

# APPENDIX 5—CULTURAL RESOURCES MANAGEMENT

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## PROGRAM OBJECTIVES

The Bureau of Land Management (BLM) has developed a cultural resources program designed to inventory, evaluate, and manage cultural resources on BLM-administered public land and in areas of BLM responsibility. BLM management of cultural resources (archaeological, historic, and socio-cultural properties) is in accordance with the provisions of the National Historic Preservation Act (NHPA) of 1966, as amended, and other applicable legislation.

## IDENTIFICATION OF CULTURAL RESOURCES

BLM requires cultural resource inventories for actions with federal responsibility that include surface disturbance as a part of the action. Three classes of inventory have been established; Class III is the most intensive.

**Class I** inventories are completed using existing data from cultural resource inventory files maintained by both BLM and the Wyoming State Historic Preservation Office (SHPO). Class I inventories are conducted at two different levels: at the planning stage of an Environmental Impact Statement (EIS) to produce a regional overview and at the site-specific level for individual proposed projects to determine whether previous cultural resource inventories have been conducted within the Area of Potential Effects (APE). The purpose of class I inventories is to provide cultural resource specialists and managers with an informed basis for understanding the nature of the archaeological record within the area in question.

**Class II** inventories are statistically based sample surveys designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in the area, to develop and test predictive models, and to answer appropriate research questions. Within individual sample units, survey aims, methods, and intensity are the same as those applied in a Class III survey. Class II surveys may be conducted in several phases that use different sample designs to improve statistical reliability.

**Class III** intensive field surveys are conducted by professionals through pedestrian survey of an entire target area. The intent of a Class III inventory is to locate and record all historic properties in a manner consistent with standards in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR 44716). Class III inventories conform to the prevailing professional survey standards for the region involved, provided that the regional standards meet or exceed the Secretary's Standards and Guidelines. Because a Class III survey is designed to produce a total inventory of the cultural properties observable within the target area, once it has been completed, no further survey work should be needed in the target area as long as the current standards have been met. Areas with a high probability of containing buried cultural materials or that are known to contain cultural materials may require additional professional monitoring and/or data recovery excavations. Areas that require additional work are analyzed on a case-by-case basis, depending on the proposed action and the types of cultural resources present in the project area.

## BLM JURISDICTION ON PRIVATELY OWNED AND/OR SPLIT ESTATE LANDS

Class III inventories are generally required before surface-disturbing actions are authorized on publicly owned surface lands and/or on private or state owned surface lands if the proposed project could not occur without the use of federally owned lands or if the project would require a BLM permit, license, or approval. If a project requires the use of federally owned surface lands as well as privately owned surface lands, two authorities require federal agencies to apply the same NHPA Section 106 compliance standards to private lands as they do to federal lands. The regulations at 36 CFR, Part 800.4(b) require the federal agency to "take the steps necessary to identify historic properties within the area of potential effect." That this regulation covers both federal and nonfederal lands is implicit throughout the statute and the regulations because the regulatory definition of "area of potential effect" is "the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties" [36 CFR, Part 800.16(d)]. It makes no distinction between federal and nonfederal lands. More explicit, however, is Executive Order (EO) No. 11593, entitled "Protection and Enhancement of the Cultural Environment." Under the EO, Section 1(3), it states that all federal agencies: "...in consultation with the Advisory Council on Historic Preservation, institute procedures to assure that federal plans and programs contribute to the preservation and enhancement of nonfederally owned sites, structures and objects of historical, architectural, or archaeological significance."

Split estate lands are defined as those lands where surface ownership transferred to private landowners from the Federal Government but the Federal Government retained the mineral rights. These situations arose either through patent under the 1914 amendment to the Homestead Act or purchase under the Stock-raising Act of 1916. Each of these Acts also allowed for the Federal Government to "reenter and occupy so much of the surface...as may be required for all purposes reasonably incident to the mining or removal of coal or other minerals." At the time of purchase, the buyer agreed to these terms. Because completing the NHPA Section 106 process is required of a federal agency by statute and regulation prior to the federal action, then completion of that process is a purpose reasonably incident to the extraction of the minerals.

## EVALUATION OF CULTURAL RESOURCE SITES

BLM evaluates the significance of cultural resources identified during inventory in consultation with the Wyoming SHPO to determine whether the resources are eligible for inclusion in the National Register of Historic Places (NRHP). Cultural resource properties may be considered eligible for listing on the National Register if they meet one or more of the following criteria identified in 36 CFR 60.4:

- **Criterion A:** An historic property is associated with an event or events that have made a significant contribution to the broad patterns of America's history.
- **Criterion B:** An historic property is associated with the lives of persons significant to our past.
- **Criterion C:** An historic property embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction.
- **Criterion D:** An historic property has yielded or may be likely to yield information important in prehistory or history.

To facilitate evaluation of cultural resource values in Wyoming, BLM has devised guidelines for determining the eligibility of archaeological and historical sites and historic trails (BLM Manual 8110.32). The guidelines supplement the National Register criteria for evaluation (36 CFR 60.4) and provide consistency across the state. Application of the guidelines ensures that significant cultural resources are recognized and managed accordingly.

Properties that encompass large areas can be deemed to have contributing and non-contributing portions. Contributing portions are seen to retain integrity of the values for which the property is considered eligible for the NRHP. Non-contributing portions are identified portions of the property that are not deemed to retain the integrity of values that would render the property eligible for the NRHP. The determination of contributing versus non-contributing portions of an eligible property can be made at any time after adequate evaluation has been conducted.

Historic trails, including the Overland and Cherokee, the Rawlins to Fort Washakie Freight Road, and the Rawlins to Baggs Freight Road, are considered eligible for the National Register under Criterion A. However, some portions of the trails no longer retain the aspects of integrity necessary for eligibility. Because no encompassing inventories of entire trails within the Rawlins Resource Management Plan Planning Area (RMPPA) have been conducted, portions of trails are evaluated to determine whether they contribute to the eligibility of the property on a case-by-case basis. Trail segments are evaluated pursuant to the National Register criteria of integrity (location, design, setting, materials, workmanship, feeling, and association). If most of the criteria are met, the segment will be considered to contribute to the property's overall NRHP eligibility.

After determination of eligibility, significant cultural resource properties are further evaluated for assignment to one or more use categories. BLM has established six use categories as follows:

1. **Scientific Use.** This category applies to any cultural property determined to be available for scientific or historical study using currently available research techniques, including methods that would result in the property's physical alteration or destruction. Recommendations to allocate individual properties to this use must be based on documentation of the kinds of data the property is thought to contain and the data's importance for pursuing specified research topics.
2. **Conservation for Future Use.** A cultural property included in this category is deemed worthy of segregation from all other land or resource uses, including cultural resource uses, that threaten the maintenance of its present condition or setting, and that property will remain in this use category until specified provisions are met in the future.
3. **Traditional Use.** This category is to be applied to any cultural resource known to be perceived by a specified social and/or cultural group as important in maintaining the cultural identity, heritage, or well being of the group. Cultural properties assigned to this category are to be managed in ways that recognize the importance ascribed to them and that seek to accommodate their continuing traditional use.
4. **Public Use.** This category may be applied to a cultural property found to be appropriate for use as an interpretive exhibit in place or for related educational and recreational uses by members of the general public.
5. **Experimental Use.** This category may be applied to a cultural property judged well-suited for controlled experimental study, to be conducted by BLM or others, concerned with the techniques of managing cultural properties, that would result in the property's alteration, possibly including loss of integrity and destruction of physical elements. It should not be applied to cultural

properties with strong research potential, traditional cultural importance, or good public use potential, if such designation would significantly diminish those uses.

6. **Discharged from Management.** This category is assigned to cultural properties that have no remaining, identifiable use. Most often these are prehistoric and historic archaeological properties, such as small surface scatters of artifacts or debris, whose limited research potential is effectively exhausted as soon as they have been documented. Properties discharged from management remain in the inventory, but they are removed from further management attention and do not constrain other land uses.

When a cultural resource property is assigned to one or more use categories, a decision is made pertaining to the management of that property. The criteria and guidelines for the evaluation of cultural resources and the assignment of significant cultural resource properties to specific use categories would remain unchanged under all the alternatives addressed in this plan.

According to the Protocol Agreement between the Wyoming BLM and the Wyoming SHPO, BLM is required to consult with the SHPO on eligibility and effects to each cultural property. Those sites recommended as eligible under Criteria A, B, or C requires case-by-case consultation with the Wyoming SHPO. Under the Protocol Agreement between the Wyoming BLM and the Wyoming SHPO, the Wyoming BLM has the implied concurrence of Wyoming SHPO in determining eligibility and effects for sites under Criterion D of the NHPA. Determination of effects to sites follows the criteria outlined in 36 CFR 800.5.

In addition to consultation with the Wyoming SHPO office, BLM conducts Native American consultation in compliance with Section 106 of the NHPA, the American Indian Religious Freedom Act of 1978, and EO No. 13007. Consultations with Native American tribes occur during the planning process of EISs and when individual projects are proposed that may impact properties that have traditional use (i.e., Traditional Cultural Properties [TCP]) or are sacred to Native American cultures. The consultation process includes requesting information pertaining to the nature of the site and asking for concurrence on the effects of the project on sites.

## MANAGEMENT OF CULTURAL RESOURCES

Management objectives for significant cultural resource values provide a direct link between the assignment of properties to use categories and the achievement of the cultural resource program objectives. The basic management objectives for significant cultural resource values would remain unchanged under all of the alternatives addressed in this plan.

Specific management actions that could be taken to achieve these objectives at selected significant properties are described in the discussions of the various alternatives. Management objectives for significant properties that have not yet been identified or for which inventory data are insufficient as of this writing will remain unchanged, but management actions for these properties will be prescribed on a case-by-case basis and will be addressed in amendments to this plan when appropriate.

## Standard Protective Measures

### Description

Within the framework described above, BLM has developed protective measures to minimize adverse effects (as defined in 36 CFR 800.5[1]) on significant cultural resource values. Protective measures are used in response to the proposed actions of BLM programs involving surface disturbance. These

measures include cultural resource inventories, evaluation of cultural resources located during inventory, and mitigation of potential adverse impacts on significant cultural resources. Mitigation measures are determined based on the types of proposed actions and the nature of the historic property. Mitigation may include avoidance, data recovery, or the presence of a BLM-authorized archaeologist during surface-disturbing activities. Avoidance, through modification of the proposed undertaking, is the primary and preferred mitigative measure used to protect cultural resources. For properties where the visual integrity contributes to NRHP eligibility, additional mitigative measures are undertaken to ensure no adverse effects occur. When a proposed project is found to be within the viewshed of an historic property that contributes to NRHP eligibility, an assessment of potential impacts is conducted through viewshed analyses, on-site inspection, and photo inspection. Mitigation measures used to ensure that the contributing viewshed of historic properties are not adversely affected include, but are not limited to, decreasing the height of structures, using paint and topography to blend structures into the background, mowing and reseeding right-of-way corridors, and using materials that match the existing environment to construct access roads. Consultation with the Wyoming SHPO and the Advisory Council on Historic Preservation is required when proposed actions are expected to adversely affect properties eligible for the National Register.

For historic trails, such as the Cherokee Trail, Overland Trail, Rawlins to Fort Washakie Road and Rawlins to Baggs Road, protection measures would be carried out similarly to other historic properties if any project were found to be located within ¼ mile of a contributing portion of the historic trail. When a proposed project is outside of the ¼ mile buffer of the trail, but found to be within the 2-mile viewshed that contributes to NRHP eligibility, analyses of potential impacts to the trails are conducted through viewshed analyses, on-site inspection, and photo inspection. Mitigation measures used to ensure that the contributing viewshed of historic trails are not adversely affected include, but are not limited to, decreasing the height of well tanks, using paint and topography to blend well locations into the background, mowing and reseeding pipeline corridors, and using materials that match the existing environment to construct access roads.

## **Modification**

Under certain circumstances, the protective measures described are modified to take into account emergency situations and the surface management regulations for leasable and locatable minerals.

## **Wildland Fire Management**

The locations of known Native American gravesites would be provided to the Fire Management Officer so that they would not be impacted by wildland fire suppression activities.

Cultural resource inventories would not be required prior to firefighting activities in most cases. On a case-by-case basis, the field office archaeologist may request the opportunity to inventory specific areas prior to their impact by firefighting activities.

The cultural program may conduct post-fire inventory of areas where fire lines were bladed or other substantial surface disturbance took place, and mitigation efforts may be undertaken at the discretion of the Field Office Manager.

## **Leasable Minerals—Coal**

Actions involving coal mining are subject to standard protective measures; however, these procedures are not implemented until a lease has been issued and a mine plan has been prepared. Although some protective measures are addressed in the mine plan, inventory and evaluation of cultural resources are

generally not completed until the mine plan is to be implemented. Responsibility for ensuring that the Section 106 requirements are completed for the mine plan implementation rests with the Office of Surface Mining (OSM). Before a lease is issued, lands that could be included in the lease are reviewed under the coal unsuitability criteria (43 CFR 3461). One criterion that would render lands unsuitable is the presence of cultural resource properties that are included in the NRHP. Cultural resource properties that have been determined to be eligible, but have not been listed, do not fulfill this unsuitability criterion.

## Locatable Minerals

For actions involving locatable minerals, standard protective measures are modified to take into account the regulations of 43 CFR 3809. These regulations limit BLM's authority to control surface-disturbing activities associated with locatable minerals activity, particularly where mining activity involves fewer than 5 acres of surface disturbance. Protective measures required for mining activity on fewer than 5 acres are—

- A 15-day notification period before mining activity can begin
- A provision that the operator may not knowingly disturb “any historical or archaeological site, structure, or building on federal lands” (43 CFR 3809.2-2(e)(1))
- A 10-day period in which known cultural resources jeopardized by mining operations can be evaluated, protected, and/or removed by BLM.

Protective measures are less limited when operations involve more than 5 acres. In these cases, a plan of operations must be submitted to BLM for approval. This gives BLM greater latitude to complete inventories and mitigate impacts, although each must be accomplished at BLM's expense and within established time limits. Plans of operations are required for all mining activity within areas of critical environmental concern.

## CULTURAL RESOURCE LAWS AND REGULATIONS

**American Antiquities Act of 1906**—provides for permits to authorize scholarly use of properties, for misdemeanor-level penalties to control unauthorized use, and for Presidential designation of outstanding properties as national monuments for long-term preservation.

**National Historic Preservation Act of 1966**—

- Section 106 directs all federal agencies to take into account effects of their undertakings (actions and authorizations) on properties included in or eligible for the NRHP.
- Section 110 sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. Section 110(c) requires each federal agency to designate a Preservation Officer to coordinate activities under the Act.

**American Indian Religious Freedom Act of 1978**—establishes the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions. Federal agencies are directed to evaluate their policies and procedures to determine whether changes are needed to ensure that such rights and freedoms are not disrupted by agency practices.

**Archaeological Resources Protection Act of 1979**—provides felony-level penalties for the unauthorized excavation, removal, damage, alteration, defacement, or the attempted unauthorized removal, damage,

alteration, or defacement of any archaeological resource, more than 100 years of age, found on public lands or Indian lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource obtained from public lands or Indian lands.

**Native American Graves Protection and Repatriation Act of 1990**—requires Native American consultation for the excavation and/or removal of “cultural items” including human remains, funerary objects, sacred objects, and objects of cultural patrimony. Consultation is also required if “cultural items” are discovered during land use activities.

**Executive Order No. 13007: Indian Sacred Sites**—establishes access to and ceremonial use of Indian sacred sites by Indian religious practitioners on federal lands. The federal agencies shall avoid adversely affecting the physical integrity of such sacred sites and maintain confidentiality of said sites.