

**Bureau of Land Management Preservation Board  
December 2021 Meeting (Virtual)  
December 6-9, 2021**

**BLM Preservation Board Members**

Cynthia Herhahn	Federal Preservation Officer (acting)
Bob King	Deputy Preservation Officer - Alaska
Matt Basham	Deputy Preservation Officer - Arizona
James Barnes	Deputy Preservation Officer – California (acting)
Natalie Clark	Deputy Preservation Officer - Colorado
John Sullivan	Deputy Preservation Officer – Eastern States
Kirk Halford	Deputy Preservation Officer - Idaho
Gary Smith	Deputy Preservation Officer - Montana
Madeline Ware Van der Voort	Deputy Preservation Officer – Nevada (interim)
Kim Ryan	Deputy Preservation Officer – New Mexico (interim)
Heather Ulrich	Deputy Preservation Officer – Oregon/Washington
Nathan Thomas	Deputy Preservation Officer – Utah
Kathy Boden	Deputy Preservation Officer - Wyoming
Byron Loosle	Acting Tribal Liaison – HQ 400
Jamie Palmer	Field Archaeology Representative - Oklahoma
Natasha Keierleber	Field Archaeology Representative - Wyoming
Mary D'Aversa	Line Manager Representative - Idaho
Greg Larson	Line Manager Representative - Colorado
Lance Porter	Line Manager Representative - Utah
Nick Pay	Line Manager Representative - Nevada
Marci Todd	Field Committee Representative – Nevada

**BLM Participants**

Mark Lambrecht	Assistant Director – HQ 400
Timothy J Fisher	Deputy Assistant Director – HQ 400
Scott Foss	Division Chief – HQ 420
Kristen Martine	Deputy Division Chief – HQ 420
Dayna Ables	Senior Archaeologist – HQ 420
Bridget Ambler	National Curator and NAGPRA Coordinator (acting) – HQ 420
Kelli Barnes	Archaeologist, IDSO
G.L. “Buck” Damone III	SHPO Liaison, WYSO
Kelly Akin	Training Specialist, National Training Center

**Partners/External Participants**

Christopher Koepfel	Advisory Council on Historic Preservation
Ira Matt	Advisory Council on Historic Preservation
Bill Marzella	Advisory Council on Historic Preservation
Valerie Grussing	National Association of Tribal Historic Preservation Officers
Tricia Canaday	National Conference of State Historic Preservation Officers

## **Day 1 – December 6, 2021**

### **Welcome and Opening Remarks:**

Assistant Director, National Landscape Conservation System Mark Lambrecht and Deputy Assistant Director Tim Fisher provided a warm welcome to the Preservation Board and invited guests. Mark noted that the Heritage program is an important aspect of all BLM does as an agency. The recently passed Infrastructure Investment and Jobs Act (IIJA) will likely generate additional work for the program and the bureau. HQ is working on how to fund that additional workload. The BLM has prioritized hiring a permanent Tribal Liaison Officer as a senior level position dedicated solely to that role. Byron Loosle is currently acting in that role and will continue until the permanent position is filled. A Tribal Relations Step-down plan is being drafted and is under review but is anticipated to be ready in the new year.

### **HQ 420 updates (Scott Foss, Kristen Martine)**

A major concern for HQ420 Education, Cultural and Paleontological Resources has been vacancies. The education team now fully staffed. Cynthia Herhahn is in a 1-year detail as the Federal Preservation Officer, and Bridget Ambler is in a 1-year detail as the National Curator/NAGPRA Program Lead through calendar 2022. The National Paleontologist position is still in process, and the Historian position is vacant. Scott and Kristen are working on updating the PD to meet current needs.

#### **FY2022 Budget updates:**

The FY22 Planning Target Allocations (PTA) is available, and most of the L1050 program dollars were planned for allocation to the field. We are still planning for \$1,000,000 in congressionally directed funding for NCRIMS (National Cultural Resources Information System) and will allocated that to states once states have clear plans for spending the funding appropriately.

#### **BLM and the DOI Strategic Plan for FY22-26:**

A new Strategic plan is being developed for DOI. HQ has been working to develop program specific goals and objectives, and metrics to gauge success in meeting those goals and objectives. These program goals are designed to contribute to the strategic goals for the administration.

BLM's Acting FPO provided an overview of data compiled from the Annual Heritage Report for FY21.

- More than 8,000 undertakings that had the potential to affect cultural resources
- 18 Memoranda of Agreement and 11 Programmatic agreements signed
- 26 data recovery projects to resolve adverse effects completed, another 70 ongoing
- 18,000+ objects deposited in repositories as a result of data recovery projects
- 564,500 total acres surveyed for 106 compliance and proactive 110
- 8,700 new sites documented
- 11 properties listed on the NRHP

### **Partners in Preservation: Updates from NCSHPO, ACHP and NCSHPO**

Tricia Canaday, National Council of State Historic Preservation Officers Board (NCSHPO) member and Idaho's Deputy SHPO, provided an overview of NCSHPO's initiatives and priorities, including: a SHPO/NAPC Working Group which was convened in 2021 to make recommendations to the National Park Service regarding Historic Preservation Fund Reapportionment; A NCSHPO committee—National

Historic Designation Advisory Committee—which was created to seek ways to address concerns expressed by Tribes, local governments, and preservation partner groups regarding barriers that exist in the National Register of Historic Places program; and concerns about SHPO capacity that may arise from the volume of review work likely to be generated by the Infrastructure Investment and Jobs Act. She encouraged BLM staff at the meeting to carry those concerns forward within the agency when opportunities arise. Tricia also expressed thanks to the BLM for continued support and funding for the data sharing partnership, and carried forward a suggestion from an Intermountain SHPOs meeting that as the BLM works toward updating the Nationwide PA, they seek input from states regarding elements that work particularly well at the State protocol level, and consider incorporating them into the NPA. ACHP Liaison Bill Marzella asked Tricia if she could clarify the requirements of the HPF grants that specified the Secretary of Interior’s Professional Standards. Tricia noted that SHPOs are required to have on staff, at a minimum, an SOI Qualified archaeologist, architectural historian, and historian. Also, the HPF grant requires a 10% pass-through to Certified Local Governments and that work done under these pass-through grants must also be completed by professionals who meet the appropriate SOI Qualifications per 36 CFR 61.

Valerie Grussing, Executive Director of the National Association of Tribal Historic Preservation Officers (NATHPO) provided an overview of recent initiatives and concerns. She noted the annual NATHPO conference will be January 25, 2022. The Sacred Sites Summit held in September was very successful and hope to make it an annual event to build on Native leadership and government and widespread support of these issues to enact lasting change. Valerie also mentioned the meeting with NCSHPO regarding the National Register program where they discussed ways to broaden Tribal engagement for recommendations. She also noted that THPOs will be affected by the coming workload from the infrastructure law when THPOs are already inundated by requests for reviews. Ensuing discussion touched on resources available to Tribes seeking THPO status and Tribal involvement in BLM’s land use planning process, including at what point in the process are Tribes involved. Cynthia will initiate a follow-up meeting with Valerie on this topic.

Bill Marzella, ACHP liaison to the BLM provided an overview of staffing changes at ACHP due to retirements and the addition of several liaisons for the NPS and the Army. Chris Koeppel joins as Assistant Director, Federal Property Management Office and Ira Matt will be Director of the Office of Native American Affairs starting in the new year. Reid Nelson is acting executive director until the position is filled, as well as continuing as the director, Office of Federal Agency Programs. Recruitment of the executive director is awaiting confirmation of the Chairman of the ACHP. Professor Sara Bronin has been nominated and awaits a vote by the full Senate. Vice Chairman Jordan Tannenbaum is performing the duties of Chair during this time. The ACHP staff is still teleworking due to Covid-19, so electronic submission is favored. The Section 106 pausing guidance for Covid-19 is still in effect, but reach out to him for priority projects with rigid deadlines. Virtual training continues with the ACHP’s basic curriculum, but agencies can request tailored courses. Bill is working on a “Special Situations” webinar that would cover foreclosure and termination.

### **National Cultural Resource Information Management System (NCRIMS) Update**

Dayna Ables provided an update on the contract and the status of tasks for each state. They are also working on improving the web app to make it more responsive to BLM’s needs. The line-item funding for NCRIMS will be pushed out to states that sent in project proposals at the Annual Work Plan (AWP). Dayna will check in around the end of the 2<sup>nd</sup> quarter to see if there are any concerns about spending the

funding prior to the end of the fiscal year. BLM has performed some outreach to Tribes regarding NCRIMS. Discussions have included access to data and access to the scripts for extracting the data.

## **PARKING LOT**

### **Using Appropriate PE codes and ensuring workload captured (Jamie Palmer)**

Maybe this will go in a general parking lot or upcoming workgroups.

BLM responsibilities on non-federal lands related to solar and gen-tie projects.

## **Day 2 – Tuesday, December 7, 2021**

### **Tribal Relations**

BLM acting Tribal Liaison Byron Loosle provided an overview of what is new in the Tribal Relations program and that the DOI and the BLM are putting a lot of emphasis on it. DOI has taken the lead on conducting national level consultations on a number of topics. BLM is launching its Tribal Relations website, which is much more encompassing than the tribal consultation webpage under the Heritage Program. The DOI is also revising the departmental manuals that may update definitions of consultation. BLM is working on a step-down plan based on the DOI plan, but it is still in process. The hiring of the national level permanent Tribal Liaison Officer is a very high priority, and more state level tribal liaisons are being added. The BLM has also been working on new trainings for line officers. We can anticipate more 638 contracts and compacting with tribes, as well as co-stewardship of public lands.

### **Program Alternatives**

ACHP Liaison Bill Marzella presented on the range of program alternatives that exist under 6 CFR 800.14, program comments, PAs (program PA, project PA, and prototype PA), exemptions, and standard treatments. He also highlighted some existing alternatives that BLM may want to consider.

### **How does BLM-Utah apply the criteria for evaluation (36 CFR Part 60)?**

UT DPO Nate Thomas presented data on site eligibility across UT BLM's field offices and emphasized the importance of historic contexts to making meaningful recommendations regarding site eligibility. This is a pattern in multiple states where the speculation of subsurface deposits drives eligibility.

Follow-up/Action item: Set up work group to continue the conversation on eligibility as a management tool. Gary commented that the historic context part of reports often is filler and boilerplate. There is a disconnect between having a summary of the culture history and then not taking that into account when making eligibility recommendations.

### **Round Robin of BLM States**

COSO is very interested in building relationships with Tribes through a variety of means, including providing training for Tribes to be able to engage effectively in RMPs.

WYSO: Kathy has been progressing on NAGPRA work; providing permitting guidance, addressing curation agreement issues with permittees, working on legacy collections. Buck has been working on their statewide cultural resources database since WYSHPO changed to a different system. BLM WY is now working on its own database that is NCRIMS plus some WY-specific fields.

UTSO: Nate reported that UT BLM has been supporting a partnership with UTSHPO and the Chinese Railroad Workers Descendants Association. Two PIT Projects and have excavated the first Chinese RR worker home in the West. Lance noted that the Bureau still faces challenges with mechanisms for compensating tribes for travel costs associated with consultation efforts. It is done through Concur, but it requires receipts and reimbursement takes a while. Micropurchases for products is another route that is open.

OR/WA: Heather reports that they have been working on a redesign of the cultural resources data system. They are decommissioning OHIMS so that BLM can actually maintain its own database. Also working on a probability tool that can be used to identify potential conflicts with broadband projects. Heather has also started on protocol revisions with SHPO. She hopes to get some interns onboard to assist with museum collections. Heather is also starting a tribal relationship certificate program at Portland State University.

MT/Dakotas: MT has been doing typical 106 work, but has also been working on National Register forms. They have been working with the Northern Cheyenne for several years on an ecoregional ethnographic assessment. BLM also has a contract with a Crow scholar to write a NRHP nomination for Dryhead Overlook. Pompey's Pillar National Monument needs some stabilization work on the rock faces both to conserve the inscriptions and to improve safety.

NM/OK/TX/KS: Kim Ryan represented NMSO. Carlsbad Field Office and Las Cruces District Office worked with the Mescalero Apache Tribe to make available areas for the tribe to harvest agave, banana yucca and beargrass for traditional uses. BLM NM law enforcement and the cultural program worked together on an ARPA case that was successfully prosecuted with the two perpetrators serving prison terms. The investigation was started when a BLM volunteer noticed a person posting photos of him digging a site recognizable as being on BLM lands. Carlsbad has a cultural resources tracking system that the NMSO is looking a to see if it could be used statewide and retooled to be able to address the annual heritage data call. Jamie Palmer added that the Oklahoma Field Office has an assistance agreement with the University of Oklahoma and the Wichita and Affiliated Tribes to document allotment era sites that will hire tribal members for interviews and to help with surveys.

NVSO: Madeline Ware Van der Voort reported that the NV protocol agreement has been extended until 2026. They will be working on revisions, but will have 4 years before it expires. Several energy/transmission projects that will be using the 36 CFR 800.8(c) process. They are also working on a Nevada-wide RMP amendment that would address energy provisions that they are gathering baseline data for. Nick Pay noted that there is a lot of interest in solar development in southern Nevada, and that they have been pretty successful in getting the applicants to conduct inventories as part of the variance process, or prior to NEPA initiation, which helps integrate the 106 and NEPA processes.

Action item for Cynthia: follow up with NPS on ARPA trainings

Action item for Cynthia: follow up on the SRMS – Solar PA situation. Who is using it, and what is the status of the training?

**Day 3 – Wednesday, December 8, 2021**

**Tribal Input in the 106 Process:** The board discussed how to incorporate better tribal consultation practices in the Section 106 process under the National Programmatic Agreement (nPA) and State Protocol Agreements, particularly focusing on more routine undertakings. More guidance for establishing effective Tribal consultation procedures, documentation standards, or securing sensitive and confidential information may be helpful for states. Early notification is essential, and Tribes need to be involved as early as establishing the Areas of Potential Effect (APE), if not sooner. The Board also acknowledged that the need for Tribal consultation is not driven by the level of National Environmental Policy Act (NEPA) analysis because Tribal concerns constitute a special circumstance under a Categorical Exclusion (CX). Additionally, consultation is still required under Section 106, separate from NEPA.

One of the most important aspects to successful consultation, is developing long standing and meaningful relationships with Tribes. Asking the Tribes how they want to be consulted, working in partnership to develop consultation protocols, documenting the results of consultation while protecting sensitive and confidential information, and providing managers with adequate training are all essential to developing relationships and partnerships with Tribes. Creating an established practice through the building of these relationships will also help Tribes to navigate transitions in BLM staff.

**Building Better Consultation Practitioners:** Natalie Clark and Greg Larson led a discussion and presented tools to facilitate better Tribal consultation practices including focus on training managers and line officers and provide them with the knowledge and skills to build long-lasting relationships. Specifically, creating action agendas prior to meetings and send these to the Tribes ahead of time in the spirit of implementing BLM Manual 1780; host pre-meetings with staff to better prepare and ensure that appropriate staff are present during consultation to address specific resource issues; do an after-action review to identify what and was not effective; implement best management practices as part of the consultation process. Consolidating resources and training on Tribal consultation will also help managers to build better consultation practices. The Board will create a new working group to aid in the identification, consolidation, and dissemination of these resources.

**Round Robins, continued:**

IDSO: Idaho is focused on energy projects and undertakings associated with the infrastructure bill, including a big broadband proposal. The need to re-establish the energy support team was emphasized.

Eastern States: Seen a reduction in undertakings relating to oil, gas, and coal. However, the Eastern States BLM is helping the new Forest Service archaeologist in Arkansas with a coal mine.

CASO: California is in the process of hiring a State Office Tribal Liaison. The job announcement for the Deputy Preservation Officer has closed. Working with the ACHP and the SHPO to amend the Desert Renewable Energy Conservation Plan (DRECP) Programmatic Agreement including a cultural resource sensitivity analysis for utility scale undertakings and needs to address compensatory mitigation fees as resolution for adverse effects. The Bakersfield Field Office is working on hundreds of rights-of-ways held by two major electric utility companies. Additionally, California is working on hazardous fuels reductions across the state to address the wildfire crisis.

AZSO: Arizona is challenged with multiple vacancies. One solution is hiring more permanent GS-7 technicians to help with field work. Undertakings are primarily focused on renewable energy generation

and transmission. There is a circumstance recently in AZ where we have received several 3809 notices in the same geological unit in relatively short order—which does not happen that often in AZ. 3809 notices are not Section 106 undertakings, but there are concerns regarding cumulative impacts to cultural resources. Tribes have expressed concern on how the BLM handles 3809 notices.

AKSO: Alaska is working with the Alaska SHPO and ACHP on the DOI's interest to open 28 million acres of BLM land for Alaska Native veterans or their heirs to select Native allotments under the 2019 Dingell Act.. Qualified individuals or heirs can select up to 160 acres each, totaling up to 480,000 acres of BLM land for consideration (based on the number of known Alaska Native Veterans). Additionally, the ANWR EIS for the Coastal Plain Oil and Gas Leasing Program is being revised with a Supplemental EIS to address concerns and changes in the current administration's priorities. Alaska is doing considerable work under NAGPRA and has submitted three Notice of Inventory Completions in the last six months.

**Section 106 Professional Standards:** The Board discussed the differences between the BLM Permitting requirements under Section 106 and the Secretary of the Interior (SOI) Professional Qualifications for archaeology and when each of the standards are appropriate for use. The SOI qualifications were published in the Federal Register in 1983. These qualifications cover multiple subject areas and requires a graduate degree, and in some cases additional specifications and specializations for work in archaeology. These standards are rather generic and do not require or include any reference to regional knowledge or experience.

While there is some overlap between the SOI Qualification Standards and the BLM permitting standards, there are some key differences. The BLM permitting standards do not cover multiple subject areas and do not require a graduate degree. Instead, permitting standard can substitute field experience, equivalent training, or supervised field and analytic experience for education requirements.

States have demonstrated that there is a need for professionals who are experienced in the field, but also competent in theory, method, planning, organizing, and supervising activities, and conducting research through to completion. Some states are struggling under the SOI Professional Qualifications in agreement documents. The BLM permitting standards offer more flexibility and emphasize local experience which allows offices to draw from a larger applicant pool, allowing them to find individuals who meet their requirements under local conditions.

A working group will be organized to summarize talking points from this discussion with the intent that it will aid conversations with leadership and partners.

**Expired MOA's and unmet stipulations:** Bill Marzella with the ACHP led a discussion on how to address unmet stipulations in an expired Memorandum of Agreement (MOA). If the agreement is expired, then the terms of that agreement are no longer in effect, potentially resulting in unresolved adverse effects to historic properties. Once an MOA is expired, it is not possible to renew or extend it. However, since this is a legally binding agreement, the agency is potentially liable for unmet obligations/stipulations. ACHP review may be required if the problem is recurrent.

There are two solutions to addressing unmet obligations/stipulations in an expired MOA:

- If the agreement is old and Section 106 standards have changed, then it is recommended the agency re-initiate consultation and go through an accelerated version of the standard process. It is not required that the old process be adhered to if that process is not feasible.
- If time ran out on the agreement before all the obligations could be met, it is recommended the agency reach out to the SHPO and directly discuss correcting the error. This is under the assumption there are not any concerns from Tribes or consulting parties. The agency may need to execute a new agreement, with a reference to the original agreement attached as an appendix. While this solution does not require new consultation under Section 106, it cannot be resolved through a simple letter.

If the BLM finds itself in the situation where an agreement has expired before all obligations are met, they can reach out to the ACHP for guidance on how to move forward.

The Board also discussed how to track agreement documents to ensure that the stipulations are met, and that expiration dates do not pass without appropriate action. Some solutions include creating a flow chart for each agreement that documents tasks and what triggers next steps in the process. If there is a contractor involved in the undertaking, that contractor could be responsible for managing the agreement and ensuring compliance with its stipulations. States could create an appendix to their protocol agreements that lists all active agreement documents and their expiration dates. Another solution is to add such a spreadsheet to the annual report.

#### **Day 4 – Thursday, December 9, 2021**

**Project Archaeology Update:** When Nate Thomas was acting FPO, he reached out to the education group in HQ420. Together, they hosted a facilitated discussion with CADR. Based on the session, BLM has been working on recommendations regarding the program following the reorganization that eliminated the dedicated Project Archaeology position. Partners at Montana State University have been managing the program, but the one MSU employee dedicated to Project Archaeology has now left MSU. The education team has brought on a 1-year detailer will be working on Project Archaeology as part of her duties.

Follow up: Kristen and DPOs meet to discuss the future of the program.

**Training:** Dayna Ables introduced Kelly Akin, the new training specialist for Heritage at the National Training Center. Dayna, Kelly and Bob King talked about reinstating the “Curriculum Advisory Team” (CAT) that would meet on a quarterly basis to evaluate current trainings, future training needs, and a 5-year training plan. Dayna will follow up with potential members. Kirk Halford, longtime CAT member emphasized that it is not a huge workload. Nick Pay noted that he is on another training team and can assist. Update on the 8100-11 training. Due to the pandemic, in person 8100-11 will be in May. PB members noted that there is enough demand to fill more than one course of 8100-11. Dayna will check back with the training cadre in January, and will be seeking replacement trainers due to recent departures. Several GIS for Archaeologists trainings offered in FY22. AGOL course in the works. To gauge needs, Dayna will send a questionnaire.

Action item: Dayna follow up with Natasha, Nick, Heather, Madeline, and other PB members to form the CAT.

**Infrastructure Investment and Jobs Act 106 workload:** Orphaned well plugging and remediation could be a 106 workload for BLM. Unclear if there will be a 106 nexus for grant funds depending on

what that program looks like and which agency is responsible for administering the grant program. Fire and fuels is also a potential workload.

**Career Development:** Jamie Palmer presented a strategy and tools to use for field archaeologists to better manage and quantify their workload so that they are able to take advantage of professional development opportunities. He showed an example of a tool to determine if time is available, and if not, to make time for an individual to pursue employee growth and development opportunities. Members noted that the tool could have broader applications in workload planning that may help with employee retention.

**Program Reviews Best Practices:** Cynthia facilitated a discussion of different types of Program Reviews and best practices for conducting those that are proactive and not “for cause”. Both types are identified in the NPA. Idaho and Colorado conduct proactive Program Reviews regularly (at least pre-Covid) and provided examples of the documents they use. General agreement that informal or proactive program reviews are important and useful tools for learning and improving our practice. Bob shared his experience with an internal control review of the cultural program in Alaska, which was not the best fit for the program. For more formal reviews, having the Preservation Board members participate is really important since those reviews can be awkward.

**Board Recommendation on addressing large renewable energy related projects:** There is a need to re-establish national or regional teams like the National Transmission Support Teams that include an archaeologist and a tribal liaison. The archaeologists would ideally be seasoned 106 practitioners, but there may be challenges recruiting senior archaeologists given that every agency along with states and tribes are also recruiting. If we recruit terms, it will be even more difficult. Maybe organized along the DOI regions, but important that it is a coordinated effort. Cynthia will follow up with Jane Childress to formulate recommendations and to give thought to how the teams integrate or work with the field office archaeologists. The team could be nimble enough to be an asset to any emerging priority.

The meeting closed with recognition of members who will be rotating off in May, and of DPOs who are retiring (Kirk Halford, following Bryan Hockett and Tony Overly earlier this year) or changing jobs (Kathy Boden). Next Board meeting is scheduled for June 7-9, 2022 and hopefully in person. Location TBD.