



**United States Department of the Interior**  
BUREAU OF LAND MANAGEMENT  
Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82003-1828



In Reply Refer To:  
8100 (930) P

July 6, 2007

Information Bulletin No. WY-2007-022

To: Field Managers  
From: Deputy State Director, Resources Policy and Management  
Subject: Draft Interagency Agreement with Federal Highway Administration  
DD: 7/27/07

The current interagency agreement between Wyoming Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA) will expire on September 30, 2007. Attached please find a draft agreement for your review. This draft allows for monitoring of FHWA projects by the Field Offices. If monitoring occurs, then the Field Office must file a report with the State Office regarding those activities. FHWA will submit a report of activities to BLM. In turn, BLM will submit a report to FHWA on the monitoring of those projects. We hope this reporting process will augment the annual meeting between the signatories in order to alleviate any issues that may arise during the year.

Comments on this draft agreement are due to the State Office by July 27, 2007. If you have any questions, please contact either Ranel Stephenson Capron at 307-775-6108 or Judyth Reed at 307-775-6017.

/s/ Jane D. Darnell

1 Attachment  
1 – Interagency Agreement between BLM and FHWA (5 pp.)

1. Background

a. The Federal Highway Administration (FHWA) is responsible for taking into account the effect of Federal-aid Highway projects on cultural resources under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 f) (NHPA). When issuing its consent for appropriation of public lands for Federal-aid Highway projects, the Bureau of Land Management (BLM) is also required to comply with Section 106 of the NHPA.

b. In addition, BLM ensures that other Federal statutes pertaining to cultural resources on Federal-aid highway projects on the public lands are met. To avoid unnecessary duplication of effort, the FHWA will be the lead Federal Agency responsible for compliance with Section 106 and ensure that the land manager's additional responsibilities for cultural resources on BLM administered lands are met in the planning and implementation of Federal-aid highway.

c. Remaining in full force and effect is a letter, dated August 7, 2003, issued to the Wyoming State Historic Preservation Officer, which stated:

“Pursuant to regulations at 36 CFR, Part 800.2 (2), the BLM and the FHWA with this letter are providing notification that FHWA Wyoming division shall serve as the lead Federal agency to all Federal-aid highway projects involving BLM-administered lands in Wyoming. Furthermore, pursuant to 36 CFR, Part 800.2 (3) FHWA has designated Wyoming Department of Transportation (WYDOT) to prepare all information, analysis, and recommendations required for compliance with Section 106 of the National Historic Preservation Act (NHPA)”

2. Purpose and Objective

The purpose of this Interagency Agreement is to establish a cooperative working relationship between the FHWA and the BLM for assuring compliance with Federal statutes and regulations and agency policies regarding the management of cultural resources on Federal-aid Highway projects in Wyoming pursuant to Title 23 U.S.C.

3. Statement of Work

a. Procedures: In lieu of BLM review and comment on cultural resource issues for specific Title 23 Federal-aid highway appropriation requests from FHWA, the procedures outlined herein will be followed by the FHWA and BLM. These procedures apply to all phases of planning and implementation of Federal-aid highways projects on BLM administered lands or BLM administered lands appropriated by FHWA under Title 23 U.S.C.

b. Areas of Cooperation

(1) The FHWA agrees to:

(a) Complete all phases of Section 106 compliance related to Federal-aid highway projects on BLM administered lands, or lands appropriated through BLM consent.

(b) Early in the planning of Federal-aid highway projects, consult with the appropriate BLM field office(s) to insure that proposed projects on the public lands are consistent with BLM land use plans and obtain the following from BLM:

- i. Existing cultural resource data pertaining to proposed project areas on BLM administered land or land appropriated through BLM consent;
- ii. BLM recommendations regarding the evaluation and treatment of known cultural resources within proposed project areas on BLM administered land or land appropriated through BLM consent; and
- iii. BLM recommendations regarding what should be done to further identify cultural resources within proposed project areas on BLM land or land appropriated through BLM consent.

(c) As they are completed, submit copies of all cultural resource inventory, testing, and mitigation reports; copies of correspondence pertaining to Section 106 compliance; proof of curation; and, when appropriate, evidence of consultation with Native Americans to the appropriate BLM Field Office(s) for inclusion in BLM's records.

(d) Insure that responsibilities of the BLM, under the Archaeological Resources Protection Act, are met for all archaeological resources located on BLM administered lands (or BLM administered lands appropriated by FHWA under Title 23) involved in the planning and implementation of Federal-aid highway projects. To meet these responsibilities FHWA shall insure the following:

- i. That archaeological investigations are limited to inventory, testing, and data recovery necessary to complete Federal Section 106 compliance responsibilities related to the planning and implementation of Federal-aid highway projects;
- ii. That all cultural resource inventory, site documentation, and reporting standards will be in accordance with the Secretary of Interior's Standards and Guidelines (48 CFR 44720-44737, September 29, 1983) and pertinent, current Wyoming SHPO standards;
- iii. That archaeological investigations are conducted by firms and/or individuals who meet the qualifications at 43 CFR 7.8(a)(1) and that approval of archaeological investigations are subject to the considerations for a cultural resource use permit in BLM Manual 8150. Firms and/or individuals authorized by FHWA to conduct archaeological investigations on BLM administered lands (or lands appropriated by FHWA through BLM consent) will be required to hold a BLM cultural resource use permit;
- iv. That all collected materials resulting from archaeological work conducted on BLM administered lands (or lands appropriated by FHWA through BLM consent) are deposited, as BLM property, with an approved Wyoming curation facility within 60 days following FHWA approval of the final report of archaeological investigations. Proof of curation shall be maintained in FHWA records with copies submitted to the appropriate BLM field office(s). The approved depository is the University of Wyoming in Laramie, Wyoming.

v. That Indian tribes are notified regarding cultural resource work proposed on Federal-aid highway projects which could harm or destroy sites having religious or cultural importance to the tribes by following the regulations at 43CFR 7.7; and

vi. That archaeological resource information acquired from BLM administered lands (or lands appropriated by FHWA through BLM consent) is held confidential per 43 CFR 7.18.

(e) Insure that oversight and administration is conducted by a specialist meeting the qualifications in 36 CFR 61, Professional Qualification Standards (with BLM approval, the qualifications in BLM Manual 8150.12 B.2.b may be used). This specialist is currently Dr. Julie Francis, Archaeologist. Successors to this position shall be identified within 60 days of the hiring process, through amendment to this agreement.

(f) Insure that Federal agency responsibilities related to implementation of the Native American Graves Protection and Repatriation Act (and its implementing regulations at 43 CFR 10) are fulfilled, on all Federal-aid highway projects. Decisions regarding the disposition of human remains and other cultural items from lands administered by BLM or land appropriated through BLM consent shall be made by the BLM.

(g) Respond to BLM monitoring of Federal-aid highway projects.

(h) Prepare an annual report for the BLM COR listing activities under this agreement.

(2) The BLM agrees to:

(a) Review proposed Federal-aid highway projects to insure that proposals are consistent with existing BLM land use plans regarding the management of cultural resources.

(b) Supply FHWA with existing cultural resource data, give recommendations regarding the evaluation and treatment of known cultural resources, and recommend additional measures needed to identify cultural resources on proposed Federal-aid highway project areas.

(c) Instruct FHWA personnel charged with implementing this agreement regarding the responsibilities of land management agencies under the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. BLM cultural resource staff will be made available for this purpose.

(d) Monitor operations under this agreement.

(e) Issue its consent for appropriation to FHWA for Federal-aid highway projects without specific review of cultural resource issues when a statement is presented in the appropriation request that the procedures in this agreement are being implemented.

4. Terms of Agreement

This agreement shall become effective upon signature by all parties and shall remain in effect until September 30, 2012. This agreement may be terminated by either party upon a 30 days written notice to the other party of such intention. The parties agree to discuss issues prior to terminating the agreement.

5. Administration

a. Compliance, Review and Reports: Monitoring of Federal-aid highway projects for compliance will be conducted in the following manner:

(1) BLM Field Offices may annually monitor a sample of Federal-aid highway projects in their jurisdiction after receiving documentation from FHWA. Monitoring may include review of inventory, testing, and mitigation reports; review of compliance documentation; and field inspection to verify compliance with proposed mitigation and protection measures. BLM reviews will be confined to operations on BLM administered lands (or lands appropriated under BLM consent) and to cultural resources located wholly or in part on BLM administered land (or lands appropriated under BLM consent). If the BLM Field Office chooses to monitor Federal-aid highway projects, they will prepare documentation on the monitoring activities for the BLM COR. Using the reports from the Field Offices, the BLM COR will prepare a report of statewide monitoring activities conducted under this agreement. BLM will transmit this report to FHWA.

(2) BLM and FHWA staff from the Cheyenne Offices will meet annually between January and June to review operations under the terms of the agreement. The performance of both parties will be discussed through joint review of the annual monitoring report prepared by BLM and the annual report prepared by FHWA. Both parties will work to resolve issues identified in the annual review.

b. Each provision contained herein is subject to the applicable laws and regulations of Wyoming, the laws of the United States, the regulations of the Department of the Interior, and the regulations of the Secretary of Transportation.

c. Nothing herein will be construed as limiting or affecting in anyway the authority or legal responsibility of the Division Administrator, FHWA, or the State Director, BLM, or as binding on the FHWA or BLM to perform beyond the respective authority of each, or to require any party to assume or expend any sum in excess of appropriations available. It is understood that all the provisions herein must be within financial, legal, and personnel limitations as determined practical by the Division Administrator and the State Director for their respective responsibilities. Funds or property cannot be transferred between agencies under this agreement. Further, nothing herein will be construed to limit BLM authority or legal responsibility for the management of cultural resources under its jurisdiction for purposes other than those described in this agreement.

d. Amendments to this agreement and written guidelines or procedures attached hereto may be proposed by either party and shall become effective upon written approval by both parties.

6. Approvals

FOR THE U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

By:

\_\_\_\_\_  
Division Administrator  
Wyoming Division

\_\_\_\_\_  
Date

FOR THE U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

By:

\_\_\_\_\_  
Wyoming State Director

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
Contracting Officer -WY 951

\_\_\_\_\_  
Date