
- ii. The ACHP may enter into consultation at any time, per the nPA section 5.d.;
  - iii. At any point in the Section 106 process, the BLM, SHPO or other consulting party may request the ACHP's guidance or participation, but the ACHP may or may not elect to participate.

## **B. Indian Tribes**

The BLM will seek out and consider the views of Indian tribes when carrying out actions under the terms of this Protocol. The BLM will consider the effects of its undertakings on historic properties significant to Indian tribes, including those of traditional religious or cultural importance. In consulting with Indian tribes or authorized tribal representatives, the BLM will be guided by the following:

- i. BLM Manual 8120, *Tribal Consultation under Cultural Resource Authorities*
- ii. BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*
- iii. Executive Order 13007, Indian Sacred Sites
- iv. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- v. National Register Bulletin 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties*
- vi. 2011 DOI Tribal Consultation Policy and companion Secretarial Order 3317
- vii. NAGPRA (P.L. 101-601)
- viii. Tribal Protocols/Memoranda of Understanding (MOU) for consultation, as developed

## **C. Consulting Parties**

The BLM and SHPO will consult to identify consulting parties based on their demonstrated interest. A "demonstrated interest" for purposes of 36 CFR 800.2(c)(5) may be indicated by an organization

that focuses on historic preservation, as exhibited in their mission statement, charter or bylaws; or an organization or individual with a legal or economic relation to the undertaking or affected property or a concern with the undertaking's effects on historic properties; or a Certified Local Government (CLG) as defined at 36 CFR Part 61. Private landowners have a demonstrated interest when an undertaking involves their property. Consulting parties shall be invited to participate in the Section 106 consultation process (Section V below) if they have a demonstrated interest in a BLM undertaking or its effects on historic properties.

#### **D. The Public**

The BLM will seek out and consider the views of the public when carrying out actions under the terms of this Protocol. The BLM will solicit such input through the public participation opportunities afforded by the BLM's land use planning and environmental review processes established under NEPA and FLPMA, and in accordance with regulations for Coordination of Planning Efforts at 43 CFR 1610.3. The BLM will also follow internal guidance regarding the coordination of NEPA and NHPA requirements, including the Washington Office Instruction Memorandum (IM) 2012-108, until that IM is superseded by policy or an updated/reissuance of that IM is available.

### **V. CULTURAL RESOURCE MANAGEMENT PROCEDURES FOR CONSIDERATION OF THE EFFECTS OF THE BLM'S UNDERTAKINGS ON HISTORIC PROPERTIES**

#### **A. The BLM Responsibilities on Non-Federal Lands**

- i. The intent of the NHPA is to consider the effects of Federal undertakings (see 36 CFR 800.16(y)) on historic properties regardless of the ownership of involved lands. Therefore, the BLM, in consultation with SHPO, will ensure that its actions and authorizations are considered in terms of their effects on cultural resources located within the area of potential effect (APE).
- ii. The determination of the extent of the BLM's responsibility for identifying and treating adverse effects to non-Federal historic properties is based on the BLM Manuals, and other guidance such as Department of the Interior solicitor's opinions and Interior Board of Land Appeals (IBLA) decisions, on the evaluation of the following factors:
  - a. Is the non-Federal portion dependent upon the Federal permit, license or approval for the project to be viable?
  - b. How likely are historic properties to exist in the area of potential effects (APE)?
  - c. To what degree will the BLM permit, license or approval affect the location of surface disturbing activities on non-Federal lands?

- iii. If a project could not occur without the BLM permit, license or approval, the BLM will make a reasonable and good faith effort to carry out appropriate identification efforts (see ACHP's guidance entitled: *Meeting the "Reasonable and Good Faith" Identification Standard in Section 106*, online at: [http://www.achp.gov/docs/reasonable\\_good\\_faith\\_identification.pdf](http://www.achp.gov/docs/reasonable_good_faith_identification.pdf)). The BLM may conduct, or cause to be conducted by the applicant an inventory for and evaluation of cultural resources within the APE (see V.B.i for guidance on the distinctions between direct and indirect APEs). This effort occurs whether the undertaking was initiated by the BLM or in response to a land use application.
- iv. The BLM will consider the effects of its decision-making upon historic properties, and will mitigate adverse effects to non-Federal historic properties that would result from land uses carried out by or authorized by the BLM. If adverse effects to historic properties occur on non-Federal lands within the APE, the BLM will invite the affected non-Federal land owner to be a consulting party to resolve the adverse effect(s). It is the responsibility of the project applicant to complete, as appropriate, the mitigation of adverse effects to historic properties within the APE.
- v. When treatment involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-Federal lands and for report preparation. The artifacts, samples, and collections recovered from non-Federal lands remain the property of the non-Federal landowner.
- vi. Treatment plans will specify the curation at University of Wyoming Archaeological Repository (UWAR) of all complete original field notes, maps, records of analyses, photographs, other data, and reports for treatment work conducted on behalf of the Federal Government. The BLM will receive two copies of the report to review. Reports resulting from work on non-Federal land will be made available to the land owner upon their request. Consistent with applicable law, confidential and/or proprietary information will not be released (see 36 CFR 800.11(c) and Section 304 of the NHPA).
- vii. Without consent of the landowner, except where provided by law, the BLM has no authority to require access to conduct an inventory or complete mitigation on non-federal lands or the property of the non-federal landowner. Identification and avoidance, minimization or mitigation of adverse effects may be required as a condition of a permit, license or approval issued by the BLM, whether Federal or non-Federal lands are involved. Consistent with applicable law, the BLM has the authority to withhold and/or deny a permit, license or approval, for any federal undertaking, if the BLM is unable to complete the Section 106 process within the APE.

## **B. Identification of Historic Properties**

- i. Area of Potential Effects

“The area of potential effects [APE] means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking” (36 CFR 800.16(d)).

In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and all aspects of integrity, including their associated settings as applicable. All cultural resources within the APE must be evaluated for NRHP eligibility.

The BLM will consult with SHPO on undertakings for which a standard APE (see *Appendix L*) has not been developed, where the APE is smaller than those covered in the appendix, or where defining the APE is complicated or controversial (e.g. undertakings involving multiple agencies, multiple States, multiple applicants, and/or multiple Indian tribes). The BLM will mail the APE documentation to SHPO for a 15 day formal review. The BLM may assume concurrence with the APE determination if SHPO does not respond within 15 days.

- a. Direct APE: The BLM and the SHPO have jointly established guidance on standard direct APEs for certain types of projects (see *Appendix L*). The BLM cultural resource specialists will determine the portion of the APE subject to inventory (after consideration of previous adequate inventory, previously disturbed areas, etc. as discussed in Section V.B.i through V.B.v).
- b. Indirect APE: The indirect APE shall include known or suspected historic properties and their associated setting where setting is an important aspect of integrity (see *Appendix C*). Identification efforts outside of a direct APE shall be at the approval of the BLM field manager, taking into account the recommendations of the cultural resource specialist and the SHPO.

ii. Undertakings Exempt from SHPO Consultation

Undertakings that have no potential to affect historic properties, for which no SHPO consultation is necessary, are identified in *Appendix B*, subject to the following:

- a. The BLM cultural resource specialist will, after reviewing a proposed undertaking, determine if specific projects or activities have no potential to affect historic properties as described in *Appendix B*.
- b. The BLM and SHPO may agree that other classes of exempted actions may be added to *Appendix B*, see the process in Section X.V.
- c. The BLM will report all undertakings exempt from inventory by entering the action in CRMTracker, will notify the public and may proceed with the undertaking.

iii. Determine Information Needs

After the BLM has determined the undertaking is not exempt under Appendix B, they will, during the earliest feasible planning stage of any undertaking, determine the information needed to identify historic properties within the APE.

Such determinations may be based on a WYCRO file search and the BLM cultural resource records, aerial photographs, GLO records, the BLM land records, resource management plan, project-specific NEPA documents of the proposed project area and on information sought and obtained from the SHPO, from consulting parties and the public.

- a. Previous Adequate Inventory: If the BLM cultural resource specialist determines that the entire APE, or a portion of the APE, has previous adequate Class III inventory (see BLM Manual 8110.21.c), that has been reviewed by the appropriate Field Office and the SHPO, the BLM may proceed with determining eligibility and effect without additional inventory for those previously inventoried areas. Inventories will be evaluated by the cultural resource specialist to determine their adequacy for identification purposes in locating and evaluating historic properties in relation to land use applications subject to terms of this Protocol. This will include an assessment of need for further consultation with Indian tribes. The BLM will notify SHPO via CRMTracker prior to authorizing an undertaking when an inventory more than 20 years old is determined adequate for identification and evaluation purposes.
- b. Level of Inventory: When determining the level of inventory of the APE, the BLM will consider direct, indirect and cumulative effects of the undertaking.
  1. If the BLM determines that a Class III inventory of the direct APE is necessary, the BLM need not seek the SHPO's views on identification efforts.
  2. If the BLM determines to conduct an inventory at less than a Class III level (except as specified in Section V.B.v. a and b below) BLM will formally consult with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking, unless specifically addressed in an appendix to this Protocol. SHPO will comment within 15 days of receipt of the documentation. Any disputes over the adequacy of the proposed inventory efforts shall be resolved in accordance with the dispute resolution clause in Section IX of this Protocol.

iv. Disturbed Areas

If the proposed undertaking is not listed in the exemptions found in *Appendix B*, the BLM cultural resource specialist will determine whether previous ground disturbance has modified the surface so extensively that the probability of finding intact cultural properties within the direct APE is negligible. If such disturbance has occurred in the APE, these areas may be exempt from inventory. Disturbed areas will be clearly marked on the project map. Indirect effects of the undertaking shall still be considered.

v. Areas of Low Probability for Historic Properties

The BLM may determine specific areas do not need to be inventoried because current information suggests the area has little or no probability to contain historic properties. Determinations regarding the applicability of low probability indicators may be made only by BLM cultural resource specialists following any consultation requirements discussed below:

- a. Low Probability Areas (Planning): Low probability for historic properties due to environmental factors or other conditions may allow some lands to be exempted from inventory. If low probability areas for historic properties occur within a Field Office, BLM will consult with SHPO to determine whether or not these areas will be exempted from inventory. Areas exempted for low probability will be negotiated between BLM and SHPO resulting in an MOA (see Section V.F.ii). Executed MOAs are listed in Appendix A of this Protocol. Other indicators of low probability may be agreed upon as developed jointly by BLM and SHPO.
- b. Low Probability Areas (Project-Specific): If low probability areas for historic properties occur within an APE per V.B.v.a, BLM will determine whether or not these areas will be exempted from inventory. BLM will cite the appropriate MOA for the exemption in CRMTracker. Low probability areas will be clearly marked on the project map. When V.B.v.a above does not apply, the BLM will request concurrence in writing from the SHPO on project-specific exemptions due to low probability for historic properties. The SHPO will be provided 15 days to comment. If SHPO does not comment within 15 days, BLM may assume concurrence and proceed with the inventory.

**C. Determination of Eligibility**

BLM will determine if there are historic properties within the APE by applying the criteria for evaluation and criteria considerations found in 36 CFR 60.4. All sites will be evaluated under all four criteria guided by the *Secretary's Standards and Guidelines for Evaluation*, the National Register Bulletin *How to Apply the National Register Criteria for Evaluation*, and appropriate historic contexts. A discussion of the integrity of location, setting, design, materials, workmanship, feeling, and association must be included in project documentation for all cultural resources. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the BLM to reevaluate properties previously determined eligible or ineligible (36 CFR 800.4(c)(1)). Details of the eligibility evaluations, criteria considerations (as appropriate), and a discussion of integrity shall be included in the report and on the appropriate Wyoming Cultural Properties Form (WYCPF).

i. No Historic Properties

- a. No Cultural Resources Identified: When no cultural resources of any kind are identified by inventory, or only those described in Appendix D (exclusions/non-site types) are encountered, the BLM will then make a determination of effect per Section V.D.i and will follow the reporting requirements in Section V.E below.
- b. No Historic Properties Identified: If the inventory results in no historic properties (only ineligible sites and/or isolated resources found) the BLM will make a determination of effect per Section V.D.i and will follow the reporting requirements in Section V.E below.

ii. Historic Properties Present

When historic properties are identified within the APE, the BLM will assess the effects of the undertaking on those historic properties and will consult with SHPO as discussed in Sections V.D and V.E below.

iii. Changes in Eligibility

If the BLM or SHPO finds it appropriate to change the eligibility determination of a previously concurred upon cultural resource or historic property, they must formally consult to seek concurrence on the changed determination, and must include justification for the proposed determination change. If SHPO presents the change, they will write an email or letter to the respective Field Office with a justification for the change and request that BLM initiate consultation. If the BLM presents the change, they will mail the report, site forms, and other documentation as appropriate to the SHPO in Cheyenne and will include a justification for the change and initiate consultation. If either party does not respond within 15 days (or the consultation timeline for the associated undertaking, whichever is longer), the other party may assume concurrence with the change in eligibility. Any consulting parties involved will be informed of the potential change in eligibility and will be provided the opportunity to comment. Previously unevaluated sites and sites without previous SHPO concurrence are not subject to this stipulation.

iv. Disputes on Eligibility

In cases of disputes on eligibility the BLM Field Office and SHPO will consult to achieve concurrence on eligibility. If the Field Office and the SHPO cannot concur on the eligibility of a cultural resource, they will seek guidance from the BLM State Office cultural resource staff. If agreement cannot be reached, then the BLM will request a formal determination of eligibility from the Keeper of the National Register of Historic Places (Keeper), pursuant to 36 CFR 800.4(c)(2). The process detailed in 36 CFR Part 63, the National Park Service (NPS)

regulations on *Eligibility for Inclusion in the National Register of Historic Places* will be followed. The Keeper's determination will be final. BLM cannot proceed with a final determination of effect until the eligibility of a property has been resolved.

#### **D. Determination of Effect**

A determination of effect is made after avoidance and minimization through standard treatment measures and/or best management practices (BMPs) have been integrated into the project design (see Appendix C, II.D.2). The final project design must incorporate all agreed upon treatment measures and these will be included in the stipulations (e.g. Conditions of Approval) of the relevant authorization (e.g. Approved APD, ROW Grant etc.). Standard treatment measures and BMPs are avoidance and minimization measures, and are not mitigation measures for resolving adverse effects. A determination of effect shall consider reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

i. **No Historic Properties Affected**

If there are no historic properties identified, or if they are present but will not be affected by the undertaking, a determination of "No Historic Properties Affected" is appropriate. Atmospheric and auditory elements need to be considered when assessing effects to setting, feeling and association. When a setting analysis (visual contrast rating (VCR) analysis and/or viewshed analysis) is completed, and a proposed project will not be visible from the historic property and/or there is no contrast between the project and the setting (see Appendix C), and no atmospheric and auditory effects are evident, then a determination of "No Historic Properties Affected" is appropriate.

ii. **No Adverse Effect**

- a. If a historic property is being affected by a proposed undertaking, but the effect does not alter, directly or indirectly, any of those characteristics that qualify the property for inclusion in the NRHP, then a determination of "No Adverse Effect" is appropriate as provided in 36 CFR 800.5(b). This applies to all historic properties located within the APE.
- b. If it can be demonstrated that only noncontributing portions of historic properties will be affected, directly or indirectly, then a determination of "No Adverse Effect" is appropriate.
- c. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, and there is a weak contrast between the undertaking and the setting (see Appendix C), and no atmospheric and auditory effects are evident, the BLM will document the decision and a determination of "No Adverse Effect" is appropriate as provided in 36 CFR 800.5(b).

iii. Adverse Effect

- a. Per the Section 106 regulations at 36 CFR 800.5(a)(1), “An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the [NRHP]. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”
- b. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, and there is a **moderate or strong contrast** between the undertaking and the setting (see Appendix C), the BLM will document the decision and a determination of “Adverse Effect” is appropriate as provided in 36 CFR 800.5(a)(1). Atmospheric and auditory elements of setting also need to be considered. In these cases, BLM will consult with SHPO to develop a MOA or PA and follow the procedures in Section V.F.ii of this Protocol.
- c. In making a determination of adverse effect, BLM will request comments of appropriate consulting parties and/or Indian tribes. BLM will maintain lists of consulting parties based on their identified interests.

iv. Non Concurrence with Determination of Effect

If the SHPO, THPO, Indian tribe or any consulting party disagrees with BLM’s determination of effect as outlined above, the procedures at 36 CFR 800.4(d)(1)(ii) through (iii); or 36 CFR 800.5(c)(2)(i) through (iii) will be followed.

## E. Consultation Procedures and Reporting

Once BLM has determined the eligibility of all cultural resources and made a decision about the effect of the undertaking, in consultation with Indian Tribes, consulting parties and the public as appropriate, the BLM will report the determinations to the SHPO and consult with SHPO to seek concurrence in the following manner.

- i. The BLM will ensure that all reports will meet the current *Wyoming State Historic*

*Preservation Office Format, Guidelines, and Standards for Class II and III Reports (WY Report Standards)*(see *Appendix J*) and will use the Wyoming Cultural Property Form (WYCPF) and/or Wyoming Isolated Resource Forms (WYIRF). Submission of all project reports will include a standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect. VCR forms will be submitted as appropriate. The BLM will submit all documentation to either the WYCRO office in Laramie or the SHPO office in Cheyenne, for review and comment, depending upon the determination of effect (see Section V.D).

- ii. The SHPO will randomly review the BLM’s determinations of “No Historic Properties Affected” and “No Adverse Effect”. If SHPO believes there is a pattern of inappropriate or inadequate eligibility or effect determinations, they will begin consultation with the BLM following dispute resolution procedures in Section IX of this Protocol.
- iii. Exemptions (V.B.ii and Appendix B), Previous Adequate Inventory (V.B.iii.a), Disturbed Areas (V.B.iv) and Areas of Low Probability (V.B.v)

The BLM will submit the electronic record to SHPO through CRMTracker and will file the standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect documentation in the Field Office case file. No submission to the SHPO office is required beyond the electronic CRMTracker record (except for project-specific low probability areas per Section V.B.v.b). The BLM will notify consulting parties and may proceed with the undertaking.

- iv. No Historic Properties Affected

The BLM will submit the electronic record to SHPO through CRMTracker and will submit the project report, meeting the current *WY Report Standards* to the WYCRO within 30 days after determining the report meets standards and completing determinations of eligibility and effect. Submission of the project report will include a standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.

- v. No Adverse Effect

- a. Sites eligible under Criterion D only: The BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current *WY Report Standards* to the WYCRO within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.
- b. Sites eligible under Criterion A, B, and/or C: If setting is not a contributing aspect of integrity for these sites, the BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current *WY Report*

Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. SHPO will review and comment on the effect within 15 days of receipt of the documentation. If SHPO does not respond within 15 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.

- c. Justification of a newly determined noncontributing portion of a historic property must be documented on a WYCPF and discussed in the project report. Portions of historic properties previously determined to be non-contributing with SHPO concurrence do not need a new site form, but the site must be discussed in the results section of the report. This should include a discussion of when and why it was previously determined non-contributing and why that determination is still appropriate.
  - d. If it is determined that the undertaking will have no adverse effect to historic property where setting is an important aspect of integrity and the project will cause a **weak contrast** after standard treatment measures or BMPs are incorporated into the project design, the BLM will submit the electronic record to SHPO through the CRMTracker database and will mail the project report meeting the *WY Report Standards* to the SHPO in Cheyenne within 30 days after determining the report meets standards, and completing determinations of eligibility and effect, to the SHPO office in Cheyenne. SHPO will review and comment on the effect within 30 days of receipt of the documentation. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will notify consulting parties, and may proceed with the undertaking.
- vi. Adverse Effect
- a. Sites eligible under Criterion D only: If an undertaking will adversely affect sites eligible only under Criterion D, BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current WY Report Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. If SHPO does not respond within 15 days, BLM may assume concurrence with determinations of eligibility and effect. When the report and the data recovery plan are submitted together, SHPO will have a 30 day review. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will proceed with the resolution of adverse effect procedures in Section V.F. of this Protocol.
  - b. Sites eligible under Criterion A, B, and/or C: If an undertaking will adversely affect sites eligible under Criteria A, B, and/or C BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current WY

Report Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will proceed with the resolution of adverse effect procedures in Section V.F.ii of this Protocol.

## **F. Resolution of Adverse Effects**

### **i. Resolutions Not Requiring an Agreement Document**

- a. Data Recovery: If the historic property being adversely affected is eligible for inclusion in the NRHP under Criterion D only, then the BLM will prepare, or cause to be prepared a data recovery plan and the BLM will implement the procedures below. Mitigation banking and site burial are not acceptable practices for resolution of adverse effects in Wyoming.
  1. Data Recovery Plan Documentation and Consultation Needs: Data Recovery plans will be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37). The plan will include, at a minimum, the items in BLM Manual 8140.26A-I, time frames and guidelines for submittal of documentation of completion of fieldwork, submission and review of reports, completion and acceptance of the final Data Recovery Report, as well as any public education/outreach (e.g. Wyoming Archaeologist article) as warranted. Compliance with the approved data recovery plan will be included in the undertaking's stipulations. Objection to or failure to comply with the approved data recovery plan by the applicant will require consultation with SHPO and negotiation of an MOA.
  2. Data Recovery Plan Review: The BLM will submit the project report meeting the current WY Report Standards and the data recovery plan to the SHPO office in Cheyenne. The BLM will concurrently submit the documentation through CRMTracker. SHPO will review and comment on the determinations of effect and the data recovery plan within 30 days of receipt of the documentation. If the SHPO has no comment, and no other consulting party objects, the BLM may assume SHPO concurrence with the plan. The BLM may proceed with the undertaking without an MOA provided there are no other historic properties eligible under Criterion A, B, or C within the APE that may be adversely affected by the undertaking.
  3. Data Recovery Report: Data recovery reports must be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37). The data recovery report will include, at a minimum, the items at BLM Manual 8140.27A-F. BLM will review data recovery reports within one year of receipt. Final data recovery reports will be provided

to the SHPO office in Cheyenne within 30 days of BLM review and acceptance. The BLM will concurrently submit the documentation through CRMTracker. SHPO may review the final data recovery report and provide courtesy comments to the BLM.

- b. Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS): In consultation with the SHPO, the BLM will identify historic properties where an adverse effect can be mitigated by completing a HABS/HAER/HALS document. The BLM will mail the project report meeting the current WY Report Standards and the recommendation for HABS/HAER/HALS documentation to the SHPO office in Cheyenne. SHPO will review and comment on the appropriateness of the documentation of the historic property and the undertaking's effect on it within 30 days of receipt of the documentation. The BLM will concurrently submit the documentation through CRMTracker. If SHPO does not respond within 30 days, BLM may assume concurrence with the adequacy of the documentation.
  1. HABS/HAER/HALS Documentation and Consultation Needs: HABS/HAER/HALS projects must be coordinated with the NPS Intermountain Region Office (IMR), which will set the appropriate levels of documentation and order the HABS/HAER/HALS number. BLM will initially write NPS IMR to request that they set levels of documentation, and will include a copy of the survey report, MOA (if one has been executed), photos and any other pertinent information that would help NPS make these determinations. NPS IMR will respond with a formal letter to the BLM that will detail documentation requirements, including number of photos, number of pages of history, and whether or not drawings are required. BLM will then contact NPS IMR to request the HABS/HAER/HALS number be assigned to the project.
  2. HABS/HAER/HALS Reporting: After completion of all the documentation required by NPS, the BLM will submit final HABS/HAER/HALS documentation to NPS within 30 days of completion. NPS will review the final HABS/HAER/HALS documentation and provide comments to the BLM within 30 days. The undertaking may not proceed until acceptance of adequate HABS/HAER/HALS documentation by NPS. BLM will provide a courtesy copy of the final documentation to SHPO. BLM will include compliance with the approved HABS/HAER/HALS documentation requirement in the project's stipulations. Objection to or failure to comply with the approved HABS/HAER/HALS plan by the applicant will require consultation with SHPO and negotiation of a MOA.
- c. Stabilization: If the agreed upon mitigation for an adverse effect is stabilization, the BLM will submit a stabilization plan to the SHPO in Cheyenne and consulting parties for a 30 day review . The BLM will concurrently submit the documentation through

CRMTracker. If SHPO does not respond within 30 days, BLM may assume concurrence with the plan. The stabilization plan may be implemented once BLM has obtained SHPO concurrence.

ii. Resolutions Requiring Agreement Documents

If there are historic properties within the APE that will be adversely affected and are eligible under NRHP Criteria A, B, and/or C, BLM will submit the project report to the SHPO in Cheyenne for 30 day review and comment. Upon receipt of SHPO concurrence of a determination of adverse effect, BLM will initiate consultation with SHPO, and as appropriate, the ACHP (if the undertaking meets the Thresholds at V.A.i), Indian tribes and consulting parties to develop an agreement document. Standard treatment measures and BMPs are not mitigation measures for resolving adverse effects, but must be applied prior to making a determination of effect.

a. Parties to the Agreement:

1. Any meetings specifically designed to discuss agreement documents must be coordinated with the BLM State Office cultural staff. There are three formal types of consulting parties as set forth in 36 CFR 800.6(c)(1-3): Signatories, Invited Signatories and Concurring Parties. Signatories: Signatories are the BLM, the SHPO and the ACHP (if they are participating). The signatories have sole authority to execute, amend or terminate the agreement.
2. Invited Signatories: The BLM authorized officer may invite additional parties to participate as Invited Signatories and will invite any party with responsibilities under the agreement, such as the applicant, to participate as in the agreement. Any Invited Signatory that signs the MOA or PA shall have the right to seek amendment or termination of the MOA/PA. The refusal of any Invited Signatory to sign a MOA or PA does not invalidate the MOA or PA.
3. Concurring Party: The BLM authorized officer may invite other consulting parties to concur. A consulting party invited to concur has no responsibility under the agreement, but may be invited to sign the agreement as a Concurring Party. The refusal of any Concurring Party invited to sign a MOA or PA does not invalidate that MOA or PA.

b. Agreement Document Process

Preparation of a MOA/PA follows consultation between all consulting parties. Unless otherwise agreed upon, the BLM is responsible for preparing the MOA/PA. Stipulations included in the MOA/PA shall come from consultation among all consulting parties and will be incorporated into BLM's stipulations for the

undertaking. Generally the MOA/PA will be drafted by the responsible BLM Field Office, and the BLM State Office will always participate. Refer to Section I.B of this Protocol to determine if an agreement document needs to be written under this Protocol or under the Regulations at 36 CFR Part 800. The detailed process for a MOA/PA is outlined in *Appendix F*.

c. Compensatory Mitigation

Compensatory mitigation, or compensating for an effect by replacement or providing substitute resources or environments, will be considered after application of all other forms of avoidance, minimization and mitigation within the APE have been exhausted. Compensatory mitigation can occur at, or immediately adjacent to, the area affected but can also be located anywhere in the same general geographic area or, in the case of linear properties (e.g. NHTs), at other places along that specific resource. Compensatory mitigation may include, but is not limited to: educational materials, completion of NRHP nominations, professional publications, acquisition of conservation easements containing historic properties, development of interpretation plans, physical restoration of NHT segments, removal or modification of modern developments in settings of historic properties to restore integrity, acquisition of land or a historic property, through exchange or another process, where public access is possible, and/or stabilization of an associated property (e.g. a stage station along the trail).

Any compensatory mitigation must result from consultation among BLM, SHPO, ACHP (if participating), the applicant, and other consulting parties. Compensatory mitigation generally provides a public benefit and must be appropriate to the scale and scope of the effect being mitigated. Compensatory mitigation may be offered voluntarily by a project applicant for consideration by the consulting parties. If accepted by the Signatories, it will be incorporated into the agreement document and as a condition of the BLM authorization. In other cases, the BLM may find it necessary to advise the applicant that the project proposal cannot be approved without additional compensatory mitigation. Field Offices shall notify the BLM DPO as soon as it is recognized that a proposed undertaking may require consideration of compensatory mitigation. The BLM DPO will monitor the use of compensatory mitigation for consistency of application by the BLM statewide.

The following procedures are not appropriate as compensatory mitigation measures:

1. Payment of money by the applicant directly to SHPO; and
2. Data recovery at historic properties other than the historic properties that will be adversely affected by an undertaking (mitigation banking); and

3. Acquisition of land or a historic property, through exchange or another process, where public access is not possible; and
4. Signage or markers where there is no public access.

## **VI. DISCOVERY SITUATIONS**

The BLM and SHPO have agreed upon a standard discovery plan for inclusion in this Protocol, see *Appendix K*. A Field Office may use this discovery plan without additional SHPO consultation. The BLM will encourage development of undertaking-specific discovery plans for large and complex undertakings and location specific plans for areas known to contain buried archaeological sites. Undertaking and/or location specific discovery plans will be forwarded to the SHPO in Cheyenne for a 30 day review along with BLM's determination of effect for the undertaking. If SHPO does not respond within 30 days, BLM may assume concurrence with the discovery plan. When a discovery plan has been accepted by BLM and SHPO, the BLM will follow the plan when cultural resources are discovered during implementation of an undertaking. The BLM shall make reasonable efforts to avoid and minimize adverse effects to such properties until treatment is completed in accordance with the discovery plan.

## **VII. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES**

### **A. Staffing**

The BLM will allow identification and evaluation of cultural resources by specialists who meet the qualifications and are classified in the appropriate professional series by the Office of Personnel Management (e.g., Series 0193 for archaeologists). Technicians at the GS-5 and GS-7 levels are considered to be performing duties in a trainee or developmental capacity. Reports prepared by GS-5 and GS-7 technicians, or any cultural resource consultant, must be reviewed and submitted to the SHPO by a GS-9 or higher-grade cultural resource specialist. New specialists at a GS-9 grade or higher must follow the procedures required of a GS-7 cultural resource technicians until they have completed training on this Protocol. All Field Offices must have at least one GS-9 or higher cultural resources specialist in order to be certified to operate under this Protocol.

When new cultural resource specialists or new managers with responsibilities affecting cultural resources (including, but not limited to, district managers, field managers, assistant field managers, supervisory natural resource specialists, resource advisors, or Deputy State Director for Resources) are hired, the BLM will ensure that they receive orientation on this Protocol, within 90 days of starting work. It shall be the responsibility of the BLM DPO, with SHPO participation, to provide appropriate orientation. Once the orientation is completed, the DPO will formally notify the SHPO and the new staff members will be certified and allowed to follow the procedures of this Protocol.

The SHPO, with BLM DPO participation, will ensure all new SHPO historic preservation specialists hired to conduct Section 106 review receive training in Section 106 compliance and this Protocol within 90 days of starting work.

## **B. Specialized Capabilities**

Circumstances may occur where BLM may choose to acquire specialized capabilities (e.g. architectural history, landscape architecture, rock art, geomorphology, photogrammetry) to determine NRHP eligibility, effects and treatments for cultural resources. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through other means, including but not limited to contracts, the BLM personnel from other Field Offices, States, or cooperative arrangements with other agencies (e.g. NPS).

## **VIII. SUPPORTING PROGRAMS AND ACTIVITIES**

The BLM and the SHPO recognize the advantages of working together on a wide range of heritage preservation activities and will cooperatively pursue the following efforts:

### **A. Data Sharing and Information Management**

- i. Reporting Standards: The BLM and SHPO have collaborated on the development of standards for preparing inventory and treatment reports, and have jointly developed Wyoming Isolated Resource Forms (WYIRF) and Wyoming Cultural Properties Forms (WYCPF). All cultural resources data will be reported on WYCPF and WYIRF as appropriate. All BLM inventory reports submitted to SHPO will follow the current WY Report Standards (see Appendix J). Any revisions to the standards will be jointly developed by BLM and SHPO.
- ii. Data System Management: The BLM will support and SHPO will maintain a statewide automated cultural records database that is accessible from all BLM Field Offices. The BLM and SHPO will continue to collaborate on ways to synthesize and use the automated cultural data to develop and improve Geographic Information System (GIS) capabilities. BLM and SHPO will continue to cooperate in this endeavor by providing financial, personnel, hardware, and software resources as funding becomes available. If the SHPO or a BLM Field Office becomes aware of specific backlog documents held in either office, they should work cooperatively to provide the documentation to the office requesting it.
- iii. Electronic Records Submission and Project Tracking: BLM and SHPO will jointly work to implement the electronic submission of records for tracking agency actions through the use of CRMTracker. BLM and SHPO will work to ensure the program meets agency and SHPO needs.
- iv. Cancelled Projects: Reports for projects that have been cancelled, or for which no undertaking was ever submitted, but for which the cultural work has already been completed will be entered into CRMTracker and the report submitted to WYCRO within 1 year of BLM receipt of notice of project cancellation. If submitting for data sharing purposes, all sites may remain unevaluated and the report will be submitted to WYCRO with no review timeframe. If the BLM wishes to use the inventory and site data for future project purposes, they will evaluate all sites and submit the report for concurrence of

eligibility with no determination of effect. Future projects will require determination of effect and consultation according to part V.D of this protocol.

## **B. Public Outreach and Heritage Education**

The BLM and the SHPO will work cooperatively to promote and enhance public education and outreach in historic preservation and cultural resource management through the following programs:

- i. Archaeology Awareness Month and Historic Preservation Month: The BLM and the SHPO will participate in and support financially, as funding permits, Archaeology Awareness Month and Historic Preservation Month activities, including the Preserve Wyoming conference, public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.
- ii. Education and Outreach: When appropriate, the BLM and SHPO will cooperatively work with various entities on the development and distribution of educational and interpretive materials that highlight our cultural resources and promote preservation ethics in Wyoming. As much as possible, such development will utilize existing programs which have been professionally endorsed or previously supported (e.g. Project Archaeology, Adventures in the Past). Such educational/interpretive materials might include lesson plans, curricula, brochures, journal articles, museum displays/exhibits, videos, interpretive signs, lectures, monographs, radio and television promotions, internet web pages and other electronic and social media. These materials will summarize the results of archaeological investigations for the general public, as well as utilize and target results to particular groups, such as middle school students or social media users. The information used may either be as a result of Section 106 compliance responsibilities or from Section 110 research on public lands. Opportunities for public dissemination will especially be sought when research produces information that may be of particular interest to the general public. BLM and SHPO staff will cooperatively develop these materials in-house or through contracts with outside organizations. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, to further these activities.
- iii. Site Stewardship: The BLM and the SHPO will cooperate, as funding and staff availability permit, to continue building a volunteer site stewardship program, to recruit and train members of the public to serve as monitors and stewards of Wyoming's cultural resources, and to assist with educational and other activities involving cultural resources. BLM and SHPO will also work to involve other Federal and State agencies, consulting parties, avocational and professional archaeological organizations and others as appropriate, in the site stewardship program. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.

- a. The BLM agrees to:
  - 1. Identify cultural resources locations where the BLM desires monitoring to occur and will share related cultural resources data; and
  - 2. Provide training support including accompaniment during an initial site visit and additional training opportunities to site stewards, as possible within limitations of funding and staff time. The BLM will also support the program by limiting site stewards to those enlisted BLM volunteers that have been appropriately trained in the SHPO program; and
  - 3. Where possible, the BLM Field Offices will designate a cultural resources specialist as the point of contact responsible for coordinating site stewardship activities.
- b. The SHPO agrees to:
  - 1. Coordinate the statewide program and related documentation; and
  - 2. Maintain a roster of appropriately trained stewards; and
  - 3. Work with the BLM to match stewards with resources to be monitored; and
  - 4. Provide reporting data to the BLM regarding site steward activities and accomplishments; and
  - 5. Will confirm with the BLM that site stewards working on the BLM managed lands are enrolled as BLM volunteers prior to working as site stewards.
- iv. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations (e.g., Society for American Archaeology, American Anthropological Association, Register of Professional Archaeologists, Alliance for Historic Landscape Preservation, Wyoming Association of Professional Archaeologists and the Wyoming Association of Professional Historians) to promote preservation ethics, good science and good history, professional standards statewide, and open dialogue regarding historic preservation issues.
- v. Avocational Groups and Non-Profit Organizations: The BLM and SHPO are encouraged to work cooperatively with groups such as the Wyoming Archaeological Society, the Wyoming State Historical Society, Oregon-California Trails Association, the Alliance for Historic Wyoming, and Tracks Across Wyoming, to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists and historians and the interested public by participating in society meetings, serving as chapter advisors, providing

presentations and demonstrations, and other assistance as appropriate.

- vi. Public Dissemination of Information: When appropriate, the BLM, SHPO, or an applicant will provide funding for development and distribution of brochures, journal articles, museum displays, videos, monographs, or other information documents summarizing the results of archaeological investigations for the general public. These can be either part of the Section 106 compliance responsibility or Section 110 research on public lands. Opportunities for public dissemination will especially be sought when research produces information that may be of particular interest to the general public. The BLM and SHPO will develop these materials in cooperation, either by BLM and SHPO staffs or through contracts. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.

### **C. State-Level Historic Preservation Training and Workshops**

In addition to the basic Protocol orientation, per Section VII.A, the BLM and SHPO will cooperate and participate in on-going training of BLM managers and cultural resource staff, SHPO staff, public land users, and cultural resource consultants. Training resources shall include, but are not limited to, NHPA and its implementing regulations, all facets of the BLM 8100 Manuals, planning documents, and statewide historic context documents. Other trainings and workshops may include writing and negotiating agreement documents and treatment plans, National Register criteria, the visual contrast rating (VCR) system, etc.. Review of training needs and/or additional workshops will occur on a yearly basis at the annual cultural resource staff's Protocol meeting. Emphasis will be on professional development training to expand professional skills of BLM and SHPO cultural resource staff. In cooperation with the ACHP and SHPO, the BLM may identify partners, as appropriate, to assist in developing training programs. The BLM may seek the active participation of Indian tribes and individual Tribal Historic Preservation Officers (THPOs) in training sessions.

### **D. Historic Context Development**

The BLM and the SHPO will cooperatively recommend statewide priorities for historic context development involving BLM lands. These recommendations shall take into consideration context development priority recommendations made by the Governor's Historic Context Development Steering Committee in 2004. Recommendations will be considered in the BLM budget process as a statewide benefiting program. Field Offices may also develop resource, project, or area-specific contexts as their funding allows. In addition, the BLM will cooperate with the SHPO in the pursuit of funding to support the development of historic contexts (e.g., grant proposals). All historic contexts must be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) and the SHPO *Guidelines for the Development of Historic Contexts in Wyoming*. In accordance with Section 101(b)(3) of the NHPA, whereby the SHPO has responsibility for preparing and implementing the State's comprehensive historic preservation plan, the SHPO shall review and provide comments on all BLM historic context documents. Historic contexts which define site eligibility criteria, levels of adequate inventory, site documentation

requirements, standards for assessment of effects, and/or appropriate treatment of historic properties shall require SHPO concurrence on those aspects.

## **E. Collections Management**

The BLM shall support and maintain the collections (artifacts and associated field notes and other documents) at the UWAR for curation of Federal archaeological collections. Curation of archaeological materials is supported through a formal MOU between the University of Wyoming and the BLM. Following the BLM acceptance and submission of project reports to SHPO, the BLM shall continue to track progress of collections from the BLM lands. Archaeological consultants, researchers and the BLM shall submit artifacts, field notes, field maps, photographs, and documentation meeting UWAR's "Guidelines and Standards" as required per standard stipulations in BLM permits. UWAR will notify the BLM State Office of receipt of the collection upon arrival at UWAR. After accessioning the collection, UWAR will further notify the BLM State Office and Field Office of acceptance and curation of the collection. The BLM will require through its Cultural Resource Use Permit stipulations that all collections are submitted to UWAR within 60 days of the acceptance of the project report by BLM.

## **IX. DISPUTE RESOLUTION PROCEDURES**

- A.** Disputes on eligibility are handled under Section V.C.iv of this Protocol. Disputes on effect and all other types of disputes, disagreements or objections not explicitly addressed in this Protocol will be handled according to the Regulations at 36 CFR 800.4 through 800.6. The resolution will be documented in writing.
- B.** Disputes regarding specific undertakings must be resolved prior to approval of the undertaking. Approval of an undertaking prior to resolution of the dispute may constitute a foreclosure and will require notification of the ACHP. All dispute resolutions will be documented in writing and will be distributed to all consulting parties.

### **C. Disputes Involving BLM and SHPO**

- i.** If the BLM or the SHPO disagree on an undertaking/action proposed or taken by the other pursuant to this Protocol, or on how this Protocol is being implemented, they will consult with one another to resolve the issue. If the disagreement is about an action in a BLM Field Office, the field manager will notify the BLM-SHPO Liaison and BLM DPO and will consult with the SHPO to resolve it. If the disagreement is with the State Office, or the matter is referred to the State Office by a field manager or the SHPO, the BLM DPO, the BLM-SHPO Liaison, the SHPO, the field manager, and the district manager (if warranted) will consult to resolve the issue. If the dispute cannot be adequately resolved at this level, the objecting party shall notify the other party in writing. Within ten (10) calendar days following receipt

of notification, the parties shall initiate a formal 45 calendar day consultation period to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution.

- ii. If the dispute cannot be resolved through IX.D.i above, and the parties have not agreed to extend the consultation period, the BLM DPO shall refer the dispute to the BLM Preservation Board, which will provide the State Director with its recommendations, per Component 3 of the nPA. If the State Director accepts the Board's recommendations, the State Director shall promptly notify the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford the SHPO 30 calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs in the Board's recommendations within this time frame, the State Director and the SHPO shall proceed in accordance with the Board's recommendations to resolve the objection.
- iii. If either the State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed 30 calendar days, the State Director shall promptly notify the Board in writing of the rejection, and immediately thereafter submit the dispute, including copies of all pertinent documentation, to the ACHP for comment in accordance with Component 5 of the nPA. Within 30 calendar days following receipt of any ACHP comments, the State Director shall take into account any comments received from the Board, the SHPO, and the ACHP pursuant to this stipulation and make a final decision regarding resolution of the dispute. The State Director shall notify in writing the Board, the SHPO and the ACHP of that decision. The dispute shall thereupon be resolved.

**D. Disputes Brought by a Federally-recognized Indian tribe or a Member of the Public**

- i. If a Federally-recognized Indian tribe or a member of the public objects at any time in writing to the manner in which this Protocol is being implemented, the BLM shall consult with the objecting party for a formal 45 calendar day consultation period and, if the objecting party requests, with the SHPO, to resolve the objection. If the objecting party and the BLM resolve the objection within 45 days, the BLM shall proceed in accordance with the terms of that resolution. If the objecting party brings the dispute to the attention of the SHPO only, the SHPO will notify the BLM DPO within 10 days, and will be party to subsequent consultation to resolve the dispute. The BLM should inform SHPO of any objections and the outcome of attempts at resolution within 10 days after period of resolution has expired.
- ii. If the objection cannot be resolved, and if the objecting party has not requested participation or guidance by the ACHP under IV.A.iii of this Protocol, the DPO shall refer the objection to the Preservation Board, which will provide the State Director and the objecting party with its recommendations for resolving the objection. If the State Director and the objecting party accept the Preservation Board's recommendations, the State Director shall

proceed in accordance with these recommendations to resolve the objection. The State Director shall notify the objecting party of the decision.

- iii. If either the State Director or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the State Director shall refer the objection to the ACHP in accordance with Component 5 of the nPA.

The State Director shall take into account any comments received from the Board, the SHPO, and the ACHP pursuant to this stipulation and make a final decision regarding resolution of the dispute. The State Director shall notify in writing the Board, the SHPO, the ACHP and the objecting party of that decision. The objection shall thereby be resolved. Any objection filed pursuant to this paragraph shall not prevent the BLM from proceeding with project planning; however, project implementation shall be deferred until the dispute/objection is resolved pursuant to the terms of this paragraph.

## **X. LEVELS OF CERTIFICATION**

**A. Certification:** Certification of Field Offices allows them to use this Protocol rather than 36 CFR 800.3 through 800.7. Field Offices will be certified under this Protocol after undergoing orientation by the BLM DPO and SHPO in the components/terms of this agreement.

**B. Program Review:** If the SHPO documents persistent problems in complying with the terms of this Protocol, the dispute resolution procedures at Section IX of the Protocol will be followed. If a pattern of failure to comply with the terms of this Protocol can be demonstrated, a field manager, the DPO, the SHPO, or the ACHP may, upon written notification to the BLM State Director, request a review of a Field Office's status and its capability for carrying out the terms of the nPA and this Protocol. The State Director may request a review and recommendations from appropriate staff, and/or the Preservation Board, and/or the ACHP. Based on the review, the BLM DPO will make a recommendation to the State Director on development of a provisional status or a decertification action plan.

**C. Action Plans:** The DPO, SHPO, or the ACHP may recommend that the State Director place a Field Office on a provisional status or be decertified based on findings from a review. The BLM, in consultation with the SHPO, and the ACHP (if they are participating), shall develop an action plan to be followed by the Field Office in order to bring that office into compliance with this Protocol. After the involved Field Office can demonstrate it has completed all of the actions specified in the plan, it will notify the BLM DPO who will review compliance with the action plan with SHPO and the ACHP if they are participating. The BLM DPO will inform the State Director of the action plan compliance to determine Field Office status.

**D. Provisional Status:** A BLM Field Office is under provisional status when designated as such by the State Director. Provisional status may extend from six months to two years, although the term of the provisional status shall be a matter of agreement between the parties involved and shall reflect the complexity of the deficiencies identified. The involved BLM office will continue to operate generally under terms of the Protocol until deficiencies are corrected within the terms and time

limits set under the Action Plan (for example, review times may be different, “notify and proceed” submissions may not be allowed). While on provisional status, a Field Office will work to correct the deficiencies identified during the review. After the Field Office can demonstrate it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO. If all parties agree that the problems have been corrected, the State Director will notify the affected field manager, SHPO and the ACHP (if they are participating) in writing that the Field Office is once again in compliance and restored to full status. If the provisional status time period is about to expire and the Field Office has made significant progress but has not met the full terms of the action plan, the BLM DPO and the SHPO may recommend that the State Director extend the provisional status time period. Should the parties determine that significant deficiencies remain uncorrected, or if new significant deficiencies are identified, the findings shall be conveyed and decertification shall be recommended to the State Director by the BLM DPO.

**E. Decertification:** Decertification may occur if: (1) the Field Office has failed to comply with the provisional status action plan, or (2) findings from a Field Office review indicate that immediate decertification is warranted. Only the State Director may decertify a Field Office from operating under the terms of this Protocol. Decertification from this Protocol will require that the affected Field Office comply with Section 106 of the NHPA by following the most current implementing regulations at 36 CFR Part 800. The BLM, in consultation with the SHPO, and the ACHP (if they are participating) shall develop an action plan to bring any decertified office into compliance with this Protocol. Decertification does not have a pre-established time frame. A Field Office is decertified until it is found to have restored the basis for certification.

The district or field manager, the DPO or the SHPO may request that the Preservation Board review a district or Field Office’s certification status. The Preservation Board will respond under the terms of the nPA at Component 9. If the Preservation Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with this Protocol), and the BLM field or district manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the State Director decertify the district or office, per the nPA. A Field Office may ask the State Director to review the Preservation Board's decertification recommendation, in which case the State Director may request the ACHP’s participation in the review. After the affected BLM office believes that it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO. All parties will review the documentation and will make a recommendation to the State Director. If the problems have been corrected, and the SHPO concurs, the State Director will notify in writing the affected field manager, SHPO and the ACHP (if participating) that the Field Office is once again in compliance and restored to certified status. If the Field Office is found to not have resolved the issues, it will continue to operate under the 36 CFR Part 800 regulations.

**F. Recertification:** If a decertified Field Office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office. Recertification of the affected Field Office, which will allow that office to resume operating under the terms of this Protocol, will occur at the discretion of the BLM State Director after consultation with the SHPO and

the ACHP (if they are participating). The State Director will notify the Field Office, the SHPO and the ACHP (if they are participating) in writing when the Field Office is recertified.

## **XI. AMENDMENTS TO THE PROTOCOL**

If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. During the amendment process, the BLM and SHPO may identify specific sections and/or appendices that are subject to amendment. Suggested amendments would be sent to appropriate consulting parties and Indian tribes for a 30 day review. Amendments will become effective when signed by both parties.

## **XII. TERMINATION**

### **A. Termination of the Protocol**

The BLM or the SHPO may terminate this Protocol by providing 90 days' notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination, including following the dispute resolution process found at IX.C.i and ii. The BLM DPO may request the assistance of the BLM Preservation Board, the NCSHPO, or the ACHP in the consultation process. If the Protocol is terminated, the BLM will be required to comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

### **B. Termination of the National Programmatic Agreement**

Should the nPA be terminated or suspended for any reason, the BLM and the SHPO shall, within 30 days, bring this Protocol to the ACHP and attempt to convert this Protocol into a stand-alone statewide programmatic agreement. If the nPA is terminated, and the current Protocol cannot be converted into a stand-alone agreement, the BLM will be required to comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

## **XIII. REPORTING REQUIREMENTS**

The BLM's Cultural Resource Management (CRM) Program Annual Report that is submitted to the Washington Office for the Secretary of the Interior's "Report to Congress on Federal Archaeological Activities" shall serve as the BLM's Annual Report to SHPO. Submission of the report to SHPO will coincide with the date the report is submitted to the Washington Office. This report, minus locational and funding information, will also be posted on the Wyoming BLM's website so it is available to the public and to Indian tribes.

## **XIV. IMPLEMENTATION**

The previous Protocol dated March 8, 2006 will remain in effect until written notification from the State Director. The terms of this Protocol will not be effective until BLM and SHPO staff has received training on the requirements and procedures pursuant to Section VII.A of this Protocol,

and are certified to work under this Protocol.

## **XV. APPENDICES**

The following appendices will become effective when the revised Protocol is ratified. New appendices may be added and existing appendices may be modified as needed upon written concurrence of the Signatories. Suggested new appendices and changes to existing appendices will be sent to appropriate consulting parties and Indian tribes for a 30 day review.

- A. Special Purpose Programmatic Agreements and Memoranda of Agreement in Effect
- B. Undertakings Exempt from SHPO Consultation
- C. Guidance on the Assessment of Setting
- D. Exclusions: Defined Non-Sites and Property Types Requiring No Formal Documentation
- E. Standard Signed Notification Documenting NHPA Compliance Project Review Under Section 106 (CRMTracker)
- F. Agreement Documents: Process and Checklist
- G. Agreement Document Template
- H. Reporting Summary Flowchart
- I. Glossary
- J. SHPO Reporting Standards
- K. Standard Discovery Plan
- L. Standard APEs

## **XVI. GENERAL PROVISIONS**

**A. Entirety of Agreement.** This Protocol, consisting of forty (40) pages, Appendix A, consisting of three (3) pages, Appendix B, consisting of three (3) pages, Appendix C, consisting of six (6) pages, Appendix D, consisting of two (2) pages, Appendix E, consisting of one (1) page, Appendix F, consisting of six (6) pages, Appendix G, consisting of five (5) pages, Appendix H, consisting of one (1) page, Appendix I, consisting of eight (8) pages, Appendix J, consisting of twenty-one (21) pages, Appendix K, consisting of four (4) pages, and Appendix L, consisting of one (1) page, represent the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.

**B. Prior Approval.** This Protocol shall not be binding upon any party unless this Protocol has been reduced to writing before performance begins as described under the terms of this Protocol, and unless the Protocol is approved as to form by the Attorney General or his representative.

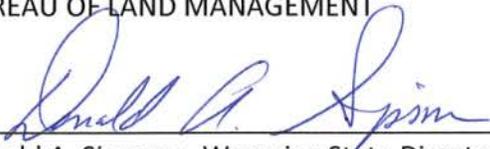
**C. Severability.** Should any portion of this Protocol be judicially determined to be illegal or unenforceable, the remainder of the Protocol shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

**D. Sovereign Immunity.** The State of Wyoming and the WYSHPO do not waive their sovereign or Governmental immunity by entering into this Protocol and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the Protocol.

**E. Indemnification.** Each Signatory to this Protocol shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this Protocol.

**XVII. SIGNATURES**

BUREAU OF LAND MANAGEMENT

  
\_\_\_\_\_  
Donald A. Simpson, Wyoming State Director

4/25/14  
Date

STATE HISTORIC PRESERVATION OFFICER

  
\_\_\_\_\_  
Mary Hopkins, Wyoming State Historic Preservation Officer

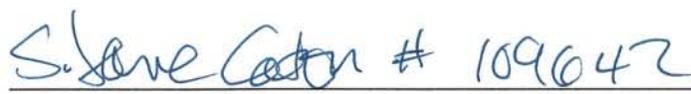
4/25/14  
Date

STATE OF WYOMING

  
\_\_\_\_\_  
Honorable Matthew H. Mead, Governor

4/25/14  
Date

STATE OF WYOMING ATTORNEY GENERAL'S OFFICE  
APPROVAL AS TO FORM

  
\_\_\_\_\_  
S. Jane Caton, Senior Assistant Attorney General

4-23-14  
Date