

**STATE PROTOCOL AGREEMENT
BETWEEN
THE BUREAU OF LAND MANAGEMENT
AND
THE UTAH STATE HISTORIC PRESERVATION
OFFICE**

Regarding the manner in which the Bureau of Land Management will meet its responsibilities under the National Historic Preservation Act as provided for in the National Programmatic Agreement



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**STATE PROTOCOL AGREEMENT
BETWEEN THE
BUREAU OF LAND MANAGEMENT UTAH
AND THE
UTAH STATE HISTORIC PRESERVATION OFFICE
REGARDING THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT WILL
MEET ITS RESPONSIBILITIES UNDER THE NATIONAL HISTORIC PRESERVATION ACT
AS PROVIDED FOR IN THE NATIONAL PROGRAMMATIC AGREEMENT**

I. PURPOSE

In 2012, the Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) signed a nationwide Programmatic Agreement (nPA) that governs the manner in which the BLM will meet its responsibilities under the National Historic Preservation Act of 1966 as amended (NHPA). This Protocol implements the nPA in Utah by describing how the Utah State Historic Preservation Office (SHPO) and the Bureau of Land Management-Utah will interact and cooperate pursuant to the nPA. The goal of this Protocol and the nPA is to continue the meaningful and productive partnership between the BLM and the SHPO regarding meeting the responsibilities of the NHPA and in implementing the procedures listed in Component 6 (b) of the nPA.

A. Relationship to Other Agreements

The BLM's Small-Scale PA, officially known as the Programmatic Agreement between the Advisory Council on Historic Preservation, the Bureau of Land Management-Utah and the Utah State Historic Preservation Office, Regarding National Historic Preservation Act Responsibilities for Small-Scale Undertakings (2019 and as amended), remains in effect. Other programmatic agreements (PA) and memoranda of agreement (MOA) also remain in effect and new agreements may be developed as required or needed to meet the BLM's requirements under the NHPA for the resolution of adverse effects (36 CFR § 800.6) or any other use listed in 36 CFR § 800.14(b).

B. When to Use 36 CFR Part 800 Regulations in Lieu of the Protocol

The regulations at 36 CFR §§ 800.3 through 800.7, 800.8(c), 800.10, and 800.14 will be complied with in lieu of the Protocol in only the following situations:

- i. When the ACHP formally participates in the resolution of identified adverse effects of an undertaking;
- ii. When there are adverse effects to National Historic Landmarks (NHLs);
- iii. Multi-State programs or projects;
- iv. If a Field or District Office is decertified;
- v. When developing project-specific PAs;
- vi. If the BLM or SHPO terminates this Protocol;

- vii. If the nPA is terminated or suspended for any reason;
- viii. If this Protocol is terminated for any reason, this Protocol will continue in effect for an additional one hundred and twenty (120) calendar days, allowing time for the BLM and the SHPO to prepare and sign a separate agreement. In such situation, the BLM may use its discretion to consult on individual undertakings of any kind with the SHPO, Tribes, and consulting parties by following 36 CFR §§ 800.3 through 800.7. If this option is used, the BLM will cite this clause in such consultation and the Appendices to this Protocol will still be applicable.

II. BLM CONSULTATION WITH OTHERS UNDER THIS PROTOCOL

A. Tribal Consultation

The BLM emphasizes the government-to-government relationship with Indian tribes and the obligation and importance of consultation on specific undertakings. The BLM will follow the procedures and guidelines established in the nPA, *BLM Tribal Relations Manual - 1780*, *BLM Tribal Relations Handbook 1780-1*, Executive Order 13175, Department of the Interior's (DOI) *Policy on Consultation with Indian Tribes* (Secretarial Order 3317), and other applicable authorities, executive orders, and policies, when conducting consultation for undertakings under this Protocol. The BLM supports and encourages the sharing of cultural resource information with federally-recognized tribes under the National Environmental Policy Act (NEPA), NHPA, the Archaeological Resources Protection Act (ARPA) and other authorities.

B. Public Participation and Consulting Parties

The SHPO, Tribes, representatives of local governments, and applicants for federal assistance, licenses and other approvals are consulting parties pursuant to 36 CFR § 800.2(c). Certain individuals and organizations with a demonstrated interest in an undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

During project planning, the BLM will plan consultation appropriate to the scale of the undertaking, the scope of Federal involvement, and coordinate with other requirements of other statutes, as applicable (see 36 CFR § 800.2(a)(4)). To the extent possible, the BLM will fulfill its consultation requirements using existing procedures and mechanisms under the NEPA, the Federal Land Policy and Management Act (FLPMA), and other applicable statutes.

C. Advisory Council on Historic Preservation Participation

The ACHP may participate on its own initiative or at the request of the BLM, the SHPO, an Indian tribe, a local government, an applicant, or any other consulting party in any proceeding associated with the BLM's NHPA Section 106 responsibilities under the regulations.

At a minimum, the BLM will notify the ACHP of its efforts under this Protocol for specific undertakings when the thresholds outlined in Stipulation 5 (b and c) of the 2012 nPA are met. The thresholds from the nPA are as follows:

- i. Non-routine interstate and/or interagency projects or programs;
- ii. Undertakings adversely affecting National Historic Landmarks;
- iii. Undertakings that the BLM determines to be highly controversial;
- iv. Undertakings that will have an adverse effect and with respect to which disputes cannot be resolved through formal agreement between the BLM and the SHPO, such as a memorandum of agreement; and
- v. The development and approval of program alternatives, including project-specific PAs, will follow the process under 36 CFR § 800.14.

III. PROCEDURES FOR CONSIDERATION OF EFFECTS TO HISTORIC PROPERTIES FROM BLM UNDERTAKINGS

A. Common Terms

Unless otherwise noted, the terms used in this Protocol, including “adverse effect,” “area of potential effect” (APE), “cultural resources,” “historic property,” and “National Register,” are consistent with the definitions found in the regulations related to the *Protection of Historic Properties* at 36 CFR § 800.16, regulations for *Determinations of Eligibility for Inclusion in the National Register of Historic Places* at 36 CFR Part 63, the BLM’s *Identifying and Evaluating Cultural Resources Manual* (BLM Manual Section-8110), BLM-Utah’s *Guidelines for Identifying Historic Properties Handbook* (BLM -Utah Handbook 8110).

B. Area of Potential Effects

During the earliest feasible planning stage of any undertaking, the BLM will identify the area of potential effects (APE). In identifying the APE, the BLM will consider the scale and nature of the undertaking. If the BLM determines that an undertaking is a complex undertaking, it will notify and consult with the SHPO on the APE.

C. Identification Methods

The BLM shall make a reasonable and good faith effort to identify historic properties within the APE for all undertakings pursuant to 36 CFR § 800.4. Identification efforts should include one or more of the following identification methods:

1. Review Existing Information

Review all existing cultural resources information involving the lands within the APE. For projects that could have large-scale visual, audible or atmospheric effects the BLM will review all existing cultural resources information involving the lands within the APE and a

minimum 0.25-mile buffer. At the discretion of the agency official, the APE buffer may be expanded beyond 0.25-miles.

2. Desktop Review

Complete a desktop review, which minimally includes relevant aerial imagery, historic topographic maps, and General Land Office plats. Other resources may include, but are not limited to, Class I – Existing Information Inventory, historic contexts, predictive models, water rights, land patents, mining records, grazing records, Sanborn Maps, and other publicly available information to assess cultural resources.

3. Seek Additional Information

Seek information, as appropriate, from any individuals and organizations on the presence of historic properties within the APE. This may include oral histories, interviews, research with local historical societies, museums, ethnographic studies, etc.

4. Gather Information

Gather information from affected Indian tribes of cultural resources and/or historic properties within the APE. This may include oral histories, interviews, on-site visits, ethnographic studies, etc.

5. Conduct Surveys

The BLM and the SHPO recognize that the 36 CFR Part 800 regulations do not require an archaeological field survey of the APE. However, as warranted, BLM will conduct archaeological field surveys of the APE, or portions thereof, to identify cultural resources and historic properties. The level of effort shall be tailored to the nature and magnitude of the undertaking, results of background research, degree of federal involvement, nature and location of potential effects on historic properties, and likely nature of historic properties within the APE.

- a. Surveys shall follow all BLM guidance from the 8110 Manual, with modifications included on site definition and isolated finds guidance within this Protocol (*Appendix C*).
- b. Any modification of survey strategy beyond the 8110 Manual, including increasing transect width beyond the 15-meters as described in the SHPO Guidance, shall be handled on a case-by-case basis in consultation with the SHPO.
- c. Non-linear sites that have been revisited twice in the modern period (defined as post 2000) and determined not-eligible with concurrence of the SHPO, shall not require additional site updates.

6. Survey Exemptions

In consultation with the SHPO, the BLM can exempt certain areas from field survey. If BLM is uncertain if an area should be exempted from field survey, the BLM shall consult with the SHPO via phone or email with sufficient information for the SHPO to provide comment on the possible exemption from survey. Survey exemption does not exempt the undertaking from consultation with the SHPO. Below are the exemptions for survey:

- a. *Disturbed areas:* Areas with significant modern or natural ground disturbance that would have removed the potential to locate any cultural resources (e.g. active gravel pits, pipeline trenches, well pads, modern landslides).
- b. *Environmental conditions:* Areas with existing field survey data sufficient to indicate that the specific environmental condition did not support human occupation or use, to a degree that the records documenting the location, methods, results, and reliability of the existing survey would make further survey information not useful or meaningful.
- c. *Previously surveyed:* Field survey information, regardless of its age, which provides the agency official with sufficient data to make informed decisions. If the agency official determines that the prior survey information is adequate to identify historic properties, no survey is needed. In cases where the agency official will be using field survey that may be approximately 10-years or older in replacement of conducting a new survey, informal consultation (e.g. phone call or email) with the SHPO is required. After such consultation, the BLM may conclude that the previous survey is adequate, needs supplementation, or is not adequate.
- d. *Field Manager Discretion:* If areas are difficult to access for topographical, geological, ecological, or safety reasons, such areas may be exempted from survey. However, a good faith and reasonable effort should be made to visually assess these areas by aerial photographs, binoculars, spotting scopes, etc. and include background research such as described in Section III.D below.

D. Eligibility

1. Eligibility Assessment

The BLM will apply the following criteria for evaluation for historic properties found in 36 CFR § 60.4 and National Register Bulletin 15:

- a. All determinations will be documented, providing justification, detailing the BLM's determination, resources consulted in making the determination, and included in the site record or report.
- b. Any agency official or BLM archaeologist may and is encouraged to contact the SHPO or the BLM's Deputy Preservation Officer (DPO) concerning determinations of eligibility when they feel assistance or additional perspectives related to this decision would be helpful, or, as applicable, and pursuant to 36 CFR §§ 800.4(c)(1), 800.4(c)(2), seek information from the SHPO and Indian tribes. For instance, standing architecture documentation and assessment is not normally within the experience of most the BLM archaeologists, but the SHPO has staff that meet the Secretary of Interior's Standards for an Architectural Historian and Architect.

2. Eligibility Dispute Resolution

If a BLM Field or District Office and the SHPO cannot concur on the eligibility of a historic property and/or cultural resource, and an agreement cannot be reached within 30 days, then the DPO will be requested to arbitrate the matter.

Appropriate documentation from both the BLM and the SHPO will be provided to the DPO, and the DPO will provide a formal written opinion within 10 days.

- a. If after DPO opinion has been provided, there is still no agreed resolution, the parties will request that the State Director offer an opinion. The State Director will offer a written opinion within 10 days.
- b. If there is still no resolution between the parties after the State Director has offered its opinion, the BLM will request a formal determination of eligibility from the Keeper of the National Register of Historic Places (Keeper), pursuant to 36 CFR § 800.4(c)(2). The process to be followed is detailed in 36 CFR Part 63: Regulations on Eligibility for Inclusion in the National Register of Historic Places. The Keeper's determination will be final.

E. No Potential to Cause Effects and No Historic Properties Affected

The BLM's National Programmatic Agreement (nPA) with the ACHP and the NCSHPO provides a framework for establishing alternative procedures where SHPO consultation is not required. The following procedures adhere to Component 4 of the nPA and procedures listed in 36 CFR § 800.3(a)(1).

1. No Potential to Cause Effects; Undertakings Exempt from SHPO Consultation

Per 36 CFR § 800.3(a)(1) and Stipulation I.B.2 of the Small-Scale PA, "if an undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the District or Field Office manager has no further obligations under Section 106."

2. Procedures for Undertakings Exempt from Consultation

Examples of undertakings, for which BLM and SHPO agree that consultation is not necessary, are identified in Appendix H, and are subject to the following:

- a. The BLM archaeologist will, after reviewing a proposed undertaking, determine if specific project or the activity has no potential to cause effects to historic properties.
- b. The BLM and the SHPO, through consultation, may agree that other classes of exempted actions may be added to Appendix H.
- c. Offices will track undertakings exempt from consultation in administrative records associated with the undertaking. Tracking may be done using the Interdisciplinary Team Checklist, or other internal documentation.

3. No Historic Properties Affected for Undertakings Below the Review Thresholds of the Small-Scale PA

Consistent with the Small-Scale PA Stipulation I.B.1, the BLM will not consult with the SHPO when all the following conditions apply:

- a. The entire proposed APE is 50 acres or less in size or less than 5 linear miles;
- b. The agency official determines that no historic properties would be affected by the proposed undertaking;

- c. The proposed undertaking is located on lands administered by the BLM, or encompasses both lands administered by the BLM and the State of Utah School and Institutional Trust Lands Administration (SITLA); and
 - d. The undertaking is not an Application for Permit to Drill (APD) outside the existing footprint of an authorized oil or gas well.
4. No Historic Properties Affected for Undertakings Above the Review Thresholds of the Small-Scale PA

If the BLM determines that a proposed undertaking will result in No Historic Properties Affected, and is above the review thresholds of the Small-Scale PA, the BLM will provide the SHPO with adequate documentation and a 30-day review period, as outlined in Stipulation III.A.

F. Determinations of No Adverse Effect or Adverse Effect

1. No Adverse Effect

If a proposed undertaking will cause effects to a historic property, but the effects do not diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association that make the property eligible for listing in the National Register of Historic Places (NRHP), the BLM will make a finding of No Adverse Effect as defined in 36 CFR § 800.5(b). The BLM will provide the SHPO with adequate documentation and a 30-day review period, as outlined in Stipulation III.A.

2. Adverse Effect

If the BLM determines that the undertaking may alter any of the characteristics that qualify a property for inclusion in the National Register in a manner that would diminish the integrity of the property's ability to convey its significance, the BLM will determine that the undertaking will have an adverse effect on that historic property resulting in an Adverse Effect finding as defined in 36 CFR 800.5(a)(1).

G. Public Notifications for Findings of No Historic Properties Affected and No Adverse Effect Determinations

Consistent with the Small-Scale PA (Stipulation IV), and as authorized under the NHPA's implementing regulations at 36 CFR § 800.2(d) (3), and the nPA, the BLM will notify the public of undertakings subject to this Protocol through the BLM's NEPA process. Indian tribes, consulting parties, and all other interested stakeholders will have access to the BLM's NEPA documents and other information concerning proposed NHPA Section 106 undertakings through the BLM's standardized NEPA website (<https://eplanning.blm.gov/>).

H. Resolution of Adverse Effects

The BLM will consult with the SHPO, affected Indian tribes, and consulting parties as appropriate to develop and evaluate alternatives or modifications to an undertaking that could avoid, minimize, or mitigate adverse effects on historic properties. These alternatives, modifications, and any treatment measures will be outlined in a MOA or PA between the BLM and the SHPO, pursuant to the procedures outlined in 36 CFR Part 800, to resolve the adverse effect(s). Other parties may be invited to sign, or concur with, the stipulations of the MOA or PA.

I. Reporting Standards

1. Adequate Documentation

The BLM will provide the SHPO with “adequate documentation” pursuant to 36 CFR § 800.11(a) for all undertakings. Adequate documentation includes, but is not necessarily limited to, a description of the undertaking specifying federal involvement, definition of the APE, description of those steps taken to identify historic properties, results of identification efforts, photographs, maps, and relevant drawings. Further information could include any consulting parties’ comments, for the SHPO’s review and comment. Further, digital data must meet the standards included in Appendix D.

- a. *Projects Without Cultural Resources Survey*: Adequate documentation of an undertaking that does not need a cultural resources survey, but that is not excluded from consultation under the Small-Scale PA, should include an agency letter describing the undertaking and the rationale for no survey, and a map showing the area of potential effects.
- b. *Projects With Survey*: Adequate documentation of an undertaking that necessitated a cultural resources survey should include all resulting, properly formatted, archaeological reports and site forms; digital data (PDFs of reports/site forms, Geographic Information Systems (GIS) shapefiles or geodatabase, and tabular data submissions); and other supporting material as required by the SHPO Guide for Archaeological Compliance, SHPO Digital Standards, Appendix D, and the BLM Manual 8110.
- c. *Section 110 Projects*: All surveys, inventories, site form updates, stabilizations, and restoration projects stemming from Section 110 activities also require submission of appropriate documentation. Proactive (non-compliance driven) surveys and new site documentation shall be submitted to the SHPO within one (1) year of completion. Site monitoring forms may also be submitted on an annual basis to the SHPO. All Section 110 submissions should include determinations of eligibility of all new and updated cultural resources. Documentation shall meet the standards as required within the SHPO Guide for Archaeological Compliance, SHPO Digital Standards, Appendix D, and the BLM Manual 8110.

Buildings/Structures: As appropriate, data on buildings and structures should be entered on the SHPO’s Historic Site Form (also known as the Building Form) and included with the archaeological site form as supplementary material. The BLM shall also encourage consultants to complete this form in addition to the archaeological site form for all standing historic-period architecture.

2. Training

At the request of the BLM cultural resources or management staff, the DPO or the SHPO will conduct in-person and online trainings on acceptable standards for those materials submitted for meeting Stipulation VI.C.1 of this Protocol.

3. Submission Expectations

Unless otherwise noted, it is expected that the BLM will submit all required consultation materials in a timely basis, providing the SHPO a minimum of the regulatory 30-calendar day consultation period for comments. The 30-calendar day consultation period begins when the documentation is received by the SHPO. As noted in Stipulation VI.C of this Protocol, the BLM will submit all cancelled projects (reports and applicable site forms, even if in draft form) within an appropriate timeline (less than one year since official cancellation or indefinite pausing). The BLM will provide these documents through the SHPO's online consultation system whenever possible.

J. Emergencies

Should an agency official find it necessary to implement an emergency undertaking as an immediate response to a declared emergency, or another immediate threat to life or property, in a manner that would preclude the use of this Protocol, the BLM will implement, to the extent prudent and feasible, any measures that could avoid or minimize harm to historic properties and will implement rehabilitation measures and evaluations for properties that have been adversely affected. The BLM will report to the SHPO any emergency actions pursuant to the stipulations above.

IV. DISCOVERY SITUATIONS AND HUMAN REMAINS

A. Post-Review Discovery of Cultural Resources

In the event that cultural resources are discovered during project activities and cannot be avoided, work in the immediate vicinity (50') of the discovery will cease immediately. The BLM will ensure that the cultural resources are protected from further disturbance, including looting, until a decision about their eligibility and any necessary mitigation has been completed. Within 72 hours of the discovery, the BLM will evaluate the site in consultation with the SHPO, potentially interested Indian tribes, and any appropriate NHPA Section 106 consulting parties.

If the site is determined to be a historic property and adverse effects cannot be avoided or minimized, the BLM will seek to resolve the adverse effect pursuant to 36 CFR § 800.6. This will include the development of a Treatment Plan or Memorandum of Agreement. The SHPO will have 15-calendar-days to review the Treatment Plan. Potentially interested Indian tribes and the appropriate consulting parties as defined by the BLM will be given an opportunity to review the Treatment Plan for a concurrent 15-day review with the SHPO.

If the discovery is determined to be not eligible for listing in the National Register of Historic Places per consultation above, then the project activities may proceed without further consultation. The responsible Field or District office, meeting the standardized reporting procedures established under this Protocol, will document this entire process in reports, site forms, GIS data, and photographs.

B. Inadvertent Discovery of Human Remains

In the event that any human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in 43 CFR § 10.2(d) are encountered on BLM administered public lands, the BLM will follow the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR part 10). If human remains are discovered on state lands or nonfederal lands that are not state lands, the process outlined in Utah Code Ann. § 9-8-309 will be followed.

V. PROFESSIONAL QUALIFICATIONS, TRAINING, AND CERTIFICATION

A. Staffing

1. Professional Qualifications

A BLM Field Office will be considered professionally qualified to implement Section 106 of NHPA with the SHPO under the terms of this Protocol when the following conditions are met:

- a. All of the agency official's decisions made in accordance with the NHPA and submitted to the SHPO for concurrence, will incorporate recommendations made by the BLM staff who meet the qualifications established by the Office of Personnel Management for a GS-0193 professional series archaeologist (BLM archaeologist).
- b. Each Field Office employs at least one full-time, permanent BLM archaeologist, or has made arrangements to have its NHPA Section 106 workload covered by another BLM archaeologist. If necessary, the Field Office, the BLM State Office, and the SHPO may coordinate to agree on temporary measures to ensure that the Field Office continues to meet its NHPA Section 106 responsibilities during periods of staffing vacancies. The BLM will make every reasonable effort to ensure that temporary measures do not exceed one year.

2. Technical Competence:

A BLM Field Office will be considered technically competent to implement Section 106 of the NHPA with the SHPO under the terms of this Protocol when the following conditions are met:

- a. The Field Office's documentation is submitted to the SHPO accurately, and in accordance with the standardized reporting procedures established under this Protocol, and the timeframes outlined in 36 CFR Part 800; and
- b. The SHPO has not documented any unresolved issues with the Field Office's efforts in its annual report to the BLM State Director, in response to the BLM activities under this Protocol.

B. Professional Development and Training

1. Agency Officials

Training and development are key elements in maintaining the effectiveness of this Protocol. Field, District, Monument Managers, and others who may act in the role of agency official within the scope of this Protocol will receive nPA and Protocol training within 120-calendar days of the beginning of their tenure and periodically thereafter. The SHPO will be offered the opportunity to assist the BLM in Protocol training. Failure of the BLM to complete Protocol training within the allotted timeframe will lead to decertification procedures under Section C of this Protocol.

2. BLM Archaeologists

- a. BLM archaeologists will periodically receive training in the use and implementation of this Protocol, including the procedural requirements of 36 CFR Part 800, which are to be implemented in instances where this Protocol does not apply. The DPO will identify and arrange specialized cultural resource training to occur during the annual cultural resource staff meeting.
Professional Development: Agency officials, in consultation with the DPO, are advised to devise professional development plans for their cultural resource staff to ensure that current professional standards in the discipline can be met and maintained, and that training needs can be identified. The BLM recognizes that staying current in relevant professional literature and that the participation of cultural resource staff in professional societies and annual meetings are integral to staying abreast of developments and advances in the discipline, for enhancing professional knowledge and skills, and for providing opportunities for leadership and service to the profession.
- b. *Compliance Training:* All BLM archaeologists will complete at least one cultural resources training module every two years. This is in recognition of the need to maintain competency in these aspects of professional development while also utilizing the growing presence of online training modules. This training may include BLM National Training Center modules, or outside workshops offered by the National Preservation Institute, Vanishing Treasures Program, the ACHP, or others. The SHPO also has a Section 106 training module that can be scheduled for each Field Office or District staff upon request.
- c. *Database Commitment:* The BLM will maintain a record of trainings and their dates for all agency officials and BLM archaeologists pursuant to this section. The BLM will provide a summary of this information upon request from the SHPO.

C. Field Office Certification & De-Certification for use of Protocol

The SHPO, the ACHP, or Agency Officials may request in writing to the State Director that the DPO complete a technical review of a Field, District, or Monument office's certification to implement Section 106 of the NHPA under the terms of this Protocol. Within 30-calendar days of receiving the request, the State Director will provide all requesters with a written response regarding the decision to initiate the decertification process, and if appropriate, a timeline under which the decertification process will occur. The DPO will collaborate and seek input from the affected parties as appropriate throughout this process. Based on the DPO's technical evaluation of the Field Office's NHPA Section 106 efforts and the recommendation included in the technical review, the following actions may be taken:

1. The State Director maintains the Field Office's certification to participate with SHPO according to the terms of this Protocol;
2. The agency official voluntarily suspends the office's participation in this Protocol. The agency official will then have 30-calendar days from the date of the technical review to collaborate with the DPO and the SHPO and finalize a corrective action plan, with associated timelines, to address identified NHPA Section 106 issues;

3. The State Director decertifies the office's participation in this Protocol. The agency official will then have 60-calendar days from the date of the technical review to collaborate with the DPO and the SHPO to finalize a corrective action plan, with associated time lines, to address identified NHPA Section 106 issues; or
4. Offices not certified to participate in this Protocol will be responsible for completing all NHPA Section 106 consultation responsibilities in accordance with the appropriate standardized process found at 36 CFR Part 800. Based on an uncertified office's timely completion of a corrective action plan to address all Protocol deficiencies, the DPO will update the office's technical review and certification recommendation for immediate State Director and SHPO consideration.

VI. COOPERATIVE PROGRAMS AND ACTIVITIES

A. Preservation Planning

1. Section 110

The BLM will meet its responsibilities under Section 110 of the National Historic Preservation Act, including proactive management of cultural resources. Where and how possible, the SHPO will support those efforts through a cooperative partnership.

2. Historic Context Development

The BLM will assist the SHPO in the development of the historic context as funding allows or through creative mitigation options. All historic contexts must be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716 (Sept. 29, 1983)). The SHPO will review and provide comments on all historic context documents.

B. Public Education

The BLM will continue to develop and implement plans in support of public education and community outreach, along with site stewardship and site protection. The BLM will continue with its Project Archaeology program and other heritage education efforts as budget and staffing resources allow.

C. Information Management and Data Sharing

1. Data Standards

The BLM will adhere to the data standards within the SHPO Guide for Archaeological Compliance, SHPO Digital Standards, Appendix D, the BLM Manual 8110, and other applicable guidance.

2. Data Sharing

The BLM and the SHPO will support and maintain compatible and up-to-date databases. The BLM and the SHPO will work jointly to implement compatible databases to allow for the electronic submission of spatial data (GIS entities), digital records (survey records, fieldwork reports, monitoring forms, and site forms) and tabular records (database records) as needed. The BLM and the SHPO will work to ensure that any joint efforts meet both agencies' needs. The BLM will support the SHPO's management of a statewide inventory

by providing assistance through various mechanisms, as agreed upon by the SHPO and the BLM. The BLM will also seek ways to improve data sharing with Indian tribes for situations where sensitive cultural resource data is necessary.

3. Backlogged Reports/Sites

In support of the shared BLM/SHPO database, the BLM will submit cancelled project reports and site forms in a timely basis to the SHPO. Submission of these materials should include a formal letter describing why these materials are being submitted (cancelled project, etc.) and the reason why, if any, the records do not conform to BLM or SHPO digital data standards. The letter will also include, if possible, a determination of eligibility for all cultural resources identified.

4. Sensitive Information

Non-sensitive cultural resource compliance documents, including findings, determinations, and recommendations, may be disclosed to the public with all necessary redactions. Under the authority of Section 304 of NHPA (see 36 CFR § 800.11(c)), Exemption 3 of the Freedom of Information Act (5 USC § 552(b)(3)), and consistent with Section 9 of ARPA (see 43 CFR § 7.18), it has been determined that public disclosure of the location and character of cultural resources may risk harm to those resources. Sensitive cultural resource information under the control of the BLM and the SHPO, regardless of ownership of the resource, will not be disclosed inappropriately.

5. Annual Meetings

a. Technical Meeting:

In order to manage the implementation of this Protocol, representatives from the SHPO and the BLM Utah State Office will meet in-person once-yearly. Each party will discuss issues, successes, and other generalized comments on the implementation of the Protocol. The technical meetings will attempt to identify issues within the Protocol that could be addressed through revision, address issues between the SHPO and the BLM Field Offices, and discuss potential amendments. This meeting will include SHPO staff, the DPO, the BLM Branch Chief for Outdoor Recreation and Heritage Resources, the BLM State Director (as possible), and other BLM State Office staff as needed. The technical meeting will review the Protocol's implementation from that previous calendar year. This meeting will take place in January of each calendar year.

b. Collaboration Meeting:

A collaboration meeting will bring together SHPO staff, agency officials and BLM archaeologists to discuss the past year's achievements under the Protocol. This meeting will be in-person, with conference call-in options, and should occur in the first quarter of each calendar year, after the Technical Meeting discussed above has taken place. This meeting may be held in conjunction with the annual meeting required by other agreements, but must include a summary of the implementation of this Protocol from the previous year, with any issues raised, resolved, or unresolved from the Technical Meeting. Any field, district, or monument office that does not send a management representative to attend the collaboration meeting will be notified of the lapse. Upon a second consecutive absence, the office decertification review process will commence.

VII. OTHER PROCEDURES

A. Procedures for Resolving Objections

1. BLM or SHPO Objections

The BLM or SHPO may object to an action proposed or taken, pursuant to this Protocol. The objecting party will notify the other party in writing of the objection. Within seven-calendar days following the receipt of notification, the parties will begin to consult to resolve the objection. If the objection is resolved within 30-calendar days, the parties will proceed in accordance with the terms of that resolution.

If the objection is not resolved within 30-calendar days, and the parties have not agreed to extend the consultation period, the DPO and/or SHPO will refer the objection to the State Director. Once the State Director makes a decision, the State Director will promptly notify the SHPO, provide a copy of the decision, and afford SHPO 30-calendar days upon receipt to comment. If the SHPO concurs with the State Director within this timeframe, the Utah DPO and SHPO will proceed in accordance with the decision, and the objection will thereby be resolved.

Should the SHPO reject the State Director's decision, the SHPO will notify the State Director as such. Upon notification from the SHPO, the State Director will notify the DPO in writing of the rejection. The State Director will then submit the objection, including copies of all pertinent documentation, to the ACHP for comment. Within 30-calendar days following receipt of any ACHP comments, the State Director will make a final decision regarding resolution of the objection, and notify the SHPO and the ACHP of that decision in writing. The objection will thereupon be resolved. In reaching a final decision regarding the objection, the State Director will consider any comments received from the DPO, SHPO, and the ACHP pursuant to this stipulation. Any objection filed will not prevent the BLM from proceeding with undertaking planning; however, undertaking implementation will be deferred until the objection is resolved.

2. Tribal Objections

If a federally recognized Indian tribe formally objects, in writing, at any time to the manner in which this Protocol is being implemented, the BLM will consult with the objecting Tribe and, if the Tribe requests, the ACHP to resolve the objection. The SHPO will be notified of the objection but will not involve itself in government-to-government consultation between the Tribe and the BLM.

If the objection cannot be resolved within 45-calendar days, the DPO will refer the objection to the Utah State Director, along with recommendations for resolving the objection. If the Utah State Director and the objecting Tribe find a resolution, the Utah State Director/DPO will proceed in accordance to the resolution and the objection will thereby be resolved.

If either the Utah State Director or the objecting Tribe cannot resolve the objection, the Utah State Director may refer the objection to the BLM Director who may request the ACHP's participation. Within 30-calendar days following the receipt of any ACHP comments, the Utah State Director will take into account any comments received from all parties involved and make a final decision regarding the resolution of the objection and will then notify all parties of that decision in writing. The objection will thereupon be resolved.

Any objection filed will not prevent the BLM from proceeding with undertaking planning; however, undertaking implementation will be deferred until the objection is resolved.

3. Public Objections

If a member of the public or a group formally objects in writing at any time to the manner in which this Protocol is being implemented, the DPO and the SHPO will consult with the objecting party. If the objecting party, DPO, and SHPO resolve the objection within 45-calendar days, the BLM will proceed in accordance with the terms of that resolution.

If the objection cannot be resolved, the DPO will refer the objection to the Utah State Director with its recommendations for resolving the objection. If the Utah State Director and the objecting party reach resolution, the Utah State Director will proceed in accordance and the objection will be resolved.

If the State Director cannot resolve the objection, he or she may refer the objection to the ACHP for its participation. Within 30-calendar days following receipt of any ACHP comments, the State Director will take into account any comments received from the parties involved and make a final decision regarding the resolution of the objection and will notify all parties of that decision in writing. The objection will thereupon be resolved.

B. Review and Revision of this Protocol

The BLM and the SHPO, in consultation with Indian tribes and other interested parties, will review this Protocol on or prior to the tenth anniversary of the date of its execution to determine if amendment or extension is warranted. This Protocol is intended to be responsive to changing circumstances. Therefore, the BLM or the SHPO may propose revisions of this Protocol at any time, whereupon the parties will consult with Indian tribes and other interested parties to consider the proposed Revision. "Revision" as used herein refers to the process of review and rewriting of all or portions of this Protocol, including the addition, deletion, or modification of appendices to this Protocol. Revisions will only become effective upon written concurrence of the BLM and the SHPO. This Protocol will be extended or revised as instructed by revisions to the nPA.

C. Amendments to this Protocol

1. Amendment Initiation

In keeping with the intended responsive nature of this Protocol, the BLM or the SHPO may propose an amendment to this Protocol at any time, whereupon the parties will consult to consider such amendment. "Amendment" as used herein refers to the process of adding supplemental procedures for specific BLM programs when parties to this Protocol wish those procedures to be made explicit. The amendment process culminates in the issuance of Protocol Amendments, which are administratively appended to this Protocol on their effective date. Amendments to this Protocol will only become effective upon signature of both parties. Protocol Amendments will be attached as appendices to this Protocol.

2. Amendment Continuation

The parties to this Protocol agree that upon termination or expiration of this Protocol, any and all supplemental agreements, procedures, or amendments contained in the Protocol appendices may continue in full force and effect, with the written consent of the signatories, and in consultation with Indian tribes and other interested parties subject to the

terms of this Protocol regarding Dispute Resolution Procedures, Revisions, Amendments, and Termination, until a successor Protocol or Programmatic Agreement is executed. Continued use of supplemental agreements, procedures, or amendments cannot exceed two years.

D. Termination, Automatic Termination, and Review of this Protocol

1. Termination of this Protocol or Any Supplemental Agreement, Procedure, or Amendment

The BLM or SHPO may terminate this Protocol or any Supplemental Agreement, Procedure, or Amendment contained in the Appendices. The party proposing termination will notify the other party in writing of its intent to terminate and explain the reasons for proposing termination. Within seven-calendar days following receipt of such notification, the parties will begin to consult for a period of 90-calendar days to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties will proceed in accordance with the terms of that agreement. Should such consultation fail to result in agreement on an alternative within that time frame, the party proposing termination may terminate this Protocol or any Supplemental Agreement, procedure, or Amendment by providing the other party with written notice of such termination. Termination hereunder will render this Protocol or any terminated Agreement, Procedure, or Amendment without further force or effect.

2. Resumption of 36 CFR Part 800

In the event of termination of this Protocol, BLM will comply with the provisions of 36 CFR Part 800 for all undertakings covered by this Protocol, except those outlined in an existing and valid programmatic agreement.

3. Extension of this Protocol

At midnight of the tenth anniversary of the date of its execution, this Protocol will automatically terminate and have no further force or effect, unless extended by written agreement of the signatories. Indian tribes, consulting parties, and interested parties will be notified prior to extension and provided an opportunity to comment. Should this Protocol not be extended and should no successor agreement document be in place at the time of automatic termination, the BLM will comply with 36 CFR Part 800, except with regard to those activities addressed in supplemental agreements, procedures, or amendments to the Protocol, which the signatory parties in writing agree remain in full force and effect.

VIII. OTHER PROCEDURES

The BLM will follow and adhere to policies and procedures detailed in the BLM 8100 Manual Series along with standards and guidelines promulgated by the SHPO, such as recording requirements. The BLM, in consultation with the SHPO, may develop other guidance as necessary, and will consider incorporating such guidance as an amendment to this Protocol.

IX. ANTI-DEFICIENCY PROVISION

Nothing herein shall, or shall be construed, to obligate the BLM to expend, or involve the United States of America in any contract or other obligation for the future payment of money in excess of appropriations authorized by law.

SIGNATURES



Edwin Roberson
State Director, Utah Bureau of Land Management

1-2-2020

Date



Christopher Merritt
Utah State Historic Preservation Officer

1/2/2020

Date

*State Protocol Agreement Between the Bureau of Land Management Utah and the Utah State Historic Preservation Office
Regarding the Manner in which the Bureau of Land Management will meet its Responsibilities Under the National Historic
Preservation Act as Provided for in the National Programmatic Agreement*

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APPENDICIES

*State Protocol Agreement Between the Bureau of Land Management Utah and the Utah State Historic Preservation Office
Regarding the Manner in which the Bureau of Land Management will meet its Responsibilities Under the National Historic
Preservation Act as Provided for in the National Programmatic Agreement*

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APPENDIX A: NATIONAL PROGRAMMATIC AGREEMENT

Online at: <https://www.blm.gov/sites/blm.gov/files/National%20Programmatic%20Agreement.pdf>

APPENDIX B: BLM 8100 MANUAL SERIES

Online at: <https://www.blm.gov/policy/manuals>

APPENDIX C: SITE & ISOLATED FINDS DEFINITIONS

I. PURPOSE

In order to adequately and consistently document cultural resources of an archaeological nature in the State of Utah, a standard site definition is needed. Further, for those cultural resources falling outside the site definition, this section better defines what an isolated find is and how to adequately document those resources. The BLM and the SHPO recognize that this is a resource management distinction and that all cultural materials are connected to a broader web of human decisions and land use patterns.

II. SITE RECORDS

All cultural properties that meet the site definitions below, discovered in the course of the inventory will be recorded and submitted on the Utah Archaeological Site Form (UASF) form by BLM personnel, contractors, or permittees. Site numbers for all cultural resources recorded on BLM-administered lands are obtained from the Utah Division of State History.

III. ARCHAEOLOGICAL SITE DEFINITION

- A. The minimum criteria for defining archaeological sites, requiring use of the UASF site record, are that sites should contain remains of past human activity that are at least 50 years old, and should consist of one or more of the following:
1. At least 10 artifacts of a single class (e.g., 10 sherds) within a 10-meter diameter area, except when all pieces appear to originate from a single source (e.g., one ceramic pot, one glass bottle).
 2. At least 15 artifacts, which include at least two classes of artifact types (e.g., 10 sherds, and five glass fragments) within a 10-meter diameter area.
 3. One or more archaeological features in temporal association with any number of artifacts.
 4. Two or more temporally associated archaeological features without artifacts.
- B. Archaeological discoveries which are less substantial than those defined by the criteria above may be recorded as sites if a professional archaeologist believes they are important enough to enter onto the UASF. For example, a property containing only three pieces of pottery within an area 10-meters in diameter might be recorded as a site if there is some indication, such as an exposed vertical profile, that a subsurface component is present. Professional judgment should always be exercised in applying the criteria to cases that are questionable.

- C. Buildings and structures (as defined by the National Register of Historic Places) regardless of their standing or collapsed disposition, are never considered isolated finds. These features represent more human investment and occupation than an isolated lithic, tin can, or bottle and should be treated as an archaeological site.

IV. ISOLATED OCCURANCES

- A. Cultural resources that fall below the thresholds in Section III or do not meet the caveats in Section III.B and III.C, shall be documented as isolated occurrences.
- B. Isolated finds could be considered objects under the definitions of the National Register of Historic Places, and therefore should be considered for their eligibility in a broader context.
- C. For those cultural resources that do not meet the definitions in Section III, there is still a requirement to provide some documentation of their location, cultural period, and artifact composition in the cultural resources report and in digital submissions.
 - 1. Tabular Data: At a minimum, the isolated finds should be individually numbered with a unique identifier, include a tabular description of cultural period, cultural affiliation, UTM coordinates, and an estimated date range.
 - 2. Photographic Data: Each recording of a diagnostic artifact or feature should include at least one digital photograph. Additional photographs of diagnostic materials such as projectile points, pottery, or unusual or unexpected cultural materials should be considered.
- D. Isolated finds that consist of entirely lithic debitage, ceramics, bottles, or cans will not be recorded, unless the archaeologist feels it warranted using professional judgement.

APPENDIX D: DATA AND DOCUMENTATION STANDARDS REPORTS

Reports will be accompanied by a SHPO Cover Page, UT 8110-3 BLM Summary Report, site forms, a table of isolated resources, photographs, and maps. Reports and all associated documentation shall be clear, legible, and submitted in a quality format as specified below.

I. DIGITAL DATA SUBMISSION

Format

A digital copy will be submitted in PDF/A format at a resolution of 300 ppi or higher. Digital copies allow documents to be easily searched, reduce impacts to archival paper copies from less handling, and provide a backup in the event a paper document is lost or destroyed.

Born Digital

All records should be born digital, meaning the records are originally created and later submitted in a digital format (i.e. in Adobe Acrobat, Microsoft Word, or other digital form generator) without being printed and re-scanned. Digital creation without rescanning assures accurate digital text recognition. Any record being submitted that is not born digital, and was scanned, requires Optical Character Recognition (OCR) processing by the submitter. OCR allows full text searching of the record within our content management system.

Reports

Reports shall be formatted in an Archival Portable Document Format (PDF/A) with Optical Character Recognition (OCR) PDF files required as they allow the document to be searchable. The PDF/A report should be a mirror image of the paper submission. Utah Archaeology Site Forms (UASF) will not be included with the report file, but submitted as separate PDF/A files. The PDF/A report file name will consist of the State Antiquities Project number (no hyphens or land status identifiers).

Example: U95IG456.pdf

UASF Site Forms

Each UASF site form will be submitted as a separate PDF/A file. The file should include all relevant parts of the UASF form including site sketch and location maps, artifact illustrations, and photographs. The naming convention for site PDF files shall be the Smithsonian Trinomial with county abbreviations capitalized, and no leading zeros. Amendments or updates for the same site will consist of the Smithsonian Trinomial followed by a hyphen and a sequential number. If more than one site form is being submitted, please put all the site form PDFs in a single .zip file.

Example: 42BE205.pdf or 42BE205-1.pdf or U95IG0456_Siteforms.zip

Tabular Data

A spreadsheet in .xlsx or .tsv format containing key tabular data corresponding with each site form submitted must also be included in submissions. The spreadsheet contains 21 data points across 37 fields. The spreadsheet must be structured the same as the template provided by the SHPO, which is located on the SHPO's website at <https://heritage.utah.gov/history/archaeology-records>. One spreadsheet for each project is required. Each site located during the project will constitute one row and every site recorded shall be included. Please name this excel file as shown below.

Example: U95IG0456_tabular.xlsx

GIS Data

GIS Data must be submitted in the form of shapefiles or a file geodatabase. Shapefiles should consist of one shapefile of the area inventoried and a separate shapefile for archaeological site boundaries. Spatial data must meet the following specifications listed below:

GIS Data – Sites

- File will be named with the state project number preceded by an 's'. Ex. sUI8UC0001.shp;
- All file components must be zipped into one file titled as shown above;
- One shapefile or geodatabase should include all project site boundaries, versus one shapefile per site;
- Include a field named "Smith_Tri" where the site number is stored without leading zeros (e.g. 42SL100 not 42SL00100);
- NAD 83 datum required;
- Only polygon features are accepted. Polygons must depict actual, ground verified site boundaries;
- A new polygon should be provided for any new site recording or updated site submitted with an updated site form. For updated sites, a duplication of the previous site boundary is acceptable if no boundary has changed. Sites revisited, but not updated, should not be included in the submitted spatial data.

GIS Data – Projects

- File will be named with the state project number preceded by a 'p'. Ex. pUI8UC0001.shp;
- All file components must be zipped into one file titled as stated above;
- Include a field named "StateProj" where the state project number is stored with no hypens/dashes or landowner suffixes;
- NAD 83 datum required;
- Polygons required;
- Different survey intensity should be clearly denoted with different record attributing;
- Accurate and clear representation of surveyed area (vs APE).

Maps

Maps related to the site and/or report shall be embedded in the appropriate PDF/A version of the site form and/or report. If the size or scale of the map is such that including the map in the PDF/A document would in some way be detrimental to the document, the map may be submitted as a separate PDF/A file. All map images should be properly displayed to the scale listed on the Map. For example, a 1:24,000 scaled map should be free from distortions that alter the accuracy of the scaling.

Maps must be appropriately labeled and include at a *minimum* the following information: Map Title/Project Name, Project Number, legend, north star, scale, firm name/authors name, date the map produced, and a *clear* depiction of the area of potential effect, area surveyed, sites recorded, and land status.

Maps depicting the GPS'd location of sites and project boundaries on the appropriate USGS 7.5' Quadrangle shall be included in the report. Good quality hand drawn site sketch maps or GPS produced site maps are acceptable.

Digital Media Format

Data must be submitted electronically using a secure platform. Files should be organized in the following manner:

- Reports and appendices to be placed in a folder named "Report"
- UASF forms to be placed in a folder named "Site_Forms"
- GIS Data should be placed in a zipped folder named with the state project number preceded by an 's'. Ex. sU18UC0001.shp.
- Maps should be placed in a folder named "Maps"

II. GPS/GIS STANDARDS

Field Observation Standards

- Site boundaries shall be recorded as polygons, as acreage cannot be calculated for linear or point features in GIS. In addition, a polygon best represents the size and shape of a site.
- For linear sites, a single linear feature down the centerline may be appropriate with the width of the feature noted in the site form and/or metadata. If possible, a linear site may be recorded as a line in the field then appropriately buffered and converted to a polygon using GIS.
- At a *minimum*, a site datum (located near the approximate center of the site) and site boundary must be recorded with a GPS unit for each site. This coordinate should correspond with the UTM listed in the UASF. Features and other site detail may be recorded with a GPS unit; however, how such details are recorded is at the archaeologist's discretion.

III. PROJECTION STANDARDS

All horizontal position data shall be reported in the NAD 1983 datum in UTM coordinates in the appropriate zone and Meridian.

IV. ACCURACY STANDARDS

Any type or model of GPS unit may be used so long as it meets the following standards:

- The positional accuracy should be within +/- 3 meters.
- GPS data will require real time or post processed differential correction to ensure data accuracy. Data must be differentially processed using a base station closer than 200 miles.
- PDOP is less than or equal to 6.
- Minimum of 4 satellites (3D) for every position.
- In situations where GPS observations are not practical or possible due to geography, vegetation, satellite availability, or the presence of hazardous materials, the recorder should locate the resource using GPS offset equipment and capabilities, map coordinates, or a combination of GPS and other techniques. Such non-GPS methods must be described in the site form, report, and/or metadata.

V. FEATURE ATTRIBUTE STANDARDS

GIS polygons for cultural resources must be associated with attributes that describe these cultural resources in accordance with the tabular data required.

Submitted data must conform to the attribute names Ag for the tabular data submitted for the sites. Data should be collected using the same attribute names or the names may be assigned later. A BLM database with these specific fields is available upon request.

VI. PHOTOGRAPH STANDARDS

Photographs

Photos should be embedded in reports and site forms. Each report and site form should have at least one photograph. Multiple photographs should be included in site forms and isolated occurrences of diagnostic artifacts and features. A maximum of two photos per page with captions is acceptable. Photographs may be back to back, so long as the caption is visible without having to remove the photo. Captions should include at a minimum the site number, project number, date, direction facing, and a brief description. If photographs are printed, they will need to be printed on acid-free paper. Photographs may be submitted in either JPEG or TIFF formats and numbered using the site or isolate number, a hyphen followed by a sequential number.

APPENDIX E: SUPPLEMENTAL PROCEDURES FOR OIL AND GAS LEASING

I. PURPOSE

The purpose of this Appendix to the Utah State Protocol Agreement (Protocol) is to address the National Historic Preservation Act of 1966 (NHPA), as amended, section 54 U.S.C. § 306108 compliance procedures, formerly known as and referred to hereafter as Section 106, for Oil and Gas Leasing. This Appendix shall cover Oil and Gas leasing compliance pursuant to Washington Office Instruction Memorandum (IM) 2018-034, BLM Handbook H-3120-1 Competitive Leases, or the most current policy direction.

The Mineral Leasing Act of 1920, as amended, requires the federal government to hold quarterly lease sales if expressions of interest are received. Offering parcels for competitive sale is considered an undertaking under the NHPA and, therefore, cultural resource review must be conducted at the leasing stage. The following procedures allow for the leasing of parcels for oil and gas development while maintaining compliance with the NHPA. The procedures herein represent a “reasonable and good faith effort,” as defined under 36 CFR § 800.4(b)(1), to identify and address the nature and extent of potential effects to historic properties.

Alternative approaches to this Appendix may be developed by individual Field Offices in coordination with the BLM’s Deputy Preservation Officer (DPO), but such approaches shall be governed by the provisions of the Protocol, or 36 CFR §§ 800.3 through 800.7, and require coordinated or individual consultation with the State Historic Preservation Officer (SHPO), Indian Tribes, and other interested parties.

II. PROCEDURES

The following guidance shall be followed when implementing these supplemental procedures. The SHPO and BLM recognize that all processes within this Appendix shall be completed within the established leasing timeframe. The assigned BLM archaeologist will oversee the following procedures:

Planning

The acreages identified within lease sale parcels offered for a quarterly lease sale are the focus of this Appendix. The act of leasing constitutes an undertaking, and the potential effects to historic properties must be considered prior to the offering of parcels in a competitive lease sale. Such lease sale parcel acreage, along with a 0.5-mile buffer for visual, audible or atmospheric effects, is referred to herein as the Lease APE.

Cultural resource compliance shall be completed for all proposed lease sale parcels associated with a lease sale. Compliance involves the completion of a records search, preparation of a cultural resource report, and all required consultation with Indian tribes, the SHPO, and interested parties as set forth in this Appendix.

Literature Review and Reporting

1. Records Search:

A literature review shall be conducted to identify previous cultural resource investigations, identified cultural resources, and to quantify inventory acreage and sites recorded within lease sale parcels, or groupings thereof, as identified by the assigned BLM archaeologist upon receipt of Expressions of Interest. The BLM and SHPO GIS databases will be the primary source of information for these analyses. Additional records, such as General Land Office maps, Class I – Existing Information Inventories, and predictive or expert-informed planning models may also be considered when conducting the requisite analysis.

2. Leasing Reports:

The results of the records search shall be compiled in a leasing report. At a minimum, leasing reports will include a summary of known cultural resource information for the lease sale parcels developed from the results of the records search. When writing these reports, the assigned BLM archaeologist may analyze parcels as units when located adjacent to each other or when located in similar environmental or geographic locations. Reports should also include the following:

- the current status of leasing and development in the general area;
- a discussion of the reasonably foreseeable development scenarios associated with the lease sale parcels;
- a discussion of the area of potential effect (APE);
- cultural resource stipulations and associated lease notices;
- a summary of input received by consulting parties;
- any additional relevant cultural resource information

The relevant Field Office and the assigned BLM archaeologist shall compare the results of the records search to the Field Office's "Reasonably Foreseeable Development Scenario" in order to determine whether the proposed lease sale may have an effect on historic properties.

Most of the data summarized in the leasing report may be found in the SHPO's cultural resource database. With this in mind, the BLM may summarize this data in the leasing report using a format to limit page length while providing sufficient information for consultation. The assigned BLM archaeologist will assist with and coordinate the completion of the final report with the assistance of Field Office archaeologists and submit the final report to the SHPO for review.

3. Mapping:

Maps shall be prepared in GIS format to supplement the information provided in the leasing report. The primary map in each leasing report will be an overview map. Additional maps may be created are not be required.

Tribal and Consulting Party Consultation

The BLM shall conduct public outreach during the National Environmental Policy Act (NEPA) process involving the proposed project in accordance with the terms of WO-IM-2018-034 or the most current policy direction. The Field Office manager shall determine if additional consultation is appropriate after the scoping phase. However, additional consulting party meetings are not required. The BLM will share all consulting party comments that it receives during its Section 106 consultation process with the SHPO.

The agency official, will be responsible for consulting with Indian tribes throughout the BLM's Section 106 consultation process. This consultation shall be consistent with the Protocol, 36 CFR § 800.2, *BLM Manual Section 1780 Tribal Relations*, and *BLM Handbook 1780-1 Improving and Sustaining BLM-Tribal Relations*.

Standard Protective/Mitigation Measures

The standard cultural resources protection stipulation will be attached to all lease sale parcels as found in Illustration 20, Page 2 of BLM Handbook 3120-1, which incorporates Attachment 1 of the original leasing reform IM-2010-117. The stipulation is as follows:

This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, Executive Order 13007, or other statutes and executive orders. The BLM will not approve any ground-disturbing activities that may affect any such properties or resources until it completes its obligations (e.g., State Historic Preservation Officer (SHPO) and tribal consultation) under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized, or mitigated.

Any additional stipulations required by the respective Field Office's Resource Management Plan shall be attached to relevant lease sale parcels.

Disagreements

Should a disagreement arise pertaining to the BLM's finding of no adverse effect regarding lease-sale-parcels, the DPO, or assigned BLM archaeologist and respective BLM archaeologists, shall work with the disagreeing parties to resolve the disagreement. If such resolution is not achieved, the DPO or assigned BLM archaeologist shall, pursuant to 36 CFR § 800.5(c)(2), request the ACHP to review the matter.

Adverse Effects

In certain situations, the BLM may determine that the issuance of a lease parcel may have the potential to have an adverse effect on historic properties. In this situation, the agency official shall notify the SHPO on the finding of effect. The BLM will not proceed with the development of an agreement document at the leasing stage. The BLM will reassess potential adverse effects identified during the leasing stage when conducting the standard identification, evaluation, and consultation process outlined in this Protocol for an Application for Permit to Drill (APD) or any other associated oil and gas development activity located within the APE. Should adverse effects, which cannot be avoided, be confirmed at the development stage, the BLM will proceed with the development of an agreement document.

III. REPORTING

The submission of the final report will follow existing consultation processes as outlined in the Protocol. No additional reporting requirements above those set forth in the Protocol is required for lease-sale activities.

IV. PROCESSING ASSOCIATED APPLICATIONS FOR PERMIT TO DRILL (APDS)

Field Offices and their respective archaeologists shall initiate NEPA and NHPA Section 106 procedures for all proposed development actions resulting from the leasing of lands for oil and gas development. APDs may require Class III survey if the APE has not been previously surveyed and does not fall under one of the exemptions outlined in this Protocol or the BLM 8100 Manual and Handbook series; however, based on the consideration of specific conditions in the APE, the appropriate BLM personnel may determine that an alternative identification strategy is more appropriate. If the identification effort or survey indicates the potential for an adverse effect, the Field Office archaeologist may invoke the Cultural Resources Protection Stipulation to require re-siting of the proposed facilities. If adverse effects cannot be avoided, the Field Office will work with the SHPO, Indian tribes, and associated consulting parties to develop a Memorandum of Agreement (MOA) to minimize or mitigate adverse effects, or disapprove the APD or other development proposal under the authority of the Cultural Resource Protection Stipulation.

V. AMENDMENT TO THIS APPENDIX

In keeping with the intended responsive nature of this Appendix E to the Protocol, the BLM or the SHPO may propose amendments of the provisions herein at any time, whereupon the parties shall consult with Indian tribes and other interested parties to consider such proposed amendments. The amendment process may culminate in the issuance of an amended Appendix E, with the amendments becoming effective only upon the signature of both parties.

VI. TERMINATION

The BLM or the SHPO may terminate this Appendix E to the Protocol. The party proposing termination shall notify the other party in writing of its intent to terminate and explain the reasons for proposing termination. Within seven-calendar days following the receipt of such notification, the parties shall have up to 90-calendar days to consult to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail to result in agreement on an alternative to termination, the party proposing termination may terminate this Appendix E to the Protocol by providing the other party with written notice of such termination. Such termination shall render Appendix E to be without further force or effect. In the event that Appendix E is terminated, the BLM shall continue to comply with the Protocol.

APPENDIX F: SUPPLEMENTAL PROCEDURES FOR GRAZING PERMIT RENEWALS

I. PURPOSE

The purpose of this appendix to the Protocol is to address the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108) (NHPA), Section 106 compliance procedures for processing 10-year grazing permit/lease applications (permit renewal) and livestock trailing permits in Utah. This Amendment shall cover grazing permit renewals for livestock as defined in 43 CFR § 4100.0-5 as "...domestic livestock – cattle, sheep, horses, burros, and goats." The following procedures will allow for the renewal and issuance of the permits while maintaining compliance with the NHPA. The procedures herein represent a "reasonable and good faith effort," as defined under 36 CFR § 800.4(b)(1), to identify and address the nature and extent of potential effects to historic properties.

This Amendment shall not apply to grazing permits issued under the Federal Lands Policy and Management Act 1976, (Pub.L. 94-579)(FLPMA), Section 402(c). All newly proposed undertakings for range improvements, such as water improvements and new fence construction, shall follow the established procedures within the Protocol.

Individual Field Offices may develop alternative approaches to this Amendment, but such approaches shall fall under the provisions of the Protocol or 36 CFR 800.3 through 800.7, and require individual Field Office consultation with the SHPO, Indian tribes, and other interested parties.

II. PROCEDURES

The following steps and methods will be used when executing these supplemental procedures.

Area of Potential Effect

For all grazing permit renewals, the Area of Potential Effect (APE) will be the BLM-administered land within external boundaries of each of the allotments being renewed. For efficiency, Field Offices are encouraged to group permit renewals for analysis and consultation. When allotments are grouped, the external boundaries of all allotments under consideration will be the APE. The APE for any trailing permit will be the extent of the trailing area.

Literature Review

The BLM archaeologist will conduct a literature review for each permit renewal APE. This literature review will primarily consist of site and report data from BLM GIS database, Utah Division of State Historic GIS database, and Field Office files. The literature review may also consist of:

1. A desktop review of relevant aerial imagery, historic topographic maps, General Land Office plats, water rights, land patents, and other publicly available information to assess cultural resources.
2. A summary of information from any relevant individuals and organizations on the presence of cultural resources. This may include oral histories, interviews, research with local historical societies and museums, etc.
3. Information from any Indian tribe on the potential of cultural resources within the APE.

Livestock Use of the Allotment

BLM archaeologists will work with BLM rangeland management specialists to gather basic information about the allotment including livestock use type (i.e. sheep, cattle), the number of animal unit months (AUMs), and the period of use. BLM rangeland management specialists, with support from BLM archaeologists, will determine areas where livestock may congregate for extended periods within the APE.

Congregation areas are defined as those areas where livestock concentrate for an extended length of time, which may result in measurable surface disturbance due to trampling and wallowing. This concentrated use can displace and damage archaeological artifacts and features. Depending on topography, the number of water sources on an allotment, and location of forage, congregation areas may include unfenced springs, perennial watercourses, ponds, lakes, and range improvements such as troughs, stock ponds, and salting areas. Sheltered areas, such as rock shelters, overhangs and rock faces, may serve as congregation areas. The BLM will not need to conduct GIS modelling to predict congregation areas.

Literature Review and Livestock Use Analysis

The agency official with support from the BLM archaeologist will determine whether renewing a grazing permit has the potential to cause effects. To do this, the BLM archaeologist will review all the information provided in the literature review and compare it to the grazing type, AUMs, period of use, and congregation areas.

If historic properties have not been identified through previous archaeological survey and investigation efforts in areas heavily impacted by livestock, areas identified as congregation areas, or proposed range improvement, and the BLM archaeologist determines that a renewal of the permit will not cause effects within the APE, then no pedestrian survey in either the form of a Class II – Probabilistic Field Survey (Class II) or Class III – Intensive Pedestrian Survey (Class III) is required.

The Need for Additional Survey

If an agency official, with support from the BLM archaeologist, determines that additional survey is needed, it should be limited to livestock congregation areas or areas that are likely to contain vulnerable historic properties. The need for additional survey will be based on the potential for historic properties to be within the boundaries of livestock congregation areas, and the vulnerability of historic properties within the APE to livestock grazing.

If the BLM determines additional information is needed to assess the potential for effects, the BLM archaeologist may conduct a field visit to a representative sample of cultural resources within the APE. The BLM archaeologist may consider recorded sites where the Intermountain Antiquities Computer Site (IMACS) form or its descendant, the Utah Archaeological Site Form (UASF), identifies livestock grazing as an impact agent, but gives no indication of the type or level of impacts. The representative sample need not be random but should address the site types present and their potential susceptibility to grazing effects.

Project Redesign to Avoid Adverse Effects

Prior to renewing a grazing permit, if the agency official finds that there is potential to adversely affect the characteristics which make a cultural resource eligible or listed on the National Register of Historic Places, the BLM will first seek to avoid these effects through project redesign. Avoidance measures may include physical protections measures such as permanent or temporary fencing, maintaining or reconstructing existing range improvements, moving range improvements to less-sensitive areas, and constructing new range improvements to reduce or eliminate impacts to historic properties. Avoidance measures may also include the changes to the terms and conditions of the grazing permit, including a change in grazing period, season of use, or the number of AUMs changing livestock numbers.

III. REPORTING STANDARDS

A report of findings for each allotment will be completed, describing proposed avoidance measures if employed, using the revised 8100-3. These investigations shall only address public lands administered by the BLM. Non-BLM administered land (i.e. private, state, and United States Forest Service) will not be evaluated.

IV. CONFORMANCE WITH THE PROTOCOL FOR ELIGIBILITY DETERMINATIONS, FINDINGS OF EFFECT, PUBLIC NOTIFICATIONS, RESOLUTION OF ADVERSE EFFECTS, DISCOVERIES AND DISAGREEMENTS

The BLM will follow the procedures outlined in the protocol when making determinations of eligibility for discovered sites and sites re-recorded during the survey or field visits for the permit renewal. The BLM will also follow the procedures in the Protocol for findings of effect, public notification, the resolution of adverse effects and discoveries. If a procedure is not outlined within this Appendix, the BLM will follow the procedure outlined in the Protocol.

V. TRIBAL AND INTERESTED PARTY CONSULTATION

Field Offices will be responsible for contacting and consulting with Indian tribes and interested parties as outlined in the Protocol, 36 CFR § 800.2 and the 1780 Manual and Handbook and for meeting BLM government-to-government responsibilities for consultation pursuant to regulations, executive orders, and policies. This consultation can be coordinated with NEPA scoping and public outreach, but tribal concerns shall be formally addressed through government-to-government consultation.

VI. AMENDING

In keeping with the intended responsive nature of this Protocol Amendment, the BLM or the SHPO may propose further amendment of provisions herein at any time, whereupon the parties shall consult with Indian tribes and other interested parties to consider such amendment. The amendment process will culminate in the issuance of new provisions under the amendment, which will only become effective upon signature of both parties.

VII. TERMINATION

The BLM or SHPO may terminate this Protocol Amendment. The party proposing termination shall notify the other party in writing of its intent to terminate and explain the reasons for proposing termination. Within seven-calendar days following the receipt of such notification, the parties shall have up to 90-calendar days to consult to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail to result in an agreement on an alternative, the party proposing termination may terminate this Protocol Amendment by providing the other party with written notice of such termination. Termination hereunder shall render the terminated Protocol Amendment without further force or effect. In the event that this amendment is terminated, the BLM shall comply with the Protocol.

APPENDIX G: SUPPLEMENTAL PROCEDURES FOR WILDLAND FIRE EMERGENCY STABILIZATION AND REHABILITATION

I. PURPOSE

The purpose of this Amendment to the Protocol is to address the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 306108), Section 106 compliance procedures for emergency wildfire stabilization and rehabilitation efforts.

This Amendment shall cover emergency stabilization treatments and activities pursuant to the BLM Handbook H-1742-1, Burned Area Emergency Stabilization and Rehabilitation, Section III.B.5, IM 2014-114-Sage-Grouse Habitat and Wildland Fire Management, and IM 2014-029 - Disclaimer Statement Policy for Datasets Held by the Bureau of Land Management (BLM).

Emergency stabilization treatments/activities are intended to protect public safety to by preventing further degradation to affected natural and cultural resources. These treatments/activities must be in accordance with approved management plans and applicable agency policy, standards, and all relevant federal, state, and local laws and regulations.

The following procedures will allow for stabilizing post-fire landscapes while maintaining compliance with the NHPA. The procedures herein represent a “reasonable and good faith effort,” as defined under 36 CFR § 800.4(b)(1), to identify and address the nature and extent of potential effects to historic properties.

This Amendment shall only apply to wildland fire emergency stabilization and rehabilitation efforts (ESR) where the BLM is the lead agency and may satisfy state agency compliance with Utah Code Annotated 9-8-404 with appropriate consultation and delegation.

Alternative approaches to this Amendment may be developed by individual Field Offices, but such approaches shall fall under the provisions of the Protocol or Section 106 regulations of the NHPA (36 CFR part 800) and require individual Field Office consultation with the Utah State Historic Preservation Officer (SHPO), Indian tribes, and other interested parties. This Appendix recognizes that Wildland Fire is not an emergency action, in most cases under Protocol Section III.J, and still necessitates consultation.

II. PROCEDURES

The following steps and methods will be used when executing these supplemental procedures. The SHPO and BLM recognize that all processes within this Amendment are usually conducted within narrow timelines for the active management of natural and cultural resources before additional resource damage is accrued. Hereafter, the BLM archaeologist overseeing the following procedures is termed “ESR archaeologist”.

A. Planning:

Acreage identified within a fire, following control and containment that warrants stabilization efforts that can impact cultural resources or that facilitates such treatments, such as access routes and vehicle staging areas, are the focus of this Amendment. Such acreage hereafter is referred to as the emergency stabilization and rehabilitation area of potential effect, or ESR APE.

Cultural resource compliance will be completed when analyzing proposed ESR efforts within the ESR APE. Compliance includes scheduling for inventory, evaluation, treatment, monitoring, and all required consultation with Indian tribes and the SHPO as addressed in this Amendment.

III. IDENTIFICATION EFFORTS

A. Records Search:

A literature review will be conducted to identify previous cultural resources investigations, identified cultural resources, and to quantify inventory acreage. The literature review will also identify sites warranting treatment within the area that were recorded during the ESR evaluation phase. The BLM's GIS database and the scanned archaeological site and report databases managed by the SHPO will allow for these analyses. (See Stipulation III. C. for additional expectations for background research.)

B. Targeted Archaeological Site Revisits:

Sites determined eligible for listing in the National Register of Historic Places (NRHP) within the ESR APE that have not been recently (<10 years) revisited will be considered for updating, review of eligibility, and assessment of potential project impacts where necessary. Sites previously determined not eligible for the NRHP will not require a revisit unless deemed necessary by the ESR archaeologist. Consultants should notify the ESR archaeologist if they feel a certain not eligible site(s) warrant a revisit with a justification for such opinion.

C. Field Survey Methods:

All areas identified within the ESR APE that are targeted for inventory shall be covered intensively using the BLM Class III survey standards with the commonly accepted 15-meter transect spacing unless consultation with the SHPO leads to a modification of transect width. All project activities with the potential to cause a ground disturbance (such as fence installation) not identified in the initial treatment parameters for the project, but are added later as an additional mitigation measure, will also be intensively inventoried. Sites recorded, or updated, within ten years of the survey date will not need to be revisited or updated. Non-eligible properties within the ESR APE do not need to be updated. However, non-eligible cultural resources should be reviewed during pre-field research (see section II.D.1) for cultural context development.

D. Inventory/Research Results:

The BLM and SHPO have agreed to an expedited review process for the results of identification efforts to ensure efficient timelines for treatment of the ESR APE. As such, the consultant will provide the ESR archaeologist draft copies of inventory materials (see Stipulation II.C.2 below for required materials and process) for a Preliminary Review (see Stipulation IV.A for more information). In addition to the draft materials, Stipulation II.C.1 details the expected level of research completed before submission of these preliminary materials to the BLM. The BLM and the SHPO will review the draft site forms for eligibility and how best to treat the site and any applicable Standard Protective Measures (see Stipulation VI below). Any comments and suggested revisions will be addressed by the consultant and submitted to the ESR archaeologist as a final draft before final SHPO consultation.

1. Minimum background research expectations for “Preliminary Review”:
 - a. The consultant shall complete a thorough literature review of all available archaeological and historical data pursuant to BLM Manual 8110.
 - b. Review all available General Land Office plats, and United States Geological Survey (USGS) topographic maps for the area.
 - c. Reference the Utah Division of State History’s Linear Site list to ensure any newly identified linear features are not previously documented outside the ESR APE.
2. Materials for “Preliminary Review” (all materials below will be provided to the BLM archaeologist as digital files (PDF, .jpeg, etc.) (See Attachment 1: Draft Form and Photos):
 - a. Draft archaeological site forms are acceptable, including hand-written forms as long as they are legible.
 - b. Newly identified sites do not require issuance of a Smithsonian Trinomial before preliminary review.
 - c. Each newly identified archaeological site form should include a temporary identification number.
 - d. Archaeological site forms should include a basic description of the site, its features and artifacts, and how it relates to nearby sites (either newly or previously recorded sites).
 - e. Eligibility recommendations for archaeological sites should be thorough enough to allow the BLM and the SHPO to reach concurrence.
 - f. Impacts, including those from fire related activities but not the fire itself, will be discussed.
 - g. Photos for archaeological site forms should include clear digital images of features, overviews, diagnostic artifacts, and/or unusual finds.
 - h. Isolated Occurrences/Finds logs and photographs.
3. Materials for “Final Review” should be formalized reports and archaeological site forms that adhere to all various standards for reporting (Protocol Stipulation III.A) and meet any additional expectations or requirements from the ESR contract.

IV. TRIBAL AND INTERESTED PARTY CONSULTATION

Although ESR treatments fall under the Full Force and Effect Decision Authority, Field Offices must make reasonable efforts to discuss all wildfire management decisions with interested parties, partners, stakeholders, and State, local, and Tribal governments during the project planning and National Environmental Policy Act (NEPA) analysis stages of any project (Handbook H-1742-1; III-A-9). Field Offices will be responsible for contacting and consulting with Indian tribes and interested parties as outlined in the Protocol, 36 CFR § 800.2 and the 1780 Manual guidelines and for meeting BLM government-to-government responsibilities for consultation pursuant to regulations, executive orders and policies. This consultation can be coordinated with NEPA scoping, but tribal concerns shall be formally addressed through government-to-government consultation.

V. ALTERNATIVE REVIEW PROCEDURES

A. Preliminary Review Process:

Given the rapidity of stabilization efforts in a post-fire situation, the SHPO and the BLM agree to a tiered consultation process. The tiered process is broken into a "Preliminary" review using draft site forms and a "Final" review process that will use refined and polished site and report materials.

1. Preliminary Review draft materials consist of all materials described in Stipulation II.D, and will be utilized as follows:
 - a. Preliminary review draft materials will be presented to the BLM archaeologist in a manner and time that provides no less than three-calendar days of review time ahead of ESR treatment. This can proceed in any manner agreed to between the contractor and the ESR archaeologist, but examples include at the end of every field session or every weekend.
 - b. The BLM archaeologist will be responsible for sharing the preliminary review draft digital materials with the SHPO through e106.
 - c. The BLM archaeologist and the SHPO will agree to a specific time to review the draft materials through in-person, phone conference, or an online meeting venue.
 - d. The BLM archaeologist will prepare a Preliminary Review tracking sheet (see Attachment 2: Tracking Sheet) containing no less than the following information for each site included within the Preliminary Review:
 - i. Project title and number;
 - ii. Site number (temporary or existing Smithsonian Trinomial for revisits and updates);
 - iii. Date evaluated (the date of the meeting between the BLM archaeologist and SHPO);
 - iv. Eligible, Yes or No (Y/N);
 - v. SHPO concurrence, Yes or No (Y/N)
 - e. The BLM archaeologist and the SHPO will review the draft materials and reach an eligibility consensus on draft materials, completing the tracking sheet concurrently. If a consensus cannot be reached due to a lack of information, the BLM archaeologist will contact the contractor and acquire the necessary data.
 - f. The ESR archaeologist will be notified of eligible historic properties for avoidance by ESR implementation.
 - g. The BLM archaeologist will prepare a transmittal letter signed by the appropriate agency official, as per standard project submission.
 - h. The project title, whatever its length, will have at its end the words 'Preliminary Review.' This project title will be reflected on the tracking sheet.
 - i. Transmittal letters, with their attached tracking sheets, will be submitted to the SHPO through an electronic consultation submission system (e106).
 - j. The SHPO will provide formal written concurrence to the BLM for the "Preliminary Review" materials described in the transmittal letter.

- k. Final review materials will be presented to the BLM archaeologist within the timeframe of the original contract. Eligibility determinations agreed to in the preliminary review process between the contractor, BLM archaeologist, and SHPO will be reflected in the final review process.

B. Determinations of Eligibility:

Determinations of eligibility for inclusion in the NRHP shall be undertaken on sites or properties that are within the ESR APE. Further description of eligibility determination requirements are included in Protocol Section III.I.1. If during preliminary review, the SHPO and BLM cannot reach consensus on site eligibility, BLM will treat the site as eligible for project implementation but will follow standard dispute resolution procedures in Protocol Section III.I during final submission.

C. Finding of Effect:

The ESR archaeologist will work with the BLM staff and consultants to understand the nature and extent of proposed treatment activities to best assess potential effects to historic properties. Identification of those historic properties that are susceptible or at risk to certain types of treatments will be addressed during the "Preliminary Review" and treatment plans would be appropriately modified. The ESR archaeologist will ensure that the proposed treatments will not have an adverse effect to historic properties through the use of Standard Protective/Mitigation Measures (SPMs) detailed in Section V of this Appendix. If a treatment will cause an adverse effect to a historic property, and that effect cannot be avoided, then the BLM and SHPO will follow procedures from Protocol Stipulation III.H.

VI. STANDARD PROTECTIVE/MITIGATION MEASURES

Standard Protective/Mitigation Measures (SPMs) can include but are not limited to:

- A. Aerial Seeding in the ESR APE, or portions thereof, to avoid adverse effects of sites sensitive to more direct treatment;
- B. Avoidance of cultural resources that would be sensitive to drill-seeding treatments;
- C. Avoidance of any type of seeding activity in areas of sensitive cultural resources that are relatively stable and would not necessitate stabilization (i.e. rock shelters, sites on bedrock or stable soils);
- D. Presence of a cultural resources monitor during implementation to ensure mitigation protocols;
- E. Installation of protective barriers/fencing to prevent erosion or inadvertent effects from stabilization activities; and
- F. Mechanical treatment of sites where the movement of artifacts within the "churn-zone" will not alter the characteristics which make a site eligible to the National Register of Historic Places.

VII. EVALUATION OF TREATMENT MEASURES

SPMs and/or other agreed upon treatment measures will be formally spelled out in the initial consultation letter between the BLM and SHPO after initial review but before implementation.

- A. To determine and document the effectiveness of treatment measures, the following guidelines are provided:

1. ESR archaeologist will revisit at least one project per calendar year, post-implementation and assess effectiveness of SPMs and treatment protocol.
- B. When SPMs are effective:
1. After documenting effectiveness, and when no additional degrading damage will likely occur because the SPMs or other treatment measures are adequate to prevent further damage from treatment activities, further SHPO consultation is not required.
- C. When SPMs or Treatment Measures are ineffective:
1. When additional degrading damage will likely occur and the SPMs, or other treatment measures, are either ineffective or cannot be utilized, mitigation of adverse effects shall be addressed on a case-by-case basis, pursuant to Stipulation IV A of this Protocol.

VIII. DISAGREEMENTS

When agreement cannot be reached within the Field Office on the level of inventory, evaluation, and monitoring for ESR, then the agency official shall consult with the DPO to assist in resolving the disagreement. If the concerns resulting in a lack of agreement on procedures continue, the agency official shall initiate consultation with the SHPO.

IX. REPORTING

All final reporting will follow existing consultation processes as outlined in the Protocol. No additional reporting above those set forth in the Protocol is required for ESR activities.

X. AMENDMENT TO THIS APPENDIX

In keeping with the intended responsive nature of this Protocol Amendment, the BLM or SHPO may propose further amendment of provisions herein at any time, whereupon the parties shall consult with Indian tribes and other interested parties to consider such amendment. The amendment process will culminate in the issuance of new provisions under the amendment, which will only become effective upon signature of both parties.

XI. TERMINATION

The BLM or SHPO may terminate this Protocol Amendment. The party proposing termination shall notify the other party in writing of its intent to terminate and explain the reasons for proposing termination. Within seven-calendar days following receipt of such notification, the parties shall have up to 90-calendar days to consult to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail to result in agreement on an alternative, the party proposing termination may terminate this Protocol Amendment by providing the other party with written notice of such termination. Termination hereunder shall render the terminated Protocol Amendment without further force or effect. In the event that this amendment is terminated, the BLM shall comply with the Protocol.

APPENDIX H: UNDERTAKINGS EXEMPT FROM SHPO CONSULTATION

I. PURPOSE

The purpose of this Amendment to the Protocol is to establish an agreement regarding the types of activities and undertakings that do not require consultation with the SHPO.

II. PROCEDURES

Pursuant to Section III.B.1 of the Protocol, the BLM archaeologist will, after reviewing a proposed undertaking and the associated information needed to identify and evaluate cultural resources, determine if specific projects or activities have no effects to historic properties and should be exempt from SHPO consultation. **In certain circumstances, even though an action may be listed here as exempt from SHPO consultation, the agency official, at the recommendation of the BLM archaeologist, may have justification to require SHPO consultation and an inventory/survey and evaluation of cultural resources.** Field Offices will internally track and document in the administrative record all undertakings exempt from inventory. The following actions are, in most circumstances, exempt:

A. Lands and Realty:

1. Issuing leases, easements, rights-of-way, and permits (not including grazing permits or oil and gas lease sales) that do not authorize surface disturbance.
2. Acquiring land and easements.
3. Transferring lands or interest in lands to other Federal agencies or Utah State Institutional Trust Land Administration, where future management will be subject to a NHPA Section 106 or Utah Annotated Code 9-8-404 process.
4. Issuing rights-of-way for existing developments, renewal, or acquiring land (name change) of existing rights-of-way except where operation, maintenance, or abandonment activities might result in new surface disturbance.
5. Issuing rights-of-way where proposed disturbance is limited to existing disturbance.
6. Issuing rights-of-way renewals for overhead lines with no pole, tower, or other surface disturbance on BLM-administered lands.
7. Authorizing new lines on existing overhead structures when there is no change in pole or tower configuration and no new surface disturbance.
8. Issuing or renewing rights-of-way for new or existing communication tower or buildings on established or designated communications where the area is previously disturbed, or past survey has occurred.
9. Issuing special land use designations, which do not authorize surface-disturbing projects such as Research Natural Areas, or Areas of Critical Environmental Concern (ACEC).

B. Minerals:

1. Seismic operations on maintained roads or trails, and those involving no use of explosives, blading, or other land modifications, nor appreciable disturbance or

compaction of vegetation, soils, or desert pavement by vehicle movement or other means except for concentrated foot traffic.

2. Issuing permits for surface collection of mineral materials in a designated common use area previously subject to Section 106 review.

C. Recreation:

1. Dispersed noncommercial recreation activities such as rock collection, Christmas tree cutting, and primitive backcountry camping.
2. Permitting non-surface disturbing special recreation permits such as outfitting, guided tours, and youth programs.
3. Issuing Special Recreation Permits along rivers, hiking trails, snow covered ground, and other specified areas where use is similar to previous permits or designated use and would not increase the level of use and where there will be no new surface disturbance.
4. Issuing river use permits.
5. Activities limited within stream channels, not including terraces and cut banks.
6. Personal use firewood permits which are not specific in size and do not concentrate use.
7. Maintenance of hiking or bicycle trails that have been surveyed.

D. Wildlife and Botany:

1. Modification of existing fences to provide wildlife ingress and egress.
2. Fishery habitat improvements when confined to stream channel and watershed improvements (such as willow plantings).
3. Herbicide application where it would be unlikely to affect archaeological sites and features, rock imagery, or traditional Native American plant gathering areas. Decisions will be consistent with and informed by the 2007 Vegetative Treatments Using Herbicides on BLM Land in 17 Western States Programmatic Environmental Impact Statement.

E. Range:

1. Animal traps and corrals in use for one week or less. Case-by-case review by the BLM archaeologist may be needed to assess potential effects prior to the undertaking.
2. Range improvement maintenance, except at locations not previously subject to Section 106 reviews.
3. Maintenance or replacement of existing fence lines that do not require disturbance beyond replacement of posts or wire and will not result in new concentrations of animals or creation of new two track trails from vehicles.
4. Stock or wildlife waterlines laid on the surface that do not require excavation or other surface disturbance and do not cross known historic properties or previously recorded unevaluated cultural resources.
5. Annual authorization of livestock trailing where types of animals and dates of operation do not change, and the numbers of animals do not exceed the maximum numbers authorized by the grazing permits.

F. Other:

1. Removing modern materials and trash scatters less than 50 years old and not associated with a larger eligible entity. Abandoned motor vehicles are included in this class.
2. Issuing special use or short-term permits not entailing environmental disturbances.
3. Issuing paleontology permits.
4. Survey, data, and information collection (including collection of samples) including land use and land cover, geological, mineralogical and resource evaluation activities, soil testing, cadastral surveys, and geophysical surveys (i.e. placement of surface geophones) and approval of permits for such activities.
5. Minor, routine, or preventive operations and maintenance activities on BLM facilities, lands, and resource developments requiring no new surface disturbance and where facilities being maintained are not historic properties (does not include wildfire rehabilitation).
6. Authorization installation of devices to protect human or animal life.
7. Installation of temporary fencing.
8. Activities which involve no more than one square meter of contiguous disturbance in any given location, unless within the boundaries of a known historic property or an unevaluated cultural resource.

G. Historic Preservation:

1. Maintenance of historic properties where consultation on materials and construction methods has already occurred, or where methods and materials are not changing from currently used techniques.
2. Use of a dry brush, eraser, water, sponge, and or towel to obscure graffiti that is located at least one-meter away from carved images and three-meters away from painted images. Under no circumstances should removal activities using any liquid occur on surfaces where the liquids used may run or drip onto images.
3. Installation of buck and rail, gabion fences, or erosion control materials, such as straw bales, to protect cultural resources.
4. Installation of trailhead register, visitor use tracking mechanisms or interpretive panels.

APPENDIX I: PETROGLYPH, PICTOGRAPH AND HISTORIC INSCRIPTIONS PROTECTION

I. PURPOSE

The purpose of this appendix to the Protocol is to address the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108) (NHPA), Section 106 compliance procedures for conservation activities, including graffiti removal, and protection measures at sites containing petroglyph(s), pictograph(s), and historic inscription(s). Graffiti is an ever-increasing management issue on public lands with new incidents being reported almost daily. Numerous studies indicate that visitors ascribe value to a site based on its condition. Graffiti and vandalism lower public perception of value and often invite further damage. As such, timely removal of vandalism and protection measures are critical for managing these valuable resources.

The following supplemental procedures identify conditions and thresholds for SHPO consultation for commonly used conservation activities and protection measures. These thresholds are designed to streamline and accelerate the Section 106 consultation process and allow for more expeditious removal of graffiti, and ultimately reduce future incidences of graffiti and vandalism.

II. PROCEDURES

Removal and treatment of graffiti, as well as the installation of physical protection measures at sites containing petroglyphs, pictographs, and/or historic inscriptions (collectively referred to hereafter as rock imagery), constitute an undertaking with the potential to effect historic properties. The following conditions and thresholds will be used when executing these supplemental procedures.

Prior to conducting any conservation or protection measures at a site containing rock imagery, the respective field office will review the existing site record. Existing site records should be updated prior to conducting any associated activities at the site. If a site record does not exist for the site, the site will be fully documented in its present state prior to conservation efforts. Site updates and new recordings will be submitted to the SHPO.

Activities Not Requiring SHPO Consultation

The following activities may be conducted by BLM staff and/or qualified volunteers without consulting with the SHPO. Staff and volunteers must meet the training and or supervision requirements described in section III. Below.

A. Dry and Wet Graffiti Removal not impacting individual rock imagery:

BLM staff, professional conservators, or trained volunteers may employ the use of a dry brush, eraser, water, graffiti remover, sponge, and or towel to obscure graffiti that is located at least one-meter away from carved images and three-meters away from painted images. Under no circumstances should removal activities using any liquid occur on surfaces where the liquids used may run or drip onto images.

1. Installation of Protective Enclosures Requiring No Ground Disturbance:

Installation of buck and rail or gabion fences around rock imagery panels as protection from livestock or visitor use.

2. Placement of Visitor Log Books:

Installation of trailhead register, visitor use tracking mechanisms or interpretive panels that disturb less than one square meter.

3. Development and installation of interpretive messaging

Activities Requiring SHPO Consultation

The following activities may be conducted by BLM staff and supervised volunteers but will require normal consultation as per 36 CFR 800.3 – 800.7.

1. Graffiti removal using wet or dry methods of graffiti less than one-meter from a rock carving or painting but no closer than 20 cm, and not located above figures located on a vertical surface.
2. Installation of boardwalks, fencing, or signage requiring ground disturbance at or adjacent to a site containing rock carvings and/or paintings.

The following activities must be conducted by a professional conservator and will require normal consultation as per 36 CFR 800.3 – 800.7.

1. Removal of graffiti that is less than 20 cm above, from, or on top of rock imagery.
2. Removal of graffiti that is not clearly recent, defined as occurring within the past 45 years.
3. Use of advanced techniques above and beyond dry brushing and misting with water including but not limited to the use of solvents, infilling, or visual integration.
4. Any attempts at restoration of individual carved or painted figures that have been damaged.
5. Any action intended to stabilize a rock surface, which contains carvings or paintings.

III. PROFESSIONAL QUALIFICATIONS & TRAINING

BLM Cultural Resource Staff

BLM cultural resources staff must attend a class held by a professional conservator in order to independently remove graffiti between 20 cm and one-meter of a carved or painted image at a cultural site. BLM staff who have attended a class with a professional conservator may train volunteers and other BLM staff. However, those trained by BLM staff may only remove graffiti that is located at least one-meter from carved images and three-meters from painted images.

Volunteers

Volunteers must attend a formal training conducted by either a professional rock art conservator or a BLM archaeologist who has attended a class held by a professional conservator. These individuals may only remove graffiti with a soft dry brush, canned air, or a spray bottle of distilled water and paper towels. Actions are only permitted one-meter from carved images and three-meters from painted images and no actions may occur above images on a vertical panel.

Volunteers must conduct work under the supervision of a trained BLM archaeologist. After a trained volunteer has conducted graffiti removal activities on three separate occasions, the BLM archaeologist may certify the individual to work on small-scale removal projects independently.

Trained BLM archaeologists shall supervise the activities of volunteers conducting the activities in this Appendix until each volunteer can work independently and is aware of the sensitive nature of archaeological resources and the BLM's responsibilities under this appendix and 36 CFR 800 and the Archaeological Resources Protection Act.

Professional Conservators

Professional conservators must have a demonstrated history of successful rock imagery conservation projects, and a master's degree in art conservation from an accredited program. Professional Conservators will be assessed for the technical capabilities and past performance within the region.

IV. REPORTING STANDARDS

For conservation efforts requiring consultation, the field office will submit site documentation that has occurred within the last 10 years, a letter clearly describing the proposed conservation procedures, appropriate avoidance or minimization measures, and a finding of effect consistent with 36 CFR 800. If the undertaking includes professional conservator efforts, then the conservator will produce a report and the report will be submitted to the SHPO for their records. The conservator's report will document the site before and after the treatment is completed.

V. TRIBAL AND INTERESTED PARTY CONSULTATION

Field Offices will be responsible for contacting and consulting with Tribes and interested parties as outlined in the Protocol, 36 CFR § 800.2 and the BLM 1780 Manual guidelines and for meeting BLM government-to-government responsibilities for consultation pursuant to regulations, executive orders, and policies. This consultation can be coordinated with NEPA scoping and public outreach, but tribal concerns should be formally addressed through government-to-government consultation.

VI. AMENDING

In keeping with the intended responsive nature of this Protocol Amendment, the BLM or the SHPO may propose further amendment of provisions herein at any time, whereupon the parties shall consult with Indian tribes and other interested parties to consider such amendment. The amendment process will culminate in the issuance of new provisions under the amendment, which will only become effective upon signature of both parties.

VII. TERMINATION

The BLM or SHPO may terminate this Protocol Amendment. The party proposing termination shall notify the other party in writing of its intent to terminate and explain the reasons for proposing termination. Within seven-calendar days following the receipt of such notification, the parties shall have up to 90-calendar days to consult to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Should such consultation fail to result in agreement on an alternative, the party proposing termination may terminate this Protocol Amendment by providing the other party with written notice of such termination. Termination hereunder shall render the terminated Protocol Amendment without further force or effect. In the event that this amendment is terminated, the BLM shall comply with the Protocol.

APPENDIX J: WITHHOLDING FROM DISCLOSURE AND PROTECTING INFORMATION ABOUT HISTORIC PROPERTIES AND ARCHAEOLOGICAL RESOURCES

I. PURPOSE

The purpose of this appendix to the Protocol is to address the National Historic Preservation Act of 1966, as amended (NHPA) Section 304 and the Archaeological Resources Protection Act of 1979 (ARPA) Section 9 procedures for withholding from disclosure information about historic properties and archaeological resources.

The following supplemental procedures outline the specific measures all BLM Utah offices must take to ensure the protection of sensitive cultural resources data and limit the disclosure of such information to Indian tribes, permitted archaeologists, consulting parties, and the public.

II. LEGAL BACKGROUND

NHPA and ARPA authorize the restriction of information about both a resource's location and its character or nature. "Location" refers to any information that specifically places a resource in its geographic setting, including UTM coordinates and descriptions of the resource's position in relation to local landmarks or natural features. "Character" and "nature" refer to the physical features, setting, and contents of a resource, such as archaeological artifacts, that could attract theft and vandalism. Protected information is not only textual but can include maps, photographs, electronic media, and other images.

NHPA Section 304

Section 304 of the NHPA provides the authority to withhold information concerning historic properties (i.e. location, character, or ownership), addresses who shall have access to that information when it is withheld, and requires the Keeper to consult with the ACHP if material proposed for withholding was generated as part of a Section 106 action or if it involves an adverse effect to a National Historic Landmark. Information may be withheld with the release could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. The application of Section 304 is not limited by location or land ownership.

Given that withholding information under Section 304 requires formal consultation with the Keeper which has no set timeframe, the BLM often does not withhold information under this provision.

ARPA Section 9

Section 9 of ARPA requires a federal land manager to withhold information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under ARPA or under any other provision of federal law. A land manager has the authority to release such information if such disclosure would further the purpose of ARPA and not create a risk of harm to the resource or site. A Governor of any state may make a written request to receive certain otherwise protected information about resources in his or her state as long as he or she commits to adequately protect the confidentiality of such information to protect the resource from commercial exploitation.

ARPA's confidentially provision protects information about the nature and location of archaeological resources over 100 years old and of archaeological interest on public lands and Indian lands. An archaeological resource for which sensitive information is withheld under ARPA does not have to be eligible for or listed in the National Register.

Interplay of Section 304 and Section 9

Sensitive information protected under NHPA Section 304 and ARPA Section 9 concerning the location and nature of cultural resources must be handled so that the protected information is not inadvertently included in public release documents such as management plans, environmental documents, protest responses, or materials disseminated to consulting parties without the protections of a data sharing agreement. Potentially sensitive materials may include site forms, reports, information submitted by consulting parties, records of meetings when confidential information about cultural resources was discussed, and project plans with specific site locations.

In making decisions as to whom sensitive information may be provided, an official may consider the wider context of who is requesting the information on a historic property and why. For example, an Indian tribe may be an acceptable requestor if knowledge of a historic property's location, character, or ownership could help the party in working with the agency to make better-informed decisions.

Alternative Data Protection Measures

An official can also protect sensitive information in the Section 106 process apart from Section 304 or Section 9. Methods include asking consulting parties to voluntarily restrict access or disclosure of sensitive information and implementation of data sharing agreements with enforceable non-disclosure provisions.

All determinations, findings, and agreements under Section 106 must be supported in sufficient detail to allow any reviewing party to understand its basis. As such, a federal official may seek voluntary agreement among its consulting parties to treat certain information as confidential and such information will be provided only on a "need to know" basis.

III. PROCEDURES

Sensitive Information to be Legally Withheld

Information, which may be legally withheld from public disclosure under Section 304 of the NHPA and/or Section 9 of ARPA, includes but is not limited to:

1. Location and ownership: Land status, legal description, UTM locations, location specific portions of an environmental context, cultural affiliation, artifact and feature counts, access directions, photographs, site sketches and maps with sites identified.
2. Nature: Site name, site description, site dimensions, site class, site type, site characteristics, condition, portions of the eligibility justification, photographs, site sketches and maps with sites identified

Specific archaeological site locations and detailed descriptions should not be included in documentation made available to the general public. Map details or text with explicit site locations should be withheld from the public to protect and prevent looting or desecration of cultural

resources. However, access may be granted to specific parties and individuals on a case-by-case basis as long as the disclosure of this information furthers the purposes of Section 304 and Section 9.

If information is already in the public realm but with very limited accessibility, it does not mean that it can no longer be protected from further disclosure.

Information that does not need to be Withheld

Information that is not legally protected from disclosure or poses no threat to the site or archaeological resource includes: report title, project number, dates of survey, development company, administrative unit, responsible institution, description of an undertaking, location and date of literature review, field methods Smithsonian Trinomial, temporary site number, date recorded, type of recording, and report number.

Protecting Sensitive Information through the Cultural Resource Use Permit

In order to ensure that cultural resource consultants and researchers do not publically disseminate sensitive site information, BLM Utah includes data protection clauses as part of the terms and conditions attached to all cultural resource use permits. Each cultural resource use permit states that the permittee agrees that information concerning the nature and location of cultural resources will not be released to the general public unless written approval for the disclosure is obtained from the appropriate agency official. Permit stipulations also note that the permittee is not to share culturally sensitive information with a project proponent, without permission from the agency official.

Protecting Sensitive Information during the NEPA Process

Cultural Resources sections of NEPA Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements should provide sufficient information to demonstrate the potential impacts of a proposed undertaking. However, as NEPA documents are made available to the public via the ePlanning website (and other BLM websites that share NEPA information), site specific information including site location, either in textual or visual format, and descriptions of specific sites and their associated features and artifacts should be generalized, included in an appendix or separate document that can be redacted prior to public dissemination or not be included in the document. Potentially sensitive information related to a NEPA project may include Section 106 submissions, cultural resource survey information, site forms and reports, information submitted by consulting parties, records of meetings when confidential information about cultural resources was discussed, and project plans with specific site locations.

Sites where the BLM encourages public use and information readily available to the public can be included in these public facing documents if there is no increased risk to the resource in doing so.

Protecting Sensitive Information in NEPA Comments

Comments received from the public during the public comment periods on NEPA documents often contain information about cultural resources, some of which is sensitive. As these comments are also posted on ePlanning, particular care must be taken to ensure any culturally sensitive information is redacted prior to posting. Equal care should be taken when responding to substantive comments to ensure sensitive cultural data is not included in public facing documents. The following process should be followed to ensure culturally sensitive data is not made available to the public through ePlanning (and other BLM websites that share NEPA information):

1. All cultural resource comments for a NEPA document shall be forwarded to the appropriate Field Office or State Office archaeologist by the NEPA coordinator upon receipt.
2. The appropriate archaeologist shall review all comments for sensitive cultural resource information. Sensitive cultural resources information should be flagged for redaction. This includes information on the nature and location of the resource. Common site names and site descriptions may be redacted if their release is perceived to put those resources at risk of harm. The archaeologist will notify the NEPA coordinator for the project of the sensitive data and provide a redacted copy of the original comments to the NEPA coordinator.
3. The NEPA coordinator shall post the redacted comments on ePlanning rather than the original unredacted comments. The NEPA coordinator shall notify the archaeologist when comment are posted.
4. The appropriate archaeologist shall then immediately review the ePlanning website to ensure that the correctly redacted documents have been posted. Any discrepancies will be immediately communicated to the NEPA coordinator.
5. The appropriate archaeologist should draft responses to all cultural resource related comments received though the NEPA planning process and forward those responses to the NEPA coordinator. Again, any culturally sensitive information must be either omitted or redacted from the responses if they are to be posted on ePlanning.

Protecting Sensitive Information in NEPA Decision Protests and Appeals

Protests to NEPA decisions are field in writing or submitted via ePlanning to the BLM State director. The State Director issues decisions on protests and appeals in writing, setting forth the reasons for the decision. Appellants must have standing by either being directly impacted by the decision or have participated in the public NEPA process.

As a result, protests and appeals received by BLM Utah often include the same or similar information to that received during the NEPA and NHPA 106 comment periods. Therefore, protests and appeals must be thoroughly reviewed by an appropriate field or state office archaeologist prior to public posting and the issuance of responses.

The process for ensuring sensitive cultural resources data is protected during the NEPA protest and appeal period should follow similar steps to those identified for responding to NEPA comments.

1. The NEPA project manager will immediately forward copies of all NEPA protests related to cultural resources to the appropriate field or state office archaeologist for review. No protests or associated documents shall be posted to ePlanning prior to review by a qualified archaeologist.
2. The appropriate archaeologist for the undertaking will review all protest documents and flag and redact any sensitive cultural resources information, including materials such as draft cultural resource reports provided to consulting parties, site location information, site descriptions and or photographs, and maps displaying locations of cultural sites. Culturally sensitive data shared by tribes may also be redacted.

3. Only after the archaeologist has reviewed and redacted the protest documents, may those documents be posted on ePlanning. The archaeologist will work with the NEPA coordinator to ensure the correct documents are posted.

4. The appropriate BLM archaeologist will draft responses to cultural resources elements of a protest or appeal in coordination with the NEPA coordinator. If responses are to be shared publically, all documents must be reviewed and redacted by the appropriate archaeologist.

Protecting Sensitive Information during the Section 106 Consultation Process

Indian tribes and consulting parties for undertakings may provide information to the BLM about cultural resources in an APE as well as their concerns regarding the potential effects an undertaking may have on historic properties. As such, Indian tribes and consulting parties may share sensitive cultural resource information with the BLM with the expectation that the data will not be shared with the public.

When this information is received, the BLM will work with Indian tribes and consulting parties to ensure that this information is provided in a way that allows for its protection. Tribes and consulting parties may take measures to protect sensitive data by explicitly marking submitted information as sensitive and submitting the information in a sealed folder or envelope that is directly addressed to BLM staff, such as a Field Office Archaeologist, who routinely handle sensitive information. BLM will also work with the Indian tribe or consulting party to determine if this information may be shared with other Indian tribes or consulting parties.

36 CFR 800.11(e) requires that all determinations, findings, and agreements under Section 106 must be supported in sufficient detail to allow any reviewing party to understand its basis, which may at times require access to sensitive cultural information. During the Section 106 process, the BLM may elect to share sensitive cultural resources information. When the BLM shares such information with an Indian tribe or consulting party, the BLM shall ask the Indian tribe or consulting party to voluntarily restrict access to the materials provided and not to disclose sensitive information. The BLM may also request the Indian tribe or consulting party to enter into a data sharing agreement with enforceable non-disclosure provisions.

Appropriate Level of Information to Share during the Section 106 Process

All determinations, findings, or agreements made under Section 106 must be supported by sufficient documentation to enable any reviewing parties to understand its basis. In accordance with 36 CFR 800.4(d)(1), 800.5(c), and 800.5(c)(2)(i) the agency official shall notify all consulting parties of a finding of “no historic properties affected,” “no adverse effect,” or when a consulting party notifies the agency in writing that it disagrees with the finding of effect. In all of these cases documentation must be provided to consulting parties regarding the finding. 36 CFR 800.11(d) and (e) outline the documentation that must be provide to reviewing parties with 800.11(c) referencing the ability to withhold information under Section 304.

In order to expediently share the information required by 36 CFR 800.11 BLM Utah frequently uses the associated ePlanning website for the NEPA action. As the ePlanning website is accessible by the public, additional care must be taken when documentation is posted.

The appropriate archaeologist should review documentation associated with both the Section 106 and NEPA processes to determine if existing documentation captures the information required for

dissemination. Often the NEPA document and Section 106 reports contain most of the required information apart from consulting party comments. The archaeologist may elect to post the Section 106 report, consulting party letters and responses to ePlanning. If these documents are used in this manner, sensitive information about the location and nature of historic properties should be redacted prior to posting.

An alternate approach to fulfilling is to prepare a summary document separate from the NEPA and 106 report. In preparing this type of document, the BLM must take care to not include any sensitive information. Consulting party comments and responses could be included in this document or as a separate attachment, provided any sensitive information is omitted or redacted.

Protecting Sensitive Information in Publications and Presentations

Cultural Resource Use Permit holders are prohibited from disclosing information concerning the nature and location of archaeological resources on BLM lands in traditional public, professional, and educational forums and publications, as well as on social media, blogs and other publically available online platforms. Authors and presenters who wish to disclose information of this type must submit a written request to the appropriate District or Field Office Manager for approval.

BLM-Utah is also afforded the opportunity to review drafts of publications and presentations prior to publication or presentation in order to ensure confidentiality of cultural resource information. Any potentially sensitive information included in a draft submission to the BLM should be noted by the appropriate archaeologist and communicated with the consultant. District and Field Office managers should communicate with their archaeologists when a request to release cultural information is received and weigh the risks of releasing such information prior to making a decision.

FOIA Requests

Information in a project file could be subject to public records laws, such as the Freedom of Information Act (FOIA) (5 USC 552), and may also serve as part of the legal administrative record demonstrating compliance with state and federal laws. Material included within an administrative record or associated with a FOIA request may be sensitive and protected depending on its contents. When filling consultation documents in the project file or administrative record, if confidential information is included in the text of any document, remove or redact that information from the document.

BLM-Utah Archaeologists should work closely with their appropriate FOIA officers and solicitors to ensure that the appropriate information is redacted before records are sent in response to a FOIA request.

APPENDIX K: SUPPLEMENTAL PROCEDURES ASSESSING VISUAL EFFECTS TO HISTORIC PROPERTIES

I. PURPOSE

The purpose of this appendix to the Protocol is to provide guidance on how a visual intrusion from an undertaking may impact the aspects of integrity of a historic property. The following procedures provide a uniform, standard process for this type of effects analysis. The procedures herein represent “a reasonable and good faith effort,” as defined under 36 CFR § 800.4(b)(1). These procedures will be applied at the agency official’s discretion for undertakings which may need an analysis for visual effects to historic properties.

Integrity

Historic properties are assessed for all seven aspects of integrity when evaluating their eligibility for listing in the National Register of Historic Places (NRHP). The integrity of a historic property relates directly to the qualities of the property’s location, design, setting, materials, workmanship, feeling, and association. A property may be eligible for inclusion in the NRHP if it meets one or more of the four eligibility criteria. The property must retain the essential physical features that enable it to convey its significance. These features are those that define why a property is significant and the period(s) during which it acquired or achieved significance.

Not all aspects of integrity are important for all types of historic properties. For most sites eligible only under Criterion D, the property does not need to recall visually an event, person, process, or design. It is only important that the significant data in the property remain sufficiently intact to yield the expected information if the appropriate study techniques are employed (*National Register Bulletin 15*). For example, integrity of setting is not relevant to the significance of most properties eligible only under Criterion D. However, properties eligible under Criterion D may also be eligible under other criteria where setting is a contributing element, and if so, it will be necessary to determine visual effects on such historic properties.

II. PROCEDURES

Assessing Visual Effects

The purpose of a visual effects assessment is to determine what physical features of a proposed undertaking will be visible from a historic property and if that visual effect will alter the characteristics that comprise the historic property, resulting in an adverse effect. The visibility of physical features of an undertaking will vary. As such, the scale of visual analysis should be commensurate with the scale of the undertaking. Most undertakings will not need to be analyzed further than ¼ of a mile, however the agency official may extend the analysis with the scale of the undertaking. In most cases, undertakings will not be seen beyond five miles. Some undertakings may be seen beyond five miles if they are unusually large or are skylined on the horizon, such as wind turbines, large transmission lines, and communication towers.

At the agency official’s discretion, the following steps will be taken to complete an assessment of the potential for visual effects on historic properties:

1. Consider if the undertaking can be hidden or obscured by natural or human-made environmental factors. If so, a visual effects analysis is not necessary.
2. If the undertaking cannot be hidden or obstructed, remove all historic properties that are eligible only under Criterion D from further analysis. Further, remove all historic properties from further analysis where design, setting, feeling and/or association are not essential characteristics of the site's eligibility.
3. Complete a desktop review or GIS viewshed analysis of visibility of the undertaking based upon the undertaking's final physical manifestation.
4. Remove all areas within the undertaking's APE that have been compromised by intrusions that are similar in size, color, and reflectiveness.
5. Complete the desktop review or GIS viewshed analysis based on the undertaking's potential to obstruct the view from the historic property.
6. Once the desktop review or GIS viewshed analysis is complete, complete a finding of effect for the undertaking in Stipulation II of this Appendix.

Instances Where a Visual Effects Assessment is Not Necessary

A visual effects assessment is not necessary under the following circumstances:

1. Historic properties that are eligible only under Criterion D
2. Historic properties that do not possess the integrity aspects of design, setting, feeling, or association
3. Segments of linear historic properties between two definable points that no longer retain any physical trace or manifestation (no longer extant)
4. Non-contributing segments (with SHPO concurrence) of linear historic properties
5. Linear historic properties of contributing segments of historic properties previously determined to lack integrity of setting
6. Irrigation canals when the loss of integrity to setting is no adverse effect, (i.e. only a small segment of the canal will be impacted and the setting of the area has already been compromised, or where the impact to the setting would not rise to the level of being adverse)
7. If the proposed undertaking is consistent with land use during the period of significance of the historic property
8. For temporary construction elements (i.e. those elements which will be in place for less than one year)

Assessing Potential Impacts to Design, Setting, Feeling, and Association

If the analysis associated with the initial assessment finds that a historic property is to be obscured by the proposed undertaking, an additional assessment of the impacts of the undertaking on the aspects of design, setting, feeling, and association shall be conducted to determine if such impacts degrade the aspects to the point of becoming adverse. These aspects must be essential characteristics to the eligibility of a historic property to convey its historic identity, in order for an impact to either to potentially be adverse to the site as a whole. These aspects must be essential to defining why the property is significant, and when the property is significant. They must be features that without which a property can no longer be identified to a specific period or style.

Setting

Setting is the physical environment of a historic property and refers to the character of the place in which the property played its historic role. It involves how the property is situated, and its relationship to surrounding features and open space. Setting reflects the basic physical conditions under which a property was built and the functions it was intended to serve. The way that a property is situated in its environment can reflect the designer's concept of nature and aesthetic preferences. Physical features that constitute setting include topographic features, vegetation, simple manmade features such as paths and fences, and the relationships between buildings and other features or open space.

Feeling

Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. Feeling results from the presence of physical features that, taken together, convey the property's historic character. An example given in National Register Bulletin 15 is a group of petroglyphs, unmarred by graffiti and intrusions and located on an isolated bluff, which can evoke a sense of tribal spiritual life.

Design

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials.

Association

Association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. An example given in National Register Bulletin 15 is a Revolutionary War battlefield whose natural and manmade elements have remained intact since the 18th century will retain its quality of association with the battle. Because feeling and association depend on individual perceptions, their retention alone is never sufficient to support eligibility of a property for the National Register.

Standard Measures and Best Management Practices (BMPs) to Reduce the Potential for Visual Effects

At the discretion of the agency official, BLM will utilize standard measures and BMPs to reduce the potential for visual effects of the proposed undertaking prior to making a determination of effect under Section 106. These efforts should be made to design the undertaking to reduce the contrast rating prior to assessing affect.

1. Standard treatment measures should be used as conditions of approval in permits, and authorizations.
2. Standard treatment measures and BMPs for reducing the visual contrast include, but are not limited to:
 - c. Reducing the amount of surface development by consolidating facilities.
 - d. Using low profile facilities.
 - e. Designing projects to blend with topographic forms and existing vegetation patterns by using location to maximize topography and vegetation to screen development.
 - f. Using environmental coloration or camouflage techniques to break up visual intrusion of facilities that cannot be completely hidden.
 - g. Blending and feathering, which may include feathering or blending the vegetation at the edges of linear rights-of-way.
 - j. Modifying the orientation of an undertaking to lessen a visual impact (e.g., lining up facilities so that one obscures the visibility of the others).

II. DETERMINING EFFECT

After completing the visual effects assessment, if the proposed project elements will not be seen from a historic property, then the agency determination should be **“No Historic Properties Affected” for the undertaking**

If the proposed project elements, or portions of the elements, can be seen but will not dominate the viewshed, then the agency determination may be either be **“No Historic Properties Affected”** or **“No Adverse Effect” for the undertaking**, depending on the location and visibility of the undertaking from the historic property.

If the proposed project elements tend to obstruct a significant portion of the viewshed from the historic property, in a manner that would diminish the integrity (design, setting, feeling and/or association) of the historic property, then the agency official may find that the undertaking will result in a finding of **“Adverse Effect”**.