



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

October 17, 2005

Information Bulletin No. WY-2006-002

To: Field Managers, Cultural Resource Specialists, and DSD 920
From: Acting Associate State Director
Subject: Review of Second Internal Draft Protocol Revision Document
DD 11/4/05

This Information Bulletin transmits the second internal draft Protocol revision document for review and comment. All Field Managers, cultural resource specialists, and other staff who may wish to comment should thoroughly review the attached draft.

The next draft will go out for public review so it is especially important that Field Office perspectives are well represented in this review. The attached draft offers significant streamlining provisions in our consultation with the State Historic Preservation Office (SHPO). SHPO review would focus on adverse effect situations. Documentation on projects for which BLM determines that there will be no effect would no longer be reviewed on a project-by-project basis, but would be sent directly to the Cultural Records Office for entry into the cultural records database. SHPO estimates that this accounts for approximately 90 percent of their project case load. Memoranda of Agreement would be required only when properties eligible under Criteria A, B, and/or C will be adversely affected. We estimate that this would result in no more than a dozen such agreements per year. Attachment 1 summarizes key changes between this draft and the current Protocol.

Several important sections remain to be developed, including compensatory (off-site) mitigation, management of setting as a contributing element to historic properties, and "no adverse effect" determinations especially relating to settings of historic trails. Additional information on these topics will be provided to Field Office staff prior to the scheduled October meetings. Field Office input on these topics will be particularly useful at that point.

Three meetings have been scheduled to allow Field Office staff and management to provide comment on this draft and to raise questions and concerns. These meetings will be attended by BLM State Office staff and SHPO staff who are working on the Protocol revision. The meetings will be held on October 25 in Casper (Casper, Newcastle, and Buffalo Field Offices), October 26 in Lander (Lander, Worland and Cody Field Offices), and October 27 in Rock Springs (Rock Springs, Pinedale, Kemmerer, and Rawlins Field Offices). The meetings will run from 10 AM to 5 PM with a 1 hour break at noon. Cultural resource staff, Field Managers and Assistant Field Managers, and key program leads should plan to attend. Please review the attached draft document prior to the meeting and be prepared with comments and questions at the meeting.

Comments submitted after the field meetings should be submitted by written memorandum, or by e-mail to Judyth Reed, SHPO Liaison, by close of business November 4, 2005. Judyth can be reached at 307-775-6017 for questions or discussion.

/s/Jesse J. Juen
ACTING

4 Attachments:

- 1 – Summary of Key Changes (1 p.)
- 2 – Draft Protocol (18 pp.)
- 3 – Appendix A, Supplemental Agreements (3 pp.)
- 4 – Appendix D, Defined Non-sites and Property Types Requiring no Formal Documentation (2 pp.)

Attachment 1
SECOND INTERNAL DRAFT
Key Differences between Current Protocol and Second Draft

ACTION	CURRENT PROTOCOL	DRAFT
ANNUAL REPORT	Annual report for SHPO requires different information from annual report to Washington; two reports must be generated.	BLM annual report to the Washington Office would also serve as the annual report to SHPO.
DOCUMENT ORGNIZATION	Organization not as closely tied to steps in processing an undertaking and consulting. Requires jumping around in document to follow process.	Organized to follow more closely the order in which undertakings are processed.
DETERMINATIONS OF ELIGIBILITY	BLM's evaluation of properties eligible under Criteria A, B, and C require consultation with SHPO. This results in SHPO review of project documentation in cases in which it may be determined that there would be no adverse effect to these properties.	BLM would make all determinations of eligibility regardless of applicable eligibility criteria. These determinations would not be reviewed by SHPO unless BLM determines that historic properties would be adversely affected.
DETERMINATIONS OF EFFECT	Some determinations of "no effect" require a 15-day SHPO review. Determinations of adverse effect require 30-day SHPO review. Determinations of effect on all sites eligible under Criteria A, B, and C require 30-day SHPO review.	BLM would make all determinations of effect. Only those undertakings for which BLM determines that historic properties would be adversely affected would require consultation with SHPO. SHPO estimates that number of projects going through required review would be reduced by 90%.
SUBMISSION OF DOCUMENTATION TO SHPO	All projects for which adverse effects to historic properties are identified, or in which properties eligible under Criteria A, B, and C are identified must go to SHPO for review, with formal cover letter. SHPO then sends to WYCRO.	Projects that result in a determination of "no historic properties affected," submit directly to WYCRO with a CRMTracker generated cover sheet. No formal cover letter would be required. These projects would not be reviewed by SHPO on an individual basis but spot reviewed for quality assurance. SHPO estimates this to be 90% of caseload.
DATA RECOVERY PLANS/REPORTS	SHPO review is 30 days.	SHPO review time for data recovery plans/reports for Criterion D sites would be 15 days.
MEMORANDA OF AGREEMENT	Conflicting interpretation between BLM and SHPO regarding this point. This is resolved in draft.	MOAs not required for data recovery on Criterion D sites or HABS/HAER documentation. Would substitute use of Conditions of Approval to ensure completion of data recovery plan requirements.
DISCOVERY PLANS	All discovery plans require consultation and 30-day review.	Routine discovery plans would not be reviewed by SHPO.

Attachment 2
SECOND INTERNAL DRAFT

**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 Section 106, 110 (f) and 111 (a) 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 with 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 (MOAs) may be developed when specific agreement documents are needed to define procedures which are not covered under the national PA or this Protocol. Agreement documents developed in the previous protocol, which are still in effect, are listed in *Appendix A*. 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

Attachment 2
SECOND INTERNAL DRAFT

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 that the report is submitted to the Washington Office.

The BLM and SHPO management will meet annually within the first quarter of the calendar year to discuss any procedures, policies, amendments to the protocol, or other matters that may warrant discussion. Time, place, agenda, and representation will be determined by BLM and SHPO management. Briefing papers, summaries, and recommendations will be prepared by BLM and SHPO staff prior to the meeting. To accomplish this, BLM will conduct an annual meeting of field office cultural resource staff and managers.

III. CONSULTATION

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

Each Field Office responsible for preparing planning and National Environmental Policy Act (NEPA) documents [e.g., Resource Management Plan (RMP), RMP amendments, RMP revisions, NEPA documents as appropriate, high level Environmental Assessments (EAs) that are sent out for public comments, NEPA "hot sheets," etc.] or preparing a cultural resource activity plan at the regional or local level will, when beginning its 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 invite the SHPO to comment on any proposed cultural resource use allocations, whether they are made in regional, local, or project plans. Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO in electronic format.

In preparing planning documents BLM will utilize all relevant information tools including resources available through the Wyoming cultural resources database, the SHPO web site, and other electronic databases.

A. General Consultation

1. Project Notification: Field Managers have the responsibility to provide written notification to the SHPO about upcoming projects that are likely to adversely affect historic properties. The preferred method of notification is by e-mail and should occur as early as possible in the planning process.
2. Other Meetings and Informal Discussions: The SHPO is encouraged to meet with the Wyoming 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

Attachment 2
SECOND INTERNAL DRAFT

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, or acting.

3. Special Conditions: Under special conditions, such as staffing shortages or emergencies, specified time frames for SHPO review may be extended or shortened through consultation between SHPO and 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, geophysical projects, or land transfers) can be more efficiently completed if segmented. If a project is to be segmented, the SHPO should be notified, by letter. The first report submitted for a segmented project 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 submitted relating to other segments of the project.
5. Field Tours: BLM Field Offices will notify the SHPO, by e-mail, of all field tours relating to planning and NEPA efforts that may affect historic properties. Field tours do not include routine on-site inspections pursuant to *On-Shore Order No. 1*.

B. Formal Consultations

Formal consultation shall occur in writing between the SHPO and the BLM as outlined in the procedures in Sections V, VI, and VII of this document.

C. Definition of Undertaking

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval [36 CFR 800.16(y)].

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.

Attachment 2
SECOND INTERNAL DRAFT

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 highly controversial (e.g., undertakings that receive unusual public attention and/or involve significant conflict related to cultural resources).

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 review process (Sections IV – VII below) if they have 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.

BLM may request comments of interested parties to make determinations of effect. If BLM makes determinations of adverse effects they will request comments of interested

Attachment 2
SECOND INTERNAL DRAFT

parties. Interested parties who want to become consulting parties will provide information to BLM regarding their demonstrated interest. BLM will maintain lists of consulting parties and their areas of interest. Consulting parties on the BLM list will be notified of undertakings based upon their identified interests.

IV. IDENTIFICATION

A. Exemptions

Undertakings that have no potential to affect historic properties, where 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. Paper documentation of compliance will not be required. The BLM will notify interested parties and 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 resources specialists will determine the APE that will be 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 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. 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

Attachment 2
SECOND INTERNAL DRAFT

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.

D. Areas of Low Potential for Historic Properties

The BLM and the SHPO may jointly determine that specific areas do not need to be inventoried because current information suggests that the area has little or no potential to contain historic properties.

1. Low Probability Areas: Indicators of low probability for historic properties may include slopes of more than 30 percent with no potential for rock art or rock shelters. Other indicators may be agreed upon as developed. When areas are exempted from inventory because one or more of these situations applies, BLM will notify SHPO and proceed with the undertaking.
2. Project-Specific: Where IV.D.1 above does not apply, the BLM will request concurrence from the SHPO on project-specific exemptions due to low probability for historic properties. The SHPO will be provided 30 calendar 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.

E. 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 has been completed in accordance with current field methods, previously reviewed and accepted by the BLM, and submitted to the SHPO, the BLM may choose to 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 of intensity, (except

Attachment 2
SECOND INTERNAL DRAFT

as specified in Section IV.D.1 and 2 above) 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. 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.

Prescribed burns require only a reconnaissance survey to determine if rock art, rock shelters, or flammable historic properties exist. 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. If fire sensitive properties do not exist within the proposed area of the prescribed burn, BLM may notify and proceed.

V. DETERMINATION OF ELIGIBILITY

BLM will determine if there are historic properties within the APE by applying the criteria of eligibility found in 36 CFR Part 63.

A. No Historic Properties

1. No Cultural Resources Identified: BLM will submit the project report documentation to SHPO through the CRMtracker database and will submit paper documentation, 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) for inclusion in the master inventory database. The BLM will submit the documentation to WYCRO within 30 days of accepting the project report. Submission of the paper documentation will include a standard signed notification (*see Appendix E*) that the determinations of eligibility and effect indicated in the report represent official BLM determinations. BLM will notify interested parties and proceed with the undertaking.

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 project report documentation to SHPO through the CRMtracker database and will submit paper documentation, meeting the *WY Report Standards* to the WYCRO for inclusion in the master inventory database. The BLM will submit documentation to WYCRO within 30 days of accepting the project report. Submission of the paper documentation will include a standard signed notification (*see Appendix E*) that the determinations of eligibility indicated in the report represent official BLM determinations. The BLM will notify interested parties and proceed with the undertaking.

B. Historic Properties Present

If historic properties are identified, the BLM will submit project documentation in the CRMtracker database. BLM will ensure project report documentation meets the WY

Attachment 2
SECOND INTERNAL DRAFT

Report Standards and will submit project documentation to either the WYCRO office or the Wyoming SHPO office in Cheyenne, for their review and comment, depending upon the determination of effect. For historic properties, a discussion on the integrity of location, setting, design, materials, workmanship, feeling, and association must be included in project documentation.

C. Geophysical Projects

All inventories conducted specifically for geophysical exploration projects will require evaluation of eligibility for inclusion on the National Register for all identified cultural resources to the extent that surface manifestations or natural sub-surface soil exposure allows. Limited shovel testing or probing may be necessary to evaluate archaeological sites. Sites requiring further testing to evaluate eligibility may remain unevaluated pending additional testing. The BLM will ensure appropriate avoidance of unevaluated sites and those evaluated as eligible.

VI. DETERMINATION OF EFFECT

In determining if an undertaking will have an adverse effect on a historic property, the BLM will apply the Criteria of Adverse Effect at 36 CFR 800.5(a).

A. No Historic Properties Affected

1. If there are no historic properties present, or if they are present but the undertaking will not alter the characteristics that qualified the property as eligible for inclusion in the National Register, then a “Determination of No Historic Properties Affected” is appropriate. The BLM will submit the documentation through CRMtracker database and will submit paper documentation, meeting the *WY Report Standards* to the WYCRO for inclusion in the master inventory database within 30 days of accepting the project report. Submission of the paper documentation will include a standard signed notification (*see Appendix E*) that the determinations of eligibility and effect indicated in the report represent official BLM determinations. The BLM will notify interested parties and proceed with the undertaking.

2. The SHPO may randomly review the BLM’s “Determination of No Historic Properties Affected.” If SHPO can demonstrate a pattern of non-compliance with this document or the *WY Report Standards* they will begin consultation with the BLM to resolve the issues.

3. A “Determination of No Historic Properties Affected” is appropriate for irrigation canals, railroads, expansion era roads, collapsed structures, and historic oil fields in situations where only the integrity of setting will be affected.

4. If any of the elements contributing to the defining characteristics that make the

Attachment 2
SECOND INTERNAL DRAFT

property eligible for inclusion in the National Register, including the integrity of location, setting, design, materials, workmanship, feeling and association, are being affected, then a “Determination of No Historic Properties Affected” is not appropriate, with the exception of the items listed in VI.A.3 above.

5. For geophysical projects appropriate avoidance will be regarded as a “No Historic Properties Affected.” The BLM will submit the documentation through CRMtracker database and will submit paper documentation, meeting the *WY Report Standards* to the WYCRO for inclusion in the master inventory database within 30 days of accepting the project report. Submission of the paper documentation will include a standard signed notification (*see Appendix E*) that the determinations of eligibility and effect indicated in the report represent **official** BLM determinations. The BLM will notify interested parties and proceed with the undertaking.

6. If a historic property is eligible for inclusion in the National Register under Criteria A, B or C, then the project will result in a finding of “No Historic Properties Adversely Affected” as defined in 36 CFR 800.5(b). The BLM will submit the documentation through CRMtracker database and submit the project report meeting the *WY Report Standards* to the Wyoming SHPO office in Cheyenne. SHPO will review and comment on the effect within 15 days.

******Setting issues will be developed with input from the field offices. Need to work on Appendix C.******

******No Adverse Effect Section to be developed******

C. Historic Properties Adversely Affected

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.

2. 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 HABS/HAER documentation. The BLM will develop and submit to SHPO a project report and follow the procedures in section VII.B. of this Protocol.

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

Attachment 2
SECOND INTERNAL DRAFT

VII. RESOLUTION OF ADVERSE EFFECTS

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)].

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 at BLM Manual 8140.26A-I. The Data Recovery Report will include, at a minimum, the items at BLM Manual 8140.27A-F.

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 and SHPO will review and comment on the effect within 15 days. 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 an Memorandum of Agreement provided there are no other historic properties eligible under Criteria A, B, or C within the APE that may be affected by the undertaking.

Subsequent Data Recovery Reports will be documented and provided to the SHPO within 30 days of BLM review and acceptance. SHPO will review the final data recovery report and provide comments to the BLM within 15 days. 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.

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. The BLM will concurrently submit the documentation through CRMtracker database for inclusion in the master inventory. The BLM will submit resulting documentation within 30 days of completion. SHPO will review the final HABS/HAER documentation and provide comments to the BLM within 30 days. Compliance with the approved HABS/HAER

Attachment 2
SECOND INTERNAL DRAFT

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. Off-Site Mitigation - ** needs discussion/development with field offices and managers. Address when appropriate and under what conditions.******

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. Other interested parties may be invited to be concurring parties. A concurring party has no responsibility under the agreement, but may be invited to sign the agreement. If an invited or concurring party declines to sign, it will not invalidate the agreement.

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

2. Memorandum of Agreement Process:

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 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. If comments are mutually exclusive, or suggest terms that are not practical, feasible, or in keeping with the nature and scope of adverse effects, additional discussion may be needed.

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, including SHPO, ACHP, and any other party to which a role has been assigned within the document, and all parties have notified the BLM State Office that the draft is acceptable.

f. When the BLM State Office receives notification from SHPO, ACHP, and any other parties to which a role has been assigned within the document, of satisfaction with a

Attachment 2
SECOND INTERNAL DRAFT

draft, the BLM will finalize the document.

g. The BLM Field Manager will sign the final MOA and submit it to the project proponent and other signatories. 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 for signature, and then submit it to the SHPO office in Cheyenne for signature by the SHPO. At least two copies of the document will retain original signatures, one for SHPO and one for BLM. 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 State Office will provide a copy of the MOA with original signatures to the SHPO. The BLM will provide ACHP, and any other party to which a role has been assigned within the document with executed copies. Additional original copies may be signed if the project proponent or the ACHP request them

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, 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.

B. Unplanned Discoveries

If the BLM determines after completion of the review process outlined in this Protocol that 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 to comment. Since implementation of the treatment plan is not covered by the land user's conditions of approval, implementation of the treatment plan will require, at a minimum, an MOA among the BLM, the SHPO, and the land user.

Attachment 2
SECOND INTERNAL DRAFT

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 resources specialist.

When new managers or cultural resources specialists are hired by a BLM Field Office, the BLM and SHPO will ensure that the new managers or cultural resources specialists receive orientation, within 90 days, in BLM Manual procedures and procedures for operating under 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. If they have not received orientation within 90 days the Field Office will be required to follow the procedures at 36 CFR Part 800. 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.

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.

Attachment 2
SECOND INTERNAL DRAFT

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, both the SHPO and the BLM Field Office 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 1 year of signature of this protocol agreement. 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 resources 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

Attachment 2
SECOND INTERNAL DRAFT

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: The BLM and SHPO are encouraged to work cooperatively with the Wyoming Archaeological Society to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists by participating in society meetings, serving as chapter advisors, providing presentations and demonstrations, and providing assistance as appropriate.
5. Professional Organizations: The BLM and SHPO cultural resources 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, and to assist with educational and other activities involving cultural resources.
7. Public Dissemination of Information: When appropriate and funding is available, either through the BLM or SHPO or from project proponents, brochures, monographs, or other information documents will be developed to summarize for the general public the results of archaeological investigations (either as 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.

D. State-Level Historic Preservation Training

The BLM and SHPO will cooperate and participate in both the initial training and future on-going training of Field Office Managers and cultural resources staff relative to the National PA and implementation of this Protocol. All new BLM field managers and cultural resource staff will be trained on implementing this protocol within 90 days of assumption of duties. Training resources shall include, but are not limited to, Wyoming BLM State Handbook or Manual Supplements, planning documents, and statewide historic context documents and writing and negotiating Memorandum of Agreement and Programmatic Agreement documents. Review of training needs and/or additional

Attachment 2
SECOND INTERNAL DRAFT

training will occur on a yearly basis at the annual cultural staff meeting. Emphasis will be on professional development training to expand the professional skills of cultural resource staff. Orientation meetings on this protocol will be held within 6 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 National Historic Preservation Act, 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.

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 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

Attachment 2
SECOND INTERNAL DRAFT

forwarded to the Governor and the State Director for final resolution.

Nothing in this section abrogates the signature authority of the SHPO under the National Historic Preservation Act.

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 National Historic Preservation Act 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 National Historic Preservation Act 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.

Attachment 2
SECOND INTERNAL DRAFT

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 National Historic Preservation Act 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. 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

XIV. APPROVALS

BUREAU OF LAND MANAGEMENT

_____	_____
Wyoming State Director	Date

STATE HISTORIC PRESERVATION OFFICER

_____	_____
Wyoming State Historic Preservation Officer	Date

STATE OF WYOMING

_____	_____
Governor	Date

Attachment 3
SECOND INTERNAL DRAFT

APPENDIX A

SPECIAL PURPOSE PROGRAMMATIC AGREEMENTS, MEMORANDUMS OF AGREEMENT AND SUPPLEMENTAL AGREEMENTS IN EFFECT UNDER THE PROTOCOL

Pursuant to Section I of the State Protocol Agreement, the following special purpose programmatic agreements and memoranda of agreement continue to be in effect. Implementation of procedures and reporting requirements under these agreements are independent of the State Protocol Agreement. Since other programmatic agreements and memoranda of agreement may be developed when special agreement documents are deemed necessary to define special purposes or procedures not covered in the National Programmatic Agreement or the State Protocol Agreement, this appendix will be reviewed annually at the Protocol review meeting in April.

National Agreements

1. Federal Coal Management Program PA (no expiration date)

Statewide Agreements

1. Land Exchanges with the Wyoming Board of Land Commissioners PA (no expiration date)
2. Management of Cultural Resources on Federal-Aid Highway Projects Interagency Agreement with the Federal Highway Administration (expires September 30, 2007)
3. Letter of agreement between BLM, Federal Highway Administration, Wyoming Dept. of Transportation, and SHPO (no expiration date)
4. Western Area Power Administration regarding routine maintenance of transmission lines, substations, and other facilities (expires 2014)

Buffalo Field Office

1. Procedural Agreement Among the BLM, SHPO, and the Twenty Mile Land Company regarding the development of Federal oil & gas reserves (no expiration date)
2. Echeta Reservoir MOA (expires Feb. 2009)

Attachment 3
SECOND INTERNAL DRAFT

Casper Field Office

1. PetroSource - Bairoil/Hartzog Draw CO₂ Pipeline (expires upon fulfillment of all requirements)

Cody Field Office

1. Bentonite Areas SPA¹ (no expiration date)
2. Spence Dome Oil Field SPA (no expiration date)
3. Elk Basin Oil Field SPA (no expiration date)
4. Garland Oil Field SPA (no expiration date)
5. Pitchfork Oil Field SPA (no expiration date)
6. Bishoff Little Mountain ROW MOU (no expiration date – Phase I Report due 11/30/03; annual reports due thereafter until project completed).

Rawlins Field Office

1. Bairoil PA (expires December 31, 2000 or on implementation of the Bairoil CRMP)
2. Echo Springs Gathering System PA (expires October 1, 2006)
3. Sea West/Pacificorp Phase I Windpower Project MOA (expires when right-of-way grant expires)
4. Overland Trail & Cattle Company Land Exchange MOA (expires upon recovery or total loss of data from the Aimee Eaton Site)

Kemmerer Field Office

1. Top the World Mine AML Reclamation Project MOA (expires upon fulfillment of all requirements)
2. Pioneer Pipeline Project MOA (expires 2007)
3. Northwest Pipeline Rockies Expansion Project (expires upon fulfillment of all requirements not to exceed 5 years from April 30, 2003)

Lander Field Office

1. Martin 's Cove Development PA (expires upon fulfillment of all requirements)

¹ Supplemental Protocol Agreement

Attachment 3
SECOND INTERNAL DRAFT

2. TNC/Ledder Land Exchange MOA (no expiration date)
3. Lost Creek Gathering System Pipeline Project PA (expires December 31, 2004)
4. South Pass City Lots 6,7,9,16,19,& 24 (no expiration date)
5. Tom Brown GBU #7-21 (expires October 8, 2008)
6. Gun Barrell Unit 12-11B (expires June 2009)

Newcastle Field Office

None

Pinedale Field Office

1. Data Recovery MOA Site 48SU261 (expires upon completion of final data recovery report)
2. Data Recovery MOA Site 48SU4479 (expires upon completion of final data recovery report)
3. Data Recovery MOA 48SU1106 (expires upon completion of final data recovery report)
4. Data Recovery MOA Site 48SU3809 (expires upon completion of final data recovery report)
5. Data Recovery MOA Site 48SU4758 (expires upon completion of final data recovery report)
6. Shell/Ultra Lander Road PA (expires October 19, 2014)
7. ExxonMobil Lake ridge 3D Geophysical PA (expires July 2009 or on project completion, whichever comes first)
8. Questar 611 Pipeline MOA (expires upon acceptance of final reports by BLM)

Rock Springs Field Office

1. Blue Forest MOA (expires in 2007)?
2. Tg Soda Ash PA (expires September 30, 2002)
3. Fremont Gold MOA (expires September 2009)
4. Fullerton Federal #23-22 MOA (expires September 2009)

Worland Field Office

1. Express Pipeline Project PA (expires upon fulfillment of all requirements)
2. Legend Rock Petroglyph Site MOA (expires upon fulfillment of all requirements)

**ATTACHMENT 4
SECOND INTERNAL DRAFT**

APPENDIX D

**DEFINED NON-SITES AND PROPERTY TYPES
REQUIRING NO FORMAL DOCUMENTATION**

BLM cultural resource specialists must review and approve any deviation from this list. Formal documentation of the property types listed below, regardless of age, is not required. Their existence, however, within the survey area, and justification for their exclusion, should be discussed in the project report. If any of these property types exhibit significant architectural or engineering features, or are associated with a National Register-eligible site or district, they should be recorded on a Wyoming Cultural Properties Form. Smithsonian numbers will not be assigned to the following property types:

1. Utility lines (i.e., power lines, towers, telephone lines, fiber optic cable, etc.).
2. Pipelines (i.e., water, gas, etc. This does not include early wooden pipelines).
3. Stock dams, troughs, spring boxes, and associated windmills that post date 1930.
4. Elevation, bench, and section markers.
5. Car banks (i.e., the use of abandoned cars, farm machinery, appliances, etc. to stabilize river banks, stream banks, or drainages).
6. Rip-rap (i.e., the use of cobbles, rock, or wood to stabilize river banks, stream banks, or drainages).
7. Isolated abandoned vehicles, appliances, and all mobile homes.
8. Fences (i.e., barbed wire, chain link, buck-and-pole, or other types of pasture fence. This does not include corrals, roundup or load-out facilities).
9. Unnamed two-track roads (i.e., ranch roads, seismic roads, etc.). This will require a

**ATTACHMENT 4
SECOND INTERNAL DRAFT**

check of GLO maps to determine if the roads are named. Named roads need to be formally recorded; unnamed roads do not need to be recorded. Specify in the report the results of the GLO check.

10. Recent trash (i.e., highway trash, etc.)
11. Producing oil/gas wells and dry hole markers.
12. Underground mine fire fissures (i.e., fissures created on the ground surface from the heat of an underground mine fire).
13. Agricultural irrigation ditches related to localized ranching/farming. Does not apply to canals associated with irrigation districts. In general, canals have head gates or other engineered features. Ditches are lower in hierarchy to canal systems.
14. Bear baiting sites.
15. Trash dumps older than 50 years but for which historic association cannot be demonstrated (e.g. truck clean-out sites – note: most sites of this type have more than 50 associated items).
16. Samples of defined lithic landscapes with approval of the affected field office.
17. Twentieth and Twenty-first century short-term camps associated with stockgrazing and recreation.