APPENDIX 1—CULTURAL RESOURCES MANAGEMENT

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 (archeological, historic, and Native American properties) is in accordance with the provisions of the National Historic Preservation Act (NHPA) of 1966, as amended, and other applicable legislation.

INVENTORIES

BLM conducts cultural resource inventories for any actions involving public lands and/or federal mineral estate that include surface disturbance as part of the action. Three classes of inventory have been established (Classes I, II, and III); Class III is the most intensive.

Class I inventories are completed with the use of existing data from cultural resource inventory files maintained by both BLM and the Wyoming State Historic Preservation Office (SHPO). Class I inventories identify known properties and are used to determine whether a more intensive inventory of specific areas is appropriate. This determination is made in consultation with the Wyoming SHPO and/or in accordance with the Wyoming Protocol implementing the National Cultural Resources Programmatic Agreement and often results in completion of Class III inventories, if existing data indicate that an adequate prior inventory has not been performed or if cultural properties lie within the area of potential effects (APE) of a proposal area.

Class II inventories employ field methodologies similar to those used to complete Class III inventories. However, in the sampling strategies used in Class II inventories, only a percentage of the given land area is inventoried at a Class III level of intensity, and the results are projected over the entire land area. Class II inventories can be used to develop predictive models of the distribution of cultural resources within a given land area. They are sometimes completed early in the planning stages of large projects that involve public lands and/or federal minerals.

A Class III inventory is an intensive inventory of a given land area that results in the identification of all cultural resources within that area. Qualified personnel complete Class III inventories by walking in parallel sweeps across land areas, with a maximum spacing of 30 meters between sweeps. Class III inventories are generally required before surface-disturbing actions are authorized on public lands and on private or state lands if there is federal involvement in the action. This ensures that BLM undertakings do not result in inadvertent damage to identified cultural resources regardless of land ownership and provides for the preservation of significant cultural resource values.

EVALUATION

BLM evaluates the significance of cultural resources identified during an inventory in consultation with the Wyoming SHPO to determine whether the resources are eligible for inclusion on the National Register of Historic Places (NRHP).

To facilitate evaluation of cultural resource values in Wyoming, BLM has devised guidelines for determining the eligibility of archeological and historical sites and historic trails for listing on the NRHP (BLM Manual 8110.32). The guidelines supplement the National Register criteria for evaluation (36 Code of Federal Regulations [CFR] §60.4) and provide consistency across the state. Application of the guidelines ensures that significant cultural resources are recognized and managed appropriately. Cultural resource properties may be considered eligible for listing on the National Register if they meet one or more of the following criteria:

- **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 America's 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.

Those sites eligible under Criteria A, B, or C require case-by-case consultation, in which the Wyoming SHPO has 30 days to reply. According to a Programmatic Agreement between Wyoming BLM and the Wyoming SHPO, BLM has implied concurrence for determining eligibility of sites under Criterion D of the NHPA.

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

Historic trails, such as the Lander Trail, the Sublette Cut-off, and the New Fork Wagon Road, are considered eligible for the NRHP under Criteria A, B, or C. However, portions of the trails no longer retain the aspects of integrity necessary for eligibility. Portions of trails are evaluated on a case-by-case basis to determine whether they contribute to the eligibility of the property. Trail segments are evaluated pursuant to the National Register criteria (location, design, setting, materials, workmanship, feeling, and association). If a preponderance of the criteria are met, the segment will be considered to contribute to NRHP eligibility.

After determination of eligibility, significant cultural resource properties may be further evaluated for assignment to one or more use categories. BLM has established the following six use categories:

- **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 that individual properties be allocated to this use category must be based on documentation of the kinds of data the property is thought to contain and the data's importance to pursuit of specified research goals.

- **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. Properties allocated to this category will remain in the category until specified provisions, specific to the site and identified at the time of classification, are met.
- **Traditional Use.** This category applies to any cultural resource known to be perceived by a specified social or cultural group as important to 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 seek to accommodate their continuing traditional use.
- **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.
- **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) of the techniques of managing cultural properties, which 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 its application would significantly diminish opportunities for those uses.
- **Discharged From Management.** This category is assigned to cultural properties that have no remaining identifiable use. Most often these are prehistoric and historic archeological properties, such as small surface scatters of artifacts or debris, whose limited research potential has been 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 concerning the management of that property. BLM does not actively employ this system of assigning cultural properties to use categories in Wyoming.

MANAGEMENT

Management objectives for significant cultural resource values provide a link between cultural properties of significant importance or containing significant data and the achievement of the cultural resource program objectives. Specific management actions that could be taken to achieve these objectives at selected significant properties are described in Section 2.3 of the Approved Resource Management Plan (RMP). Management objectives for significant properties that have not yet been identified or for which inventory data were insufficient as of planning completion will remain unchanged, but management actions for these properties will be prescribed case by case 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 on significant cultural resource values.

Protective measures are used in response to the 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 may include avoidance, data recovery (including excavation), or other protective measures. Avoidance is the primary and preferred mitigative measure used to protect cultural resources. Consultation with the Wyoming SHPO and the Advisory Council on Historic Preservation is required when surface-disturbing actions are expected to affect significant cultural resources. The Programmatic Agreement between the Wyoming BLM and the Wyoming SHPO is, among many other things, an agreement of implied concurrence to consultation for sites that are eligible for the NRHP under Criterion D and many No Adverse Effect determination projects.

Although Class III inventories are completed before any surface disturbance can begin, the BLM's opportunity to preserve significant cultural resource values in place can be precluded in areas if cultural properties are not identified before initiation of an action. In these cases, mitigative action such as data recovery will be implemented. However, it is possible that cultural resource properties that otherwise would have been nominated to the NRHP (including those known to be eligible) will be destroyed, albeit following the implementation of mitigative actions such as excavation. In addition, the protection of sensitive viewsheds is becoming increasingly important, especially for sites that are important from a modern day Native American perspective.

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. Modification of protective measures requires the approval of the Authorized Officer, and any impacts on cultural resources must be mitigated. If impact mitigation is not possible, modifications will not be allowed.

Wildland Fire Management

The location of known Native American and other sensitive sites will be provided to the Incident Commander so that the sites are not impacted by wildland fire suppression activities.

Cultural resource inventories are not required before firefighting activities begin in most wildland fire situations. On a case-by-case basis, the field office archeologist could request the opportunity to inventory specific areas before they are affected by firefighting activities. When prescribed fires are planned, cultural resource inventories will be performed before fire ignition, and fire plans will be amended to avoid cultural resources that could be damaged by fire.

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 as needed.

Locatable Minerals

For actions involving locatable minerals, standard protective measures are modified to take into account the regulations of 43 CFR §3809. These regulations outline BLM's authority to control surface-disturbing activities associated with locatable minerals activity. According to 43 CFR §3809.11 and 3809.21, exploration over 5 acres, all activities in areas of critical environmental concern (ACEC) regardless of their acreage, and all mining operations regardless of their acreage require Plans of Operation. This gives BLM greater latitude to complete inventories and mitigate impacts, although each of these efforts must be accomplished at BLM's expense and within established time limits. Only exploration activities on 5 acres or less are allowed with just a notice.

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 the effects of their undertakings (actions and authorizations) on properties included on or eligible for the NRHP.
- Section 110 provides for proactive 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.

National Environmental Policy Act of 1969—Establishes national policy for the protection and enhancement of the environment, including "important historic, cultural, and natural aspects of our national heritage."

Executive Order 11593 ("Protection and Enhancement of the Cultural Environment," 36 *Federal Register* 8921, May 13, 1971)—Directs federal agencies to inventory cultural properties under their jurisdiction, nominate to the NRHP all federally owned properties that meet the criteria for eligibility, use due caution until the inventory and nomination processes are completed, and ensure that federal plans and programs contribute to preservation and enhancement of nonfederally owned properties.

Federal Land Policy and Management Act of 1979 (FLPMA)—Directs BLM to manage public lands on the basis of multiple use in a manner that will protect the quality of historical resources and archeological values. No distinction is made between properties on the basis of NRHP eligibility. FLPMA is the primary basis for managing cultural resources on the public lands.

American Indian Religious Freedom Act of 1978—Establishes the policy of the United States to protect and preserve for the American Indians, Eskimos, Aleuts, and Native Hawaiians 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 unauthorized excavation, removal, damage, alteration, or defacement or *attempted* unauthorized removal, damage, alteration, or defacement, of any archeological resource more than 100 years of age found on public lands

or Native American lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archeological resource obtained from public lands or Native American 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 NAGPRA-related or NAGPRA-controlled cultural items are discovered during land use activities.

Executive Order 13007: Indian Sacred Sites—Establishes access to and ceremonial use of Native American sacred sites by Native American religious practitioners on federal lands. The federal agencies shall avoid adversely affecting the physical integrity of such sacred sites and maintain the confidentiality of said sites.

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments—Establishes that all federal agencies are required to consult with Native American tribes when developing regulatory policies that might affect tribal communities.

Programmatic Agreement Among BLM, the Advisory Council on Historic Preservation, and the National Conference of SHPOs 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 Wyoming SHPO

Executive Order 13287: Preserve America 2004—States that it is the policy of the Federal Government to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties.