

In Reply Refer To:

8143 (930) P
(Tnowak)
PHONE NO: 307-775-6035
FAX NO: 307-775-6082

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To: Field Managers

From: State Director

Subject: Policy and Guidance on Developing Historic Preservation Agreements
Beyond the State Protocol

The Wyoming State protocol is a supplement to the "Programmatic Agreement Among the Bureau of Land Management, the 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," signed on

March 26, 1997. The national Programmatic Agreement (PA) and the required State protocol together take the place of 36 CFR 800 as the process to fulfill BLM's Section 106 responsibilities pursuant to the National Historic Preservation Act (NHPA).

Replacing the governmentwide regulations with such an agency-specific process is authorized in accordance with 36 CFR 800.13¹. The State protocol, as an element of the national PA, defines how the BLM and the State Historic Preservation Office (SHPO) shall coordinate and interact to fulfill the obligations of the NHPA. It also establishes a partnership between the two agencies to ensure that National Register-eligible cultural resources administered by the BLM are appropriately and practically managed.

Therefore, the State protocol serves as the umbrella document for any and all other agreement documents between the two agencies.

Relationship of Protocol to Other Agreement Documents

¹The BLM's national Programmatic Agreement and the Wyoming State Protocol were established based on the 1986 regulations of the Advisory Council on Historic Preservation governing the Section 106 review process [47 FR 24306, June 4, 1986] and the National Historic Preservation Act as amended through 1992 [Public Law 89-665; 80 Stat.915; 16 U.S.C. 4700].

The State protocol supercedes all other State-level agreements between the BLM and the SHPO. Since the protocol forms the legal relationship between the Wyoming BLM and the Wyoming SHPO, and affirms the preservation partnership between the two agencies, most procedures not specifically dealt with in the protocol (e.g., the specifics of a treatment plan) can be implemented on a temporary, project-specific basis through a simple Memorandum of Agreement (MOA) with the SHPO.

PAs between a Field Office and the SHPO should only be considered for larger, more complex projects or major undertakings when it is necessary to develop special procedures in order to avoid or reduce impacts to historic properties, establish specific time frames, or accomplish specific tasks. These special-purpose PAs are also to be temporary agreement documents that exist only through the life of a specific project. Field Offices are authorized under the auspices of the State protocol to develop PAs with the SHPO. However, because the procedures of a PA either depart from or are not covered by the protocol, and because they are subsumed under the State protocol pursuant to Section I, they require review by the BLM Deputy Preservation Officer to ensure conformance with BLM policy and to see that they are incorporated into the State protocol under Appendix A.

Supplemental Protocol Agreements

Supplemental Protocol Agreements (SPAs) are agreements authorized by and subsumed under the State protocol pursuant to Section VII.A.4.b. They are to be used exclusively for defining and exempting broad geographic areas or large blocks of land from inventory and case-by-case review because of low probability to contain historic properties due to environmental factors or other conditions. SPAs must have well-reasoned and quantifiable justifications based on previous inventory results, sound scientific explanation, and/or statistical probability. SPAs developed between the Field Office and the SHPO require coordination and review by the BLM Deputy Preservation Officer.

Contacts with the Advisory Council on Historic Preservation

Not only does the national PA replace the 36 CFR 800 process as the means for BLM to fulfill its Section 106 responsibilities pursuant to the NHPA, it also establishes a new structure of consultation by removing the Advisory Council on Historic Preservation from the basic consultation process, except for some very specific circumstances which may call for Council review. Essentially, items 2 and 3f in the national PA substitute the BLM's internal Preservation Board in the Council's customary consultation function. As indicated in Manual Section 8100.04H, it is the Board's function to coordinate with the Advisory Council. Accordingly, the Wyoming BLM's representative to the Preservation Board, the Deputy Preservation Officer, serves as the primary point of contact between the Advisory Council staff and the Wyoming BLM. Any agreements involving the Advisory Council require Deputy Preservation Officer involvement and State Director

concurrence.

As per item 4 of the national PA, circumstances calling for the Council's review include the following classes of undertakings:

1. **Nonroutine interstate and/or interagency projects or programs.**
2. **Undertakings directly and adversely affecting National Landmarks or National Register eligible properties of national significance.**

Manual Section 8110.33B2 identifies the National Landmark program as the only prevailing official process by which a historic property may be evaluated for national significance. While congressionally designated National Historic Trails commemorate transportation routes associated with specific historic events, designation does not certify the physical integrity or significance of any particular segments of those trails. To do that, those trail segments that appear to possess integrity and significance must be evaluated according to the eligibility criteria of the National Register [see Manual Section 8110.33C1b(1)]. Therefore, undertakings directly and adversely affecting portions of a designated National Historic Trail, unless specifically associated with a National Landmark, do not automatically require consultation with the Advisory Council. However, Manual 8110.33D2 allows for the State Historic Preservation Officer and the State Director, with the advice of the Deputy Preservation Officer, to concur that an undesignated property should be listed as nationally significant.

3. **Highly controversial undertakings, when Council review is requested by the BLM, a SHPO, an Indian tribe, a local government, or an applicant for BLM authorization.**

Under the State protocol, "highly controversial undertakings" have been more specifically defined as undertakings that receive an unusual amount of public attention and/or involve significant conflict related to cultural resources. Field Offices which may be considering an undertaking to be highly controversial (either because it satisfies the protocol definition, or because the SHPO, an Indian tribe, a local Government, or an applicant for BLM authorization has requested Council involvement), should discuss the issues with the Deputy Preservation Officer. If a determination is made between the Field Office and the Deputy Preservation

Officer that the undertaking meets the threshold for Council review, the State Director will be so informed.

Any questions regarding the policy and guidance provided by this Instruction Memorandum may be directed to Tim Nowak, Deputy Preservation Officer, at 307-775-6035.

/s/Alan R. Pierson