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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 Wyoming Bureau of Land Management State Director  
and  
The Wyoming State Historic Preservation Officer

This Protocol supplements the above referenced national Programmatic Agreement (PA). It describes the manner in which the Wyoming State Historic Preservation Officer (SHPO) and the Wyoming Bureau of Land Management (BLM) will interact and cooperate under the national Programmatic Agreement. As a condition of the national PA, the BLM, the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs (NCSHPO) mutually agreed that the BLM, after revising and updating its 8100 Manual Series, 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 national PA rather than by following the procedure set forth in the ACHP's regulations (36 CFR Part 800). The goal of the national Programmatic Agreement and this Protocol is to forge a more meaningful and productive historic preservation partnership between BLM and SHPO that will enhance the management of historic properties under the BLM's jurisdiction.

**I. RELATIONSHIP TO OTHER AGREEMENTS**

Other PAs and Memoranda of Agreement (MOA) may be developed when specific agreement documents are needed to define procedures that are not covered under the national PA or this Protocol. Agreement documents still in effect and negotiated under the previous Protocol are listed in *Appendix A*. Agreement documents negotiated under this Protocol will be added to *Appendix A* when signed. When more than one Federal agency is involved in an undertaking and BLM accepts lead responsibility for Section 106 compliance, the BLM and SHPO agree to follow the procedures of the national PA and this Protocol instead of developing a separate agreement document as long as the other agencies agree. BLM will provide SHPO with documentation that the other agencies have agreed to follow the Protocol.

## II. ADMINISTRATIVE INTERACTION AND 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.

Two meetings will be held annually within the first quarter of the calendar year to discuss issues related to this Protocol. The first meeting will include BLM field office cultural resource staff and managers, and State Office personnel. BLM will develop an agenda that includes SHPO input and SHPO will participate. A primary purpose of this meeting will be to prepare briefing papers, summaries, and recommendations for the BLM and SHPO executive management meeting to follow.

The second meeting will be an executive management meeting to be held following the annual field office cultural resource meeting. This meeting will specifically discuss procedures, policies, amendments to the Protocol, or other matters as warranted. BLM and SHPO executive management will determine time, place, agenda, and representation at this meeting.

## III. CONSULTATION

### A. BLM Project Planning

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

Each Field Office is responsible for preparing planning and National Environmental Policy Act (NEPA) documents such as Resource Management Plans (RMP), RMP amendments, RMP revisions, high level Environmental Assessments (EAs), or cultural resource activity 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. The BLM will formally invite the SHPO to comment on any historic properties use allocations, whether they are made in regional, local, or project plans. Field Offices will send all draft and final land use plans and historic properties project plans to the SHPO in electronic format or will provide paper copies upon request.

In preparing planning documents, BLM will utilize all relevant information tools including the SHPO web site, BLM Government Land Office (GLO) documents, municipal and county records, and other electronic databases.

### B. General Consultation

1. Project Notification: Field Managers have the responsibility to provide written notification to the SHPO about upcoming projects likely to adversely affect known historic properties, or known resources that are unevaluated but are likely to be eligible for inclusion in the National Register of Historic Places. The preferred method of notification is by e-mail 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.

2. Other Meetings and Informal Discussions: The SHPO is encouraged to meet with the Wyoming BLM State Office or a Field Manager and/or staff at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by SHPO. The SHPO and Field Office personnel may informally discuss specific undertakings or any aspect of BLM's cultural resource management program. Any meetings specifically designed to discuss agreement documents must be coordinated with the State Office BLM/SHPO liaison.

3. 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 between SHPO and a BLM Field Office or the BLM State Office.

4. 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 letter will include a brief description of the overall project. SHPO and BLM tracking numbers shall be referenced by the BLM and SHPO in all subsequent documentation relating to all segments of the project. Geophysical exploration projects do not require advance notification of segmentation.

5. Field Tours: BLM Field Offices will notify the SHPO, by e-mail, of all formal field tours relating to planning and NEPA efforts that may affect historic properties, particularly when the project proponent, the public, or interested parties are invited to participate. Field tours do not include routine on-site inspections pursuant to *Onshore Oil and Gas Order No. 1 (BLM, 43CFR 3160, Federal Register/Vol. 48, No. 205)*.

#### C. Formal Consultations

Formal consultation shall occur in writing between the SHPO and the BLM as outlined in the procedures in Sections V through VIII of this document. Unless otherwise specified, all 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 in the appropriate sections of this Protocol.

#### D. Undertakings Requiring Consultation

At a minimum, the BLM will consult with SHPO and request comments on eligibility and effect in the following situations:

1. Non-routine interstate and/or interagency projects or programs that necessitate agreements among affected agencies to clarify roles and responsibilities
2. Undertakings adversely affecting National Historic Landmarks or National Register-eligible properties
3. Land exchanges or land sales affecting historic properties which will no longer be under BLM ownership or management
4. Undertakings that are determined by the BLM or the SHPO to be subject to unusual public attention or involve strongly opposing view points

#### E. Native American Participation

The BLM will consider the effects of its undertakings on historic properties significant to Native Americans because of an association with tribal history or because of a property's traditional religious or cultural importance to a tribe. In consulting with Indian tribes or authorized tribal representatives, the BLM will be guided by the following:

- BLM Manual 8120, *Tribal Consultation under Cultural Resource Authorities*
- BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*
- Executive Order No. 13007, Indian Sacred Sites
- National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties

Additionally, if Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered as a result of a BLM undertaking, the BLM will comply with Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations at 43 CFR Part 10, Subpart B. These situations will also be treated as archaeological discoveries and appropriate discovery procedures, as defined in the BLM Handbook or other guidance developed jointly between the BLM and the SHPO, will be followed.

#### F. Public Participation

The BLM will seek 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 BLM's land use planning and environmental review processes established under the National Environmental Policy Act (NEPA) of 1969 and the Federal Land Policy and Management Act (FLPMA) of 1976, and in accordance with regulations at 43 CFR Part 1610.3. Interested parties shall be invited to participate in the Section 106 consultation process (Sections V through VIII below) if they have a demonstrated interest in a BLM undertaking or action on historic properties. Such interested parties may include, but are not limited to, local governments, grantees, permittees, owners of affected lands or land surfaces, Indian tribes, and other interested parties determined jointly by BLM and SHPO.

In making determinations of effect, BLM may request comments of interested parties. When BLM makes a determination of adverse effect, they will request comments of interested parties. BLM will maintain lists of interested parties based on their identified interests.

BLM and SHPO will consult to identify *invited* concurring parties based on their demonstrated interest and level of participation. *Invited* concurring parties will be provided the opportunity to sign a Memorandum of Agreement or Programmatic Agreement. Refusal by an *invited* concurring party to sign an agreement will not invalidate the agreement.

### IV. IDENTIFICATION

#### A. Exemptions

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

1. 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*.

2. BLM and SHPO may agree that other classes of exempted actions may be added to *Appendix B*.
3. The BLM will report any undertakings exempt from inventory by entering the action in CRMtracker and will proceed with the undertaking.

#### B. Area of Potential Effect

The area of potential effect (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)].

Until such time as the appropriate size of APEs for specific types of projects has been defined in the BLM Handbook or other guidance developed jointly between the BLM and the SHPO, BLM cultural resource specialists will determine that portion of the APE subject to inventory. In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and their associated settings as applicable. The APE shall include historic properties and their associated setting where setting is an important aspect of integrity (see *Appendix C*). The size of the survey area outside of an APE shall be at the approval of the BLM manager, taking into account the recommendations of the cultural resource specialist.

#### C. Determine Information Needs

The BLM will, during the earliest feasible planning stage of any undertaking, determine the information needed to identify historic properties situated within the APE. Such determinations may be based on a file search of the SHPO/BLM cultural resource records, aerial photographs, GLO records, BLM land records, resource management plan, project-specific NEPA documents of the proposed project area and on information sought and obtained from the SHPO and from interested parties.

1. Previous Adequate Inventory: The BLM cultural resource specialist will determine whether the APE has been adequately inventoried for historic properties. If an adequate Class III inventory (see *BLM Manual 8110.21.c*) has been completed in accordance with current field methods, and BLM and SHPO have previously agreed that no historic properties will be affected, the BLM shall document the undertaking through CRMtracker and proceed. A record of these determinations shall be retained in field office files.

2. Level of Inventory: If the BLM determines that a Class III inventory of the APE is necessary, the BLM need not seek the SHPO's views on identification efforts. If the BLM determines to conduct an inventory at less than a Class III level (except as specified in Section IV.E.1 and 2 below) BLM will consult, in writing, with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking. SHPO will comment in 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 XI.A of this Protocol.

a. Geophysical Exploration Projects: BLM's obligations to identify National Register-eligible or listed historic properties often include non-Federal lands which are directly or indirectly affected by the Federally permitted seismic project. BLM will make a reasonable and good faith effort to identify such

properties on non-Federal lands for geophysical exploration projects through examination of existing records, or through on-the-ground inventory only at the request of the non-Federal landowner. The BLM will ensure the geophysical operator will inform non-Federal landowners of their right to request a cultural resources inventory. BLM will also ensure that historic properties are not adversely affected by the geophysical project activities.

b. Fuels Reduction or Prescribed Burns: Fuels reduction or prescribed burns that require no surface disturbance (i.e. hand thinning, hand piling, or chemical treatment) require only a reconnaissance survey to determine if rock art, rock shelters, or other types of fire sensitive or chemical-sensitive historic properties exist. The BLM fuels reduction program coordinators will consult with the BLM cultural resource specialist on all fuels reduction projects. The BLM may require special conditions as necessary to protect historic properties. If fire sensitive historic properties exist within the area of the prescribed burn, a protection plan must be submitted to SHPO. SHPO will provide comment within 30 days of receipt of the documentation. If the BLM cultural resource specialist determines that fire sensitive properties do not exist within the proposed area of the prescribed burn, BLM may notify and proceed.

#### D. 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 is negligible. If such disturbance has occurred in the APE, the BLM may proceed with the undertaking.

#### E. Areas of Low Potential 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 potential 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:

1. Low Probability Areas: Indicators of low probability for historic properties may include steep slopes with no potential for sites such as rock art or rock shelters. Other indicators may be agreed upon as developed and included in the BLM Handbook. When BLM determines that areas are exempted from inventory because one or more of these situations applies, BLM will notify SHPO through CRMtracker and proceed with the undertaking.
2. Project-Specific: When IV.E.1 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.
3. Supplemental Protocol Agreements: Low probability for historic properties due to environmental factors or other conditions may allow large blocks of land to be exempted through a Supplemental Protocol Agreement (SPA). SPAs will be negotiated between BLM and SHPO resulting in an MOA. Executed SPAs are listed in *Appendix A* of this Protocol.

### V. DETERMINATION OF ELIGIBILITY

BLM will determine if there are historic properties within the APE by applying the criteria for evaluation found in 36 CFR Part 60.4.

#### A. No Historic Properties

1. No Cultural Resources Identified: When no cultural resources of any kind are identified by inventory, or only those described in *Appendix D* are encountered, BLM will submit the electronic record to SHPO through the CRMtracker database and will submit the project report, meeting the *Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and III Reports (WY Report Standards)* to the Wyoming SHPO Cultural Records Office (WYCRO). The BLM will submit the project report to WYCRO within 30 days after determining the report meets standards. Submission of the project report will include a standard signed notification (*see Appendix E*). The BLM will notify interested parties and proceed with the undertaking (see III.F of this Protocol).

2. No Historic Properties Identified: If the inventory results in no historic properties (only ineligible sites and isolated resources found) then the BLM will submit the electronic record to SHPO through the CRMtracker database and will submit the project report, meeting the *WY Report Standards* to the WYCRO. The BLM will submit the project report and Wyoming Cultural Property Forms (WYCPF) and/or Wyoming Isolated Resource Forms (WYIRF) to WYCRO within 30 days after determining the report meets standards and completing determinations of eligibility. Submission of the project report will include a standard signed notification (*see Appendix E*) containing BLM's determinations of eligibility. The BLM will notify interested parties and proceed with the undertaking.

#### B. Historic Properties Present

If historic properties are identified, the BLM will submit the electronic record to SHPO through the CRMtracker database. BLM will ensure the project report and associated forms (WYCPF and WYIRF) meet the *WY Report Standards* and will submit all documentation to either the WYCRO office or the Wyoming SHPO office in Cheyenne, for review and comment, depending upon the determination of effect (see Section VI). A discussion on the integrity of location, setting, design, materials, workmanship, feeling, and association must be included in project documentation for all historic properties.

#### C. Geophysical Projects

Cultural resource inventories conducted specifically for geophysical exploration projects will not be required to evaluate identified properties provided the properties are avoided by an appropriate distance as defined in BLM Handbook H-3150. Proper avoidance will be regarded as a “**no effect**” situation. The BLM will submit the report to the SHPO per Section VI.A and proceed with the undertaking.

### VI. DETERMINATION OF EFFECT

Standard measures for reducing effects (see Appendix C, II.D.2) for reducing effects are to be considered part of the project design. Determination of effect must be made after standard treatment measures have been integrated into the project design. The final project design must incorporate all agreed upon treatment measures and be included in the Conditions of Approval or components of the Surface Use Plan, Plan of Operations, or Plan of Development.

#### A. No Historic Properties Affected

1. If there are no historic properties present, or if they are present but will not be affected by the undertaking, then a determination of “No Effect” is appropriate. The BLM will submit the electronic

record to SHPO through the CRMtracker database and will submit the project report, meeting the *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 interested parties and proceed with the undertaking.

2. The SHPO will randomly review the BLM's determinations of "No Effect." If SHPO believes there is a pattern of inappropriate or inadequate eligibility determinations, they will begin consultation with the BLM following dispute resolution procedures in Section XI.A of this Protocol.

3. If any of the elements contributing to the defining characteristics that make the property eligible for inclusion in the National Register, including the integrity of location, setting, design, materials, workmanship, feeling and association, will be affected, then a determination of "No Effect" is not appropriate.

4. For geophysical projects appropriate avoidance of unevaluated sites or historic properties will be regarded as "No Effect." The BLM will submit the electronic record to SHPO through the CRMtracker database and will submit the project report, meeting the *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 interested parties and proceed with the undertaking.

5. If a proposed project will not be visible from the historic property and there is no contrast between the project and the setting (*see Appendix C* of this Protocol), then a determination of "No Effect" is appropriate. The BLM will submit the electronic record to SHPO through the CRMtracker database and will submit the project report, meeting the *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 interested parties and proceed with the undertaking.

#### B. No Adverse Effect

1. If a proposed project will cause effects to a historic property, but the effects will not diminish the aspects of integrity nor the characteristics that make the property eligible for listing in the National Register of Historic Places, then a determination of "No Adverse Effect" is appropriate as defined in 36CFR800.5(b). If undertakings involve sites eligible under Criterion A, B, or C, the BLM will submit the electronic record to SHPO through the CRMtracker database and will submit 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. 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 and proceed with the undertaking.

2. If a proposed project will cause effects to a historic property, but the effects will not diminish the aspects of integrity nor the characteristics that make the property eligible for listing in the National Register of Historic Places, then a determination of "No Adverse Effect" is appropriate as defined in 36CFR800.5(b). If undertakings involve sites eligible only under Criterion D, BLM will submit the

electronic record to SHPO through the CRMtracker database and will submit the project report, meeting the *WY Report Standards* to the WYCRO within 30 days after determining the report meets standards and completing determinations of eligibility and effect. The SHPO will randomly review the BLM's determinations of "No Adverse Effect" for Criterion D properties. If SHPO believes there is a pattern of inappropriate or inadequate eligibility determinations, they will begin consultation with the BLM following dispute resolution procedures in Section XI.A of this Protocol.

3. If it can be demonstrated only noncontributing portions of historic properties will be affected, then a determination of "No Adverse Effect" is appropriate. Justification of a noncontributing portion must be documented on a WYCPF and discussed in the project report.
4. If a proposed project will be visible, but there is weak contrast, a determination of "No Adverse Effect" is appropriate. A "Weak Contrast" occurs when the proposed project elements, or portions of the elements, can be seen but will not dominate the setting or attract the attention of the casual observer because the basic elements of form, line, color and texture found in the setting are repeated in the project's physical elements (see *Appendix C* of this Protocol). In this case, a determination of "No Adverse Effect" is appropriate.
5. If setting is an important aspect of integrity for a historic property and the project will cause a weak contrast, the BLM will submit the electronic record to SHPO through the CRMtracker database and will submit the project report meeting the *WY Report Standards* within 30 days after determining the report meets standards, and completing determinations of eligibility and effect, to the Wyoming 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 and proceed with the undertaking.

#### C. Adverse Effect

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 National Register 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 National Register. 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 [CFR 800.5(a)(1)].

1. Data Recovery Plan: If the historic property is eligible for inclusion in the National Register under Criterion D only, and the adverse effect will be minimized by data recovery, then the BLM will prepare a data recovery plan and follow the procedures in Section VII.A of this Protocol. A Memorandum of Agreement is not required to implement the data recovery plan.
2. Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER): In consultation with the SHPO, the BLM will identify any historic property eligible for inclusion in the National Register where an adverse effect can be minimized by completing a HABS/HAER document. All HABS/HAER projects must be coordinated with the National Park Service prior to initiation of the project in order to ensure that the appropriate level of documentation is completed. The BLM will develop and submit to SHPO a project report and follow the procedures in Section VII.B of this Protocol. A Memorandum of Agreement is not required to implement a HABS/HAER.

3. Memorandum of Agreement: If there are historic properties within the APE that will be adversely affected and are eligible under National Register Criterion A, B or C, BLM will submit the project report to SHPO for review and comment. If the project involves stabilization, the BLM will submit a stabilization plan to SHPO for comment. Upon concurrence with the project report or stabilization plan, BLM will consult with SHPO to develop a Memorandum of Agreement (MOA) and follow the procedures in Section VII.D of this agreement.

If a proposed project will be visible and there is moderate or strong contrast a determination of “Adverse Effect” is appropriate. A “Moderate Contrast” occurs when the proposed project elements, or portions of the elements, begin to attract attention and begin to dominate the characteristic landscape. A “Strong Contrast” occurs when the proposed project elements, or portions of the elements, demand attention, cannot be overlooked, and are dominant on the landscape (see Appendix C of this Protocol). In this case, a determination of “Adverse Effect” is appropriate. In these cases, BLM will consult with SHPO to develop a Memorandum of Agreement (MOA) and follow the procedures in Section VII.D of this agreement.

## VII. RESOLUTION OF ADVERSE EFFECTS

### A. Data Recovery

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. Compliance with the approved data recovery plan will be included in the project Conditions of Approval. Objection to or failure to comply with the approved data recovery plan by the project proponent will require consultation with SHPO and negotiation of a MOA.

2. Data Recovery Plan Review: The BLM will submit the project report meeting the *WY Report Standards* and the data recovery plan to the Wyoming SHPO office in Cheyenne. SHPO will review and comment on the effect and the plan within 30 days of receipt of the documentation. The BLM will concurrently submit the documentation through CRMtracker database for inclusion in the master inventory. 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 without a Memorandum of Agreement provided there are no other historic properties eligible under Criterion A, B, or C within the APE that may be 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. Final data recovery reports will be provided to the SHPO within 30 days of BLM review and acceptance. The BLM will concurrently submit the documentation through CRMtracker database for inclusion in the master inventory. SHPO may review the final data recovery report and provide courtesy comments to the BLM.

### B. HABS/HAER

The BLM will submit the project report meeting the *WY Report Standards* and the recommendations for HABS/HAER documentation to the Wyoming SHPO office in Cheyenne and SHPO will review and comment on the effect within 30 days of receipt of the documentation. The BLM will concurrently

submit the documentation through CRMtracker database for inclusion in the master inventory. The BLM will submit resulting documentation to the National Park Service (NPS) and SHPO within 30 days of completion. SHPO will review the final HABS/HAER documentation and provide comments to the BLM within 30 days receipt of the documentation. The project may not proceed until acceptance of adequate HABS/HAER documentation by the NPS. Compliance with the approved HABS/HAER documentation requirement will be included in the project Conditions of Approval. Objection to or failure to comply with the approved HABS/HAER plan by the project proponent will require consultation with SHPO and negotiation of a MOA.

### C. Compensatory Mitigation

Compensatory mitigation, or compensating for an impact by replacement or providing substitute resources or environments, will be considered after application of other forms of onsite mitigation, including best management practices, has been exhausted. Compensatory mitigation can occur immediately adjacent to the area impacted but can also be located anywhere in the same general geographic area or, in the case of linear properties (e.g. National Historic Trails), at other places along that specific resource. Any compensatory mitigation must result from consultation among BLM, SHPO, ACHP (if participating), the project proponent, and other interested parties. Compensatory mitigation must provide a public benefit and be appropriate to the scope of the effect being mitigated. Field offices shall notify the BLM Deputy Preservation Officer as soon as it is recognized that a proposed undertaking may require consideration of compensatory mitigation. The BLM Deputy Preservation Officer 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 project proponent directly to BLM or SHPO
2. Data recovery at historic properties other than historic properties that will be adversely affected by an undertaking
3. Acquisition of land or a historic property, through exchange or another process, that offers no public access
4. Signage or markers where there is no public access

### D. Memorandum of Agreement

1. Consulting Parties: Consulting parties are the BLM, the SHPO, the ACHP (if participating), the project proponent and any other party who assumes responsibilities stipulated in the MOA. The agency official may invite other interested parties to concur. An interested party *invited* to concur has no responsibility under the agreement, but may be invited to sign the agreement. The refusal of any party *invited* to sign the MOA does not invalidate the MOA.

Unless otherwise agreed, the BLM is responsible for preparing the MOA. Stipulations included in the MOA should come from consultation among the consulting and *invited* concurring parties and BLM's conditions of approval.

#### 2. Memorandum of Agreement Process:

Preparation of a MOA follows consultation between BLM, SHPO, the project proponent and *invited* concurring parties. Generally the MOA will be drafted by the responsible Field Office.

- a. The BLM State Office will provide the SHPO with an electronic draft of the MOA for their comment. The BLM will concurrently request comments from the ACHP (if participating), and any other party to which a role has been assigned within the document.
- b. The SHPO shall ensure a timely response to the request for comment and SHPO comment will be sent electronically to the BLM State Office.
- c. After receiving all comments, BLM will make necessary revisions to the draft MOA or continue negotiations with parties as necessary to resolve differences. Unresolved differences should follow the dispute resolution process in Section XI of this Protocol.
- d. The BLM State Office will provide the SHPO with electronic revised drafts for review. The BLM will distribute revised drafts to any other party to which a role has been assigned within the document.
- e. The MOA shall not be finalized until the BLM has made efforts to accommodate all comments from consulting parties and all parties have notified the BLM State Office that the draft is acceptable.
- f. When the BLM State Office receives notification from SHPO and other consulting parties of satisfaction with a draft, the BLM will prepare the final the document.
- g. The BLM Field Manager will sign the final MOA and submit it to the project proponent and signatories other than SHPO and ACHP. When these signatures are affixed, the Field Office will send the signed MOA to the BLM State Office for signature by the Deputy State Director for Resources Policy and Management. Then the BLM State Office will submit it to the SHPO office in Cheyenne for signature by the SHPO. When the MOA has been executed through signature of all consulting parties, the consultation will be concluded and the MOA will be implemented.
- h. The BLM will provide a copy of the MOA with original signatures to the SHPO, the BLM Field Offices and consulting parties.

## **VIII. DISCOVERY SITUATIONS**

### **A. Planning For Discoveries**

The BLM will encourage applicant development of discovery plans for large and complex undertakings and those involving land disturbance in areas known to contain buried sites. Copies of such discovery plans will be forwarded to the SHPO for review along with BLM's determination of effect for the project. When a discovery plan has been accepted by BLM and SHPO, the BLM can meet its Section 106 requirements by following the plan when cultural properties are discovered during implementation of an undertaking. The BLM shall take prudent and feasible steps to ensure that the undertaking does not harm the property until treatment is completed in accordance with the discovery plan. BLM and SHPO may agree upon a standard discovery plan for inclusion in the BLM Handbook. A field office may follow that discovery plan without additional consultation with SHPO on the discovery plan. Until such a plan is developed for inclusion in the BLM Handbook, BLM will follow procedures outlined in Section VIII.B of this Protocol.

### **B. Unplanned Discoveries**

If the BLM determines, after completion of the review process outlined in this Protocol, an undertaking

may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will be required to follow appropriate discovery procedures defined in the BLM Handbook or other guidance developed jointly between the BLM and the SHPO. Until the BLM Handbook procedures are developed, the BLM will make a reasonable effort to avoid or minimize harm to a discovered property until (1) the property has been assessed in terms of National Register eligibility, and (2) if the property is determined eligible, an appropriate treatment plan has been prepared. The SHPO will be provided 15 days of receipt of the documentation to comment on the treatment plan. Since implementation of the treatment plan is not covered by the land user's Conditions of Approval, implementation of the treatment plan will require a MOA among the BLM, the SHPO, and the land user.

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

### **A. Staffing**

The BLM will allow identification and evaluation of cultural resources only by specialists who meet the qualifications and are classified in the appropriate professional series by the Office of Personnel Management (e.g., Series 193 for archaeologists). Specialists 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 specialists, 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 who have not received training on this Protocol must follow the procedures required of a GS-7 cultural resource specialist.

When new managers (Field Managers, Assistant Field Managers, Supervisory Natural Resource Specialists, or Deputy State Director for Resources) or cultural resource specialists are hired, the BLM will ensure that the new managers or cultural resource specialists receive orientation, within 90 days in accordance with Section X.D of this Protocol. It shall be the responsibility of the BLM Deputy Preservation Officer (DPO) to provide appropriate orientation to new managers and cultural resource specialists. Once the orientation is completed, the DPO will notify the SHPO and the Field Office will be allowed to follow the procedures of this Protocol. If the SHPO documents persistent problems in complying with the terms of this Protocol, the Dispute Resolution Procedures at Section XI.A of the Protocol will be followed.

The Wyoming SHPO will ensure all new historic preservation specialists hired to conduct Federal Section 106 review receive training in Section 106 compliance and this Protocol within 90 days of being hired.

### **B. Specialized Capabilities**

When the BLM is involved in an undertaking requiring expertise not possessed by available BLM staff (i.e., architectural history), it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural properties in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies.

## **X. 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

1. Reporting Standards: BLM and SHPO will collaborate on the development of standards for preparing inventory and treatment reports, and jointly develop isolated resource and *Wyoming Cultural Properties Forms (WYCPF)*. All BLM inventory reports submitted to SHPO will follow *WY Report Standards*. All site data will be reported on Wyoming Cultural Property Forms or Wyoming Isolated Resource Forms as appropriate. Any revisions to the standards will be jointly developed by BLM and SHPO.
2. Data System Management: BLM 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 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 SHPO or a BLM Field Office are aware of specific backlog documentation held in either office, they should work cooperatively to provide the documentation to the office requesting it.
3. 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 insure the program meets agency and SHPO needs. The use of this program greatly increases the efficiency of data management, review, and annual reporting.

## B. State BLM Handbook Supplement

BLM field procedures will be detailed in a Wyoming State BLM Handbook as a supplement to bureau-wide BLM Manual procedures. BLM and SHPO will collaborate on development of the handbook and set a goal of finalizing the handbook within one year of signature of this Protocol. The BLM and SHPO, in consultation with contractors permitted by the BLM to work in the state of Wyoming, will collaborate on development of a supplemental contractor handbook. Disagreement between BLM and SHPO regarding either development or implementation of Handbook procedures will be resolved in accordance with the dispute resolution procedures at Section X of this Protocol. All future changes or amendments to the Handbook procedures will be made in cooperation with the SHPO.

## C. 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:

1. Archaeology Awareness Month: The BLM and the SHPO will participate in and support financially, as funding permits, Archaeology Awareness Month activities, including public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.
2. Project Archaeology: The BLM and SHPO will support Project Archaeology as a component of BLM's Heritage Education Program, by encouraging staff archaeologists to be trained and serve as facilitators in the program, with the goal of integrating the teaching of archaeological concepts and preservation ethics in Wyoming schools statewide.
3. Adventures in the Past/Heritage Education: The BLM and SHPO may, as funding permits, cooperatively work on the development of interpretation of cultural resources through a variety of media

including, but not limited to, exhibits, brochures, lectures, radio and television promotions, Internet web pages, and interpretive signs.

4. Wyoming Archaeological Society and the Wyoming Historical Society: The BLM and SHPO are encouraged to work cooperatively with the Wyoming Archaeological Society and the Wyoming Historical Society to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists and historians by participating in society meetings, serving as chapter advisors, providing presentations and demonstrations, and other assistance as appropriate.

5. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations (e.g., 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 .

6. Site Stewardship: The BLM and the SHPO will cooperate, as funding and staff availability permit, to develop a volunteer site stewardship program to recruit and train members of the public to serve as monitors and stewards of Wyoming's cultural resources on public lands, and to assist with educational and other activities involving cultural resources. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.

7. Public Dissemination of Information: When appropriate, the BLM, SHPO, or a project proponent will provide funding for development and distribution of brochures, 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.

#### D. State-Level Historic Preservation Training and Workshops

The BLM and SHPO will cooperate and participate in both the initial training and future on-going training of BLM managers and cultural resource staff, SHPO staff, public land users, and cultural resource contractors relative to the National PA and implementation of this Protocol. Training resources shall include, but are not limited to, Wyoming BLM State Handbook or Manual Supplements, planning documents, and statewide historic context documents. Other training and workshops may include writing and negotiating agreement documents and treatment plans, 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 meeting. Emphasis will be on professional development training to expand professional skills of BLM and SHPO cultural resource staff. Orientation meetings on this Protocol will be held within six months of signature of this agreement for contractors, developers, and other interested parties.

#### E. Historic Context Development

Pursuant to the *Letter of Intent Creating a Partnership in Preservation between the State of Wyoming and the Wyoming State Office of the Bureau of Land Management* which was executed on April 23, 2004, increased emphasis will be given to the development of historic contexts. 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. Recommendations will be considered in the BLM budget process as a statewide benefiting program. Field Managers may also develop project-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. All jointly developed historic contexts within Wyoming shall be endorsed by all participating parties.

#### F. Collections Management

BLM and SHPO shall cooperate to support and maintain the collections (artifacts and associated field notes and other documents) at the University of Wyoming Archaeological Repository (UWAR) for curation of Federal archaeological collections. Curation of archaeological materials is supported through a formal Memorandum of Understanding between the University of Wyoming Department of Anthropology and the SHPO's Office of the Wyoming State Archaeologist. Following BLM acceptance and submission of project reports to SHPO, BLM shall continue to track progress of collections from BLM lands. Consultants and 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 of acceptance and curation of the collection. BLM will require through its Cultural Resource Use Permit stipulations that all collections are submitted to UWAR within 60 days of the submission of the project report to BLM. The project report will be date-stamped and that date shall be the beginning of the 60-day period.

### **XI. DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION**

A. If the BLM and the SHPO disagree on an issue, they will consult with one another to resolve the issue. If the disagreement is about an action in a BLM Field Office, the Field Office Manager and the SHPO will consult to resolve it.

If the disagreement is with the State Office, or the matter is referred to the State Office by a Field Office Manager or the SHPO, the BLM Deputy Preservation Officer, the SHPO, and the Wyoming State Division of Cultural Resources Administrator will consult to resolve the issue. If the matter is not resolved at this level, the matter will be referred to the BLM Deputy State Director and the Director of the Wyoming State Department of Parks and Cultural Resources.

If the issue is not satisfactorily resolved at this management level, the issue will be forwarded to the Governor and the State Director for final resolution.

Nothing in this section abrogates the signature authority of the SHPO under the NHPA.

#### B. 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. Amendments will become effective when signed by both parties.

#### C. 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. The BLM DPO may request the assistance of the BLM Preservation Board, the National Conference of State Historic Preservation Officers, 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.

#### D. Termination of the National Programmatic Agreement

Should the National Programmatic Agreement 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 National Programmatic Agreement 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.

### **XII. DECERTIFICATION/SUSPENSION FOR CAUSE**

If a pattern of failure to comply with the terms of this Protocol can be demonstrated, a Field Office Manager, the DPO, or the SHPO 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 national Programmatic Agreement and this Protocol. The BLM State Director may request a review and recommendations from appropriate staff and/or the Preservation Board. The BLM, in consultation with the SHPO, shall develop an action plan to be followed by the Field Office under review in order to bring that office into compliance with this Protocol. After the subject Field Office believes that it has completed all of the actions specified in the plan, it will notify the BLM Deputy Preservation Officer who will review compliance with the action plan with SHPO. Based on the review, the BLM Deputy Preservation Officer will make a recommendation to the State Director.

If the Field Office has failed to comply with the action plan, the State Director may decertify and suspend a Field Office from operating under the terms of this Protocol. Decertification and suspension from this Protocol will require that the affected Field Office comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

Recertification of the affected Field Office, which will allow that office to continue operating under the terms of this Protocol, will occur at the discretion of the BLM State Director after consultation with the

SHPO and/or Governor. The State Director will notify in writing both the Field Office and the SHPO when that Field Office is recertified.

### **XIII. IMPLEMENTATION**

The previous Protocol dated April 15, 1998 will remain in effect until all appropriate staff are trained pursuant to Section IX.A of this Protocol. The terms of this Protocol will not be effective until BLM and SHPO staff has received training on the requirements and procedures herein. Cultural resource permittees will have the opportunity to receive training on Appendix C concurrently with the BLM and SHPO.

### **XIV. APPENDICES**

- A. Special Purpose Programmatic Agreements, Memorandums of Agreement and Supplemental Agreements in Effect Under the Protocol
- B. Actions Exempt from Case-By-Case Review
- C. Guidance on the Assessment of Setting (pending)
- D. Defined Non-Sites and Property Types Requiring No Formal Documentation
- E. Standard Signed Notification

Glossary

**XIV. APPROVALS**

BUREAU OF LAND MANAGEMENT

/ signed /	03/08/2006
_____	_____
Robert A. Bennett, Wyoming State Director	Date

STATE HISTORIC PRESERVATION OFFICER

/ signed /	03/08/2006
_____	_____
Sara E. Needles, Wyoming State Historic Preservation Officer	Date

STATE OF WYOMING

/ signed /	03/08/2006
_____	_____
Honorable Dave Freudenthal, Governor	Date

STATE OF WYOMING ATTORNEY GENERAL

/ signed /	03/08/2006
_____	_____
Kyle Smith Signature as to form	Date