APPENDIX 7—HERITAGE RESOURCES MANAGEMENT

INTRODUCTION

The Bureau of Land Management (BLM) and the National Council of State Historic Preservation Officers have consummated a Programmatic Memorandum of Agreement (PMOA) streamlining implementation of the National Historic Preservation Act on BLM lands and for BLM authorized undertakings. Under the agreement, each BLM state office has negotiated a Protocol prescribing how BLM consults with the State Historic Preservation Officer (SHPO) in each respective state to comply with Section 106 of 36 Code of Federal Regulations (CFR) 800 (one of the implementing regulations for the National Historic Preservation Act). The Protocol between the Wyoming BLM and the Wyoming SHPO (WSHPO) is reprinted below (following pages).

NATIONAL REGISTER CRITERIA

Implementing regulations for the National Historic Preservation Act provide four criteria for evaluating the significance of historic properties to determine whether they are eligible for inclusion in the National Register of Historic Places. The Criteria for Evaluation are found in 36 CFR 60, and are reprinted here in full.

Criteria for Evaluation

The qualities of significance in American history, architecture, archaeology, engineering, and culture are presented in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and—

1. That are associated with events that have made a significant contribution to the broad patterns of our history; or

2. That are associated with the lives of persons significant in our past; or

3. That embody 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; or

4. That has yielded, or may be likely to yield, information important in prehistory or history.

WYOMING BLM – SHPO PROTOCOL AGREEMENT

STATE PROTOCOL AGREEMENT BETWEEN BLM AND WSHPO

(Final version 04/15/99)

PROGRAMMATIC AGREEMENT AMONG THE BUREAU OF LAND MANAGEMENT, 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

STATE PROTOCOL AGREEMENT

Between

The Wyoming BLM State Director

And

The Wyoming State Historic Preservation Officer

This protocol Agreement (Protocol) supplements the above referenced National Programmatic Agreement (PA). It describes agreements specific to how the Wyoming State Historic Preservation Officer (SHPO) and the Wyoming BLM will interact and cooperate under the National Programmatic Agreement. The goal of the National Programmatic Agreement and this Protocol is to forge a more meaningful and productive partnership with SHPO that will enhance the management of historic properties under the BLM's jurisdiction.

I. RELATIONSHIP TO OTHER AGREEMENTS

Relevant sections of the Wyoming Statewide Programmatic Agreement have been incorporated into the National Programmatic Agreement and this Protocol. As a result, the Wyoming Statewide Programmatic Agreement, signed June 27, 1995, is terminated. Further, all other existing project and special purpose programmatic agreements are terminated unless specifically noted in Appendix A.

Other PAs and MOAs may be developed when specific agreement documents are needed to define procedures which are not covered under the National PA or this Protocol. Additionally, when more than one Federal agency is involved in an undertaking and BLM accepts lead responsibility for Section 106 compliance, the BLM and SHPO may agree to follow the procedures of the National PA and this Protocol instead of developing a separate agreement document, as long as the other agencies agree. The Advisory Council on Historic Preservation (Council), pursuant to the National PA, will review all non-routine interstate and/or interagency projects or programs. When more than one Federal Agency is involved in an undertaking, and an agency other than BLM takes lead responsibility for Section 106 compliance, the National PA and this Protocol do not apply.

II. ADMINISTRATIVE INTERACTION AND REPORTING REQUIREMENTS

The BLM will prepare an annual survey report to the SHPO that describes the implemented actions taken in the previous fiscal year. This report will be due to the SHPO by February 15th of each year and will include information as outlined in Appendix B.

The SHPO and SHPO staff, the BLM State Director, the BLM Deputy State Director for Resources Policy and Management, the BLM Field Office managers, the BLM Deputy Preservation Officer (DPO), and the BLM cultural resources specialists will meet annually in April to review and discuss procedures and polices for managing cultural resources under the National PA and this Protocol. Individual Field Office mangers will further discuss with the SHPO and proposed projects for the current and forthcoming fiscal years which may affect cultural resources. The Council will be invited to participate in the annual meeting and receive a copy of the BLM 's annual report.

III. SHPO INVOLVEMENT IN BLM STATE MANAGEMENT PROCESSES

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

1. Planning Efforts: Each Field Office responsible for preparing land use plan (Resource Management Plan or RMP amendment) or preparing a cultural resource activity plan at the regional or local level will, when beginning its planning effort, invite the SHPO to participate in scoping for the purpose of identifying issues that should be addressed in the plan. The BLM will invite the SHPO to comment on any proposed cultural resource use allocations, whether they are made in regional, local, or project plans. Field Offices will send all draft and final land use plans and cultural resource project plans to the SHPO.

2. Project Consultation: As major projects become known, each Field Office manager has the responsibility to contact the SHPO to discuss upcoming projects that are likely to affect cultural resources (i.e. large land distributing projects, land exchanges, land sales, etc.). This consultation accomplishment is these projects in ways that meet heritage preservation goals. Such consultation may be by telephone or by meetings which may be held at the State Historic Preservation Office or the BLM Field Office, as agreed between the two parties.

3. Other Meetings and Informal Consultations: The SHPO is encourages to meet with the Wyoming State Office or a Field Office manager at any time to discuss annual work plans, specific undertakings, outreach efforts, or other issues related to the BLM's management of cultural resources. The BLM will make every effort to arrange such meetings in a timely manner and to provide information requested by SHPO. The SHPO and Field Office personnel may consult informally at their discretion on specific undertakings or any aspect of BLM's cultural resource management program.

4. Field Tours: BLM Field Offices will notify the SHPO, in writing, of all public field tours relating to land use planning efforts (RMP's and RMP amendments) or to Environmental Impact Statement (EIS) planning efforts that may affect

cultural resources. The SHPO's views will be specifically requested with regard to management of cultural resources involved.

IV. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

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

A. Data Sharing and Information Management

1. Reports: Field Offices will send the SHPO copies of all cultural resources inventory reports, research designs, treatment plans, and other reports, generated by actions initiated or authorized by BLM. This also includes inventory reports for actions in which no cultural resources are identified. BLM will submit to SHPO copies of all reports for cultural reducer inventories, including site forms, as soon as possible, but no later than 30 calendar days after BLM review and acceptance of the report.

   All known "backlog" documentation that exists in BLM files and which predates the signing of this Protocol should be submitted to the SHPO Review and Compliance Office within one year of the implementation of this Protocol. If SHPO or a BLM Field Office is aware of specific backlog documentation held in either office, both the SHPO and the BLM Field Office should work cooperatively to provide the documentation to the office requesting it.

2. Reporting Standards: BLM and SHPO will collaborate on the development of standards for preparing inventory and treatment reports, and jointly develop isolated artifact and site forms.

3. Data System Management: BLM and SHPO will, through a Cooperative Agreement, develop a Statewide automated cultural records database which will be accessible from all BLM Field Offices. The BLM and SHPO will further collaborate on ways to synthesize and use the automated cultural data to develop Geographic Information System (GIS) capabilities. BLM and SHPO will continue to cooperate in this endeavor by providing financial, personnel, and hardware and software resources as funding becomes available.

B. State BLM Handbook Supplement

In addition to the procedures described in Bureau-wide directories and Manuals, Wyoming BLM will be guided by manual supplements issued by the Wyoming State Office. The BLM will update these manual supplements as needed to conform to Bureau-wide directives, policies issued by the Wyoming State Director, new laws, and new regulations. The SHPO will be invited to participate in development and subsequent revisions of Wyoming Manual Supplements and Handbooks.

BLM field procedures will be detailed in a State BLM Handbook as a supplement to BLM Manual procedures. Disagreement between BLM and SHPO regarding wither development or Implementation of Handbook procedures will be resolved in accordance with the disparate resolution procedures at Section X of this Protocol. All future changes or amendments to the Handbook procedures will be made in cooperation with the SHPO.

C. Public Outreach and Heritage Education

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

1. Archaeology Awareness Month: The BLM and the SHPO will participate in and support financially, as funding permits, Archaeology Awareness Month activities, including public presentations, field tours and excavations, exhibits, archaeology fairs, posters, brochures, and educational activities.

2. Project Archaeology: The BLM and SHPO will support Project Archaeology as a component of BLM's Heritage Education Program, by encouraging staff archaeologists to be trained and serve as facilitators in the program, with the goal of integrating the teaching of archaeological concepts and preservation ethics in Wyoming schools statewide.

3. Adventures in the Past/Heritage Education: The BLM and SHPO may, as funding permits, cooperatively work on the development of interpretation of cultural resources through a variety of media including, but not limited to, exhibits, brochures, lectures, radio and television promotions, Internet web pages, and interpretive signs.

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

5. Professional Organizations: The BLM and SHPO cultural resources specialists are encouraged to participate in and work cooperatively with professional historic preservation organizations (e.g. Wyoming Association of Professional Archaeologists and the Wyoming Association of Professional Historians) to promote preservation ethics, good science and good history, professional standards statewide, and open dialogue regarding historic preservation issues.

D. State-Level Historic Preservation Training

The SHPO will assist the BLM and/or participate in both the initial training and future on-going training of Field Office Managers and cultural resources staff relative to the National PA and implementation of this Protocol. Training resources might include, but are not limited to, Wyoming BLM State Handbook or Manual Supplements, planning documents, and statewide historic context documents. Review of training needs and/or additional training will occur on a yearly basis and will coincide with the annual review meeting to be held in April.

E. Historic Context Development

The BLM and SHPO will jointly work to develop standards and guidelines for the development of historic contexts within Wyoming and will strive to involve participation

from other Federal land-managing agencies within the state. The BLM and the SHPO will cooperatively recommend statewide priorities for historic context development involving BLM lands. Recommendations will be considered in the BLM budget process as a statewide benefiting program. Field Managers may also develop project-specific contexts as their funding allows. All historic contexts, however, must be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716). In accordance with Section 101(b)(3) of the National Historic Preservation Act, whereby the SHPO has responsibility for preparing and implementing the State's comprehensive historic preservation plan, the SHPO shall review and provide comments on all BLM history context documents. Historic contexts which define site eligibility criteria, levels of adequate inventory, site documentation requirements, standards for assessment of effects, and/or appropriate treatment of historic properties shall require SHPO concurrence on those aspects. All jointly developed historic contexts within Wyoming shall be endorsed by all participating parties.

F. Public Participation

The BLM will seek and consider the views of the public when carrying out actions under the terms of this Protocol. The BLM will solicit such input through the public participation opportunities afforded by BLM's land use planning and environmental review processes established under the National Environmental Policy Act (NEPA) of 1970 and the Federal Land Policy and Management Act (FLPMA) of 1976, and in accordance with regulations at 43 CFR Part 1610.3. Interested parties shall be invited to participate in the review process [Section VI.B below] if they have interest in a BLM undertaking or action on historic properties. Such interested parties may include, but are not limited to, local governments, grantees, permitees, or owners of affected lands or land surfaces, Indian tribes, and other interested parties determined jointly my BLM and SHPO.

V. NATIVE AMERICAN PARTICIPATION

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

- BLM Manual 8160, Native American Consultation and Coordination Executive Order No. 13007, Indian Sacred Sites
- National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties

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

VI. CASE-BY-CASE REVIEW PARAMETERS

A. Review Thresholds

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

1. Non-routine interstate and/or interagency projects or programs.

2. Undertakings adversely affecting National Historic Landmarks or National Register eligible properties.

3. Undertakings containing cultural resources that are or have the potential to be eligible under National Register Criteria A, B, or C [36 CFR Part 60.4].

4. Land exchanges or land sales affecting historic properties which will no longer be under BLM ownership or management.

5. Undertakings that are determined by the BLM or the SHPO to be highly controversial (e.g. undertakings that receive unusual public attention and/or involve significant conflict related to cultural resources).

B. General Review Process

1. SHPO Response Time: Unless otherwise agreed, the BLM shall afford the SHPO 30 calendar days from receipt of appropriate documentation to respond to any BLM communication regarding identification, evaluation (unless Section VII.C.3 applies), effect determination (or 15 days for findings of "no effect" pursuant to Section VII.D.1.c), or treatment of effects. Should the SHPO not respond within the appropriate time limit, the BLM may assume SHPO concurrence and can proceed with the BLM's proposed course of action. The BLM will document non-response by the SHPO in the Annual Report for cases where review is requested or required.

2. Concurrent SHPO Comment – Eligibility and Effect: The BLM will make determinations of eligibility according to 36 CFR Part 60.4. When SHPO review is requested or required, SHPO will be provided 30 calendar days to comment on BLM's determination of eligibility and effect. These may be done concurrently.

3. When Eligibility or Effect is in Doubt: BLM will confer with the SHPO whenever questions about eligibility and/or effect arise.

4. Disagreement on Eligibility: If the BLM and SHPO disagree on the eligibility of a property, BLM will seek a determination of eligibility from the Keeper of the Register pursuant to 36 CFR Part 63.2.

5. Sequence of Consultation: Project-related communications to the SHPO should proceed in accordance with the sequence of consultations as specified in this Protocol. The BLM may also request comments for an individual portion of a project (e.g., segmented inventories like large geophysical projects or land transfers). Each segment of a project will be inventoried and reported as though it is a complete project. The first report submitted for a segmented project will include a brief description of the overall project. The same SHPO tracking

numbers shall be referenced by the BLM in all subsequent documentation submitted to the SHPO relating to other segments of the project.

6. Resolving Objections: If the SHPO objects to the BLM's finding of effect or treatment, resolution will follow the Dispute Resolution Procedures pursuant to Section X.A of this Protocol.

VII. IDENTIFICATION, EVALUATION AND TREATMENT OF HISTORIC PROPERTIES

The BLM will ensure that historic properties which may be affected by any undertaking are identified and evaluated in accordance with 36 CFR Part 800 and follow the procedures established below. The BLM will ensure that project-specific surveys and other efforts to identify and evaluate historic properties are conducted in accordance with appropriate professional standards as defined in BLM Manual 8110, Identifying Cultural Resources, BLM Manual 8120, Protecting Cultural Resources, Wyoming BLM supplements, the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic preservation (48 FR 44716), and relevant SHPO guidance.

A. Determining Inventory Needs

1. Exemptions: Actions exempted from case-by-case review are identified at Appendix C, subject to the following:

   a. The BLM cultural resource specialist will, after determining information needed to identify and evaluate cultural properties, determine if specific projects or activities should be appropriately be exempted from case-by-case review, as described in Appendix C.

   b. Upon recommendation by any party to this Protocol, other classes of exempted actions may be added to Appendix C if the BLM and the SHPO agree that such undertaking qualify.

   c. A record listing all undertaking authorized under this section will be documented in the Annual Report in accordance with the information requirements stipulated in Appendix B. Exempted actions do not require reports or any notification to the SHPO at the time of the undertaking.

2. Disturbed Areas: If the proposed undertaking is not listed in the exemptions found in Appendix C, the BLM cultural resource specialist will determine whether previous ground disturbance has modified the surface so extensively that the probability of finding intact cultural properties is negligible. If such disturbance has occur in the area of potential effect, the BLM may proceed with the undertakings authorized under this section will be documented in the Annual Report in accordance with the information requirements stipulated in Appendix B.

3. Previous Adequate Inventory: The BLM cultural resource specialist will determine whether the area of potential effects has been adequately inventoried for historic properties. If an adequate Class III inventory has been completed (generally after 1980 as defined in the Wyoming BLM Handbook) and previously reviewed by the SHPO, the BLM may choose to proceed. A record

listing undertakings authorized under this section will be documented in the Annual Report in accordance with this information requirements stipulated in Appendix B.

4. Areas with Low Potential for Containing Historic Properties: The BLM and the SHPO may jointly determine that specific areas do not need to be inventoried because current information suggests that the area has little or no potential to contain historic properties. Such determinations may be developed in two ways:

   a. Project-Specific: The BLM will consult with the SHPO on project-specific exemptions due to low site probability. The SHPO will be provided 30 calendar days to comment.

   b. Supplemental Protocol Agreements: Low site probability due to environmental factors or other conditions may allow large blocks of land to be exempted through a Supplemental Protocol Agreement (SPA) and listed in Appendix A of this Protocol.

B. Identification

1. Information Needs: The BLM will, during the earliest feasible stage of any undertaking, determine the information needed to identify and evaluate historic properties situated within the area of potential affects. Such determination may be based on a file search of the SHPO/BLM cultural resource records, aerial photographs, GLO records, BLM land records, resource management plans, project-specific NEPA documents of the proposed project area and on information sought and obtained from the SHPO and from interested persons.

2. Level of Inventory: If the BLM determines that a Class II inventory of the area of potential effects (APE) is necessary, the BLM need not seek the SHPO's views on identifications efforts. If the BLM determines to conduct an inventory at less than a Class III level of intensity, BLM will consult, in writing, with the SHPO on the adequacy of the inventory design prior to initiating the inventory or authorizing the proposed undertaking. Any disputes over the adequacy of the proposed inventory efforts shall be resolved in accordance with the dispute resolution clause at Section X.A of this Protocol.

3. Defining Area of Potential Effects (APE): The appropriate size of APE's for specific types of projects will be defined in the BLM Handbook or other guidance developed jointly between the BLM and the SHPO. The size of the survey area outside of an APE shall be at the discretion of the BLM Manager, taking into account the recommendations of the cultural resource specialist.

4. Project Segmentation: The BLM may determine that some very large projects (e.g., geophysical projects or land transfers) can be more efficiently completed if segmented. If a project is to be segmented, the SHPO should be notified, in writing, in accordance with the BLM Handbook or other guidance developed jointly between the BLM and the SHPO. Reports for segmented projects should be submitted as per Section VI.B.5 of this Protocol.

5. No Find Situations: If the BLM determines that no historic properties are present in the APE as a result of the Class III survey inventory, it will immediately upon review and acceptance, submit its report to the SHPO, notify interested persons, and proceed with the undertaking.

C. Evaluation for National Register Eligibility

1. Classes of Properties Not Eligible for the National Register: The BLM and the SHPO may jointly determine a class or classes of properties to be ineligible for listing on the National Register and not meriting further consideration for purposes of Section 106. Such properties require no formal documentation and are listed in Appendix E of this Protocol.

2. Evaluation Standards: Evaluations shall be consistent with the Secretary of the Interior's Standards and Guidelines for Evaluation (48 FR 44729) and other relevant guidance such as National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation.

   a. Sites within the APE: The BLM will ensure that any properties identified within a project's APE are evaluated in accordance with the provisions of this Protocol.

   b. Sites with boundaries extending outside the APE: Sites located within the APE but which have boundaries that extend outside of the APE must be evaluated, and tested as appropriate, in the area of the site most likely to yield information. his may require the site be tested outside the APE.

   c. Sites outside the APE: All properties completely outside of the APE but within the survey area may be generally left as unevaluated. However, sites should be evaluated to the extent that surface manifestations or natural subsurface soil exposure allows without extensive probing and without subsurface testing when possible.

3. Properties with only Archaeological or Historical Research Value: Using the guidelines referenced at VII.C.2. above, the BLM cultural resource specialist will determine if properties significant only for their potential contribution to archaeological and historical research are eligible for the National Register. The effectiveness of the BLM's evaluation of these properties may be discussed by the SHPO and BLM at the annual review meeting.

4. Properties with Associative or Design Value: Excluding property types discussed under VII.C.3 above and historic linear features, the BLM will evaluate the National Register eligibility of all other properties in consultation with the SHPO. These include properties significant for their association to events (Criterion A), their association with important persons (Criterion B) [36 CFR Part 60.4]. Historic period linear features may be recorded and evaluated as specified in Appendix D, "Recordation and Evaluation of Historic Period Linear Features". If the BLM and the SHPO agree that no properties identified within an undertaking's area of potential effects qualify for listing on the National Register, BLM may proceed with the undertaking.

5. Disagreement of Eligibility: If the BLM and SHPO can cannot resolve a disagreement on the eligibility of a property, the BLM will seek a formal determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.2.

D. Assessment of Effects

1. No Effect Situations:

   a. Avoidance of Unevaluated Properties on Geophysical Projects: Cultural resource inventories conducted specifically for geophysical exploration projects will not be required to evaluate identified properties provided the properties are avoided by an appropriate distance as defined in the BLM Handbook. Proper avoidance will be regarded as a "no effect" situation. The BLM will submit its report, as approved by the BLM cultural resource specialist to the SHPO and proceed with the undertaking.

   b. Other Avoidance of Effects: If an undertaking is modified to avoid effects to historic properties under National Register Criterion D through project relocation, project redesign, erection of barriers, or fencing of construction, the undertaking will be regarded as a "no effect" situation. The BLM will submit its report, as approved by the BLM cultural resource specialist, to the SHPO and proceed with the undertaking.

   c. Requests for Determination of "No Effect": The BLM may request, in writing, SHPO's concurrence on all other situations which the BLM believes to be a "no effect." The SHPO shall be provided 15 calendar days to respond to the BLM's finding of "no effect."

2. No Adverse Effect Situations: Historic properties eligible under National Register Criterion D [36 CFR Part 60.4(d)] may contain areas with significant cultural deposits and areas which would contribute little or no information about prehistory or history. When an undertaking is planned within the boundaries of these properties and will not affect the qualities which contribute to the significance of the property, it will be considered a "no adverse effect" situation. The BLM will submit its report, as approved by the BLM cultural resource specialist, to the SHPO and proceed with the undertaking.

3. Adverse Effect Situations: In determining if an undertaking is considered to have an adverse effect, the BLM and the SHPO will apply the Criteria of Adverse Effect at 36 CFR Part 800.9(b). An "adverse effect" situation occurs when treatment efforts will not be able to mitigate impacts to a historic property or when the Field Office manager determines that mitigation is unfeasible or is not appropriate or cost effective. Pursuant to the National PA, the Council will be required to review undertakings directly and adversely affecting National Historic Landmarks or National Register eligible properties of national significance in accordance with BLM Manual 8110.33.

E. Treatment

1. Determining Appropriate Treatment: In accordance with both the Advisory Council's Treatment of Archeological Properties – A Handbook, Principles VII and VIII, and BLM Manual 8120.21, the preferred strategy for treating potential adverse effects on cultural properties is avoidance. If avoidance is imprudent or infeasible, a range of alternative physical and administrative conservation measures should be considered.

2. Treatments Resulting in "No Adverse Effect" Determinations: Treatment measures which may result in a determination of "no adverse effect" include stabilization, data recovery, or HABS/HAER documentation. The BLM will consult with the SHPO on any proposed treatments for findings of "no adverse effect" where Section VII.D.2 does not apply. The BLM will submit written treatment plans and afford the SHPO 30 calendar days to comment on findings of no adverse effect, and provide the SHPO with final reports on the implementation of treatments.

F. Disagreement on Findings of Effect or Treatment

If the SHPO objects to the BLM's finding of effect or treatment, and the issue cannot be resolved through the Dispute Resolution Procedures at Section X.A. of this Protocol, the undertaking will be considered "highly controversial" and will require Council review pursuant to the National POA if Council review is requested by either the BLM or the SHPO.

VIII. DISCOVERY SITUATIONS

A. Planning for Discoveries

The BLM will encourage applicant development of discovery plans for large and complex undertakings and those involving land disturbance on areas known to contain buried sites. Copies of such discovery plans will be forwarded to the SHPO for review along with BLM's determination of effect for the project. The SHPO will be provided 30 days to comment.

B. Unplanned Discoveries

If the BLM determines after completion of the review process outline in this Protocol that an undertaking may affect or has affected a previously unidentified property that may be eligible for the National Register, the BLM will be required to follow appropriate discovery procedures defined in the BLM handbook or other guidance developed jointly between the BLM and the SHPO. Until the BLM Handbook procedures are developed, the BLM will follow 36 CFR Part 800.11.

IX. STAFFING AND OBTAINING SPECIALIZED CAPABILITIES

A. Staffing

The BLM will only 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 193 for archaeologists). Specialists at the GS-5 and GS-7 levels are considered to be performing duties in a trainee or development capacity. Reports prepared by GS-5 and GS-7 specialists, or any cultural resource consultant, must be reviewed and submitted to the SHPO by a GS-9 or higher grade cultural resources specialist.

B. Specialized Capabilities

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

X. DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Dispute Resolution Procedures

If, at any time, the BLM or the SHPO question an action taken by the other under this Protocol, they will consult to resolve the issue. If the issue concerns an action taken by a Field Manager, the questioning party will consult with the Field Manager to resolve it. If the issue cannot be resolved, the questioning party will request the BLM's Deputy Preservation Officer (DPO) to assist in resolving it. If the issue cannot be resolved, the BLM DPO will refer the issue to BLM State Director to negotiate a resolution with the SHPO. The State Director may refer the matter to BLM Preservation Board which will provide recommendations to the State Director. Except for disagreements on National Register eligibility, findings of effect, or treatment, the final decision shall be made by the BLM State Director.

Disagreements on determinations of National Register eligibility which cannot be resolved through the dispute resolution process will be resolved by the keeper of the Register. Issues relating to BLM's findings of effect or treatment which cannot be resolved through the dispute resolution process shall be considered "highly controversial" and will require Council review pursuant to the National PA if Council review is requested by either the BLM or the SHPO.

B. Amendments to the Protocol

If the BLM or the SHPO wish to amend this Protocol at any time, they will consult to consider requested changes. Amendments will become effective when signed by both parties.

C. Termination of the Protocol

The BLM or the SHPO may terminate this Protocol by providing 90 days notice to the other party, providing that they consult during this period to seek agreement on amendments or other actions that would avoid termination. The BLM DPO may request the assistance of the BLM Preservation Board, the National Conference of State Historic Preservation Officers, or the Council in the consultation process. If the Protocol is

terminated, the BLM will be required to comply with Section 106 of the National Historic Preservation Act by following the implementing regulations at 36 CFR Part 800.

After decertification of a Field Office, the BLM, in consultation with the SHPO, shall develop an action plan to be followed by the decertified Field Office in order to bring that office into compliance with this Protocol. After the subject Field Office believes that it has completed all of the actions specified in the plan, it will notify the State Director through BLM Deputy Preservation Officer. Recertification of the affected Field Office, which will allow that office to continue operating under the terms of this Protocol, will occur at the discretion of the BLM State Director after consultation with the SHPO. The State Director will notify in writing both the Field Office and the SHPO when that Field Office is recertified.

XI. APPENDICES

A. Special Purpose Programmatic Agreements, Memorandums of Agreement and Supplemental Agreements in Effect Under the Protocol

B. Annual Reporting Requirements

C. Actions Exempt from Case-By-Case Review

D. Recordation and Evaluation of Linear Features

E. Site Types Requiring No Formal Documentation

XII. APPROVALS

BUREAU OF LAND MANAGEMENT

/s/ Alan R. Pierson April 15, 1998

Wyoming State Director Date

STATE HISTORIC PRESERVATION OFFICER

/s/ John T. Keck 4/15/98

Wyoming State Historic Preservation Officer Date

SUMMARY OF NATIVE AMERICAN CONSULTATION PROCESSES IN THE JACK MORROW HILLS

BLM identifies tribes that have documented oral traditions of significant cultural use in the planning area or are documented to have had a substantial historic occupancy of the lands being considered under the land use plan.

Consultation is first initiated by certified letter to the appropriate tribal governmental official (e.g., tribal chairman) in a government-to-government process.

Follow-up telephone contact and other communication (as appropriate) are made if initial letter(s) do not elicit response from tribal governmental leaders.

Tribes are kept informed regarding public meetings, and special meetings with tribal leaders may be scheduled if so requested.

Consultation with Native American tribal representatives is relevant at two different stages.

1. Consultation on Land Use Plans

BLM informs tribal councils that it is initiating a planning process and requests comments on—

a. Any interests or concerns the tribe(s) might have with the BLM's management of the planning area.

b. Whether there are any places of traditional religious or cultural importance to the tribe(s) within the planning area, or needs for access to such places, and;

c. Whether there are any traditional cultural leaders or religious practitioners who should also be contacted.

2. Consultation on Land Use Actions

BLM informs tribes and requests comments for all land use actions that have a potential to affect tribal interests or concerns. This is especially relevant to tribal interests identified during the planning process described above.

The BLM should provide the tribe(s) with a copy of the draft environmental document and results of cultural resource inventory. The BLM should invite tribes' comments on the proposed action, including—

a. Concerns the tribes might have with the proposed action in general, and how to resolve any issues that might affect the tribes.

b. How to resolve potential adverse effects to property types generally perceived to be of traditional religious or cultural importance to tribes (e.g., rock cairns/alters, alignments, medicine wheels, rock art) identified in the cultural resource inventory.

c. Whether there are places of traditional religious or cultural importance or sacred places that were not identified as a result of the cultural resource inventory, and if so, how to resolve potential adverse effects on them.

d. How to treat human remains and cultural items (as defined in the Native American Graves Protection and Repatriation Act) if the BLM anticipates any impacts to such remains.

e. Whether there are any traditional cultural leaders or religious practitioners who should also be contacted.

If tribes request it, the appropriate BLM official should meet personally with tribal officials and/or other tribal members to discuss the proposed action.

The purpose of meetings and direct consultation is to elicit specific information to be integrated into the body of data submitted to the authorized officer as a basis for decision making.

Consultation and coordination meetings should be narrowly focused on the proposed BLM action, with the goal of developing (1) a specific description of the places and/or values at issue; and (2) potential management options to avoid or minimize any negative consequences to Native American cultural and religious values and practices.

Annual Meetings

If at all possible, representatives from each BLM field office should plan to meet annually with tribes to discuss land use actions that are planned by BLM or that are expected to be initiated by public land users.

Compensation for Consultation

Tribal officials and/or tribal member or individuals sometimes ask the BLM for payment or other compensation in return for bringing native American issues to BLM's attention and providing the BLM with information on Native American interests and concerns that relate to BLM's land use planning, environmental review, and other legal-regulatory administrative requirements.

BLM does not compensate any entity, including Indian tribes, for any consultation that is required by law, regulation, or other authorities, where the consultation is part of the BLM administrative processes designed to protect the interests of the consulting entity.

Some misunderstandings seem to result from use of the term "consultation." As used in this context, the term means conducting a dialogue or exchanging information. A participant in this kind of consultation is not a "consultant" in the way that a contractor who provides technical services might be called a consultant. Accordingly, "consultants' fees," travel expenses, or per diem are never appropriate to this kind of consultation.

Nothing, however, prevents the BLM from contracting or paying for the services of qualified individuals, firms, or organizations, including tribes and Indian individuals, through BLM acquisition and procurement procedures, to produce in-depth ethnographic reports, *National Register* nominations, or other specific products for proactive management uses that are not considered BLM administrative processes designed to protect tribal interests.