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**PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT,
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
REGARDING THE MANNER IN WHICH BLM
WILL MEET ITS RESPONSIBILITIES UNDER
THE NATIONAL HISTORIC PRESERVATION ACT**

STATE PROTOCOL

Between

The Bureau of Land Management Wyoming State Director
and

The Wyoming State Historic Preservation Officer

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Preamble

This Protocol supplements the *Programmatic Agreement among the Bureau of Land Management, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* [hereinafter the national Programmatic Agreement (nPA)]. It describes the manner in which the Wyoming State Historic Preservation Officer (SHPO) and the Bureau of Land Management (BLM) Wyoming will interact and cooperate under the nPA. As a condition of the nPA, the BLM, the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs (NCSHPO) mutually agreed that the BLM will meet its responsibilities under Sections 106, 110 (f) and 111 (a) of the National Historic Preservation Act (NHPA) through the implementation of the mechanisms agreed to in the nPA rather than by following the procedure set forth in the ACHP's regulations (36 CFR Part 800). The goal of the nPA and this State Protocol (Protocol) is to forge a more meaningful and productive historic preservation partnership between the BLM and SHPO that will enhance the management of historic properties under the BLM's jurisdiction.

The Bureau of Land Management. The BLM, consistent with its authorities and responsibilities under the Federal Land Policy and Management Act of 1976 (FLPMA)(P.L. 94-579, as amended), is charged, among other things, with managing public lands in Wyoming in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values,” and “that will provide for outdoor recreation and human occupancy and use.”

The BLM also has specific responsibilities and authorities to consider, plan for, protect, and enhance historic properties and other resources that may be affected by its actions, in compliance with the National Environmental Policy Act (NEPA)(P.L. 91-190, as amended), the National Historic Preservation Act of 1966 (NHPA)(P.L. 89-665, 16 U.S.C. 470, et seq.) and implementing regulations of Section 106 of the NHPA at 36 CFR Part 800, the Archaeological Resources Protection Act (ARPA)(P.L. 96-95, as amended), the Native American Graves Protection and Repatriation Act (NAGPRA)(P.L. 101-601) and implementing regulations at 43 CFR Part 10, the Historic Sites Act of 1935 (P.L. 74-292, as amended), the Antiquities Act of 1906 (P.L. 59-209, as amended), the American Indian Religious Freedom Act (AIRFA)(P.L. 95-341, as amended), Executive Order (EO) 13007 (“Indian Sacred Sites”), EO 13287 (“Preserve America”), EO 13175 (“Consultation and Coordination with Indian Tribal Governments”), and related authorities.

In carrying out its responsibilities specific to the NHPA, the BLM has:

1. developed policies and procedures through its directives system (BLM Manual Sections 8100-8170);
2. executed an nPA in 1997 and revised it in 2012 to help guide the BLM's planning and decision making as defined in the NHPA; and
3. assembled a cadre of cultural heritage specialists to advise the BLM's managers and to implement cultural heritage policies consistent with the BLM's statutory authorities.

In addition, under Section 110(a)(2)(D) and Section 110(a)(2)(E) of the NHPA, Federal agencies are required to consult with the SHPO to identify and evaluate historic properties for listing in the National Register of Historic Places (NRHP), and on the development and implementation of Memoranda of Agreement (MOA) and Programmatic Agreements (PA) regarding the means by which adverse effects on such properties will be considered.

State Historic Preservation Officers. The State Historic Preservation Officer (SHPO) has responsibilities under Section 101(b) of the NHPA that include:

1. “advise and assist, as appropriate, Federal and State agencies and local Governments in carrying out their historic preservation responsibilities;” and
2. “identify and nominate eligible properties to the National Register and otherwise administer applications for listing the historic places on the National Register;” and
3. “in cooperation with Federal and State agencies, local Governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;” and
4. “consult with the appropriate Federal agencies in accordance with [the NHPA] on Federal undertakings that may affect historic properties, and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties.”

Advisory Council on Historic Preservation. Pursuant to the NHPA (16 USC 470) and the regulations implementing Section 106 of the NHPA (36 CFR Part 800), the ACHP has the responsibility to:

1. administer the process implementing Sections 106, 110(f), and 111(a) of the NHPA; and
2. to comment with regard to Federal undertakings subject to review under Sections 106, 110(f), and 111(a) of the NHPA in accordance with its implementing regulations (36 CFR Part 800); and
3. “review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out” under Section 202(a)(6) of the NHPA; and
4. act at times in lieu of the SHPO ((36 CFR 800.3(c)(4)).

Indian Tribes. This Protocol is entered into pursuant to the NHPA (16 USC 470), which specifically requires that Federal agencies consult with federally recognized tribes as defined in that Act so that these Indian tribes may:

1. identify their concerns about historic properties, including those of traditional religious and cultural significance to them; and
2. advise agencies on the identification and evaluation of historic properties; and
3. articulate their views on the potential effects of an undertaking; and
4. participate in resolving adverse effects.

The BLM consults with Indian tribes on a Government-to-Government basis consistent with the Department of the Interior’s tribal consultation policy.

While the BLM may initiate consultation under multiple authorities at one time, this Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other treaty, trust, and consultation responsibilities to Indian tribes under multiple other authorities.

Consulting Parties. In addition to SHPO, ACHP and Indian tribes, consulting parties under NHPA may include representatives of local Governments, applicants, landowners, and certain organizations or individuals with a demonstrated interest in the undertaking 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 (36 CFR 800.2(c)(3-5)). In consultation with the SHPO, the BLM will identify consulting parties and invite them to participate in Section 106 consultation and shall consider all written requests of individuals and organizations to participate as consulting parties (36 CFR 800.3(f)). This Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other responsibilities to consulting parties under other authorities.

The Public. The views of the public are essential to inform Federal decision-making, and the BLM shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The BLM must also provide the public with information about an undertaking and seek public comment and input, except where appropriate to protect confidentiality concerns of affected parties (36 CFR 800.2(d)(2)). Pursuant to 36 CFR 800.2(d)(3), the BLM may use its procedures to involve the public as described in this document or through its established NEPA procedures. This Protocol governs compliance with the NHPA, specifically the relationship of the BLM and SHPO, and in no way replaces the BLM's other responsibilities to the public under other authorities.

Through the nPA, the BLM, NCSHPO, and the ACHP—in consultation with Indian tribes, consulting parties and the public—ensure that the BLM will organize its programs to operate efficiently and effectively, according to the spirit and intent of Section 106 of the NHPA, and in a manner consistent with 36 CFR Part 800. The BLM will integrate its historic preservation planning and management decisions with other policy and program requirements to the maximum extent. The BLM and the SHPO intend to streamline and simplify procedural requirements, and emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction and control in the public interest.

Basis for Protocol

Proceeding from these responsibilities, goals, and objectives, the BLM and SHPO acknowledge the following basis for agreement:

WHEREAS, the BLM's management of public lands and resources may affect historic properties as defined by the NHPA; and

WHEREAS, among other things, the BLM's historic preservation program, established in response to Section 110(a)(2) of the NHPA and related authorities, provides a systematic basis for:

(1) identifying, evaluating, and nominating historic properties under the BLM's jurisdiction or control to the NRHP; (2) managing and maintaining properties listed in or eligible for the NRHP in a way that considers the preservation of their archaeological, historical, architectural, and cultural values and the avoidance of adverse effects in consultation with Indian tribes, local Governments, applicants, consulting parties, and the interested public; and (3) giving special consideration to the preservation of such values in the case of properties designated as having national significance; and

WHEREAS the BLM's program is also intended to ensure that its preservation-related activities will be carried out in consultation with Indian tribes, SHPO, other Federal agencies, local Governments, consulting parties, and the public; and

WHEREAS the BLM's program also is intended to: (1) ensure that the BLM's procedures for compliance with Section 106 of the NHPA are consistent with current regulations issued by the ACHP pursuant to Section 211 of the NHPA (36 CFR Part 800, "Protection of Historic Properties"); (2) provide a process for the identification and evaluation of historic properties for listing in the NRHP and the development and implementation of agreements, in consultation with SHPOs, Indian tribes, local Governments, consulting parties, and the public, as appropriate, regarding the means by which adverse effects on such properties will be considered and resolved; and

WHEREAS the SHPO has an interest in continuing its cooperative relationship with the BLM to facilitate a more effective and efficient Section 106 consultation process, and promote activities of mutual benefit; and

WHEREAS the BLM acknowledges that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them in accordance with 36 CFR 800.4(c)(1); and

WHEREAS the BLM's programs benefit from consultation with Indian tribes in the identification and management of properties of religious and cultural significance and the BLM will ensure that its NHPA Section 106 procedures recognize the interests of Indian tribes in historic properties potentially affected by agency decisions and will afford tribes participation in the process leading up to a BLM decision, in accordance with 36 CFR Part 800; and

WHEREAS this Protocol does not apply to proposed BLM undertakings located on or affecting historic properties on tribal lands, with respect to which the BLM will comply with the regular Section 106 process under 36 CFR 800.3 through 800.7, the process under 36 CFR 800.8(c), or an applicable program alternative under 36 CFR 800.14; and

WHEREAS the parties intend that efficiencies in the NHPA Section 106 process, realized through this Protocol, should enable the staffs to devote a larger percentage of their time and energies to focus on: (1) complex and priority undertakings; (2) analysis and synthesis of data accumulated through decades of Section 106 compliance; (3) historic property identification where information is needed; (4) long-term preservation planning; (5) NRHP nominations; (6) planning and historic property management; (7) creative public education and interpretation; (8) more effective tribal and public engagement; and (9) other activities that will contribute to readily recognizable tribal and public benefits; and

WHEREAS, historic properties and cultural resources on public lands administered by the BLM are managed according to the FLPMA, NHPA, ARPA, NEPA, AIRFA, and NAGPRA, applicable regulations (e.g., 36 CFR Parts 60, 63, and 800; and 43 CFR Parts 7 and 10), applicable Executive Orders (e.g., 13007, 13175, and 13287), and the BLM 8100 Manuals, and these have been considered during consultation for this Protocol; and

WHEREAS, the BLM continues to consult with Indian tribes, consulting parties and the public regarding ways to ensure that the BLM's planning and management will be more fully integrated and consistent with the above authorities, requirements, and objectives; and

WHEREAS, due to their previous and ongoing demonstrated interest in historic preservation in Wyoming, the BLM and SHPO have solicited comment and input on this Protocol from the Alliance for Historic Wyoming (AHW), the Oregon-California Trails Association (OCTA), Tracks Across Wyoming (TRACKS), the Wyoming State Historical Society (WSHS), Certified Local Governments (CLGs), Wyoming Association of Professional Archaeologists (WAPA), Wyoming Archaeological Society (WAS), the Northern Arapaho Tribe, the Eastern Shoshone Tribe, the Ute Tribe of the Uintah and Ouray Reservation, the Northern Cheyenne Tribe, the Standing Rock Sioux Tribe, the Oglala Sioux Tribe, the Lower Brule Sioux Tribe, the Yankton Sioux Tribe, the Shoshone-Bannock Tribe, the Nez Perce Tribe, the Ft. Peck Assiniboine/Sioux, the Blackfeet Tribe, the Crow Tribe, the Santee Sioux Tribe, the Three Affiliated Tribes, the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Rosebud Sioux Tribe, the Sisseton-Wahpeton Oyate Tribes, National Trust for Historic Preservation (NTHP), American Rock Art Research Association (ARARA), and the Utah Rock Art Research Association (URARA); and

WHEREAS, throughout this process, the BLM and SHPO have held public meetings and have had public comment periods regarding this Protocol and received comments from various interest groups and industries.

NOW, THEREFORE, the BLM and the SHPO mutually agree that the BLM, consistent with the provisions of this Protocol, will meet its responsibilities under the NHPA as provided for in 36 CFR 800.14(b) rather than by following the procedure set forth in 36 CFR 800.3 through 800.7. Certification of Field Offices allows them to use this Protocol rather than 36 CFR 800.3 through 800.7. The BLM will integrate the manner in which it meets its historic preservation responsibilities as fully as possible with its other responsibilities for land-use planning and resource management.

The BLM shall ensure that the following stipulations are carried out:

Stipulations

I. APPLICABILITY

A. Relationship to Other Agreements

This Protocol supersedes the 2006 Protocol. No existing informal or formal agreements between the BLM and an Indian tribe or tribes will be altered by this agreement. Other PAs and MOAs may

be developed when specific agreement documents are needed to define procedures that are not covered under the nPA or this Protocol. Any agreement document still in effect and negotiated under the previous Protocol are listed in *Appendix A*. New agreement documents negotiated under this Protocol will be added to *Appendix A* when signed, and will be clearly differentiated from documents executed under the previous Protocol.

B. When to Use the 36 CFR Part 800 Regulations

The Regulations at 36 CFR 800.3 through 800.7, 36 CFR 800.8(c) and 800.14 will be followed in lieu of this Protocol in the following situations:

- i. Whenever the ACHP formally participates in the resolution of adverse effects for an undertaking the BLM will follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve those adverse effects;
- ii. For all multi-state projects;
- iii. Undertakings involving lands on the Wind River Indian Reservation;
- iv. When there are adverse effects to National Historic Landmarks (NHLs);
- v. If a field or district office is decertified;
- vi. The development and approval of program alternatives, including project-specific PAs, will follow 36 CFR 800.14;
- vii. If the BLM or the SHPO terminates this Protocol;
- viii. If the nPA is terminated or suspended for any reason;
- ix. If SHPO disagrees with BLM's effect determinations (see section V.D.vii) the BLM will follow the process at 36 CFR 800.4(d)(1)(ii) through (iii); or 36 CFR 800.5(c)(2)(i) through (iii);
- x. In the case of complex or controversial projects, such as major infrastructure projects, the BLM and SHPO will consult to determine if the regulations would be the appropriate mechanism for compliance.

II. ADMINISTRATIVE INTERACTION/ANNUAL MEETINGS

Two meetings will be held annually by the end of the second quarter of the calendar year to discuss issues related to this Protocol. One meeting will include the BLM Field, District, and State Office cultural resource staff and the SHPO and applicable SHPO staff. The SHPO and Deputy Preservation Officer (DPO) will meet to determine the appropriate BLM management participants. The BLM and SHPO will jointly develop an agenda. A primary purpose of this meeting will be to discuss and review Section 110 activities and Section 106 compliance processes, and will include identifying

issues to forward to management for resolution. Mutually identified training sessions may occur during these annual meetings.

The second meeting will be an executive management meeting consisting of a briefing by the DPO and SHPO to the BLM Leadership Team, and will specifically discuss procedures, policies, amendments to the Protocol, or other matters as requested.

Any Indian tribe or other consulting party is welcome to raise a concern by letter or email regarding any Section 106 or 110 activities involving the BLM to either the BLM State Director or to the SHPO by January 1. These items will be included in the agenda for the Executive Management Meeting, and the SHPO or BLM will reply via letter within 60 days after the Executive Management Meeting has occurred with a summary of the discussion.

III. The BLM CONSULTATION RESPONSIBILITIES WITH SHPO UNDER THIS PROTOCOL

A. BLM Project Planning

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

Each Field Office is responsible for preparing land use planning and NEPA documents; including Environmental Impact Statements (EISs), Resource Management Plans (RMPs), RMP amendments, RMP revisions, high level/controversial Environmental Assessments (EAs), and cultural resource project plans at the regional or local level. Field Offices will, when beginning a planning effort, invite the SHPO to participate in scoping for the purpose of identifying issues that should be addressed in the plan, and, as appropriate, will invite SHPO to participate as a cooperating agency. The BLM will formally invite the SHPO to comment on any cultural resource use allocations for the BLM surface, whether they are made in regional, local, or project-specific plans. Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO in electronic format or will provide paper copies upon request.

In preparing planning documents, the BLM will utilize all relevant information tools including, but not limited to such things as, Federal cultural resource records, the SHPO web site, the BLM General Land Office (GLO) documents, municipal and county records, and other electronic databases and data sources as appropriate. The SHPO will provide comments as appropriate and within the timeframe specified for review of the planning documents.

B. General Consultation

- i. Project Notification: Field managers shall provide written notification to the SHPO about upcoming projects likely to adversely affect known historic properties. This notification should include those undertakings likely to affect historic properties [e.g. NHLs, National Historic Trails (NHTs) and traditional cultural properties (TCPs)] and known cultural resources that have not been fully documented or evaluated for inclusion in the NRHP (e.g.

from previous seismic surveys) The preferred method of notification is by email and should occur as early as possible in the planning process. Field managers should use their best judgment in determining what projects should be brought to the SHPO's attention early in the process. The agency official should plan notifications appropriate to the scale of the undertaking and the scope of Federal involvement.

- ii. Other Meetings and Informal Consultation: The SHPO and the BLM (State Office, District Manager, Field Manager and/or staff) may meet at any time to discuss annual work plans, specific undertakings, outreach efforts, or other topics/issues related to the BLM's management of cultural resources. Both parties will make every effort to arrange such meetings in a timely manner and to provide any information requested. The SHPO and Field Office personnel may informally discuss specific undertakings or any aspect of BLM's cultural resource management program. Any meetings proposed by a Field Office specifically designed to discuss agreement documents should be coordinated with the BLM State office cultural resources staff. Any BLM Field Office correspondence with the ACHP will be coordinated with the BLM State office cultural resources staff.
- iii. Special Conditions: Under special conditions, such as staffing shortages, unforeseen events, or non-discretionary actions, specified time frames for SHPO review may be extended or shortened through consultation among SHPO, the relevant BLM District, Field Office and the BLM State Office. Changes in review timeframes will be documented in writing, usually via email and will be sent by the BLM to all consulting parties, including the applicant.
- iv. Project Segmentation: The BLM may determine that some very large projects (e.g., linear rights-of-way that cross more than one BLM Field Office) can be more efficiently completed if segmented. If a project is to be segmented, the SHPO shall be notified by letter in advance. The notification will include a brief description of the overall project. SHPO and the BLM tracking numbers shall be referenced by the BLM and SHPO in all subsequent documentation relating to all segments of the project. Segmentation of geophysical projects does not require advance SHPO notification.
- v. Field Tours: The BLM Field Offices will notify the SHPO, by email, of all formal field tours relating to planning and NEPA efforts that may affect historic properties, particularly when the project applicant, the public, or consulting parties are invited to participate. Field tours do not include routine on-site inspections.

C. Formal Consultations

Formal consultation shall occur between the SHPO and the BLM as outlined in the procedures in Sections V through VI of this document. Formal consultations are initiated by the use of standardized forms in CRMTracker or by a formal letter on the BLM letterhead. The purpose of formal consultation is to afford SHPO the opportunity to comment and for the BLM to make informed decisions, while building an administrative record for the undertaking. SHPO's formal

response will be on SHPO letterhead, and will include the SHPO review number. Unless otherwise specified, all formal consultation shall be with the SHPO's Cheyenne office. Circumstances in which documentation should be submitted directly to the SHPO's Wyoming Cultural Records Office (WYCRO) in Laramie are specified below.

D. Undertakings Requiring Formal Consultation

At a **minimum**, the BLM will consult with SHPO and seek concurrence on determinations of eligibility and effect in the following situations:

- i. Non-routine interstate and/or interagency projects or programs that necessitate agreements among affected agencies to clarify roles and responsibilities;
- ii. Undertakings adversely affecting properties listed on, or eligible for listing, on the NRHP and/or NHLs;
- iii. Land exchanges or land sales affecting historic properties, which after sale or exchange, will no longer remain under the BLM ownership or management;
- iv. Anytime the BLM notifies the ACHP; and
- v. Undertakings that are determined by the BLM or the SHPO to be subject to unusual public attention or involve strongly opposing viewpoints.

IV. BLM CONSULTATION WITH OTHER ENTITIES UNDER THIS PROTOCOL

In order to allow an opportunity for interested parties to comment on the BLM undertakings subject to Section 106 review, the BLM will maintain an online database containing basic information about upcoming projects. This database is called the NEPA Register and it is found at <http://www.wy.blm.gov/nepa/search/index.php>. Interested parties should contact the Field Office to discover additional information about an undertaking that they may have an interest in. Each Field Office has a webpage that includes a phone number and email address for public contact.

A. Advisory Council on Historic Preservation

The BLM will invite the ACHP to participate in consultation following the guidelines at 36 CFR 800.11(e) when undertakings meet the thresholds listed below and will follow the process at 36 CFR 800.6(b)(2) or 800.14(b) to resolve adverse effects whenever the ACHP formally participates in the resolution of adverse effects for an undertaking.

Thresholds for ACHP Notification:

- i. At a minimum, the BLM will request the ACHP's participation in the following classes of undertakings:

- a. Non-routine interstate and/or interagency projects or programs;
 - b. Undertakings adversely affecting NHLs;
 - c. Undertakings that the BLM determines to be highly controversial;
 - d. Undertakings that will have an adverse effect on historic properties and with respect to which disputes cannot be resolved through formal agreement between the BLM and SHPO, such as a MOA or PA;
 - e. The development and approval of program alternatives, including project-specific PAs;
 - f. The BLM and SHPO may choose to consult to identify additional circumstances and conditions that, when met, call for the ACHP's notification;
- ii. The ACHP may enter into consultation at any time, per the nPA section 5.d.;
 - iii. At any point in the Section 106 process, the BLM, SHPO or other consulting party may request the ACHP's guidance or participation, but the ACHP may or may not elect to participate.

B. Indian Tribes

The BLM will seek out and consider the views of Indian tribes when carrying out actions under the terms of this Protocol. The BLM will consider the effects of its undertakings on historic properties significant to Indian tribes, including those of traditional religious or cultural importance. In consulting with Indian tribes or authorized tribal representatives, the BLM will be guided by the following:

- i. BLM Manual 8120, *Tribal Consultation under Cultural Resource Authorities*
- ii. BLM Handbook H-8120-1, *Guidelines for Conducting Tribal Consultation*
- iii. Executive Order 13007, Indian Sacred Sites
- iv. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- v. National Register Bulletin 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties*
- vi. 2011 DOI Tribal Consultation Policy and companion Secretarial Order 3317
- vii. NAGPRA (P.L. 101-601)
- viii. Tribal Protocols/Memoranda of Understanding (MOU) for consultation, as developed

C. Consulting Parties

The BLM and SHPO will consult to identify consulting parties based on their demonstrated interest. A "demonstrated interest" for purposes of 36 CFR 800.2(c)(5) may be indicated by an organization

that focuses on historic preservation, as exhibited in their mission statement, charter or bylaws; or an organization or individual with a legal or economic relation to the undertaking or affected property or a concern with the undertaking's effects on historic properties; or a Certified Local Government (CLG) as defined at 36 CFR Part 61. Private landowners have a demonstrated interest when an undertaking involves their property. Consulting parties shall be invited to participate in the Section 106 consultation process (Section V below) if they have a demonstrated interest in a BLM undertaking or its effects on historic properties.

D. The Public

The BLM will seek out and consider the views of the public when carrying out actions under the terms of this Protocol. The BLM will solicit such input through the public participation opportunities afforded by the BLM's land use planning and environmental review processes established under NEPA and FLPMA, and in accordance with regulations for Coordination of Planning Efforts at 43 CFR 1610.3. The BLM will also follow internal guidance regarding the coordination of NEPA and NHPA requirements, including the Washington Office Instruction Memorandum (IM) 2012-108, until that IM is superseded by policy or an updated/reissuance of that IM is available.

V. CULTURAL RESOURCE MANAGEMENT PROCEDURES FOR CONSIDERATION OF THE EFFECTS OF THE BLM'S UNDERTAKINGS ON HISTORIC PROPERTIES

A. The BLM Responsibilities on Non-Federal Lands

- i. The intent of the NHPA is to consider the effects of Federal undertakings (see 36 CFR 800.16(y)) on historic properties regardless of the ownership of involved lands. Therefore, the BLM, in consultation with SHPO, will ensure that its actions and authorizations are considered in terms of their effects on cultural resources located within the area of potential effect (APE).
- ii. The determination of the extent of the BLM's responsibility for identifying and treating adverse effects to non-Federal historic properties is based on the BLM Manuals, and other guidance such as Department of the Interior solicitor's opinions and Interior Board of Land Appeals (IBLA) decisions, on the evaluation of the following factors:
 - a. Is the non-Federal portion dependent upon the Federal permit, license or approval for the project to be viable?
 - b. How likely are historic properties to exist in the area of potential effects (APE)?
 - c. To what degree will the BLM permit, license or approval affect the location of surface disturbing activities on non-Federal lands?

- iii. If a project could not occur without the BLM permit, license or approval, the BLM will make a reasonable and good faith effort to carry out appropriate identification efforts (see ACHP's guidance entitled: *Meeting the "Reasonable and Good Faith" Identification Standard in Section 106*, online at: http://www.achp.gov/docs/reasonable_good_faith_identification.pdf). The BLM may conduct, or cause to be conducted by the applicant an inventory for and evaluation of cultural resources within the APE (see V.B.i for guidance on the distinctions between direct and indirect APEs). This effort occurs whether the undertaking was initiated by the BLM or in response to a land use application.
- iv. The BLM will consider the effects of its decision-making upon historic properties, and will mitigate adverse effects to non-Federal historic properties that would result from land uses carried out by or authorized by the BLM. If adverse effects to historic properties occur on non-Federal lands within the APE, the BLM will invite the affected non-Federal land owner to be a consulting party to resolve the adverse effect(s). It is the responsibility of the project applicant to complete, as appropriate, the mitigation of adverse effects to historic properties within the APE.
- v. When treatment involves data recovery, adequate time will be allocated for the analysis of the artifacts, samples, and collections recovered from non-Federal lands and for report preparation. The artifacts, samples, and collections recovered from non-Federal lands remain the property of the non-Federal landowner.
- vi. Treatment plans will specify the curation at University of Wyoming Archaeological Repository (UWAR) of all complete original field notes, maps, records of analyses, photographs, other data, and reports for treatment work conducted on behalf of the Federal Government. The BLM will receive two copies of the report to review. Reports resulting from work on non-Federal land will be made available to the land owner upon their request. Consistent with applicable law, confidential and/or proprietary information will not be released (see 36 CFR 800.11(c) and Section 304 of the NHPA).
- vii. Without consent of the landowner, except where provided by law, the BLM has no authority to require access to conduct an inventory or complete mitigation on non-federal lands or the property of the non-federal landowner. Identification and avoidance, minimization or mitigation of adverse effects may be required as a condition of a permit, license or approval issued by the BLM, whether Federal or non-Federal lands are involved. Consistent with applicable law, the BLM has the authority to withhold and/or deny a permit, license or approval, for any federal undertaking, if the BLM is unable to complete the Section 106 process within the APE.

B. Identification of Historic Properties

- i. Area of Potential Effects

“The area of potential effects [APE] means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking” (36 CFR 800.16(d)).

In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and all aspects of integrity, including their associated settings as applicable. All cultural resources within the APE must be evaluated for NRHP eligibility.

The BLM will consult with SHPO on undertakings for which a standard APE (see *Appendix L*) has not been developed, where the APE is smaller than those covered in the appendix, or where defining the APE is complicated or controversial (e.g. undertakings involving multiple agencies, multiple States, multiple applicants, and/or multiple Indian tribes). The BLM will mail the APE documentation to SHPO for a 15 day formal review. The BLM may assume concurrence with the APE determination if SHPO does not respond within 15 days.

- a. Direct APE: The BLM and the SHPO have jointly established guidance on standard direct APEs for certain types of projects (see *Appendix L*). The BLM cultural resource specialists will determine the portion of the APE subject to inventory (after consideration of previous adequate inventory, previously disturbed areas, etc. as discussed in Section V.B.i through V.B.v).
- b. Indirect APE: The indirect APE shall include known or suspected historic properties and their associated setting where setting is an important aspect of integrity (see *Appendix C*). Identification efforts outside of a direct APE shall be at the approval of the BLM field manager, taking into account the recommendations of the cultural resource specialist and the SHPO.

ii. Undertakings Exempt from SHPO Consultation

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

- a. The BLM cultural resource specialist will, after reviewing a proposed undertaking, determine if specific projects or activities have no potential to affect historic properties as described in *Appendix B*.
- b. The BLM and SHPO may agree that other classes of exempted actions may be added to *Appendix B*, see the process in Section X.V.
- c. The BLM will report all undertakings exempt from inventory by entering the action in CRMTracker, will notify the public and may proceed with the undertaking.

iii. Determine Information Needs

After the BLM has determined the undertaking is not exempt under Appendix B, they will, during the earliest feasible planning stage of any undertaking, determine the information needed to identify historic properties within the APE.

Such determinations may be based on a WYCRO file search and the BLM cultural resource records, aerial photographs, GLO records, the BLM land records, resource management plan, project-specific NEPA documents of the proposed project area and on information sought and obtained from the SHPO, from consulting parties and the public.

- a. Previous Adequate Inventory: If the BLM cultural resource specialist determines that the entire APE, or a portion of the APE, has previous adequate Class III inventory (see BLM Manual 8110.21.c), that has been reviewed by the appropriate Field Office and the SHPO, the BLM may proceed with determining eligibility and effect without additional inventory for those previously inventoried areas. Inventories will be evaluated by the cultural resource specialist to determine their adequacy for identification purposes in locating and evaluating historic properties in relation to land use applications subject to terms of this Protocol. This will include an assessment of need for further consultation with Indian tribes. The BLM will notify SHPO via CRMTracker prior to authorizing an undertaking when an inventory more than 20 years old is determined adequate for identification and evaluation purposes.
- b. Level of Inventory: When determining the level of inventory of the APE, the BLM will consider direct, indirect and cumulative effects of the undertaking.
 1. If the BLM determines that a Class III inventory of the direct APE is necessary, the BLM need not seek the SHPO's views on identification efforts.
 2. If the BLM determines to conduct an inventory at less than a Class III level (except as specified in Section V.B.v. a and b below) BLM will formally consult with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking, unless specifically addressed in an appendix to this Protocol. SHPO will comment within 15 days of receipt of the documentation. Any disputes over the adequacy of the proposed inventory efforts shall be resolved in accordance with the dispute resolution clause in Section IX of this Protocol.

iv. Disturbed Areas

If the proposed undertaking is not listed in the exemptions found in *Appendix B*, the BLM cultural resource specialist will determine whether previous ground disturbance has modified the surface so extensively that the probability of finding intact cultural properties within the direct APE is negligible. If such disturbance has occurred in the APE, these areas may be exempt from inventory. Disturbed areas will be clearly marked on the project map. Indirect effects of the undertaking shall still be considered.

v. Areas of Low Probability for Historic Properties

The BLM may determine specific areas do not need to be inventoried because current information suggests the area has little or no probability to contain historic properties. Determinations regarding the applicability of low probability indicators may be made only by BLM cultural resource specialists following any consultation requirements discussed below:

- a. Low Probability Areas (Planning): Low probability for historic properties due to environmental factors or other conditions may allow some lands to be exempted from inventory. If low probability areas for historic properties occur within a Field Office, BLM will consult with SHPO to determine whether or not these areas will be exempted from inventory. Areas exempted for low probability will be negotiated between BLM and SHPO resulting in an MOA (see Section V.F.ii). Executed MOAs are listed in Appendix A of this Protocol. Other indicators of low probability may be agreed upon as developed jointly by BLM and SHPO.
- b. Low Probability Areas (Project-Specific): If low probability areas for historic properties occur within an APE per V.B.v.a, BLM will determine whether or not these areas will be exempted from inventory. BLM will cite the appropriate MOA for the exemption in CRMTracker. Low probability areas will be clearly marked on the project map. When V.B.v.a above does not apply, the BLM will request concurrence in writing from the SHPO on project-specific exemptions due to low probability for historic properties. The SHPO will be provided 15 days to comment. If SHPO does not comment within 15 days, BLM may assume concurrence and proceed with the inventory.

C. Determination of Eligibility

BLM will determine if there are historic properties within the APE by applying the criteria for evaluation and criteria considerations found in 36 CFR 60.4. All sites will be evaluated under all four criteria guided by the *Secretary's Standards and Guidelines for Evaluation*, the National Register Bulletin *How to Apply the National Register Criteria for Evaluation*, and appropriate historic contexts. A discussion of the integrity of location, setting, design, materials, workmanship, feeling, and association must be included in project documentation for all cultural resources. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the BLM to reevaluate properties previously determined eligible or ineligible (36 CFR 800.4(c)(1)). Details of the eligibility evaluations, criteria considerations (as appropriate), and a discussion of integrity shall be included in the report and on the appropriate Wyoming Cultural Properties Form (WYCPF).

i. No Historic Properties

- a. No Cultural Resources Identified: When no cultural resources of any kind are identified by inventory, or only those described in Appendix D (exclusions/non-site types) are encountered, the BLM will then make a determination of effect per Section V.D.i and will follow the reporting requirements in Section V.E below.
- b. No Historic Properties Identified: If the inventory results in no historic properties (only ineligible sites and/or isolated resources found) the BLM will make a determination of effect per Section V.D.i and will follow the reporting requirements in Section V.E below.

ii. Historic Properties Present

When historic properties are identified within the APE, the BLM will assess the effects of the undertaking on those historic properties and will consult with SHPO as discussed in Sections V.D and V.E below.

iii. Changes in Eligibility

If the BLM or SHPO finds it appropriate to change the eligibility determination of a previously concurred upon cultural resource or historic property, they must formally consult to seek concurrence on the changed determination, and must include justification for the proposed determination change. If SHPO presents the change, they will write an email or letter to the respective Field Office with a justification for the change and request that BLM initiate consultation. If the BLM presents the change, they will mail the report, site forms, and other documentation as appropriate to the SHPO in Cheyenne and will include a justification for the change and initiate consultation. If either party does not respond within 15 days (or the consultation timeline for the associated undertaking, whichever is longer), the other party may assume concurrence with the change in eligibility. Any consulting parties involved will be informed of the potential change in eligibility and will be provided the opportunity to comment. Previously unevaluated sites and sites without previous SHPO concurrence are not subject to this stipulation.

iv. Disputes on Eligibility

In cases of disputes on eligibility the BLM Field Office and SHPO will consult to achieve concurrence on eligibility. If the Field Office and the SHPO cannot concur on the eligibility of a cultural resource, they will seek guidance from the BLM State Office cultural resource staff. If agreement cannot be reached, then 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 detailed in 36 CFR Part 63, the National Park Service (NPS)

regulations on *Eligibility for Inclusion in the National Register of Historic Places* will be followed. The Keeper's determination will be final. BLM cannot proceed with a final determination of effect until the eligibility of a property has been resolved.

D. Determination of Effect

A determination of effect is made after avoidance and minimization through standard treatment measures and/or best management practices (BMPs) have been integrated into the project design (see Appendix C, II.D.2). The final project design must incorporate all agreed upon treatment measures and these will be included in the stipulations (e.g. Conditions of Approval) of the relevant authorization (e.g. Approved APD, ROW Grant etc.). Standard treatment measures and BMPs are avoidance and minimization measures, and are not mitigation measures for resolving adverse effects. A determination of effect shall consider reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

i. **No Historic Properties Affected**

If there are no historic properties identified, or if they are present but will not be affected by the undertaking, a determination of "No Historic Properties Affected" is appropriate. Atmospheric and auditory elements need to be considered when assessing effects to setting, feeling and association. When a setting analysis (visual contrast rating (VCR) analysis and/or viewshed analysis) is completed, and a proposed project will not be visible from the historic property and/or there is no contrast between the project and the setting (see Appendix C), and no atmospheric and auditory effects are evident, then a determination of "No Historic Properties Affected" is appropriate.

ii. **No Adverse Effect**

- a. If a historic property is being affected by a proposed undertaking, but the effect does not alter, directly or indirectly, any of those characteristics that qualify the property for inclusion in the NRHP, then a determination of "No Adverse Effect" is appropriate as provided in 36 CFR 800.5(b). This applies to all historic properties located within the APE.
- b. If it can be demonstrated that only noncontributing portions of historic properties will be affected, directly or indirectly, then a determination of "No Adverse Effect" is appropriate.
- c. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, and there is a weak contrast between the undertaking and the setting (see Appendix C), and no atmospheric and auditory effects are evident, the BLM will document the decision and a determination of "No Adverse Effect" is appropriate as provided in 36 CFR 800.5(b).

iii. Adverse Effect

- a. Per the Section 106 regulations at 36 CFR 800.5(a)(1), “An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the [NRHP]. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”
- b. If setting, feeling and/or association are contributing aspects of integrity for any historic property, and a proposed undertaking will be visible from the historic property, and there is a **moderate or strong contrast** between the undertaking and the setting (see Appendix C), the BLM will document the decision and a determination of “Adverse Effect” is appropriate as provided in 36 CFR 800.5(a)(1). Atmospheric and auditory elements of setting also need to be considered. In these cases, BLM will consult with SHPO to develop a MOA or PA and follow the procedures in Section V.F.ii of this Protocol.
- c. In making a determination of adverse effect, BLM will request comments of appropriate consulting parties and/or Indian tribes. BLM will maintain lists of consulting parties based on their identified interests.

iv. Non Concurrence with Determination of Effect

If the SHPO, THPO, Indian tribe or any consulting party disagrees with BLM’s determination of effect as outlined above, the procedures at 36 CFR 800.4(d)(1)(ii) through (iii); or 36 CFR 800.5(c)(2)(i) through (iii) will be followed.

E. Consultation Procedures and Reporting

Once BLM has determined the eligibility of all cultural resources and made a decision about the effect of the undertaking, in consultation with Indian Tribes, consulting parties and the public as appropriate, the BLM will report the determinations to the SHPO and consult with SHPO to seek concurrence in the following manner.

- i. The BLM will ensure that all reports will meet the current *Wyoming State Historic*

Preservation Office Format, Guidelines, and Standards for Class II and III Reports (WY Report Standards)(see *Appendix J*) and will use the Wyoming Cultural Property Form (WYCPF) and/or Wyoming Isolated Resource Forms (WYIRF). Submission of all project reports will include a standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect. VCR forms will be submitted as appropriate.

The BLM will submit all documentation to either the WYCRO office in Laramie or the SHPO office in Cheyenne, for review and comment, depending upon the determination of effect (see Section V.D).

- ii. The SHPO will randomly review the BLM’s determinations of “No Historic Properties Affected” and “No Adverse Effect”. If SHPO believes there is a pattern of inappropriate or inadequate eligibility or effect determinations, they will begin consultation with the BLM following dispute resolution procedures in Section IX of this Protocol.
- iii. Exemptions (V.B.ii and Appendix B), Previous Adequate Inventory (V.B.iii.a), Disturbed Areas (V.B.iv) and Areas of Low Probability (V.B.v)

The BLM will submit the electronic record to SHPO through CRMTracker and will file the standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect documentation in the Field Office case file. No submission to the SHPO office is required beyond the electronic CRMTracker record (except for project-specific low probability areas per Section V.B.v.b). The BLM will notify consulting parties and may proceed with the undertaking.

- iv. No Historic Properties Affected

The BLM will submit the electronic record to SHPO through CRMTracker and will submit the project report, meeting the current *WY Report Standards* to the WYCRO within 30 days after determining the report meets standards and completing determinations of eligibility and effect. Submission of the project report will include a standard signed notification (see *Appendix E*) containing BLM’s determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.

- v. No Adverse Effect

- a. Sites eligible under Criterion D only: The BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current *WY Report Standards* to the WYCRO within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.
- b. Sites eligible under Criterion A, B, and/or C: If setting is not a contributing aspect of integrity for these sites, the BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current *WY Report*

Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. SHPO will review and comment on the effect within 15 days of receipt of the documentation. If SHPO does not respond within 15 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will notify consulting parties and may proceed with the undertaking.

- c. Justification of a newly determined noncontributing portion of a historic property must be documented on a WYCPF and discussed in the project report. Portions of historic properties previously determined to be non-contributing with SHPO concurrence do not need a new site form, but the site must be discussed in the results section of the report. This should include a discussion of when and why it was previously determined non-contributing and why that determination is still appropriate.
 - d. If it is determined that the undertaking will have no adverse effect to historic property where setting is an important aspect of integrity and the project will cause a **weak contrast** after standard treatment measures or BMPs are incorporated into the project design, the BLM will submit the electronic record to SHPO through the CRMTracker database and will mail the project report meeting the *WY Report Standards* to the SHPO in Cheyenne within 30 days after determining the report meets standards, and completing determinations of eligibility and effect, to the SHPO office in Cheyenne. SHPO will review and comment on the effect within 30 days of receipt of the documentation. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will notify consulting parties, and may proceed with the undertaking.
- vi. Adverse Effect
- a. Sites eligible under Criterion D only: If an undertaking will adversely affect sites eligible only under Criterion D, BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current WY Report Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. If SHPO does not respond within 15 days, BLM may assume concurrence with determinations of eligibility and effect. When the report and the data recovery plan are submitted together, SHPO will have a 30 day review. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will proceed with the resolution of adverse effect procedures in Section V.F. of this Protocol.
 - b. Sites eligible under Criterion A, B, and/or C: If an undertaking will adversely affect sites eligible under Criteria A, B, and/or C BLM will submit the electronic record to SHPO through CRMTracker and will mail the project report, meeting the current WY

Report Standards to the SHPO in Cheyenne within 30 days after determining the report meets standards and after completing determinations of eligibility and effect. If SHPO does not respond within 30 days, BLM may assume concurrence with determinations of eligibility and effect. The BLM will proceed with the resolution of adverse effect procedures in Section V.F.ii of this Protocol.

F. Resolution of Adverse Effects

i. Resolutions Not Requiring an Agreement Document

- a. Data Recovery: If the historic property being adversely affected is eligible for inclusion in the NRHP under Criterion D only, then the BLM will prepare, or cause to be prepared a data recovery plan and the BLM will implement the procedures below. Mitigation banking and site burial are not acceptable practices for resolution of adverse effects in Wyoming.
 1. Data Recovery Plan Documentation and Consultation Needs: Data Recovery plans will be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37). The plan will include, at a minimum, the items in BLM Manual 8140.26A-I, time frames and guidelines for submittal of documentation of completion of fieldwork, submission and review of reports, completion and acceptance of the final Data Recovery Report, as well as any public education/outreach (e.g. Wyoming Archaeologist article) as warranted. Compliance with the approved data recovery plan will be included in the undertaking's stipulations. Objection to or failure to comply with the approved data recovery plan by the applicant will require consultation with SHPO and negotiation of an MOA.
 2. Data Recovery Plan Review: The BLM will submit the project report meeting the current WY Report Standards and the data recovery plan to the SHPO office in Cheyenne. The BLM will concurrently submit the documentation through CRMTracker. SHPO will review and comment on the determinations of effect and the data recovery plan within 30 days of receipt of the documentation. If the SHPO has no comment, and no other consulting party objects, the BLM may assume SHPO concurrence with the plan. The BLM may proceed with the undertaking without an MOA provided there are no other historic properties eligible under Criterion A, B, or C within the APE that may be adversely affected by the undertaking.
 3. Data Recovery Report: Data recovery reports must be consistent with the Secretary of Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37). The data recovery report will include, at a minimum, the items at BLM Manual 8140.27A-F. BLM will review data recovery reports within one year of receipt. Final data recovery reports will be provided

to the SHPO office in Cheyenne within 30 days of BLM review and acceptance. The BLM will concurrently submit the documentation through CRMTracker. SHPO may review the final data recovery report and provide courtesy comments to the BLM.

- b. Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS): In consultation with the SHPO, the BLM will identify historic properties where an adverse effect can be mitigated by completing a HABS/HAER/HALS document. The BLM will mail the project report meeting the current WY Report Standards and the recommendation for HABS/HAER/HALS documentation to the SHPO office in Cheyenne. SHPO will review and comment on the appropriateness of the documentation of the historic property and the undertaking's effect on it within 30 days of receipt of the documentation. The BLM will concurrently submit the documentation through CRMTracker. If SHPO does not respond within 30 days, BLM may assume concurrence with the adequacy of the documentation.
 1. HABS/HAER/HALS Documentation and Consultation Needs: HABS/HAER/HALS projects must be coordinated with the NPS Intermountain Region Office (IMR), which will set the appropriate levels of documentation and order the HABS/HAER/HALS number. BLM will initially write NPS IMR to request that they set levels of documentation, and will include a copy of the survey report, MOA (if one has been executed), photos and any other pertinent information that would help NPS make these determinations. NPS IMR will respond with a formal letter to the BLM that will detail documentation requirements, including number of photos, number of pages of history, and whether or not drawings are required. BLM will then contact NPS IMR to request the HABS/HAER/HALS number be assigned to the project.
 2. HABS/HAER/HALS Reporting: After completion of all the documentation required by NPS, the BLM will submit final HABS/HAER/HALS documentation to NPS within 30 days of completion. NPS will review the final HABS/HAER/HALS documentation and provide comments to the BLM within 30 days. The undertaking may not proceed until acceptance of adequate HABS/HAER/HALS documentation by NPS. BLM will provide a courtesy copy of the final documentation to SHPO. BLM will include compliance with the approved HABS/HAER/HALS documentation requirement in the project's stipulations. Objection to or failure to comply with the approved HABS/HAER/HALS plan by the applicant will require consultation with SHPO and negotiation of a MOA.
- c. Stabilization: If the agreed upon mitigation for an adverse effect is stabilization, the BLM will submit a stabilization plan to the SHPO in Cheyenne and consulting parties for a 30 day review . The BLM will concurrently submit the documentation through

CRMTracker. If SHPO does not respond within 30 days, BLM may assume concurrence with the plan. The stabilization plan may be implemented once BLM has obtained SHPO concurrence.

ii. Resolutions Requiring Agreement Documents

If there are historic properties within the APE that will be adversely affected and are eligible under NRHP Criteria A, B, and/or C, BLM will submit the project report to the SHPO in Cheyenne for 30 day review and comment. Upon receipt of SHPO concurrence of a determination of adverse effect, BLM will initiate consultation with SHPO, and as appropriate, the ACHP (if the undertaking meets the Thresholds at V.A.i), Indian tribes and consulting parties to develop an agreement document. Standard treatment measures and BMPs are not mitigation measures for resolving adverse effects, but must be applied prior to making a determination of effect.

a. Parties to the Agreement:

1. Any meetings specifically designed to discuss agreement documents must be coordinated with the BLM State Office cultural staff. There are three formal types of consulting parties as set forth in 36 CFR 800.6(c)(1-3): Signatories, Invited Signatories and Concurring Parties. Signatories: Signatories are the BLM, the SHPO and the ACHP (if they are participating). The signatories have sole authority to execute, amend or terminate the agreement.
2. Invited Signatories: The BLM authorized officer may invite additional parties to participate as Invited Signatories and will invite any party with responsibilities under the agreement, such as the applicant, to participate as in the agreement. Any Invited Signatory that signs the MOA or PA shall have the right to seek amendment or termination of the MOA/PA. The refusal of any Invited Signatory to sign a MOA or PA does not invalidate the MOA or PA.
3. Concurring Party: The BLM authorized officer may invite other consulting parties to concur. A consulting party invited to concur has no responsibility under the agreement, but may be invited to sign the agreement as a Concurring Party. The refusal of any Concurring Party invited to sign a MOA or PA does not invalidate that MOA or PA.

b. Agreement Document Process

Preparation of a MOA/PA follows consultation between all consulting parties. Unless otherwise agreed upon, the BLM is responsible for preparing the MOA/PA. Stipulations included in the MOA/PA shall come from consultation among all consulting parties and will be incorporated into BLM's stipulations for the

undertaking. Generally the MOA/PA will be drafted by the responsible BLM Field Office, and the BLM State Office will always participate. Refer to Section I.B of this Protocol to determine if an agreement document needs to be written under this Protocol or under the Regulations at 36 CFR Part 800. The detailed process for a MOA/PA is outlined in *Appendix F*.

c. Compensatory Mitigation

Compensatory mitigation, or compensating for an effect by replacement or providing substitute resources or environments, will be considered after application of all other forms of avoidance, minimization and mitigation within the APE have been exhausted. Compensatory mitigation can occur at, or immediately adjacent to, the area affected but can also be located anywhere in the same general geographic area or, in the case of linear properties (e.g. NHTs), at other places along that specific resource. Compensatory mitigation may include, but is not limited to: educational materials, completion of NRHP nominations, professional publications, acquisition of conservation easements containing historic properties, development of interpretation plans, physical restoration of NHT segments, removal or modification of modern developments in settings of historic properties to restore integrity, acquisition of land or a historic property, through exchange or another process, where public access is possible, and/or stabilization of an associated property (e.g. a stage station along the trail).

Any compensatory mitigation must result from consultation among BLM, SHPO, ACHP (if participating), the applicant, and other consulting parties. Compensatory mitigation generally provides a public benefit and must be appropriate to the scale and scope of the effect being mitigated. Compensatory mitigation may be offered voluntarily by a project applicant for consideration by the consulting parties. If accepted by the Signatories, it will be incorporated into the agreement document and as a condition of the BLM authorization. In other cases, the BLM may find it necessary to advise the applicant that the project proposal cannot be approved without additional compensatory mitigation. Field Offices shall notify the BLM DPO as soon as it is recognized that a proposed undertaking may require consideration of compensatory mitigation. The BLM DPO will monitor the use of compensatory mitigation for consistency of application by the BLM statewide.

The following procedures are not appropriate as compensatory mitigation measures:

1. Payment of money by the applicant directly to SHPO; and
2. Data recovery at historic properties other than the historic properties that will be adversely affected by an undertaking (mitigation banking); and

3. Acquisition of land or a historic property, through exchange or another process, where public access is not possible; and
4. Signage or markers where there is no public access.

VI. DISCOVERY SITUATIONS

The BLM and SHPO have agreed upon a standard discovery plan for inclusion in this Protocol, see *Appendix K*. A Field Office may use this discovery plan without additional SHPO consultation. The BLM will encourage development of undertaking-specific discovery plans for large and complex undertakings and location specific plans for areas known to contain buried archaeological sites. Undertaking and/or location specific discovery plans will be forwarded to the SHPO in Cheyenne for a 30 day review along with BLM's determination of effect for the undertaking. If SHPO does not respond within 30 days, BLM may assume concurrence with the discovery plan. When a discovery plan has been accepted by BLM and SHPO, the BLM will follow the plan when cultural resources are discovered during implementation of an undertaking. The BLM shall make reasonable efforts to avoid and minimize adverse effects to such properties until treatment is completed in accordance with the discovery plan.

VII. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES

A. Staffing

The BLM will allow identification and evaluation of cultural resources by specialists who meet the qualifications and are classified in the appropriate professional series by the Office of Personnel Management (e.g., Series 0193 for archaeologists). Technicians at the GS-5 and GS-7 levels are considered to be performing duties in a trainee or developmental capacity. Reports prepared by GS-5 and GS-7 technicians, or any cultural resource consultant, must be reviewed and submitted to the SHPO by a GS-9 or higher-grade cultural resource specialist. New specialists at a GS-9 grade or higher must follow the procedures required of a GS-7 cultural resource technicians until they have completed training on this Protocol. All Field Offices must have at least one GS-9 or higher cultural resources specialist in order to be certified to operate under this Protocol.

When new cultural resource specialists or new managers with responsibilities affecting cultural resources (including, but not limited to, district managers, field managers, assistant field managers, supervisory natural resource specialists, resource advisors, or Deputy State Director for Resources) are hired, the BLM will ensure that they receive orientation on this Protocol, within 90 days of starting work. It shall be the responsibility of the BLM DPO, with SHPO participation, to provide appropriate orientation. Once the orientation is completed, the DPO will formally notify the SHPO and the new staff members will be certified and allowed to follow the procedures of this Protocol.

The SHPO, with BLM DPO participation, will ensure all new SHPO historic preservation specialists hired to conduct Section 106 review receive training in Section 106 compliance and this Protocol within 90 days of starting work.

B. Specialized Capabilities

Circumstances may occur where BLM may choose to acquire specialized capabilities (e.g. architectural history, landscape architecture, rock art, geomorphology, photogrammetry) to determine NRHP eligibility, effects and treatments for cultural resources. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through other means, including but not limited to contracts, the BLM personnel from other Field Offices, States, or cooperative arrangements with other agencies (e.g. NPS).

VIII. SUPPORTING PROGRAMS AND ACTIVITIES

The BLM and the SHPO recognize the advantages of working together on a wide range of heritage preservation activities and will cooperatively pursue the following efforts:

A. Data Sharing and Information Management

- i. Reporting Standards: The BLM and SHPO have collaborated on the development of standards for preparing inventory and treatment reports, and have jointly developed Wyoming Isolated Resource Forms (WYIRF) and Wyoming Cultural Properties Forms (WYCPF). All cultural resources data will be reported on WYCPF and WYIRF as appropriate. All BLM inventory reports submitted to SHPO will follow the current WY Report Standards (see Appendix J). Any revisions to the standards will be jointly developed by BLM and SHPO.
- ii. Data System Management: The BLM will support and SHPO will maintain a statewide automated cultural records database that is accessible from all BLM Field Offices. The BLM and SHPO will continue to collaborate on ways to synthesize and use the automated cultural data to develop and improve Geographic Information System (GIS) capabilities. BLM and SHPO will continue to cooperate in this endeavor by providing financial, personnel, hardware, and software resources as funding becomes available. If the SHPO or a BLM Field Office becomes aware of specific backlog documents held in either office, they should work cooperatively to provide the documentation to the office requesting it.
- iii. Electronic Records Submission and Project Tracking: BLM and SHPO will jointly work to implement the electronic submission of records for tracking agency actions through the use of CRMTracker. BLM and SHPO will work to ensure the program meets agency and SHPO needs.
- iv. Cancelled Projects: Reports for projects that have been cancelled, or for which no undertaking was ever submitted, but for which the cultural work has already been completed will be entered into CRMTracker and the report submitted to WYCRO within 1 year of BLM receipt of notice of project cancellation. If submitting for data sharing purposes, all sites may remain unevaluated and the report will be submitted to WYCRO with no review timeframe. If the BLM wishes to use the inventory and site data for future project purposes, they will evaluate all sites and submit the report for concurrence of

eligibility with no determination of effect. Future projects will require determination of effect and consultation according to part V.D of this protocol.

B. Public Outreach and Heritage Education

The BLM and the SHPO will work cooperatively to promote and enhance public education and outreach in historic preservation and cultural resource management through the following programs:

- i. Archaeology Awareness Month and Historic Preservation Month: The BLM and the SHPO will participate in and support financially, as funding permits, Archaeology Awareness Month and Historic Preservation Month activities, including the Preserve Wyoming conference, public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.
- ii. Education and Outreach: When appropriate, the BLM and SHPO will cooperatively work with various entities on the development and distribution of educational and interpretive materials that highlight our cultural resources and promote preservation ethics in Wyoming. As much as possible, such development will utilize existing programs which have been professionally endorsed or previously supported (e.g. Project Archaeology, Adventures in the Past). Such educational/interpretive materials might include lesson plans, curricula, brochures, journal articles, museum displays/exhibits, videos, interpretive signs, lectures, monographs, radio and television promotions, internet web pages and other electronic and social media. These materials will summarize the results of archaeological investigations for the general public, as well as utilize and target results to particular groups, such as middle school students or social media users. The information used may either be as a result of Section 106 compliance responsibilities or from Section 110 research on public lands. Opportunities for public dissemination will especially be sought when research produces information that may be of particular interest to the general public. BLM and SHPO staff will cooperatively develop these materials in-house or through contracts with outside organizations. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, to further these activities.
- iii. Site Stewardship: The BLM and the SHPO will cooperate, as funding and staff availability permit, to continue building a volunteer site stewardship program, to recruit and train members of the public to serve as monitors and stewards of Wyoming's cultural resources, and to assist with educational and other activities involving cultural resources. BLM and SHPO will also work to involve other Federal and State agencies, consulting parties, avocational and professional archaeological organizations and others as appropriate, in the site stewardship program. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.

- a. The BLM agrees to:
 - 1. Identify cultural resources locations where the BLM desires monitoring to occur and will share related cultural resources data; and
 - 2. Provide training support including accompaniment during an initial site visit and additional training opportunities to site stewards, as possible within limitations of funding and staff time. The BLM will also support the program by limiting site stewards to those enlisted BLM volunteers that have been appropriately trained in the SHPO program; and
 - 3. Where possible, the BLM Field Offices will designate a cultural resources specialist as the point of contact responsible for coordinating site stewardship activities.
- b. The SHPO agrees to:
 - 1. Coordinate the statewide program and related documentation; and
 - 2. Maintain a roster of appropriately trained stewards; and
 - 3. Work with the BLM to match stewards with resources to be monitored; and
 - 4. Provide reporting data to the BLM regarding site steward activities and accomplishments; and
 - 5. Will confirm with the BLM that site stewards working on the BLM managed lands are enrolled as BLM volunteers prior to working as site stewards.
- iv. Professional Organizations: The BLM and SHPO cultural resource specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations (e.g., Society for American Archaeology, American Anthropological Association, Register of Professional Archaeologists, Alliance for Historic Landscape Preservation, Wyoming Association of Professional Archaeologists and the Wyoming Association of Professional Historians) to promote preservation ethics, good science and good history, professional standards statewide, and open dialogue regarding historic preservation issues.
- v. Avocational Groups and Non-Profit Organizations: The BLM and SHPO are encouraged to work cooperatively with groups such as the Wyoming Archaeological Society, the Wyoming State Historical Society, Oregon-California Trails Association, the Alliance for Historic Wyoming, and Tracks Across Wyoming, to promote preservation ethics, good science, and professional standards statewide to amateur archaeologists and historians and the interested public by participating in society meetings, serving as chapter advisors, providing

presentations and demonstrations, and other assistance as appropriate.

- vi. Public Dissemination of Information: When appropriate, the BLM, SHPO, or an applicant will provide funding for development and distribution of brochures, journal articles, museum displays, videos, monographs, or other information documents summarizing the results of archaeological investigations for the general public. These can be either part of the Section 106 compliance responsibility or Section 110 research on public lands. Opportunities for public dissemination will especially be sought when research produces information that may be of particular interest to the general public. The BLM and SHPO will develop these materials in cooperation, either by BLM and SHPO staffs or through contracts. BLM and SHPO will cooperate in efforts to obtain funding and other resources, such as grants and partnerships, for these activities.

C. State-Level Historic Preservation Training and Workshops

In addition to the basic Protocol orientation, per Section VII.A, the BLM and SHPO will cooperate and participate in on-going training of BLM managers and cultural resource staff, SHPO staff, public land users, and cultural resource consultants. Training resources shall include, but are not limited to, NHPA and its implementing regulations, all facets of the BLM 8100 Manuals, planning documents, and statewide historic context documents. Other trainings and workshops may include writing and negotiating agreement documents and treatment plans, National Register criteria, the visual contrast rating (VCR) system, etc.. Review of training needs and/or additional workshops will occur on a yearly basis at the annual cultural resource staff's Protocol meeting. Emphasis will be on professional development training to expand professional skills of BLM and SHPO cultural resource staff. In cooperation with the ACHP and SHPO, the BLM may identify partners, as appropriate, to assist in developing training programs. The BLM may seek the active participation of Indian tribes and individual Tribal Historic Preservation Officers (THPOs) in training sessions.

D. Historic Context Development

The BLM and the SHPO will cooperatively recommend statewide priorities for historic context development involving BLM lands. These recommendations shall take into consideration context development priority recommendations made by the Governor's Historic Context Development Steering Committee in 2004. Recommendations will be considered in the BLM budget process as a statewide benefiting program. Field Offices may also develop resource, project, or area-specific contexts as their funding allows. In addition, the BLM will cooperate with the SHPO in the pursuit of funding to support the development of historic contexts (e.g., grant proposals). All historic contexts must be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) and the SHPO *Guidelines for the Development of Historic Contexts in Wyoming*. In accordance with Section 101(b)(3) of the NHPA, whereby the SHPO has responsibility for preparing and implementing the State's comprehensive historic preservation plan, the SHPO shall review and provide comments on all BLM historic context documents. Historic contexts which define site eligibility criteria, levels of adequate inventory, site documentation

requirements, standards for assessment of effects, and/or appropriate treatment of historic properties shall require SHPO concurrence on those aspects.

E. Collections Management

The BLM shall support and maintain the collections (artifacts and associated field notes and other documents) at the UWAR for curation of Federal archaeological collections. Curation of archaeological materials is supported through a formal MOU between the University of Wyoming and the BLM. Following the BLM acceptance and submission of project reports to SHPO, the BLM shall continue to track progress of collections from the BLM lands. Archaeological consultants, researchers and the BLM shall submit artifacts, field notes, field maps, photographs, and documentation meeting UWAR's "Guidelines and Standards" as required per standard stipulations in BLM permits. UWAR will notify the BLM State Office of receipt of the collection upon arrival at UWAR. After accessioning the collection, UWAR will further notify the BLM State Office and Field Office of acceptance and curation of the collection. The BLM will require through its Cultural Resource Use Permit stipulations that all collections are submitted to UWAR within 60 days of the acceptance of the project report by BLM.

IX. DISPUTE RESOLUTION PROCEDURES

- A.** Disputes on eligibility are handled under Section V.C.iv of this Protocol. Disputes on effect and all other types of disputes, disagreements or objections not explicitly addressed in this Protocol will be handled according to the Regulations at 36 CFR 800.4 through 800.6. The resolution will be documented in writing.
- B.** Disputes regarding specific undertakings must be resolved prior to approval of the undertaking. Approval of an undertaking prior to resolution of the dispute may constitute a foreclosure and will require notification of the ACHP. All dispute resolutions will be documented in writing and will be distributed to all consulting parties.

C. Disputes Involving BLM and SHPO

- i.** If the BLM or the SHPO disagree on an undertaking/action proposed or taken by the other pursuant to this Protocol, or on how this Protocol is being implemented, they will consult with one another to resolve the issue. If the disagreement is about an action in a BLM Field Office, the field manager will notify the BLM-SHPO Liaison and BLM DPO and will consult with the SHPO to resolve it. If the disagreement is with the State Office, or the matter is referred to the State Office by a field manager or the SHPO, the BLM DPO, the BLM-SHPO Liaison, the SHPO, the field manager, and the district manager (if warranted) will consult to resolve the issue. If the dispute cannot be adequately resolved at this level, the objecting party shall notify the other party in writing. Within ten (10) calendar days following receipt

of notification, the parties shall initiate a formal 45 calendar day consultation period to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution.

- ii. If the dispute cannot be resolved through IX.D.i above, and the parties have not agreed to extend the consultation period, the BLM DPO shall refer the dispute to the BLM Preservation Board, which will provide the State Director with its recommendations, per Component 3 of the nPA. If the State Director accepts the Board's recommendations, the State Director shall promptly notify the SHPO of such acceptance, provide a copy of the Board's recommendations, and afford the SHPO 30 calendar days following receipt of the notification to comment on the recommendations. If the SHPO concurs in the Board's recommendations within this time frame, the State Director and the SHPO shall proceed in accordance with the Board's recommendations to resolve the objection.
- iii. If either the State Director or the SHPO rejects the Board's recommendations after a period of consideration not to exceed 30 calendar days, the State Director shall promptly notify the Board in writing of the rejection, and immediately thereafter submit the dispute, including copies of all pertinent documentation, to the ACHP for comment in accordance with Component 5 of the nPA. Within 30 calendar days following receipt of any ACHP comments, the State Director shall take into account any comments received from the Board, the SHPO, and the ACHP pursuant to this stipulation and make a final decision regarding resolution of the dispute. The State Director shall notify in writing the Board, the SHPO and the ACHP of that decision. The dispute shall thereupon be resolved.

D. Disputes Brought by a Federally-recognized Indian tribe or a Member of the Public

- i. If a Federally-recognized Indian tribe or a member of the public objects at any time in writing to the manner in which this Protocol is being implemented, the BLM shall consult with the objecting party for a formal 45 calendar day consultation period and, if the objecting party requests, with the SHPO, to resolve the objection. If the objecting party and the BLM resolve the objection within 45 days, the BLM shall proceed in accordance with the terms of that resolution. If the objecting party brings the dispute to the attention of the SHPO only, the SHPO will notify the BLM DPO within 10 days, and will be party to subsequent consultation to resolve the dispute. The BLM should inform SHPO of any objections and the outcome of attempts at resolution within 10 days after period of resolution has expired.
- ii. If the objection cannot be resolved, and if the objecting party has not requested participation or guidance by the ACHP under IV.A.iii of this Protocol, the DPO shall refer the objection to the Preservation Board, which will provide the State Director and the objecting party with its recommendations for resolving the objection. If the State Director and the objecting party accept the Preservation Board's recommendations, the State Director shall

proceed in accordance with these recommendations to resolve the objection. The State Director shall notify the objecting party of the decision.

- iii. If either the State Director or the objecting party rejects the Preservation Board's recommendations for resolving the objection, the State Director shall refer the objection to the ACHP in accordance with Component 5 of the nPA.

The State Director shall take into account any comments received from the Board, the SHPO, and the ACHP pursuant to this stipulation and make a final decision regarding resolution of the dispute. The State Director shall notify in writing the Board, the SHPO, the ACHP and the objecting party of that decision. The objection shall thereby be resolved. Any objection filed pursuant to this paragraph shall not prevent the BLM from proceeding with project planning; however, project implementation shall be deferred until the dispute/objection is resolved pursuant to the terms of this paragraph.

X. LEVELS OF CERTIFICATION

A. Certification: Certification of Field Offices allows them to use this Protocol rather than 36 CFR 800.3 through 800.7. Field Offices will be certified under this Protocol after undergoing orientation by the BLM DPO and SHPO in the components/terms of this agreement.

B. Program Review: If the SHPO documents persistent problems in complying with the terms of this Protocol, the dispute resolution procedures at Section IX of the Protocol will be followed. If a pattern of failure to comply with the terms of this Protocol can be demonstrated, a field manager, the DPO, the SHPO, or the ACHP may, upon written notification to the BLM State Director, request a review of a Field Office's status and its capability for carrying out the terms of the nPA and this Protocol. The State Director may request a review and recommendations from appropriate staff, and/or the Preservation Board, and/or the ACHP. Based on the review, the BLM DPO will make a recommendation to the State Director on development of a provisional status or a decertification action plan.

C. Action Plans: The DPO, SHPO, or the ACHP may recommend that the State Director place a Field Office on a provisional status or be decertified based on findings from a review. The BLM, in consultation with the SHPO, and the ACHP (if they are participating), shall develop an action plan to be followed by the Field Office in order to bring that office into compliance with this Protocol. After the involved Field Office can demonstrate it has completed all of the actions specified in the plan, it will notify the BLM DPO who will review compliance with the action plan with SHPO and the ACHP if they are participating. The BLM DPO will inform the State Director of the action plan compliance to determine Field Office status.

D. Provisional Status: A BLM Field Office is under provisional status when designated as such by the State Director. Provisional status may extend from six months to two years, although the term of the provisional status shall be a matter of agreement between the parties involved and shall reflect the complexity of the deficiencies identified. The involved BLM office will continue to operate generally under terms of the Protocol until deficiencies are corrected within the terms and time

limits set under the Action Plan (for example, review times may be different, “notify and proceed” submissions may not be allowed). While on provisional status, a Field Office will work to correct the deficiencies identified during the review. After the Field Office can demonstrate it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO. If all parties agree that the problems have been corrected, the State Director will notify the affected field manager, SHPO and the ACHP (if they are participating) in writing that the Field Office is once again in compliance and restored to full status. If the provisional status time period is about to expire and the Field Office has made significant progress but has not met the full terms of the action plan, the BLM DPO and the SHPO may recommend that the State Director extend the provisional status time period. Should the parties determine that significant deficiencies remain uncorrected, or if new significant deficiencies are identified, the findings shall be conveyed and decertification shall be recommended to the State Director by the BLM DPO.

E. Decertification: Decertification may occur if: (1) the Field Office has failed to comply with the provisional status action plan, or (2) findings from a Field Office review indicate that immediate decertification is warranted. Only the State Director may decertify a Field Office from operating under the terms of this Protocol. Decertification from this Protocol will require that the affected Field Office comply with Section 106 of the NHPA by following the most current implementing regulations at 36 CFR Part 800. The BLM, in consultation with the SHPO, and the ACHP (if they are participating) shall develop an action plan to bring any decertified office into compliance with this Protocol. Decertification does not have a pre-established time frame. A Field Office is decertified until it is found to have restored the basis for certification.

The district or field manager, the DPO or the SHPO may request that the Preservation Board review a district or Field Office’s certification status. The Preservation Board will respond under the terms of the nPA at Component 9. If the Preservation Board finds that a BLM office does not maintain the basis for its certification (e.g., the professional capability needed to carry out these policies and procedures is no longer available, or the office is not in conformance with this Protocol), and the BLM field or district manager has not voluntarily suspended participation under this Protocol, the Preservation Board will recommend that the State Director decertify the district or office, per the nPA. A Field Office may ask the State Director to review the Preservation Board's decertification recommendation, in which case the State Director may request the ACHP’s participation in the review. After the affected BLM office believes that it has completed the actions specified in the plan, it will notify the State Director through the BLM DPO. All parties will review the documentation and will make a recommendation to the State Director. If the problems have been corrected, and the SHPO concurs, the State Director will notify in writing the affected field manager, SHPO and the ACHP (if participating) that the Field Office is once again in compliance and restored to certified status. If the Field Office is found to not have resolved the issues, it will continue to operate under the 36 CFR Part 800 regulations.

F. Recertification: If a decertified Field Office is found to have restored the basis for certification, the Preservation Board will recommend that the State Director recertify the office. Recertification of the affected Field Office, which will allow that office to resume operating under the terms of this Protocol, will occur at the discretion of the BLM State Director after consultation with the SHPO and

the ACHP (if they are participating). The State Director will notify the Field Office, the SHPO and the ACHP (if they are participating) in writing when the Field Office is recertified.

XI. AMENDMENTS TO THE PROTOCOL

If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. During the amendment process, the BLM and SHPO may identify specific sections and/or appendices that are subject to amendment. Suggested amendments would be sent to appropriate consulting parties and Indian tribes for a 30 day review. Amendments will become effective when signed by both parties.

XII. TERMINATION

A. Termination of the Protocol

The BLM or the SHPO may terminate this Protocol by providing 90 days' notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination, including following the dispute resolution process found at IX.C.i and ii. The BLM DPO may request the assistance of the BLM Preservation Board, the NCSHPO, or the ACHP in the consultation process. If the Protocol is terminated, the BLM will be required to comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

B. Termination of the National Programmatic Agreement

Should the nPA be terminated or suspended for any reason, the BLM and the SHPO shall, within 30 days, bring this Protocol to the ACHP and attempt to convert this Protocol into a stand-alone statewide programmatic agreement. If the nPA is terminated, and the current Protocol cannot be converted into a stand-alone agreement, the BLM will be required to comply with Section 106 of the NHPA by following the implementing regulations at 36 CFR Part 800.

XIII. REPORTING REQUIREMENTS

The BLM's Cultural Resource Management (CRM) Program Annual Report that is submitted to the Washington Office for the Secretary of the Interior's "Report to Congress on Federal Archaeological Activities" shall serve as the BLM's Annual Report to SHPO. Submission of the report to SHPO will coincide with the date the report is submitted to the Washington Office. This report, minus locational and funding information, will also be posted on the Wyoming BLM's website so it is available to the public and to Indian tribes.

XIV. IMPLEMENTATION

The previous Protocol dated March 8, 2006 will remain in effect until written notification from the State Director. The terms of this Protocol will not be effective until BLM and SHPO staff has received training on the requirements and procedures pursuant to Section VII.A of this Protocol,

and are certified to work under this Protocol.

XV. APPENDICES

The following appendices will become effective when the revised Protocol is ratified. New appendices may be added and existing appendices may be modified as needed upon written concurrence of the Signatories. Suggested new appendices and changes to existing appendices will be sent to appropriate consulting parties and Indian tribes for a 30 day review.

- A. Special Purpose Programmatic Agreements and Memoranda of Agreement in Effect
- B. Undertakings Exempt from SHPO Consultation
- C. Guidance on the Assessment of Setting
- D. Exclusions: Defined Non-Sites and Property Types Requiring No Formal Documentation
- E. Standard Signed Notification Documenting NHPA Compliance Project Review Under Section 106 (CRMTracker)
- F. Agreement Documents: Process and Checklist
- G. Agreement Document Template
- H. Reporting Summary Flowchart
- I. Glossary
- J. SHPO Reporting Standards
- K. Standard Discovery Plan
- L. Standard APEs

XVI. GENERAL PROVISIONS

A. Entirety of Agreement. This Protocol, consisting of forty (40) pages, Appendix A, consisting of three (3) pages, Appendix B, consisting of three (3) pages, Appendix C, consisting of six (6) pages, Appendix D, consisting of two (2) pages, Appendix E, consisting of one (1) page, Appendix F, consisting of six (6) pages, Appendix G, consisting of five (5) pages, Appendix H, consisting of one (1) page, Appendix I, consisting of eight (8) pages, Appendix J, consisting of twenty-one (21) pages, Appendix K, consisting of four (4) pages, and Appendix L, consisting of one (1) page, represent the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.

B. Prior Approval. This Protocol shall not be binding upon any party unless this Protocol has been reduced to writing before performance begins as described under the terms of this Protocol, and unless the Protocol is approved as to form by the Attorney General or his representative.

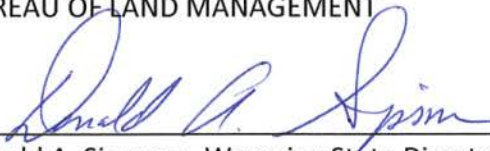
C. Severability. Should any portion of this Protocol be judicially determined to be illegal or unenforceable, the remainder of the Protocol shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

D. Sovereign Immunity. The State of Wyoming and the WYSHPO do not waive their sovereign or Governmental immunity by entering into this Protocol and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the Protocol.

E. Indemnification. Each Signatory to this Protocol shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this Protocol.

XVII. SIGNATURES

BUREAU OF LAND MANAGEMENT



Donald A. Simpson, Wyoming State Director

4/25/14
Date

STATE HISTORIC PRESERVATION OFFICER



Mary Hopkins, Wyoming State Historic Preservation Officer

4/25/14
Date

STATE OF WYOMING



Honorable Matthew H. Mead, Governor

4/25/14
Date

STATE OF WYOMING ATTORNEY GENERAL'S OFFICE
APPROVAL AS TO FORM



S. Jane Caton, Senior Assistant Attorney General

4-23-14
Date

**WYOMING STATE PROTOCOL
APPENDIX A
SPECIAL PURPOSE PROGRAMMATIC AGREEMENTS,
AND MEMORANDA OF AGREEMENT
IN EFFECT**

Pursuant to Section I.A of the State Protocol, the following special purpose Programmatic Agreements (PA) and Memoranda of Agreement (MOA) continue to be in effect. Implementation of procedures and reporting requirements under these agreements are independent of the State Protocol. Other PAs (see Protocol Stipulation I.B.vi) and MOAs may be developed when deemed necessary to define special purposes or procedures not covered in the national Programmatic Agreement or the State Protocol. This appendix will be reviewed and updated annually at the Protocol meeting.

National/Multi-State Agreements

1. Federal Coal Management Program PA (executed 5/20/1980; no expiration date)
2. Interagency Agreement-Interstate Natural Gas Pipeline (with FERC as lead agency for 106) (see WO IM 2003-197)(executed 5/2002; no expiration date)
3. Memorandum of Understanding between BLM and Nuclear Regulatory Commission (NRC) (executed 2/14/2013; no expiration date)
4. Western Area Power Administration regarding routine maintenance of transmission lines, substations, and other facilities PA (executed 2/2002; expires 2014)

Statewide/Multiple Field Office Agreements

1. Land Exchanges with the Wyoming Board of Land Commissioners PA (no expiration date)
2. Memorandum of Agreement between BLM, Federal Highway Administration, and Wyoming Dept. of Transportation (no expiration date-updating 9/21/2012)
3. Gateway West Transmission Line PA (Rawlins, Rock Springs and Kemmerer)(executed 9/12/2013; expires 9/12/2023)

Buffalo Field Office

1. Dry Willow Phase 1 MOA (executed 3/19/2007; no expiration)
2. Savageton 3 and 4 MOA (executed 1/23/2008; expires when requirements are met)

Casper Field Office

1. Greencore Co2 Pipeline PA (executed 8/24/2011; expires 8/24/2017)
2. PetroSource - Bairoil/Hartzog Draw CO₂ Pipeline (executed __; expires upon fulfillment of all requirements)

Cody Field Office

1. Little Mountain Bishoff Road MOU (executed 5/30/2003; no expiration date)

Kemmerer Field Office

1. Ruby Pipeline PA (FERC is the lead agency)(executed 7/30/2010; expires 7/30/2015)

Lander Field Office

1. Baroil/Beaver Creek Pipeline MOA (executed 8/12/2010; expires 8/12/2016)
2. Gas Hills Uranium Project PA and Amendment (executed 5/22/2012; expires 11/1/2023)

3. Gun Barrel Unit Future Drilling MOA (executed 10/30/2006; expires 10/30/2016)
4. Iron Horse Unit Future Drilling MOA (executed 9/14/2006; expires 9/14/2016)
5. Madden Deep Bridger Trail MOA (executed 5/31/2001; no expiration date)
6. Madden Deep Ditches MOA (executed 8/08/2006; expires 8/8/2016)
7. Martin's Cove Walking Path Development PA (executed 1997; expires upon fulfillment of all requirements)
8. South Pass City MOA Lots 6,7,9,16,19,& 24 (executed 4/03/2001; no expiration date)
9. TNC/Ledder Land Exchange MOA (executed 10/27/1997; no expiration date)

Newcastle Field Office

None

Pinedale Field Office

1. 2002 Work Plan Agreement (executed 7/08/2002; no expiration date)
2. Data Recovery MOA Site 48SU261 Duke Energy (executed 7/15/2002; expires upon completion of final data recovery report)
3. Data Recovery MOA Site 48SU261 Mountain Gas Pipeline (executed 7/22/2002; expires upon completion of final data recovery report)
4. Data Recovery MOA Site 48SU4479 (executed 2002; expires upon completion of final data recovery report)
5. Data Recovery MOA 48SU1106 (executed 7/22/2002; expires upon completion of final data recovery report)
6. Data Recovery MOA Site 48SU4758 (executed 8/30/2002; expires upon completion of final data recovery report)
7. Jonah Gas Field PA and Amendment (executed 6/26/2007, amendment 9/05/2013; mitigation expires 9/05/2015, PA expires when all requirements are met or 6/26/2017)
8. MOU Between Wyoming and Idaho BLM on Management of Remote PFO Acreage (executed 3/20/1972, no expiration date)
9. Paradise Transmission Line MOA (executed 5/06/2010; expires 5/16/2015)
10. Questar 611 Pipeline MOA (executed 6/17/2005; expires upon acceptance of final reports by BLM/SHPO)
11. Shell/Ultra Lander Road Amended PA (executed 8/09/2010; expires 8/9/2020)
12. Ultra Riverside 1A1-9 Well Pad MOA (executed 11/20/2008; expired 11/20/2013-terms incomplete)
13. Wardell Adverse Effects MOA (executed 11/01/2006; expires 11/1/2009, or when SHPO received approved data recovery plan)

Rawlins Field Office

1. AR Federal 1691 2-22 Pipeline MOA (Data Recovery at 48CR9375) (executed 1/23/2013; expires 1/23/2018)
2. Atlantic Rim Trails PA (executed 8/02/2007; expires 8/2/2027)
3. Baroil Enhanced Oil Recovery PA (6 amendments)(executed 1988, 6th amendment executed 3/16/2000; no expiration date)
4. Carbon Basin Mine MOA (OSM is the lead agency) (executed 9/03/2008; expires 9/3/2018)
5. Chokecherry-Sierra Madre Wind Farm PA (executed 8/23/2012; expires 8/23/2022)
6. Data Recovery at 48CR103 MOA (USDA-NRCS is lead agency) (expires 10/20/2014)
7. Doty Mountain to Jolly Rogers Lateral Pipeline MOA (executed 6/02/2006; no expiration date)
8. Jack Sparrow Loop 1 Pipeline MOA (Data Recovery at 48CR9362) (executed 1/23/2013; expires 1/23/2018)

9. Mexican Flats 19-10 Pipeline MOA (executed 4/22/2013; expires 4/22/2018)
10. Ninemile Hill CCC Windbreak MOA (executed 8/09/2012; expires 8/3/2015)
11. Overland Pass Pipeline MOA (with 2 Amendments) (executed 9/24/2012; expires 9/24/2015)
12. Overland Trail & Cattle Company Land Exchange MOA and Amendment (executed 2/25/2003; expires upon recovery or total loss of data from the Aimee Eaton Site)
13. Sea West/Pacificorp Phase 1 Windpower Project MOA (executed 6/24/1997; expires when right-of-way grant expires)
14. Sinclair Pathfinder 16" Pipeline MOA (executed 9/14/2009; expires 9/14/2015)
15. Sundog Transconnect Pipeline MOA (executed 3/25/2010; 3/25/2015)
16. Sundog to Brown Cow Pipeline MOA (Data Recovery at 48CR9459) (executed 1/15/2013; expires 1/15/2018)

Rock Springs Field Office

1. Blue Forest MOA (executed 12/26/2006; expires 12/26/2016)
2. Bridger Underground Coal Mine MOA (executed 7/12/2010; expires 7/12/2015)
3. Hiawatha PA (executed 5/13/2011; expires 5/13/2041)
4. Horseshoe Basin MOA 7-36 Well, 1-4 Pipeline MOA and Amendment (executed 11/16/2011; expired 9/25/2013-terms incomplete)
5. Jonah 30-inch Offset Pipeline MOA (executed 11/20/2007; no expiration date)
6. Monell MOA (executed 2/16/2007; expires 2/16/2017)
7. Point of Rocks MOA (executed 2/16/2007; expires 2/16/2017)

Worland Field Office

1. Express Pipeline Project PA (executed 8/10/1995; expires upon fulfillment of all requirements)
2. Legend Rock Petroglyph Site MOA (executed 8/22/1989; expires upon fulfillment of all requirements)
3. Westside Irrigation District Land Transfer PA (executed 3/15/2010; expires 3/15/2015)
4. Wyo-Ben Meeteetse Draw PA (executed 10/10/2012; expires 10/10/2022)

**WYOMING STATE PROTOCOL
APPENDIX B
UNDERTAKINGS EXEMPT FROM SHPO CONSULTATION**

Pursuant to Section V.B.ii of the State Protocol, the BLM cultural resource specialist will, after determining information needed to identify and evaluate cultural properties, determine if specific projects or activities should be exempted from SHPO consultation and in most cases do not require Class III inventory. **In certain circumstances, even though an action may be listed here as exempt from SHPO consultation, the Field Manager, at the recommendation of the cultural resource specialist, may have justification to require SHPO consultation and an inventory and evaluation of cultural resources.** Appropriate CRMTracker documentation must be completed for these exemptions. The following actions are, in most circumstances, exempt:

1. Activities which involve no more than two square meters of cumulative surface disturbance and 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.
2. Issuing leases, easements, rights-of-way and permits (not including grazing permits) that do not authorize surface disturbance.
3. Acquiring lands and easements.
4. Transferring lands or interest in lands to other Federal agencies where future management will be subject to the Section 106 process.
5. Issuing rights-of-way for existing developments or renewal of existing rights-of-way except where operation, maintenance, or abandonment activities might result in new surface 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 special land use designations which do not authorize surface-disturbing projects such as Research Natural Areas, Areas of Critical Environmental Concern (ACEC), and Wilderness Areas.
9. 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).
10. Installing signs and markers adjacent to existing roads, or placing recreational, special designation or information signs, or visitor registers, unless within known historic properties. Disturbance cannot exceed the exemption allowed in Item 1 above.

11. Temporary road closures.
12. Designating areas closed to vehicles or areas limited to travel only on existing roads and trails.
13. Maintenance of crowned or ditched roads that does not widen or otherwise extend surface disturbance, unless archaeological features which have not been evaluated are exposed.
14. Dispersed non-commercial recreational activities such as Christmas tree cutting.
15. Issuing special recreation permits along rivers, trails, and other specified areas where use is similar to previous permits and which would not increase the level of use and where there will be no new surface disturbance. This exemption does not include recreation permits for outfitter camps.
16. Activities limited within stream channels, not including terraces and cut banks.
17. Personal use firewood permits which are not specific in size and do not concentrate use.
18. Removing modern materials and trash scatters less than 50 years old and not associated with a larger eligible entity. Abandoned motor vehicles (regardless of antiquity) and modern trash dumps are included in this class.
19. Cadastral survey.
20. Animal traps and corrals in use for three days or less. Case-by-case review by the field office cultural resource specialist may be needed to assess potential effects prior to the undertaking.
21. Authorizing or installing devices to protect human or animal life (such as raptor electrocution prevention devices) that do not involve new surface disturbance.
22. Continued development of borrow sources which have previously removed all Holocene and Pleistocene sediments and will not extend into any area which contains Holocene and Pleistocene sediments.
23. Herbicide application where it would be unlikely to affect archaeological sites and features, rock art or traditional Native American plant gathering areas. Decisions will be consistent with and informed by the 2007 *Vegetative Treatments Using Herbicides on BLM Lands in 17 Western States Programmatic Environmental Impact Statement*.
24. Stock or wildlife water lines 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.
25. 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.

26. Renewal or transfer of grazing leases/permits and other permit administrative actions where types of animals do not change, numbers of animal unit months (AUMs) do not increase or seasons of use do not change.

27. Annual authorization of livestock trailing where types of animals and seasons do not change, and the numbers of animals do not exceed the maximum numbers authorized by the grazing permits

28. Any undertaking that is proposed to occur in an APE that has been previously and completely disturbed by mechanical means to the extent and depth where no cultural resources exist and there are no indirect effects to extant cultural resources.

**WYOMING STATE PROTOCOL
APPENDIX C
GUIDANCE ON THE ASSESSMENT OF SETTING**

I. INTRODUCTION

This appendix provides guidance on when to assess visual effects of an undertaking on historic properties where setting is a contributing aspect of integrity. This appendix only covers the visual aspects of setting. Physical, atmospheric and auditory effects also need to be considered when assessing effects to setting.

All historic properties must be assessed for all 7 aspects of integrity. 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 National Register of Historic Places (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 both why a property is significant and when a property was significant. For guidance on the assessment of the setting when evaluating a property for eligibility, please refer to *National Park Service, National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation"* (1997). If an historic context has been developed and accepted by the SHPO for the property type being evaluated, also follow the guidelines and eligibility thresholds established for that property type.

The determination of whether setting is an important aspect of integrity for eligible A, B or C properties of religious and/or cultural significance to Tribes must involve consultation with the appropriate Tribes and THPOs.

The aspect of setting may not be important for all types of properties. For most sites eligible only under Criterion D, the property does not need to recall visually an event, person, process, or construction technique. 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*). Therefore 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.

The BLM and SHPO have developed a method to assess affects to a setting using the visual contrast rating (VCR) analysis. Instructions on the procedures and methodology will be provided to archaeological consultants by individual BLM Field Offices, as necessary.

II. ASSESSING AN UNDERTAKING'S EFFECTS ON SETTING

A. Determining if Effects To Setting Needs to be Assessed

1. Historic properties for which setting is a contributing aspect of integrity, in both the direct and indirect APE of an undertaking, will require assessing the affects to the setting when the undertaking will be visible from the historic property. The BLM cultural resource specialist or archaeological consultant with GIS capabilities will run a viewshed analysis as needed to determine whether a proposed undertaking will potentially be seen from the historic property.

If the viewshed analysis indicates that a proposed undertaking will not be seen from the historic property then no further work is required. If the viewshed analysis determines that a proposed undertaking has the potential to be seen from a historic property, then the BLM cultural resource specialist will inform the archaeological consultant on the additional steps to be required, such as a VCR analyses, visual simulations, and additional viewshed analyses as appropriate.

2. Setting assessment is not necessary under the following circumstances:

- a. historic properties eligible only under Criterion D where setting is not a contributing aspect of integrity;
- b. segments of linear historic properties between two definable points that no longer retain any physical trace or manifestation (no longer extant);
- c. noncontributing segments (with SHPO concurrence) of linear historic properties;
- d. linear historic properties or contributing segments of historic properties previously determined to lack integrity of setting;
- e. for irrigation canals when loss of the integrity to a setting is a no adverse effect;
- f. if the proposed undertaking is consistent with land use during the period of significance of the historic property;
- g. for temporary construction elements (i.e. those elements that will be in place less than one year).

B. Determining the Area for Assessment of Integrity of Setting

The purpose of a setting assessment is to determine what physical features of a proposed undertaking will be visible from a historic property for which setting is an important aspect of integrity. Visibility of undertakings will vary. The scale of visual analysis should be commensurate with the scale of the undertaking. In many 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. The indirect APE is the area of assessment.

C. Visual Contrast Rating System

BLM will utilize the Visual Contrast Rating (VCR) system (as defined in BLM Manual 8431) as a recommended method to determine the degree of contrast of a proposed undertaking on the setting of historic properties. The VCR is conducted from the historic property towards the proposed undertaking utilizing the following “contrast” ratings. The location of the historic property is the key observation point (KOP). For linear historic properties multiple KOPs may be needed. A basic VCR form is included on pages 5-6 of this appendix, but other visual assessment methods may be used in addition as appropriate, if approved by BLM in consultation with SHPO.

Contrast Ratings:

1. “No Contrast” occurs when the project elements will not be seen from the historic property and/or there is no change in the form, line, color and texture between the undertaking and the setting.
2. A “Weak Contrast” occurs when the proposed project elements, or portions of the elements, can be seen but will not dominate the setting or attract the attention of the casual observer

because the basic elements of form, line, color and texture found in the setting are repeated in the project's physical elements.

3. A "Moderate Contrast" occurs when the proposed project elements, or portions of the elements, begin to attract attention and begin to dominate the characteristic landscape.
4. A "Strong Contrast" occurs when the proposed project elements, or portions of the elements, demand attention, cannot be overlooked, and are dominant on the landscape.

D. Standard Treatment Measures/Best Management Practices (BMPs) to Reduce the Visual Contrast

BLM cultural resource specialists and management will utilize standard treatment measures/BMPs to reduce the visual effects of the proposed undertaking prior to making a determination of effect under Section 106. Every effort should be made to design the undertaking to reduce the contrast rating prior to assessing affect.

1. Standard treatment measures should be used as stipulations or conditions of approval in leases, permits, etc.
2. Standard treatment measures and BMPs for reducing the visual contrast include, but are not limited to:
 - a. Consolidating project facilities among oil and gas developers – this also facilitates cumulative analysis.
 - b. Develop coordinated road and pipeline systems.
 - c. Reduce the amount of surface development by consolidating facilities (e.g., develop bottom-hole wells using directional drilling from a single surface well location).
 - d. Use low profile facilities.
 - e. Design projects to blend with topographic forms and existing vegetation patterns by using location to maximize topography and vegetation to screen development.
 - f. Use environmental coloration or camouflage techniques to break up visual intrusion of facilities that cannot be completely hidden.
 - g. Use broken linear patterns for road developments to screen roads as much as possible. This can include feathering or blending of the edges of linear rights-of-way.
 - h. For livestock control, use electric fencing with low-visibility fiberglass posts and environmental colors (e.g., sage green).
 - i. Design linear undertakings to run parallel to KOPs rather than perpendicular.
 - j. Modify the orientation of undertakings to lessen a visual impact (e.g., several tanks lined up so that one obscures the visibility of the others).

E. Determination of Effect

After completing the appropriate level of setting assessment (see Section II above), effects will be determined after application of Standard Treatment Measures/BMPs by using the VCR ratings in the following manner:

1. **No Contrast** – If the proposed project elements will not be seen and/or there is no contrast (as defined above) between the undertaking and the setting. The agency determination should be **“No Historic Properties Affected.”**
2. **Weak Contrast** – If the proposed project elements, or portions of the elements, can be seen but will not dominate the setting or attract the attention of the casual observer because the basic elements of form, line, color and texture found in the setting are repeated in the project’s physical elements, then the proposed undertaking will result in a weak contrast rating. The agency determination should be **“No Adverse Effect”** if there are no additional auditory or atmospheric effects.
3. **Moderate or Strong Contrast** – If the proposed project elements tend to dominate the setting, the proposed undertaking will have a moderate or strong contrast rating. The agency determination should be **“Adverse Effect.”**

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

VISUAL CONTRAST RATING WORKSHEET

Date:
District:
Resource Area:
Activity (Program):

Section A. Project Information

1. Project Name: _____ 2. Key Observation Point: _____ 3. VRM Class:	4. Location: Township _____ Range _____ Section _____	5. Location Sketch:
--	--	---------------------

Section B. Characteristic Landscape Description

	1. LAND/WATER	2. VEGETATION	3. STRUCTURES
FORM			
LINE			
COLOR			
TEXTURE			

Section C. Proposed Activity Description

	1. LAND/WATER	2. VEGETATION	3. STRUCTURES
FORM			
LINE			
COLOR			
TEXTURE			

1. DEGREE OF CONTRAST		FEATURES											
		LAND / WATER BODY				VEGETATION				STRUCTURES			
		Strong	Moderate	Weak	None	Strong	Moderate	Weak	None	Strong	Moderate	Weak	None
ELEMENTS	Form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Line	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Color	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Texture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section D. Contrast Rating

SHORT TERM

LONG TERM

2. Does project design meet visual resource management objectives?

Yes No

(Explain on reverse side)

3. Additional mitigating measures recommended?

Yes No

Evaluators' Name(s):

Date(s):

Section D. (Continued)

Comments from item 2:

Additional Mitigating Measures (See item 3)

**WYOMING STATE PROTOCOL
APPENDIX D
EXCLUSIONS:
DEFINED NON-SITES AND PROPERTY TYPES REQUIRING
NO FORMAL DOCUMENTATION**

The Bureau of Land Management (BLM) cultural resource specialists must review and approve any deviation from this list. In most cases, formal documentation of the property types listed below is not required. **Existence of these defined non-sites and property types within the survey area, and justification for their exclusion, must be discussed in the project report.** If any of these property types exhibit significant architectural or engineering features, or are associated with a National Register eligible site or district (either within the boundary, or clearly related to the significance of a NRHP eligible site or district), they should be recorded on a Wyoming Cultural Properties Form (WCPF). Professional judgment and common sense should be applied. In general, Smithsonian numbers will not be assigned to the following property types:

1. Utility lines (i.e., power lines, towers, telephone lines, fiber optic cable, etc.)
2. Pipelines (i.e., water, gas, etc. This does not include early wooden pipelines.)
3. Isolated stock dams, troughs, spring boxes, and associated windmills.
4. Elevation, bench, and section markers (i.e. all survey or cadastral markers).
5. Car banks (i.e., the use of abandoned cars, farm machinery, appliances, etc. to stabilize riverbanks, stream banks, or drainages.
6. Rip-rap (i.e., the use of cobbles, rock, or wood to stabilize riverbanks, stream banks, or drainages)
7. Isolated abandoned motorized vehicles, appliances, and mobile homes.
8. Fences and exclosures (i.e., barbed wire, chain link, buck-and-pole, or other types of pasture fence.) This does not include corrals, roundup or load-out facilities.
9. Unnamed two-track roads (i.e., ranch roads, seismic roads, etc.). This will require standard historic research to determine if the roads are named. Named roads need to be formally recorded; generally, unnamed roads do not need to be recorded. Discuss in the report the historic research conducted (i.e. General Lands Office (GLO) check, county records, historic maps, etc.)
10. Recent trash (i.e., highway trash, etc.)
11. Producing oil/gas wells and dry hole markers.
12. Water control channels, laterals, spreaders, canals, and ditches that are not designated by name on the USGS Topographic maps. (Water records can be found on the State Engineering Office's (SEO) website at <https://seoweb.wyo.gov/e-Permit/> or in the "tabulation of Adjudicated Surface Water Rights

of the State of Wyoming: Water Division Numbers One-Four.”)

13. Samples of defined lithic landscapes. Approval from the BLM cultural resource specialist must be obtained for the cultural resource permittee to apply this exclusion.

14. Short-term camps associated with stockgrazing and recreation that provide no significant information.

15. Temporary sawmill sites, slash piles, and isolated woodpiles.

16. Prospect pits and claim stakes associated with mineral exploration or mining with no associated features, cribbing, and/or less than 50 associated historic artifacts.

17. Roads that have been reconstructed within the last 50 years do not need to be recorded. Abandoned segments that are not associated with an eligible road do not need to be recorded.

WYOMING STATE PROTOCOL

APPENDIX E

STANDARD SIGNED NOTIFICATION DOCUMENTING NHPA COMPLIANCE PROJECT REVIEW UNDER SECTION 106 (CRMTRACKER)

NOTE: This form is generated from the CRMTracker Database. The information below is not from an actual project. It is only presented as an example.

STANDARD SIGNED NOTIFICATION DOCUMENTING NHPA COMPLIANCE

PROJECT REVIEW UNDER SECTION 106

DBU Number:

Project Name: Lame Deer Well Pad and Access		Agency Project No.: 001-KL-6001			
Project Proponent: Lame Deer Development		Distinct Actions: 1			
Legal Location T12.00N R100.00W Sec. 8					
Undertaking Name: Lame Deer Well Pad and Access					
Other Agency Nos: DBI_WY_2014_6001					
Field Org. Project No.: 14-001					
Brief Description: Class III Inventory; Well and Access pad					
Associated Sites					
Site Number 48RC0001	Site Type Prehistoric Site	Eligibility Not Eligible	Criteria n/a	Impact N	Effect Statement No historic prop. affected
Lead Agency Activities					
Review Framework: State Protocol			Time Frame:		
Interested Parties: BLM-Minerals & Lands SHPO					
Date Accepted:		Fiscal Year:		Date Printed:	
Requirements and Stipulations					
Stipulations: Standard Stipulation regarding the unanticipated discovery of cultural resources.					
Finding of Effect for Project					
Lead Agency: No Historic Properties Affected					
Notes: Only one ineligible prehistoric site found in project area.					

Reviewer: _____ (initials)

Certifying Official:

Date sent to SHPO

**WYOMING STATE PROTOCOL
APPENDIX F
AGREEMENT DOCUMENT PROCEDURES AND CHECKLIST**

Project Name: _____

NOTE: Please use the Agreement Document Template found in Appendix G. Preparation of a MOA or PA follows consultation between the Signatories, Invited Signatories and the Concurring Parties. Generally the MOA/PA will be drafted by the responsible Field Office, who will also keep all parties apprised of the document's progress, and will schedule any necessary meetings and calls.

Before starting the Agreement Document process:

Action	YES	NO	Dates/Comments
Have SHPO concurrence on determination of eligibility and adverse effect that requires an agreement document, or have SHPO concurrence that a formal agreement document is required.	<input type="checkbox"/>	<input type="checkbox"/>	
Formally invite SHPO to participate in the agreement document	<input type="checkbox"/>	<input type="checkbox"/>	
Review the thresholds for ACHP participation-are they met?	<input type="checkbox"/>	<input type="checkbox"/>	
Review the thresholds for ACHP participation-are they met? If thresholds are met, invite ACHP via formal letter, including the information required at 800.11(e)	<input type="checkbox"/>	<input type="checkbox"/>	
Is ACHP Participating?	<input type="checkbox"/>	<input type="checkbox"/>	
Will this agreement be done under the Protocol or the Regulations?	Protocol	Regs	

MOA or PA

	Comments
Does this agreement need to be a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA)? Look at definitions of the two types at: 36 CFR Part 800.6(c) and 800.14(b).	
MOA	
Records the terms and conditions agreed upon to resolve the adverse effects of an undertaking on historic properties; and lays out how the undertaking will avoid, minimize, and/or mitigate those known effects. An MOA is likely when:	
Is this a discrete undertaking?	
Has there been a complete inventory and have all historic properties been evaluated for eligibility and effect, and BLM has SHPO concurrence on both.	

PA	
Records the terms and conditions agreed upon to resolve the potential adverse effects of an agency program, complex undertaking or other situations in accordance with 800.14(b); and lays out processes to determine eligibility, effects and ways to avoid, minimize and mitigate effects. A PA is likely when:	
Is this a complex undertaking?	
Is this a phased undertaking?	
Effects cannot be determined in advance	
Effects on historic properties are similar or repetitive, or are multi-state or regional in scope	
Nonfederal parties are delegated major decision making responsibilities	
Routine management activities are undertaken at Federal installations, facilities, or other land management units	
Other circumstances warrant a departure from the normal section 106 process	
May incorporate provisions from the State Protocol	
Will likely require a Historic Properties Treatment Plan	
Remember, ALL project specific PAs must now be done under the 106 Regulations at 36 CFR Part 800	

Setting up the Agreement Document:

Action	YES	NO	Dates/Comments
Work with SHPO to obtain an initial list of consulting parties and Indian tribes	<input type="checkbox"/>	<input type="checkbox"/>	
Send letters inviting consulting parties/Tribes to participate in the resolution of adverse effects (give them a respond by deadline)	<input type="checkbox"/>	<input type="checkbox"/>	
Compile lists of consulting parties who have and have not agreed to participate	<input type="checkbox"/>	<input type="checkbox"/>	
Send invites out for first meeting/conference call	<input type="checkbox"/>	<input type="checkbox"/>	
At first meeting: try to set a standard day/time and conference line/passcode numbers for each subsequent meeting /call	<input type="checkbox"/>	<input type="checkbox"/>	
Provide frequent drafts to all participants, and continue to do so throughout the consultation process until all parties approve document	<input type="checkbox"/>	<input type="checkbox"/>	
All parties will consult until an agreement is reached. Accept comments/edits during the meetings and in writing on drafts of the document	<input type="checkbox"/>	<input type="checkbox"/>	

The Agreement Document:

Topic/Section	YES	NO	Dates/Comments
Title, Preamble:			
Are all Signatories named in the title? (e.g. Federal Agencies, SHPO/THPO, Applicant/s, ACHP if participating, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the entire undertaking and the nature of the Federal involvement described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the agreement note whether the agreement was developed pursuant to the State Protocol or the Section 106 Regulations at 36 CFR Part 800?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the responsible Federal agency identified?	<input type="checkbox"/>	<input type="checkbox"/>	
If a multi-agency undertaking, has BLM been identified as the lead Federal agency? Identify the roles of other delegating agencies (see 36 CFR Part 800.2(a)(1)).	<input type="checkbox"/>	<input type="checkbox"/>	
Is an applicant for Federal permits, licenses, grants, or other assistance identified? Make sure to describe their roles and responsibilities clearly.	<input type="checkbox"/>	<input type="checkbox"/>	
Has the appropriate SHPO/THPO been identified?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all other consulting parties identified? (see 36 CFR Part 800.2)	<input type="checkbox"/>	<input type="checkbox"/>	
Have the historic properties affected by the undertaking been identified?			
If doing a PA with phased identification, is the need for such an approach described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the preamble acknowledge historic properties will or may be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a reference included to the agency's public involvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>	
Stipulations:			
Are the stipulations preceded by a clear statement that the Federal agencies shall ensure that these terms are carried out?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all of the provisions agreed upon during consultation included? Make sure they are grouped logically.	<input type="checkbox"/>	<input type="checkbox"/>	
Does each stipulation clearly identify who is responsible to carry it out?	<input type="checkbox"/>	<input type="checkbox"/>	
Do all tasks have clear time frames for initiation and completion?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all stipulations written in the active voice?	<input type="checkbox"/>	<input type="checkbox"/>	
Are tasks assigned only to those parties that will sign the agreement (Signatories and Invited Signatories)?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the use of qualified professionals been stipulated where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	

If archaeological data recovery is stipulated, is the data recovery plan attached to or referenced in the document?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the process for a post-execution decision making described in a complete, logical and organized way? (Who makes what decisions? Who is consulted with? When do decisions need to be made? What information is needed?)	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for consulting party involvement included for any ongoing reviews carried out according to the agreement's terms?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for responding to the unanticipated discovery of historic properties or adverse effects to identified historic properties included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a dispute resolution procedure included?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project?	<input type="checkbox"/>	<input type="checkbox"/>	
Are provisions for the amendment or termination of the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the duration specified, and does it allow adequate time for the terms to be completed?	<input type="checkbox"/>	<input type="checkbox"/>	
Do the stipulations conclude with an affirmation statement consistent with the template agreement document?	<input type="checkbox"/>	<input type="checkbox"/>	

Completing the Agreement Document (housekeeping, approval, signatures):

Action	YES	NO	Dates/Comments
Housekeeping:			
Are all parties assigned responsibilities in the agreement document either a Signatory or Invited Signatory?	<input type="checkbox"/>	<input type="checkbox"/>	
Does each signature line include the printed name, title, agency/organization and date of signature?	<input type="checkbox"/>	<input type="checkbox"/>	
Are Signatories, Invited Signatories and Concurring Parties clearly separated from each other?	<input type="checkbox"/>	<input type="checkbox"/>	
Have all terms and references been used correctly and accurately?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all acronyms and abbreviations identified and used consistently?	<input type="checkbox"/>	<input type="checkbox"/>	
Double check spelling, grammar, formatting, pagination, section numbers, etc. including on Appendices; remove all "draft" notations	<input type="checkbox"/>	<input type="checkbox"/>	
Are all attachments and appendices cited correctly, and	<input type="checkbox"/>	<input type="checkbox"/>	

are they attached?			
Could a “cold reader” understand the agreement and what it requires?	<input type="checkbox"/>	<input type="checkbox"/>	
Approvals/Signatures:			
ALL Signatories have reviewed the document and approved it	<input type="checkbox"/>	<input type="checkbox"/>	
As applicable, email to DOI solicitors (SOL) for review and approval (through FM or DM) (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Email to SHPO to send for AG review and approval (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Have Wyoming Attorney General (AG) approval	<input type="checkbox"/>	<input type="checkbox"/>	
Send “Draft Final” document back out to all parties for one more look, request they respond via email/in writing of their approval (specify timeframe)	<input type="checkbox"/>	<input type="checkbox"/>	
Make enough originals to send around for signature for primary Parties to keep (SHPO, company/ies, Field Office and ACHP if participating), all others will receive a copy including the signatures	<input type="checkbox"/>	<input type="checkbox"/>	
Order of Signatures:			
BLM Field Manager	<input type="checkbox"/>	<input type="checkbox"/>	
BLM District Manager, as appropriate			
Applicant/s	<input type="checkbox"/>	<input type="checkbox"/>	
All other Invited Signatories	<input type="checkbox"/>	<input type="checkbox"/>	
Any Concurring Party that wants to sign (they do not <i>have</i> to sign)	<input type="checkbox"/>	<input type="checkbox"/>	
Send to State Office SHPO Liaison to obtain signatures:	<input type="checkbox"/>	<input type="checkbox"/>	
DSD for Resources Policy and Management	<input type="checkbox"/>	<input type="checkbox"/>	
State AG	<input type="checkbox"/>	<input type="checkbox"/>	
SHPO	<input type="checkbox"/>	<input type="checkbox"/>	
ACHP (if participating)	<input type="checkbox"/>	<input type="checkbox"/>	
Once all signatures are obtained, WSO or ACHP (if participating) will send originals back to Field Office for distribution (minus the SHPO copy), and will scan document and email to Field Office	<input type="checkbox"/>	<input type="checkbox"/>	
Once the document is fully signed/executed, then Section 106 has been completed. Any decision document (e.g. ROD/DR, FONSI, CX, etc.) can then be signed and shall reference the agreement document.	<input type="checkbox"/>	<input type="checkbox"/>	

Even if the ACHP did not participate, the Field Office shall send a copy of the fully executed document to them	<input type="checkbox"/>	<input type="checkbox"/>	
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Tips:

Do not include information that is not relevant to Section 106

Do reference other laws as needed, but don't go into detail about how they will be carried out

Bind sidebar agreements (e.g. HPTPs) to ROD/DR

**WYOMING STATE PROTOCOL
APPENDIX G
AGREEMENT DOCUMENT TEMPLATE**

PROGRAMMATIC AGREEMENT/MEMORANDUM OF AGREEMENT
AMONG

BUREAU OF LAND MANAGEMENT, OTHER FEDERAL AGENCIES, WYOMING STATE HISTORIC
PRESERVATION OFFICER, ADVISORY COUNCIL ON HISTORIC PRESERVATION (if involved), OTHER
SIGNATORIES, REGARDING _____(NAME OF PROJECT)

WHEREAS, Project description; and

WHEREAS, Undertaking description if different from project; and

WHEREAS, the *Programmatic Agreement among the BLM, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* (hereinafter BLM's national PA), State Protocol between the BLM Wyoming State Director and Wyoming State Historic Preservation Officer (WYSHPO) executed on ____, 2014 (hereinafter State Protocol), is incorporated herein by reference; and

WHEREAS, APE definition; and

WHEREAS, Reason for PA/MOA; and

WHEREAS, Any other whereas clauses as needed (determinations of effect, etc.); and

WHEREAS, Tribal consultation/tribes invited, did/did not choose to participate; and

WHEREAS, SHPO consultation; and

WHEREAS, the 1) regulations at 36 CFR Part 800.6(c)(1-3) OR 2) the State Protocol Part V.F.ii.a recognizes three types of signatories to this agreement: **Signatories**, **Invited Signatories** and **Concurring Parties**, which are referred to collectively as **the Parties**. Signatories and Invited Signatories may include any party who assumes responsibilities under this agreement. Concurring Parties have a demonstrated interest in the undertaking or its effects on historic properties, but do not assume responsibilities under the agreement. Concurring Parties may participate in development of the document and may concur with this agreement. The refusal of any Invited Signatory or Concurring Party to sign does not invalidate the PA. Concurring Parties cannot amend or terminate this agreement; and

WHEREAS, 1) the BLM has notified the ACHP according to 36 CFR Part 800.14(a)(1)/OR Protocol IV.A. and the ACHP has elected to participate/not participate OR 2) WHEREAS, the BLM has determined that this undertaking does not meet the thresholds for ACHP participation as found at 36 CFR 800 Appendix A OR Part 5.b. in the national PA; and

WHEREAS, OTHER INTERESTED PARTIES have requested to be consulting parties in actions affecting the (historic properties) and the BLM has invited CONSULTING PARTIES NAME to participate as a ___ (type of party) and they have accepted/not accepted; and

NOW, THEREFORE, the BLM, other FEDERAL AGENCIES, WYSHPO, the ACHP and the OTHER CONSULTING PARTIES agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

BLM will ensure that the following is implemented.

I. STIPULATIONS

AS MANY AS ARE NEEDED. FOLLOW NUMBERING SYSTEM USED IN THE REGULATIONS.

II. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

To the extent consistent with the National Historic Preservation Act, Section 304, and the Archaeological Resources Protection Act, Section 9(a), and other applicable laws and executive orders. Cultural resources data from BLM lands will be treated as confidential by all Parties. The Signatories to this agreement will determine what information may be released to the other Parties. Duplication or distribution of cultural resource data from BLM lands by any Signatory requires written authorization from the BLM.

III. DISPUTE RESOLUTION

- A. Should any Signatory to this PA/MOA provide notice to the BLM of its objection to an action under this PA/MOA, or implementation of the measures stipulated in this PA/MOA, within 30 days of becoming aware of an action, the BLM shall consult with the Parties to this PA/MOA to resolve the objection, unless otherwise specified in this document. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the BLM. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
1. Provide the BLM with recommendations, which the BLM shall take into account in reaching a final decision regarding the dispute; or
 2. Notify the BLM that it will comment within an additional 30 days. Any ACHP comment provided in response to such a request will be taken into account, and responded to by BLM with reference to the subject of the dispute.
- B. The BLM responsibility to carry out all actions under this PA/MOA that are not the subject of the dispute will remain unchanged.

IV. AMENDMENT

Any Signatory or Invited Signatory to this agreement may request that the other Signatories consider amending the agreement if circumstances change over time and warrant revision of the stipulations of the agreement. Except in the case of amendments addressing

resolution of disputes pursuant to Section V of this PA/MOA, amendments shall be executed in writing and shall be signed by all Signatories in the same manner as the original PA/MOA.

V. TERMINATION

Any Signatory or Invited Signatory to this PA/MOA may initiate termination by providing written notice to the other Signatories of their intent. After notification by the initiating party, the remaining Signatories and Invited Signatories shall have 90 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. In the event of termination, the BLM shall refer to 36 CFR Part 800 to address any remaining adverse effects.

VI. SUNSET TERMS

This PA/MOA shall remain in effect for XX years after the date of execution hereof. The BLM and WYSHPO shall re-evaluate the PA every XX years. The BLM shall ensure the PA/MOA will be re-evaluated and amended, to accommodate any changes to the terms. All Signatories will be consulted during the amendment process (See Section V).

General Provisions

- A. **Entirety of Agreement.** This PA/MOA, consisting of number (xx) pages, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.
- B. **Prior Approval.** This PA/MOA shall not be binding upon any party unless this PA/MOA has been reduced to writing before performance begins as described under the terms of this PA/MOA, and unless the PA/MOA is approved as to form by the Attorney General or his representative.
- C. **Severability.** Should any portion of this PA/MOA be judicially determined to be illegal or unenforceable, the remainder of the PA/MOA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- D. **Sovereign Immunity.** The State of Wyoming, the WYSHPO and the Tribes do not waive their sovereign or governmental immunity by entering into this PA/MOA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA/MOA.
- E. **Indemnification.** Each Signatory to this PA/MOA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA/MOA.

Execution of this PA/MOA and implementation of its terms evidence that BLM has taken into account the effects of the undertaking on historic properties.

Signatures. In witness whereof, the Parties to this PA/MOA through their duly authorized representatives have executed this PA/MOA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA/MOA as set forth herein.

The effective date of this PA/MOA is the date of the last Signatory signature affixed to these pages.

Signatories:

Bureau of Land Management, ___ Field Office

____ Field Manager Date

Bureau of Land Management, Wyoming State Office

Deputy State Director Date
Resource Policy and Management

Any other federal agencies

Other Federal Agency Officials Date

Wyoming State Historic Preservation Officer

_____, SHPO Date

Advisory Council on Historic Preservation

_____, Executive Director Date

(Other signature lines as needed (applicant, consulting parties, etc.))

Invited Signatories:

Name and title Date

Concurring Parties:

Name and title

Date

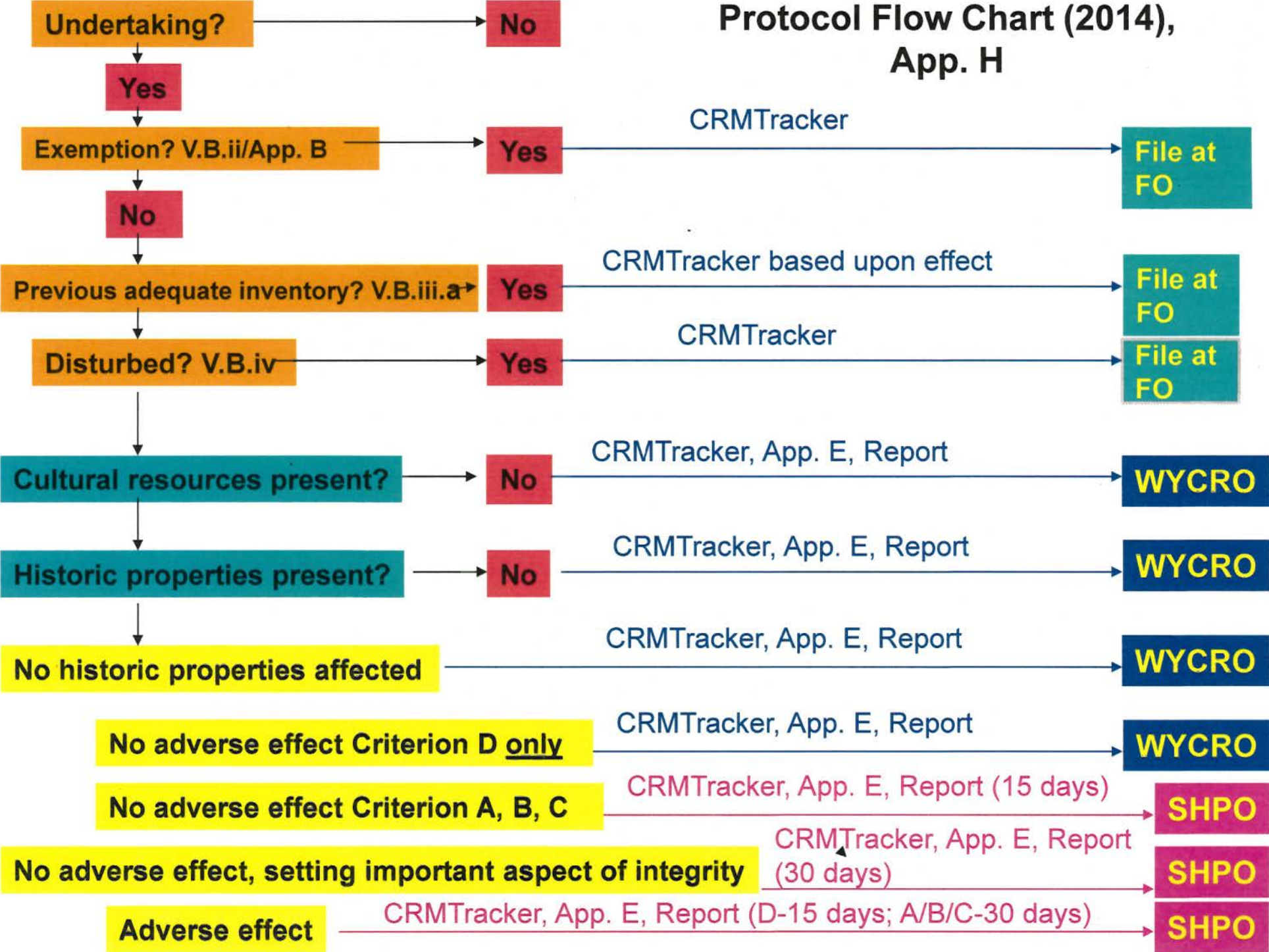
Approval as to Form:
Wyoming Attorney General's Office

Senior Assistant Attorney General

Date

List of Appendices as needed.

Protocol Flow Chart (2014), App. H



**WYOMING STATE PROTOCOL
APPENDIX I
GLOSSARY**

Advisory Council on Historic Preservation (ACHP)

Established by the National Historic Preservation Act (1966), the ACHP is an independent executive agency that has an advisory role in a Federal agency's decision-making process when a proposed undertaking might affect a cultural property which meets National Register criteria. The ACHP promulgates regulations which implement section 106 of the National Historic Preservation Act.

Area of Potential Effect (APE)

The area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." 36 CFR 800.16(d). In defining the APE, the BLM will consider potential direct, indirect, and cumulative effects to historic properties and all aspects of integrity, including their associated settings as applicable.

Backlog

Reports and site forms that are not currently associated with an active project and are older than 1 year.

Best Management Practices (BMPs)

Practices, methods or techniques found to be the most effective and practical means of preventing, avoiding or minimizing effects of undertakings. A BMP can be something structural that is implemented on the ground, or can be part of a process that is used to plan, conduct or close out an operation. BMPs should be matched and adapted to meet the site-specific requirements of the project and local environment, relative to the historic property(ies) within the APE. No one BMP is best suited to every site or situation, or will remain the most optimal practice over time. BMPs must be adaptive and monitored regularly to evaluate effectiveness.

Bureau of Land Management Deputy Preservation Officer (BLM DPO)

The BLM Deputy Preservation Officer is a senior cultural resource specialist on each BLM State Director's staff who is responsible for advising the State Director, district and field managers on professional and technical matters relating to cultural resource management. The DPO serves as an ex-officio member on the BLM Preservation Board.

Bureau of Land Management (BLM) Preservation Board

The Preservation Board which was established by the BLM Director pursuant to the national Programmatic Agreement of March 26, 1997 and continued in the 2012 national Programmatic Agreement. The Preservation Board oversees historic preservation activities bureau wide, coordinates with the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and advises the State Directors and the Headquarters Directorate in Washington, D.C. on historic preservation matters.

Bureau of Land Management (BLM)-State Historic Preservation Office (SHPO) Liaison

The BLM-SHPO Liaison is a senior cultural resource specialist on the Wyoming State Director's Staff who serves as the liaison between the SHPO, the BLM State Office, and the 10 BLM Field Offices. This position coordinates and oversees all joint efforts with SHPO and appropriate BLM district, field and state office staff, and assists the district and field offices in the development and review of agreement documents. In conjunction with the DPO, the BLM-SHPO Liaison coordinates and resolves cultural program compliance work, and provides backup for the DPO for all aspects of the cultural heritage program.

Certified Field Office

A certified field office is one that operates under the State Protocol instead of the Section 106 regulations at 36 CFR Part 800. Certification occurs by having qualified cultural resources staff at or above the GS-9 level who has received orientation on the NHPA, the nPA and the Protocol by the DPO and the SHPO.

Concurring Party

The agency official may invite all consulting parties to concur on an agreement to resolve adverse effects. A consulting party invited to concur has no responsibility under the agreement, but may be invited to sign the agreement as a Concurring Party. The refusal of any party invited to sign a MOA or PA does not invalidate that MOA or PA.

Consulting Party

Consulting parties include all groups who have a consultative role in the Section 106 process. These may include SHPO, THPO, Indian Tribes, representatives of local governments, the Public, certain individuals and organizations with a demonstrated interest in the undertaking 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, individuals and organizations with a demonstrated interest in historic preservation and applicants for Federal assistance, permits, licenses and other approvals. In consultation with the SHPO/THPO, the BLM shall identify consulting parties and invite them to participate in consultation and shall consider all written requests of individuals and organizations to participate as consulting parties.

Cultural Resources

Cultural resources are all eligible, unevaluated, and not eligible resources including buildings, structures, sites, objects, districts and landscapes.

Cultural Resource/Heritage Specialist/Historic Preservation Specialist

A cultural resource/heritage specialist/historic preservation specialist is a Federal agency or SHPO employee meeting qualifications for an archaeologist or historian. For BLM, this is a person responsible for advising BLM managers about cultural resource issues associated with various land use activities; developing a full range of reasonable and justifiable alternatives for inventory, evaluation and treatment of cultural resources potentially affected by land use activities; conducting cultural resource inventory, making professional recommendations of eligibility and effect; and preparing (or reviewing) reports, records, etc., needed for documenting the section 106 process. For SHPO, this is the person responsible for reviewing BLM section 106 determinations and the appropriateness of the BLM's documentation justifying those determinations.

Cultural Resource Use Allocations

Within the framework of the BLM manuals, this term refers to six BLM categories (scientific use, conservation for future use, traditional use, public use, experimental use, discharged from management) employed by field office managers to connect identified cultural resources with decisions about their protection and utilization (see BLM Manual Section 8110.42). All cultural resources have uses, to which they can often be assigned even before they have been individually identified. Use allocations allow field office managers to know in advance how to respond to potential conflicts between cultural resources and proposed land uses. A cultural resource may be allocated to more than one use category. Although some scientific and experimental uses result in physical alteration of resources, use does not imply consumptive use. Managed use of cultural resources can be fully compatible with long-range preservation, and also the means by which preservation is achieved.

Demonstrated Interest

Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties in the Section 106 process 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. A "demonstrated interest" as found at 36 CFR Part 800.2(c)(5) may be indicated by an organization that focuses on historic preservation, as exhibited in their mission statement, charter or bylaws; or an organization or individual with a legal or economic relation to the undertaking or affected properties; or a Certified Local Government (CLG) as defined at 36 CFR Part 61.6. Private landowners have a demonstrated interest when an undertaking involves their property.

Eligible Properties (see Historic Properties)

Federal Land Policy and Management Act 1976 (FLPMA)

The Federal Land Policy and Management Act established public land policy, guidelines for its administration, and provisions for the management, protection, development, and enhancement of the public lands. Public lands retained in Federal ownership are to be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Public land resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts.

Geographic Information System (GIS)

A geographic information system (GIS) is a system for managing spatial data and associated attributes. In the strictest sense, it is a computer system capable of integrating, storing, editing, analyzing, and displaying geographically-referenced information.

Historic American Buildings Survey/Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS)

The Historic American Buildings Survey/Historic American Engineering Record/Historic American Landscapes Survey (HABS/HAER/HALS) is an integral component of the federal government's commitment to historic preservation. The program documents important architectural, engineering and industrial sites and landscapes throughout the United States and its territories. A complete set of formal documentation, consisting of measured drawings, large-format photographs, and written history plays a

key role in accomplishing the mission of creating an archive of American architecture and engineering and in better understanding what historic resources tell us about America's diverse ethnic and cultural heritage. To insure that such evidence is not lost to future generations, the HABS/HAER/HALS Collections are archived at the Library of Congress, where they are made available to the public.

Historic Properties

Historic properties are any prehistoric or historic district, site, building, structure, or object that after evaluation through the NRHP process of assessing their significance and integrity are determined as eligible for listing or have been listed in the NRHP. A property may be determined to be eligible under any, or several, of the following four Criteria, as defined at 36 CFR.60.4:

Criterion A

The property is associated with events that have made a significant contribution to the broad patterns of our history.

Criterion B

The property is associated with lives of persons significant in our past.

Criterion C

The property embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

Criterion D

The property has yielded, or may be likely to yield, information important in history or prehistory.

High Level Environmental Assessment (EA)

An Environmental Assessment written in compliance with the National Environmental Policy Act that may be subject to unusual public attention or involve strongly opposing viewpoints.

Invited Signatory

The BLM authorized officer may invite additional parties to participate in an agreement to resolve adverse effects as Invited Signatories and will invite any consulting parties with responsibilities under the agreement, such as the applicant, to participate as Invited Signatories. Any such party that signs the MOA or PA shall have the same rights as other Signatories with regard to seeking amendment or termination of the MOA/PA. The refusal of any Invited Signatory to sign a MOA or PA does not invalidate the MOA or PA.

Key Observation Points (KOP)

A key observation point is the location from which setting photographs are taken, visual simulations and/or VCR analyses are completed. The KOP must include the view toward the proposed undertaking. Linear historic properties may require multiple KOPs, with the visual contrast rating done from the most critical viewpoints. Locations of KOPs must be recorded precisely, so if multiple visits are required, accuracy can be ensured.

Mitigation

Mitigation is resolving an adverse effect by compensating for said effect as formalized in an agreement document or data recovery plan. (Note on usage: One mitigates adverse effects to historic properties; one does not mitigate historic properties.)

Mitigation Banking

Mitigation banking refers to the acquisition and preservation of archaeological sites away from the project area in return for doing little or no direct mitigation on sites within the area of potential effects.

National Environmental Policy Act of 1969 (NEPA)

The National Environmental Policy Act is the Federal law which guides the decision-making process for public lands in the United States. NEPA requires that all federal agencies involve the interested public in their decision-making, consider reasonable alternatives to proposed actions, and prepare environmental documents which disclose the impacts of proposed actions and alternatives.

National Historic Landmarks (NHL)

A National Historic Landmark is a historic property evaluated and found to have significance at the national level and designated as such by the Secretary of the Interior.

National Historic Preservation Act (NHPA)

The National Historic Preservation Act (NHPA; Public Law 89-665; 16 U.S.C. 470 *et seq.*) is legislation intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices.

National Register of Historic Places (NRHP)

The National Register of Historic Places, expanded and maintained by the Secretary of the Interior, as authorized by section 2(b) of the Historic Sites Act and section 101(a)(1)(A) of the National Historic Preservation Act (16 U.S.C. 470). The National Register lists cultural properties found to qualify for inclusion because of their local, state, or national significance. Eligibility criteria and nomination procedures are found in 36 CFR Parts 60.4 - 60.15. The NRHP lists the districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and or culture. The Secretary's administrative responsibility for the National Register is delegated to the National Park Service, and is maintained by the Keeper of the National Register.

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)

The Native American Graves Protection and Repatriation Act establishes that lineal descendants, tribes, and Native Hawaiian organizations have rights of ownership to "cultural items" (i.e., human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined in the Act), taken from federal lands and Indian lands after the date of enactment. It requires identification of "cultural items" that were in federal agencies' and federally funded museums' possession or control before enactment; establishes a requirement and process for agencies and museums to repatriate "cultural items" on request; directs the Secretary to form a review committee to oversee implementation; provides for imposing civil penalties on museums that fail to comply; authorizes grants of funds for tribes, Native Hawaiian organizations, and museums to carry out the Act; requires the Secretary to promulgate

regulations; and assigns to U.S. District Courts jurisdiction to adjudicate violations of the Act and to enforce the Act's provisions.

Not Eligible Properties

Not eligible properties are cultural resources that, after evaluation through the process of assessing significance, integrity, and criteria considerations are determined not to meet the National Register criteria and are excluded from the NRHP.

Signatory

Signatories to an agreement to resolve adverse effects are the BLM, the SHPO and the ACHP (if participating). The Signatories have sole authority to execute, amend or terminate the agreement in accordance with subpart 36 C.F.R. 800.6(c).

State Historic Preservation Office or Officer (SHPO)

State Historic Preservation Offices and Officers were established by the National Historic Preservation Act of 1966 as an agency within each State government charged with carrying out the provisions of the Act. The SHPO reflects the interest of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the NHPA (16 USC 470), the SHPO advises and assists the Federal agencies in carrying out their Section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development. A SHPO receives Federal funds from the National Park Service and allocates matching funds and grants to Certified Local Governments (CLGs) for the protection of sites eligible for listing in the National Register of Historic Places.

Standard Treatment Measures

See Best Management Practices

Temporary

Activities or elements that will be in place less than one year, i.e. temporary construction elements.

Traditional Cultural Property (TCP)

A traditional cultural property can be defined generally as a property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

Undertaking

A project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval.

Visual Contrast Rating (VCR) System

This is a systematic process defined in BLM Manual 8143 and used by the BLM to analyze potential visual impacts of proposed projects and activities. It can also provide a systematic approach to assessing the current condition of a landscape through documentation and analysis of existing cultural (human-made) features seen on the contemporary landscape. The visual contrast rating system is intended to

assist anyone not formally trained in the design arts to apply the basic principles of design (i.e., form, line, color, and texture) in the analysis and resolution of visual impacts.

Wyoming Cultural Records Office (WYCRO)

Wyoming Cultural Records Office is a section of the Wyoming State Historic Preservation Office, located in Laramie, which maintains the Wyoming Cultural Resource Information System (WYCRIS).

Wyoming Cultural Resources Information System (WYCRIS)

Wyoming Cultural Resources Information System which is a computerized statewide inventory and database of cultural resources, and associated inventories. The database includes a GIS system with digitized cultural resource sites, scanned site forms, and a searchable database for project information.

Acronyms

ACHP – Advisory Council on Historic Preservation
AIRFA – American Indian Religious Freedom Act
APE – Area of Potential Effect
ARPA – Archaeological Resources Protection Act
BLM – Bureau of Land Management
BMP – Best Management Practices
CLG – Certified Local Government
CRM – Cultural Resource Management
CRMTracker – Cultural Resource Management tracking database
DPO – BLM Deputy Preservation Officer
EA – Environmental Assessment
EIS – Environmental Impact Statement
FLPMA – Federal Land Policy and Management Act
GIS - Geographic Information System
GLO – General Land Office
HABS – Historic American Buildings Survey
HAER – Historic American Engineering Record
HALS – Historic American Landscapes Survey
IBLA – Interior Board of Land Appeals
IM – Instruction Memorandum
MOA – Memorandum of Agreement
MOU – Memorandum of Understanding
NAGPRA – Native American Graves Protection and Repatriation Act
NCSHPO – National Conference of State Historic Preservation Officers
NEPA – National Environmental Policy Act
NHPA – National Historic Preservation Act
NHT – National Historic Trail
nPA - National Programmatic Agreement
NPS – National Park Service
NRHP – National Register of Historic Places
PA – Programmatic Agreement
ROW – Right-of-Way
RMP – Resource Management Plan

SHPO – State Historic Preservation Office or Officer
TCP – Traditional Cultural Property
THPO - Tribal Historic Preservation Officers
UWAR – University of Wyoming Archaeological Repository
VCR – Visual Contrast Rating System
WYCRO – Wyoming Cultural Records Office, SHPO Laramie
WYCPF – Wyoming Cultural Properties Form
WYIRF – Wyoming Isolated Resource Form

**WYOMING STATE PROTOCOL
APPENDIX J
SHPO REPORTING STANDARDS**

**WYOMING STATE HISTORIC PRESERVATION OFFICE
FORMAT, GUIDELINES, and STANDARDS for CLASS II and III REPORTS
9/17/2012**

Reports must be prepared for all Class II and III inventories (these report standards may also be used for Section 110 planning surveys, Certified Local Government survey and inventory projects, etc.). Reports should be commensurate with the undertaking/project size and the quantity and significance of cultural resources present. Discussion of items below may be as simple as a short sentence or passage, or lengthy and complex. Reports should include the following sections in this order:

- I. Survey Report Cover Page/Resource Summary Table (required)**
- II. Title Page (required)**
- III. Abstract (as appropriate)**
- IV. Table of Contents (as appropriate)**
- V. Undertaking/Project Description (required)**
- VI. Environmental Setting (required)**
- VII. Present Built Environmental Setting (required)**
- VIII. Background Research (required)**
- IX. Survey Methodology (required)**
- X. Inventory Results (required)**
- XI. Conclusions/Summary (required)**
- XII. References Cited (as appropriate)**
- XIII. Attachments (as appropriate)**
- IVX. Appendices (as appropriate)**

The standard "Survey Report Cover Page" and "Resource Summary Table," as well as all other forms and guidelines, are available on the Wyoming SHPO web site at <http://wyoshpo.state.wy.us>. CRMtracker generates standard "Survey Report Cover Page" and "Resource Summary Table." Either the paper or the CRMtracker version can be provided. The CRMtracker version with a DBI number is required for all BLM undertakings; other agencies may also use CRMtracker, confirm this use with the lead agency prior to submitting the report. Please provide one or the other, but not both. For CRMtracker account information, see the SHPO website.

- I. Survey Report Cover Page/Resource Summary Table (required)**
 - a. Consultant Project Number (optional)
 - b. Agency Number (for agency use)
 - c. Review and Compliance Number (for SHPO R&C use)

- d. Cultural Records Office Number (enter WYCRO ID# if applicable) and File Search Number
- e. Author(s)
- f. Report Title - The title should reflect the name and type of undertaking/project. It should be the same as what is listed on the cover letter provided by the lead agency and how the agency refers to the undertaking/project.
- g. Date of Report
- h. Lead Agency (e.g. BLM Rawlins, BLM Buffalo, WYDOT, DEQ, Medicine Bow National Forest ... SHPO is NEVER a lead agency)
- i. State the name of the cultural resource consulting company, if any.
- j. Brief Description of Undertaking/Project - Briefly describe the type of action.
- k. Federal Permit Number and expiration date if applicable.
- l. Survey Methods- Check the transect width (in meters) and check or enter the width of linear corridor (in feet)
- m. County or counties
- n. USGS Quad Maps - Provide the names and dates of all the maps used.
- o. Landowner/Federal Land Managing Agency - Identify the owner(s) of land involved in the undertaking.
- p. Legal Description of the Survey Area - Please provide township, range, and section(s) with $\frac{1}{4}$ location descriptions of the survey area. The $\frac{1}{4}$ locations should describe the area covered by the inventory. General $\frac{1}{4}$ locations are acceptable for undertakings/projects such as transmission lines, seismic lines, or pipelines. Note template corner and/or section line used. In general, WYCRO uses the section corner closest to the undertaking/project or cultural resource regardless of section shape. Universal Transverse Mercator (UTM) coordinates should be used where there is no cadastral survey e.g. Yellowstone National Park.
- q. Acreage - The acreage numbers should be calculated for the federal/non-federal and block and linear inventory. Total acreage should report the entire acreage involved in the survey. Please report total acreage per landowner/land manager if applicable (e.g. BLM 25 acres, State 14 acres, private 7 acres, total = 46 acres). Please also include a breakdown for each BLM Field Office, Forest, etc. if applicable.
- r. File Search Date – File searches should be conducted no more than 60 days prior to your beginning fieldwork date.

- s. Fieldwork Date - Indicate beginning and ending fieldwork dates.
- t. Field Personnel - List the crew chief/field supervisor and all field personnel.
- u. Survey Results - Please indicate whether cultural material was found on the survey. Put the total number of isolated finds/isolated resources and number of sites in the Area of Potential Effect (APE) (i.e. located during the literature/files search as well as on-the-ground survey) in the spaces (not just a check mark).
- v. Resource Summary Table - The report preparer is required to fill out the resource summary table for all resources identified within the APE for the current survey.

II. Title Page

III. Abstract

- a. Type of Undertaking/Project to Include the Proponent and Land Owner/Manager.
- b. Type of Investigation (Class II or III), Include survey acreage and survey type (i.e. block, linear, etc.).
- c. General Undertaking/Project Location for rural undertakings/projects (Drainage Basin, Major Geographic Area).
- d. Urban inventories should include a short description of the built environment.
- e. Summary of Results, including in brief the number and types of resources, resource significance, and potential undertaking/project effects on significant resources, and management recommendations.

IV. Table of Contents (Appropriate for large undertakings/projects.)

V. Undertaking/Project Description

- a. Describe the type of undertaking/project (e.g. well pad, pipeline, aggregate pit, coal mine, etc.) and the elements of the undertaking/project (e.g. four wells, three miles of access road, and one mile of buried pipeline.) Include the total acres involved; specify the length and width of linear undertaking/projects, providing the actual undertaking/project dimensions and not the inventory dimensions. Also include a description of the visible characteristics of the constructed undertaking (e.g. height, mass, color), and any auditory or atmospheric issues created by the undertaking. For example:
 - i. *“ABC Oil, Inc proposes the construction of a well pad and access road. A Class III inventory was conducted of a 10 acre area centered on the well pad and an*

access road 1 mile in length and 50 feet wide on either side of the centerline for a total 100 foot corridor. After completion of drilling, the well will stand 20 feet tall...”

- b. Describe the area and nature of the anticipated disturbance if any or if known (e.g. drill pads, surface blading, lay-down and staging areas, trenching, recontouring, open pit mining.)
- c. Define the area of potential effect (APE) as determined by the lead federal agency including any considerations for **indirect effects** such as visual, auditory, or atmospheric. This description should include how the APE was defined by the lead agency; consultants should contact the lead agency for this information. [Note: The agency shall consider that the APE is influenced by the scale and nature of the undertaking. Potential direct and indirect effects shall be considered when identifying the area of potential effects (36 CFR 800.16(d)). The agency shall define a single APE; areas within the APE may be contiguous or noncontiguous and may be related to direct effects, indirect effects, or both. Since multiple scales of effects are possible within a single APE, the agency should consider not only potential direct effects but also potential indirect effects (e.g. visual, auditory, or atmospheric) when defining the APE.] In some situations, such as a Section 110 inventory or a planning survey, there may not be an APE. If this is the case, state the reason that no APE is defined in the report.
- d. Provide general overview photograph(s) of the proposed undertaking/project area. All photographs, whether in the text or attached, shall be at least 3.5 inches by 5 inches in size. (Digital photos are acceptable. See “Wyoming SHPO Photographic, Archival, and Digital Submission Standards for Reports and WYCPFs” (<http://wyoshpo.state.wy.us/pdf/PhotographicStandards.pdf>) for detailed information and instructions.)
- e. Provide a high quality copy of a 1:24,000 scale standard 7.5’ USGS topographic map for the undertaking. **Do not enlarge or reduce** the 1:24,000 scale map(s). The 1:24,000 scale map(s) should illustrate: the geographical extent of the undertaking (i.e., undertaking/project footprint), the APE (direct and indirect) as defined by the lead agency, the field inventoried area, and locations of resources in the APE (newly identified and previously recorded). Ensure that each map is labeled with legal coordinates and legends as appropriate. Include highlighted areas as needed to help illustrate undertaking/project and cultural resource locations. Topographic lines should be visible. Maps should not be cropped to an individual section but should expansively show the area around the inventory area to the extent possible. The map(s) should have enough detail so it can be geo-referenced. Supplemental maps which are enlarged or reduced are often necessary to enhance the illustration of the undertaking/project or resource locations and, if not already submitted, will be requested by SHPO, when necessary.

VI. Environmental Setting (of the APE) – * for undertakings in urban areas, this section is not necessary *.

- a. Present Environment

- i. Describe the general physiographic area (reference the Wyoming Geographic Landforms Map <http://wyoshpo.state.wy.us/Images/geomap.jpg>).
- ii. Undertaking/Project Area Description (include specific reference to the APE when appropriate).
 1. Geology: Formations (see Love and Christiansen, 1985; Lageson and Spearing) exposed at the surface and their influence on local topography and landforms.
 2. Hydrology: Primary trunk, local drainage patterns, and surface water sources.
 3. Depositional Settings
 - a. Nature of surface deposits (i.e. alluvial, colluvial, aeolian, etc.) and their distribution on the landscape.
 - b. Potential for buried cultural materials.
 4. Vegetation
 - a. General plant communities (see Knight 1994); indicate specific plants if relevant to interpreting environmental history or site function.
 - b. General surface visibility.

VII. Present Built Environmental Setting

- a. What is visible from the undertaking/project? What is visible within the APE? Generally describe the surroundings and visible manmade features (e.g., these might include roads, fences, windmills, buildings, structures, modern oil field development, highways, etc.).
- b. As appropriate, include a representative photograph(s) of the surrounding landscape (if applicable, the undertaking/project overview photograph may be used).

VIII. Background Research

- a. Background research shall be conducted for the entire APE and must include a formal file search from the Wyoming SHPO's Cultural Records Office (WYCRO), GLOs (access the GLOs at <http://www.wy.blm.gov/cadastral/surveydocs.htm>) and appropriate responsible agency(ies) records. It is not necessary to include the printed WYCRO file search in the Class II or III report.
- b. Identify and summarize the type and nature of previous inventories that have occurred in the APE. In general, an undertaking/project-by-project description of the previous inventories is neither necessary nor desired. Indicate if portions of the APE have been previously inventoried. Provide rationale if any areas of the APE were re-inventoried. For example:

- i. *The WYCRO file search (#00001 on 3/10/12) lists seven surveys; three are well pads totaling 30 acres, located in the north half and south half of the SW ¼ of the section ??, Township ?? North, Range ?? West, and four are linear undertakings/projects of which two are located in the SE 1/4 of Section ?? crossing the current APE. A portion of the NW ¼ of the APE was previously inventoried in 1978. This inventory does not meet current professional standards. No resources have been previously recorded in the APE. Three previously recorded resources are reported on the file search. Resources 48XY#### and 48XY#### are located more than one half mile to the west of the current APE and are previously evaluated, with SHPO concurrence as not eligible for inclusion to the NRHP. They are both small prehistoric lithic scatters. Resource 48 XY#### is a contributing segment of the Oregon-California-Mormon Pioneer National Historic Trail. It is one third mile from the eastern border of the APE. This segment of trail has been recorded and evaluated on two separate field visits in 1988 and 1999. Further discussion of undertaking/project effect to this resource can be found in the Inventory Results section of this report.*
- ii. The file search should be broad enough to include an APE for indirect effects (again, the indirect APE is determined by the lead agency through consultation with SHPO and other interested parties) note: files search for the indirect APE can be done on-line for no fee.
- c. Identify and describe cultural resources (eligible and not eligible properties) previously recorded in the APE. The file search should help identify possible landscapes in the indirect APE such as ranches, historic trails, mining districts, traditional cultural properties (TCPs), sites of potential religious and cultural significance (e.g. rock art, cairns) to Indian Tribes, and known burial sites.
- d. Discuss additional sources of information consulted (please cite as appropriate in the references cited section of report). These might include aerial photographs, other land records, archival sources, planning documents, and other sources suggested or required by the responsible agency(ies).
- e. For archaeological resources, provide a context relative to resources that may be anticipated in the undertaking/project area. Please reference and review available contexts on the WYSHPO website at <http://wyoshpo.state.wy.us/HC/Available.aspx>.
 - i. Discuss known resource density.
 - ii. Discuss cultural affiliation/historical themes of known resources. Address these factors to the degree they are applicable and necessary to support evaluations and recommendations.
 - iii. Discuss the chronological placement and environmental setting of resources. Address these factors to the degree they are known or to the degree necessary to support evaluations and recommendations (e.g., Late Archaic resources in this area tend to be located in sand dunes.).

- iv. For known cultural resources, discuss, based on cultural affiliation/historical themes and placement, whether or not these resources should be evaluated as a district and/or landscape.
- f. For the historic period built environment, provide historical contextual information relative to resources that may be anticipated in the undertaking/project area. This discussion should be scaled to the undertaking and the resources encountered. Refer to *National Register Bulletin: How to Complete the National Register Registration Form*, page 4 and *National Register Bulletin: How to Apply the National Register Criteria for Evaluation*, pages 7-10 for guidance on historic contexts relative to specific properties. Please reference and review available contexts on the WYSHPO website at <http://wyoshpo.state.wy.us/HC/Available.aspx>.
- i. Discuss history of undertaking/project area relative to resources that may be anticipated in the undertaking/project area. This is necessary to understanding a historic property's significance and to determining a period of significance.
 - ii. Discuss the property types (e.g. contextual information for homesteads, etc.).
- g. Discuss appropriate historic research conducted prior to field work. Properties eligible under criteria A, B, and/or C generally require additional research (these include homesteads, ranches, trails, roads, canals, etc.). Typical sources include county records, county libraries, local museums, Wyoming State Archives, and the American Heritage Center at the University of Wyoming. To complete this section, please see *National Register Bulletin: Researching a Historic Property*.
- i. Discuss types of historical records reviewed and where they are stored.
 - ii. Provide names and addresses of individuals contacted if applicable.
 - 1. It may be necessary to contact the landowner regarding the history of resources for undertakings where these resources occur on private land.
 - iii. Provide appropriate citations of references used.
 - iv. Discuss the limitations, accuracy, and biases of the archival research.

Note: If VIII.g.i-iv.is not addressed in the report, SHPO will assume the research has not been done and will request that it be completed.

IX. Survey Methodology

- a. Describe the total acres field inventoried. Describe the sizes of survey elements, such as well pad blocks and linear surveys. Describe relationship of survey area to the APE and

any special inventory strategies to aid in assessing indirect effects to identified historic properties.

- b. Extent of Survey Coverage
 - i. Pedestrian Coverage.
 - 1. Transect width (if non-standard, description and justification should include authorization from federal agency, if applicable).
 - 2. Describe other types of coverage (examined cut banks, rodent burrows, road cuts, animal trails, etc.).
 - ii. Supplemental coverage.
 - 1. Remote Sensing.
 - 2. Airplanes or helicopters (In general, this is used for historic trails).
 - 3. Describe any other type of additional identification methods used.
- c. If applicable, describe the collection strategy. Specific artifact and sample collection policies are determined by the responsible lead agency. Check with the lead agency to determine collection policies prior to fieldwork.
 - i. State the disposition of artifacts, photographs, notes, specimen samples, etc. Name the curation facility used. Name where other field notes, photos, and documents can be obtained and accessed. State if the private surface owner has requested artifacts be returned or if the artifacts will be or have been donated to a curation facility.
 - ii. If no collection is made, please state here.
- d. Discuss resource mapping methodology (techniques, equipment).
- e. Discuss testing strategy, if applicable (provide rationale for testing).
 - i. Shovel testing.
 - ii. Auger testing.
 - iii. Backhoe trenching (if approved by agency).
- f. Provide a brief discussion of weather and ground conditions at the time of the survey (e.g., if overcast and foggy with 10 percent snow cover).
 - i. To what extent did field conditions alter methods?

- ii. To what extent might field conditions have biased results?

X. Inventory Results (this includes all cultural resources within the APE, including those found during the background research as well as field survey)

- a. Summarize Cultural Resource Findings (e.g. 23 resources were recorded, 19 prehistoric and four historic; nine IRs were recorded, eight prehistoric and one historic. Two prehistoric resources were re-evaluated and one previously recorded prehistoric site could not be relocated.)
- b. Cultural Resource Descriptions (Each individual resource should be discussed separately using the following format. Include the Smithsonian Trinomial Number. **Discuss properties in alphanumeric order.** Repeat X.b.i – ix. **as necessary** for each resource.)
 - i. General topographic location.
 - ii. Landownership (e.g. BLM, private, split-estate).
 - iii. Size (length, width, total area).
 - iv. Physical remains.
 - v. Cultural affiliation/period of use/manufacture (if known).
 - vi. Condition (i.e. physical condition. Aspects of integrity should be discussed under section X.d.v.).
 - vii. Testing.
 - viii. Assessment of potential threats to the resource (i.e. erosion, etc. not threats from the undertaking/project).
 - ix. Sketch map - illustrate the following as appropriate:
 - 1. Areas tested.
 - 2. Resource boundaries.
 - 3. North arrow.
 - 4. General artifact distribution.
 - 5. Features and/or concentrations of artifacts.
 - 6. Diagnostic artifacts.
 - 7. Collected artifact locations.
 - 8. Datum (note if the mapping of the resource datum is a physical datum or a datum point with no physical datum on site).
 - 9. Pertinent physiographic features (i.e., schematic topographic lines, drainages, depressions, outcrops, modern features, and disturbances).
 - 10. Map key (label all symbols used).
 - 11. Smithsonian Trinomial number.
 - 12. Scale.
 - 13. Relationship to APE (If applicable show the APE boundary on the sketch map).
- c. Resource photographs (see standards at <http://wyoshpo.state.wy.us/pdf/PhotographicStandards.pdf>)
 - i. Resource overview photographs. For large undertakings/projects, a sample set of photographs may be provided in the report as appropriate to illustrate representative types of resources found on the undertaking/project inventory.

- ii. Representative feature photographs, overview, plan and cross-section as appropriate, with scale.
 - iii. Photographs of diagnostic artifacts, as appropriate, with a standard, graduated scale (i.e. no pennies, pens, pencils, trowels, etc., used for scale). Line illustrations are optional.
 - iv. If setting is an important consideration for determining resource eligibility, appropriate setting photographs should be used to support the eligibility determination.
 - 1. Photos are necessary to justify a determination of compromised or altered integrity that causes the cultural resource to be considered not eligible or non-contributing. **Provide photos illustrating the loss/diminishment of integrity of setting, as appropriate.**
 - v. Updated photos must be provided for historic above-ground properties that have not been recorded within the last five years, for properties whose eligibility is in question due to integrity issues, and/or for those that were poorly recorded previously.
- d. National Register of Historic Places Evaluation - All unevaluated resources found within the APE must be evaluated for NRHP eligibility under **all four criteria**. This must include a reasonable rationale and justification under NRHP criteria (36CFR60.4). For guidance refer to *National Register Bulletins: How to Apply the National Register Criteria for Evaluation [Bulletin 15]*, *How to Complete the National Register Registration Form [Bulletin 16A]*, *How to Complete the National Register Multiple Property Documentation Form [Bulletin 16B]*, *Researching a Historic Property [Bulletin 39]* (<http://www.nps.gov/nr/publications/index.htm>), and applicable historic contexts (<http://wyoshpo.state.wy.us/HC/Available.aspx>).
- i. Categorize the resource. A resource must be classified as a district, site, building, structure, or object. A landscape or a traditional cultural property should be classified as a site or a district.
 - ii. Determine which prehistoric or historic context(s) the resource represents. A resource must possess significance in American history, architecture, archaeology, engineering, or culture when evaluated within the historic context of a relevant geographic region.
 - 1. Refer to *National Register Bulletin: How to Complete the National Register Registration Form*, page 4 and *National Register Bulletin: How to Apply the National Register Criteria for Evaluation*, pages 7-10 for guidance on historic contexts relative to specific properties. Contexts available for Wyoming are on the WYSHPO website at <http://wyoshpo.state.wy.us/HC/Available.aspx>.

- iii. Evaluate whether the resource is significant under the NRHP criteria. This is done by identifying the links to important events or persons, design or construction features, or information potential that make the property important.
 - 1. Determine the Area of Significance for the resource.
 - a. Area of Significance is the aspect of historic development in which a property made contributions for which it meets the NRHP criteria. Please use the Areas of Significance provided in the *How to Complete the National Register Registration Form*, pages 40-41.
 - 2. Determine the Period(s) of Significance for the resource.
 - a. Period(s) of Significance is the span of time in which a property attained the significance for which it meets the NRHP criteria. The period of significance should not be taken from the Wyoming Cultural Property Form defined periods of significance as these are broad eras in Wyoming history.
- iv. Determine if the property represents a type usually excluded from the NRHP. If so, determine if it meets any of the Criteria Considerations.
- v. Determine whether the property retains integrity. Discuss the aspects of integrity (location, setting, feeling, materials, workmanship, association, design) as appropriate – not all aspects may apply.
 - 1. The applicable aspects of integrity can be different based on the criteria for which the property is significant. Discuss each aspect of integrity based on the end of the period of significance. Remember that integrity is “sometimes a subjective judgment, but it must always be grounded in an understanding of a property’s physical features and how they relate to its significance. To retain historic integrity a property will always possess several, and usually most, of the aspects.” See *How to Apply the National Register Criteria for Evaluation*. Discuss integrity of the property type (site, building, structure, object, and district with consideration given to landscapes and traditional cultural properties) as it relates to the evaluation and eligibility of the property.
- e. Previously Adequately Evaluated Resources
 - i. For cultural resources that have been previously adequately evaluated, please state when the cultural resource was evaluated and why it was found eligible or not eligible for the NRHP.
- f. Evaluation of Effect

- i. For those resources identified within the APE, provide a discussion of the effect of the proposed action on each resource, regardless of resource eligibility (e.g. “Because the site is not eligible for the NRHP, the undertaking/project will have no effect. Pipeline construction is likely to destroy the site completely.”). Effects discussion should include direct and indirect effects, as applicable. For example, if it was determined that properties identified through the file search or on the USGS topographic map will not be affected by indirect effects, please state why this is the case (e.g. “The undertaking will not be visible from the historic ranch due to topography.”)
 - ii. Address whether the proposed undertaking/project may introduce visual, atmospheric, or audible elements which could have an effect on newly recorded and/or previously recorded historic properties. In general, this pertains only to resources which are, or may be, eligible under criterion A, B, or C.
 - iii. In cases when the effect to historic properties is unknown or there is no effect, such as planning inventories or Section 110 activities, state this in this section of the report.
- g. Recommendations
 - i. Provide recommended alternatives for avoiding or reducing potential adverse effects to eligible resources that may result from implementation of the undertaking.
 - ii. Describe any methods of treatment which could mitigate direct and/or indirect adverse effects on NRHP-eligible properties.
 - iii. Recommend a finding of effect for the undertaking.
- h. Isolated Find/Isolated Resource Descriptions – Provide brief description of each isolate/isolated resource(s) (include how the determination was made that the resource is not part of a buried site); photographs of isolated resource(s) and setting are required.

XI. Conclusions/Summary

- a. Evaluation of Findings and Recommendations for Additional Work.
 - i. Compare expected results to actual results.
 - ii. Provide a discussion of the confidence in meeting the objectives of the inventory and the possibility or potential of buried cultural resources not revealed during the survey of the undertaking/project area. It is just as important to discuss the level of confidence for there being no potential for buried resources as it is for there being a high potential for buried resources.
 - iii. Discuss whether or not further work, such as open trench inspection, monitoring, etc., would be productive and appropriate.

- iv. Make recommendations as to whether or not data recovery is appropriate or necessary as a potential mitigation measure for this undertaking and provide rationale.
 - b. Resource Synthesis - Commensurate with the scale of the undertaking/project, discuss findings in relationship to previous or ongoing work within the region, the contribution to regional research orientations, or inferences to area cultural history or culture process. Use existing contexts as appropriate.
- XII. References Cited** - Use the American Antiquity Style Guide or the Chicago Manual of Style.
- XIII. Appendices** - Attach any applicable appendices. Historical studies, geoarchaeological reports, historic maps, etc. (Please do not attach WYCRO file search results). Copies of radiocarbon lab reports should be included as an individual appendix.
- XIV. Attachments** - Attach Wyoming Cultural Properties Forms (WYCPF) and Isolated Resource Forms (<http://wyoshpo.state.wy.us/Section106/PropertiesForms.aspx>). **Please do not bind these in the report.** Note that prior to the submission of the report, previously recorded resources that are proposed to be divided into smaller resources or combined into larger resources should be discussed with the appropriate agency and the WYCRO. Previously recorded resources that require changes in boundaries, description, or eligibility status require updated WYCPFs. These changes will be included and reflected in the WYCRO database. Provide a discussion of these changes in the Inventory Results section of the report for each resource.
- a. Complete WYCPF and Wyoming Isolated Resource Forms (WYIRF).
 - i. Provide resource legal location and evaluation of all identified cultural resources, including previously recorded resources, within the APE on the WYCPF.
 - ii. For newly recorded resources, complete a WYCPF.
 - iii. For previously recorded resources, a WYCPF update may need to be completed if conditions, integrity, or cultural resource characteristics have changed since the original recording.
 - 1. For example, for historic above-ground resources that have not been recorded within the last five years and/or will be affected by the undertaking, for properties in which contributing/noncontributing determinations are being made for the first time, for properties whose eligibility is in question due to integrity issues, for those whose condition and/or boundaries have changed, and for those that were poorly recorded previously.
 - iv. If an artifact(s) is located meeting the Wyoming SHPO definition of isolated resource, a WYIRF must be completed.

- v. Each WYCPF and WYIRF must have attached a legible standard 7.5 minute USGS map at the 1:24,000 scale with the resource and/or isolated resource clearly plotted. **Do not reduce or enlarge the primary map.** Supplemental maps which are enlarged or reduced may be included to enhance the illustration of the resource areas. Include appropriate resource photograph(s).
- vi. Other Supporting Documentation.
 - 1. Include any other supporting documentation as appropriate. (e.g. radiocarbon lab reports, lithic or faunal analyses, etc.)

END NOTE: The inventory report is a legal document provided for compliance with the National Historic Preservation Act. The inventory report will be reviewed by the SHPO and retained as a permanent state record. It serves as part of the statewide inventory of cultural resources and is not considered a public document. Any document owner (e.g., a responsible federal agency) intending to distribute or otherwise use the inventory report as a public document are responsible for removing or deleting all legal descriptions and resource-specific location maps and information prior to public distribution.

For archaeological resources on federal lands, pursuant to the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii) and Section 7.18 of the implementing regulations at 43 CFR Part 7, these reports shall not be made available to the public under subchapter II of Chapter 5 of Title 5 of the United States Code. If this report is prepared under the authority of a federal permit issued in accordance with Section 7.8 of the regulations it shall signify that the permittee has accepted the terms and conditions of the permit and has submitted the report as a legal document for compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470). Any falsification of information deliberately entered in or withheld from this report shall be considered a violation of those permit requirements, and may result in suspension or revocation of the permit by the issuing federal agency, or may result in penalties pursuant to 18 U.S.C. 1001.

WYOMING SHPO PHOTOGRAPHIC, ARCHIVAL, AND DIGITAL SUBMISSION STANDARDS FOR REPORTS AND CULTURAL PROPERTY FORMS

Revised 10/1/2012

Introduction

The use of digital images in reports has become the preferred medium by the majority of agencies and contractors in Wyoming. The following provides an explanation of photographic and archival standards for reports and site forms to be submitted to the Wyoming State Historic Preservation Office (WYSHPO). These standards pertain to photographs, physical paper documents, and the submission of GIS data and reports in pdf format, not to the content of the report.

PHOTOGRAPHS AND ARCHIVAL CONSIDERATIONS

Photo Quality Standard

Photographic documentation is an integral part of site and project recording. Photos serve to supplement the site plan map by documenting aspects of site location, structure, and condition that cannot be easily drawn. Project photos are important in documenting current conditions of the landscape, visual intrusions, vegetation, setting, and similar aspects of site situation as well as providing photographic documentation of changes through time. Photos are a required part of site and project documentation. Photos and digital images must be clear, crisp, and focused. Digital images should not be visibly pixilated. Color or high quality grayscale is preferred for digital images. Slides may be submitted, but are optional, and are supplemental to photographic prints or digital images. Photographs on Polaroid-style print paper will not be accepted.

Digital Imaging Equipment (Digital Cameras)

Digital images must be taken using a camera having at least **six** megapixels of resolution. Camera phones, disposable digital cameras, and digital cameras with fewer than six megapixels of resolution are not acceptable. Software solutions are applicable and permissible for further correcting and improving the quality of the final printed image. It is advisable to upgrade camera and software technology as with any other computer or digital equipment. WYSHPO reserves the right to update its standards at anytime, including in response to improvements in readily available technology. A state-of-the-art system is not necessary. It is anticipated that WYSHPO may review available technology every three to five years.

It is very important that all camera equipment of any type or manufacture be adjusted to appropriate settings or modes to use in certain situations. Of special note should be the proper use of the "macro" or "close-up" mode on a digital camera. User manuals will specify the focal range of the camera when it is in macro mode. After taking a close-up shot it is often beneficial to review the photo immediately on the camera display, and then zoom in to make sure that the focus is sharp. Additionally, cameras should be set to take photographs of the highest quality, for the equipment to operate properly within the required six megapixel resolution capability. Also, be aware that some software programs, including MSWord and conversions to Acrobat pdf, may "resize" photographs inserted into documents (automatically or as a user option), lowering the resolution and the print quality below WYSHPO standards.

Photographic Format

Photographic prints and digital images converted to prints must be submitted in a 3.5 x 5 inch format or larger (with the exception of feature and artifact photos, which may be smaller). Each photo or image

must be properly labeled. At a minimum, the label must indicate the following items as appropriate: subject identification, Smithsonian number, description of image, direction of view, photographer's name, date, and whether or not the image has been modified. Photographic documentation must be checked in the "Records Inventory" section of the core Wyoming Cultural Properties Form. Original prints or original printed digital images of the general project area and other documentary photos or images must be included in the report. Each Wyoming Cultural Properties form must include a general site overview photo; feature and diagnostic artifact photos should be included as appropriate. Photocopies of photographs or images will not be accepted. All images must be printed on acid-free paper.

Different types of inkjet or laser printers used to print digital images vary greatly in quality and longevity. Those with better quality inks and longevity are preferred. Photos must be printed using a printer with a minimum print quality of 300 dpi. Colorfast and waterproof inks are preferred.

If the original master image is modified or edited using software, a separate file should be saved of the edited version. The master image should be saved unedited. Indicate whether or not the image has been modified or kept in the original form in the image label. Over enlarging of images must be avoided to maintain image quality. Photos must be printed at a minimum of 300 dpi.

Required Photographs or Images (adapted from the National Register Photo Policy Factsheet):

The number and kind of photos taken depend on the size and complexity of the site, basic photographic documentation commonly includes the following types of shots:

Buildings, structures, and objects:

Submit 3.5 x 5 inch photographs showing the principal facades and the setting in which the property is located.

Additions, alterations, intrusions, and dependencies should appear in the photographs.

Include 3.5 x 5 inch photographic views of interiors (if applicable), outbuildings, landscaping, or unusual features if they contribute to the significance of the property.

Historic and archeological sites:

Overview photos (3.5 x 5 inch) showing the site area in relation to major topographic and cultural features. A photo of such large scale may require several frames and necessitate taking photos at some distance from the site. It is useful to have a person or some object (e.g. a vehicle) in these shots for scale. If possible, **include the site datum (made highly visible) in the center of the photo so it can be related to the site sketch map.**

Feature photos showing some overt site detail (e.g., exposures showing deposit depth, evidence of vandalism or other disturbance, excavation units) or site features (e.g., hearths, stone circles, cairns, surface depressions). Again, it is required to have a scale in the field of view, a person or recognizable object in this case is acceptable. Please also relate the photo to the site map. Feature photographs are **not** required to be 3.5 x 5 inches in size; however, they should be of a size that allows for sufficient detail to be easily recognizable. Show photo points on the sketch

map or include a separate map with photo points plotted, as appropriate. Photos of significant features must be keyed to the site sketch map and site form.

Artifact photos showing the size and material of artifacts present, particularly diagnostics, can be an important part of evaluating site significance. A scale must be included in this type of photograph and **significant** items must be keyed to the sketch map. Artifact photographs are **not** required to be 3.5 x 5 inches in size; however, they should be of a size that allows for sufficient detail to be easily recognizable. Macro settings may be appropriate to use when taking artifact photos.

Architectural and Historic Districts (key all photographs to the sketch map for the district):

Submit 3.5 x 5 inch photographs showing major building types and styles, pivotal buildings and structures, and representative noncontributing resources.

Streetscapes and landscapes are recommended. Aerial views may also be useful. Views of significant topographic features and spatial elements should also be submitted.

Views of individual buildings are not necessary if streetscape views clearly illustrate the significant historical and architectural qualities of the district.

Archeological Districts:

Submit 3.5 x 5 inch photographs of the principal sites and site types within the district following the guidelines for archaeological sites (see above).

ARCHIVAL CONSIDERATIONS

The long-term survival of paper and photographic records is a critical issue. When submitting records to WYSHPO, please adhere to the following standards:

Paper and Forms

Acid-free paper must be used for all records simply because it lasts longer. Acid-free paper is readily available from common retail supply sources for office paper.

All reports and forms, including photo labels, must be in typographic font of appropriate size and readability, and not hand written.

Durability and Archival Standard

All imagery submitted must have been created with a process having an image life of at least 20 years. WYCRO may test occasional photographic or digitally produced imagery in appropriate ways to ensure durability of records in the archive. Records that are not sufficiently durable may be rejected as a group.

Mounted Photos

Although the mounting of photographic prints in reports has become quite rare, it is necessary to provide the following information should this photo production method be used. Almost all mounting methods cause deterioration of the print with time and eventually lose their adhesive power, resulting

in the loss of the print from the page. This cannot be avoided completely, but heat-sensitive adhesive sheets are less destructive and last longer than other methods. In any event acid-free adhesives are to be used. The best method of including photos in a report is to include archivally sound sleeves in the report such as chemically inert polypropylene photo pages. Note that the stiff plastic sleeves known as PVC, or polyvinyl chloride, must not be used; this material contains gases harmful to just about everything. In all cases, photos must be marked (pencil or permanent ink only -- no ball-point or water-based pens) on the backside for association with the correct figure numbers and captions in the report if they become separated from the report or sleeve. Note that the word "archival", often found on plastic sleeves, does not always refer to archival quality materials; it may refer to the archival company. Care must be taken when purchasing plastic materials, because not all plastics are sound for preservation. Only clear, inert, polypropylene or polyethylene slide and negative pages should be used for negative and slide storage.

Magnetic Computer Media

Submission in electronic format is supplemental to the other photo and report requirements. Images should be submitted on CD-ROM or DVD.

Archiving computer data on magnetic media has two major problems. First, the magnetic media used by most PCs will not reliably store data for extended periods of time. Second, the format that applications use for storing data changes as new versions of the application are released. At some point in time the old format becomes unreadable by the current technology. As with all electronic information, digital images are very volatile which places historical images at risk. The major concerns are: storage media may only last 5 years or less; the hardware and software will become obsolete and place the information at risk; once an image is no longer being accessed for viewing on a regular basis, there is a risk of bit degradation that will not be identified; and the cost of migration of non-accessed information is extremely expensive and may also result in a degradation of the image. Consequently, at this time, the WYSHPO cannot guarantee the long-term survival of any information submitted on magnetic media.

DIGITAL DATA SUBMISSION

CRM Reports for Publication on SHPO Data Transfer Site

The Wyoming Cultural Records Office is providing secure access to CRM reports through the WYCRO Online Database and Internet Map Service. Submission of digital files is voluntary. PDFs converted from original digital format (such as a word processing document) is the preferred process to create a digital file.

- ✓ At least two original paper copies must be submitted to the lead agency
- ✓ Final reports should be submitted to SHPO Data Transfer Site **after** they have been approved by the lead agency.
- ✓ Digital reports should be submitted (by the federal agency) in pdf via CD-ROM, dvd or to the SHPO data transfer site (see instructions below).
- ✓ Submitted pdf files are intended for access through Internet connections and file sizes should be relatively small (~ less than 50 megabytes). Software capable of producing pdf files (such as

Microsoft Word) generally has a quality setting that includes a Web setting. From the file menu use: File, Save as pdf and choose the “Minimum size (publish online)” setting.

- ✓ Very large reports can be broken into sections.
- ✓ Label the file with the WYCRO ID that is assigned to the project. – (e.g. “64399.pdf” if it is in multiple volumes label it “64399_2.pdf, 64399_3.pdf, etc.)

Submitting GIS Files

GIS data files for cultural resources and projects may be submitted to WYSHPO.

- ✓ GIS data should be submitted in a file geodatabase (gdb). WYSHPO is providing a template geodatabase as well as instructions on a WYSHPO web page or by request.
- ✓ Project shapes and site shapes must be separate layers
- ✓ Linear sites and projects should be polyline shapes. Other sites and project shapes should be polygons.
- ✓ Projects and sites should be limited to boundaries or extents. SHPO will not process files containing artifact or feature point plots.
- ✓ Sites should be combined in one polygon and/or line layer as appropriate.
- ✓ Site attributes should contain the site number, consultant project number and CRMTracker DBI number (if applicable)
- ✓ Project attributes should include the CRMTracker DBI number (if applicable), and consultant project number.

Submitting Files to the WYSHPO Data Transfer Site

WYSHPO has established a data transfer site at <https://pepperjackshpo.uwyo.edu>. The user login is ‘shpouploads’ and the password is ‘public’. To upload files to the WYSHPO server, click the Pick Files button in the upper left corner of the browser window, navigate to and select the file on the user’s computer and click the Open button. The name of the file will appear above the Pick Files button. Click the Upload button below the Pick Files button to complete the transfer. Uploaded files are secure and are not available for viewing or downloading from the upload portion of the web site. WYSHPO will move files to appropriate locations for viewing from individual accounts (such as the WYCRO Online Database and WYSHPO Map service).

To obtain technical assistance with digital data submission, please contact the WYCRO office at 307-766-5336.

WYOMING RESOURCE DEFINITIONS AND RECORDING GUIDELINES

WYOMING PREHISTORIC AND HISTORIC SITE DEFINITION

A prehistoric site is 15 or more spatially associated artifacts within a 30 meter diameter area (site may be much larger than 30 meters in diameter). A feature is a site (e.g. hearth, cairn, stone circle).

A historic site is 50 or more spatially associated artifacts within a 30 meter diameter area (site may be much larger than 30 meters in diameter).

WYOMING ISOLATE/ISOLATE RESOURCE DEFINITION

A prehistoric isolate is defined as 14 or fewer spatially associated artifacts where no buried cultural materials or features are thought to exist.

A historic isolate is defined as 49 or fewer spatially associated artifacts where no buried cultural material or features are thought to exist.

DEFINED NON-SITES AND PROPERTY TYPES REQUIRING NO FORMAL DOCUMENTATION

The appropriate lead agency cultural resource specialists must review and approve any deviation from this list. In most cases, formal documentation of the property types listed below is not required.

Existence of these defined non-sites and property types within the survey area, and justification for their exclusion, must be discussed in the project report. If any of these property types exhibit significant architectural or engineering features, or are associated with a National Register-eligible site or district (either within the boundary, or clearly related to the significance of a NRHP-eligible site or district), they should be recorded on a Wyoming Cultural Properties Form. Professional judgment and common sense should be applied. In general, Smithsonian numbers will not be assigned to the following property types:

1. Utility lines (i.e., power lines, towers, telephone lines, fiber optic cable, etc.)
2. Pipelines (i.e., water, gas, etc. This does not include early wooden pipelines.)
3. Isolated stock dams, troughs, spring boxes, and associated windmills.
4. Elevation, bench, and section markers (i.e. all survey or cadastral markers).
5. Car banks (i.e., the use of abandoned cars, farm machinery, appliances, etc. to stabilize riverbanks, stream banks, or drainages).
6. Rip-rap (i.e., the use of cobbles, rock, or wood to stabilize riverbanks, stream banks, or drainages)
7. Isolated abandoned motorized vehicles, appliances, and mobile homes.
8. Fences and enclosures (i.e., barbed wire, chain link, buck-and-pole, or other types of pasture fence.) This does not include corrals, roundup or load-out facilities.

9. Unnamed two-track roads (i.e., ranch roads, seismic roads, etc.). This will require standard historic research to determine if the roads are named. Named roads need to be formally recorded; generally, unnamed roads do not need to be recorded. Discuss in the report the historic research conducted (i.e. GLO check, county records, historic maps, etc.)
10. Recent trash (i.e., highway trash, etc.)
11. Producing oil/gas wells and dry hole markers.
12. Water control channels, laterals, spreaders, canals, and ditches that are not designated by name on the USGS Topographic maps. (Water records can be found on the SEO's website at <https://seoweb.wyo.gov/e-Permit/> or in the "tabulation of Adjudicated Surface Water Rights of the State of Wyoming: Water Division Numbers One-Four.")
13. Samples of defined lithic landscapes. Approval from the lead agency cultural resource specialist must be obtained for the cultural resource permittee to apply this exclusion.
14. Short-term camps associated with stockgrazing and recreation that provide no significant information.
15. Temporary sawmill sites, slash piles, and isolated woodpiles.
16. Prospect pits associated with mineral exploration or mining with no associated features, cribbing, and/or less than 50 associated historic artifacts.
17. Roads that have been reconstructed within the last 50 years do not need to be recorded. Abandoned segments that are not associated with an eligible road do not need to be recorded.

**WYOMING STATE PROTOCOL
APPENDIX K
STANDARD DISCOVERY PLAN**

I. Introduction

- A. Surface disturbing activities have the potential to affect historic properties though unanticipated discoveries. Unanticipated discoveries typically occur when previously undetected cultural resources are exposed during construction or other permitted surface disturbing activities, but after the federal agency has completed the Section 106 process. Cultural resources may be discovered by construction personnel, an archaeological monitor, a BLM inspector, or others who may be present during construction activities. This appendix serves as a basic Discovery Plan for federal undertakings authorized by the BLM, and may be used if there is no undertaking-specific Discovery Plan. In response to this potential for discoveries, we are addressing discoveries programmatically per 36 CFR 800.13(a)(1). This standard Discovery Plan is optional and may not be applicable in all circumstances or for all BLM undertakings.
- B. This Discovery Plan is intended to address typical cultural resources such as prehistoric or historic features, artifacts, discovery of a previously unknown portion of a historic property, or other cultural materials that are most likely to be discovered during surface disturbing activities. Discoveries can also take other forms including activities that go beyond permitted boundaries and encroach upon a historic property or an unevaluated site, and/or activities that cause unexpected additional effects (physical, visual, audible, or atmospheric effects) to a historic property.

II. Planning for Discoveries

- A. The BLM will encourage development of undertaking-specific discovery plans for large and complex undertakings and those involving land disturbance in areas suspected to contain buried sites. Undertaking-specific discovery plans will be forwarded to the SHPO for a 30 day review along with BLM's determination of effect for the undertaking as specified in Section VI of this Protocol.
- B. Undertaking-specific discovery plans must include at a minimum the following components:
 - i. Monitoring methods that will be used during surface disturbing activities
 - ii. Communication strategies in the event of a discovery
 - iii. Training plan for personnel working in the area regarding disturbance of cultural resources
 - iv. Testing and evaluation strategy
 - v. Discovery of human remains
 - vi. Reporting methods
- C. When an undertaking-specific discovery plan has been accepted by the BLM and SHPO, the BLM will reference the plan in the project stipulations (conditions of approval, terms and conditions, etc.) The BLM will follow the plan when cultural resources are discovered during implementation of the undertaking. The BLM shall take prudent and feasible steps to ensure

that the undertaking does not further harm the cultural resource until treatment is completed in accordance with the discovery plan.

III. Unanticipated Discoveries

- A. If cultural remains, or possible cultural remains, are discovered during surface disturbing activities, all construction activities will be halted immediately within a minimum of 100 feet of the discovery and the BLM Authorized Officer will be notified within 24 hours. The BLM will notify the SHPO of the discovery by telephone and/or email within 48 hours after receiving the initial notification. The discovery will be secured until it can be evaluated by the BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant. The project applicant is responsible for informing all persons in the area who are associated with the project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. Construction activities may continue in other areas of the project a minimum of 100 feet from the discovery, but may be subject to an archaeological monitor at the BLM authorized officer's discretion.
- B. The BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant will determine if the discovery is cultural, and if so, record and evaluate the discovery and make a recommendation of eligibility and effect. BLM will consult with appropriate Indian tribes and consulting parties at this time. The discovery will be evaluated under all four criteria eligibility and all seven aspects of integrity. Evaluative testing may be necessary to determine the nature and extent of the cultural materials. Consultation with the applicable field office will occur to determine the level of permit necessary for the evaluative testing. Evaluative testing will follow the *Wyoming Bureau of Land Management Field Guide for Evaluative Testing of Archaeological Sites*. The results will be reported following the *Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and III Reports*. The BLM will make the determination of eligibility and effect and will consult with the SHPO as specified in Sections III.B.i, III.B.ii, or III.B.iii below.

i. Discovered Property is Not Eligible with a No Historic Properties Affected Determination

If the BLM determines that the discovery is not eligible for inclusion in the NRHP, a "No Historic Properties Affected" determination will be made. The BLM will submit the documentation to WYCRO as specified in Section V.E.iv of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

ii. Discovered Property is Eligible with a No Adverse Effect Determination

If the BLM determines that the overall cultural resource is eligible for inclusion in the NRHP, but the discovery does not contribute to its eligibility, a "No Adverse Effect" determination will be made. The BLM will submit the documentation to WYCRO as specified in Section V.E.v of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the discovery. Additional

construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

iii. Discovered Property is Eligible with an Adverse Effect Determination

- a. If the BLM determines that the discovery is eligible for inclusion in the NRHP or that it contributes to the eligibility of a known historic property, and was adversely affected by the undertaking, a determination of "Adverse Effect" will be made. The BLM will submit the documentation to the SHPO (Cheyenne) as specified in Section V.E.vi of this Protocol. If the SHPO does not respond within 15 days, the BLM may assume concurrence with the determinations of eligibility and effect.
- b. The project applicant will develop a mitigation plan and/or data recovery plan (see the procedures specified in Section V.F.i of this Protocol). Mitigation/data recovery plans should contain provisions for stabilizing and/or protecting the resource until the appropriate plan can be implemented. The BLM should combine consultation with the SHPO on the eligibility and effect and the consultation on the data recovery plan, in which case the SHPO will have 30 days to review and comment on the eligibility and effect, and the treatment plan together. If submitted separately, SHPO will have 30 days to review each document.
- c. Upon SHPO concurrence with the treatment plan, the BLM will notify the project applicant that the plan is acceptable. The project applicant's archaeological consultant will notify the BLM through the fieldwork notification procedures in CRMTracker to implement the plan. The applicant will be responsible for the cost of any mitigation required by the Authorized Officer. When the terms of the treatment plan have been completed, the BLM Authorized Officer will issue a written notice to proceed to the applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

IV. Human Remains

A. Inadvertent Discovery of Human Remains on Federal Lands

- i. If human remains, funerary objects, sacred objects, or objects of cultural patrimony, or suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony, are discovered during surface disturbing activities on BLM lands, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and a reasonable effort will be made to protect the discovery. The BLM will contact and coordinate with the appropriate Law Enforcement Agency and the appropriate coroner's office. The BLM will notify the DPO and SHPO of the discovery by telephone and/or email within 48 hours.
- ii. If the appropriate Law Enforcement Agency determines the human remains are not part of a crime scene and the appropriate coroner releases the human remains, the BLM will

determine if the human remains are Native American. If it is determined that the human remains are not Native American, the BLM will proceed in a similar manner to the Unanticipated Discovery procedures listed in Section III above. If it is determined that the human remains are Native American, or if the discovery includes funerary objects, sacred objects, or objects of cultural patrimony, the BLM will follow the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (43 CFR Part 10). Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.

B. Inadvertent Discovery of Human Remains on Non-Federal Lands

- i. If human remains, or suspected human remains, are discovered during surface disturbing activities on non-federal lands as part of a federal undertaking, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and all reasonable efforts will be made to protect the discovery. The BLM will contact and coordinate with the appropriate Law Enforcement Agency, the appropriate coroner's office and the appropriate land owner.
- ii. If the Law Enforcement Agency determines the human remains are not part of a crime scene and the appropriate coroner releases the human remains, the BLM will proceed in a similar manner to the procedures listed in Section IV.A above, but will include consultation with the appropriate land owner. If the human remains are Native American, additional consultation with the appropriate Indian tribes will be necessary, with land owner consent. Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.

**WYOMING STATE PROTOCOL
APPENDIX L
STANDARD APES**

Pursuant to Section V.B.i. of the State Protocol, BLM and SHPO have consulted on the following standard Areas of Potential Effect (APEs) for common types of undertakings. The standard APEs listed below are **minimum** APE sizes. These minimums do not apply if project disturbance exceeds these sizes. In certain circumstances, even though an action may have a standard APE listed below, the Field Manager, at the recommendation of the cultural resource specialist, may have justification to require a larger APE. If an APE larger than the minimums below is being recommended, SHPO consultation is not required. For any other APEs, the BLM cultural resource specialist will consult with SHPO pursuant to 36 CFR 800.4(a)(1) to determine the undertaking's APE. The inventory area is the entire direct APE, unless there is previous adequate inventory, previously disturbed areas, etc. as discussed in the Protocol, Section V.B.i through V.B.v. All cultural resources within the APE must be evaluated for NRHP eligibility. For actions where a field office is suggesting a smaller APE than what is listed here, SHPO consultation will be required.

Standard Direct APEs

Single Well Pads:	10 acres
MET Towers:	10 acres
Communication Sites:	10 acres
Transmission Lines:	twice the construction right-of-way (ROW)
Pipelines:	twice the construction ROW
Roads:	twice the construction ROW