

STATE LEVEL AGREEMENT
BETWEEN
THE NATURAL RESOURCES CONSERVATION SERVICE
AND
THE WYOMING STATE HISTORIC PRESERVATION OFFICE

AUTHORITY: Public Law 46-74, 49 Stat. 163 (16 U.S.C. § 590 a-f) and Public Law 89-560, 80 Stat. 706 (42 U.S.C. § 3271-3274 the Soil Conservation and Domestic Allotment Act, as amended (Public Law 74-46), The Food Security Act of 1985, Public Law 99-198, and the Farm Security and Rural Investment Act of 2002 (P. L. 107-171).

WHEREAS, The United States Department of Agriculture, Natural Resources Conservation Service (NRCS), has entered into a Programmatic Agreement titled *Programmatic Agreement Among the USDA Natural Resources Conservation Service, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers regarding undertakings involving soil and water conservation assistance activities (conservation practices) on private and public lands* (dated May 31, 2002) (hereinafter referred to as the National Agreement); and

WHEREAS, this State Level Agreement (SLA) implements Stipulation II of the National Agreement which requires each state NRCS office and its counterpart State Historic Preservation Office (SHPO) to develop an SLA in order to further expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, The definitions given in 36 CFR § 800 and GM 420 Part 401 and the NRCS Cultural Resources Handbook, Part 601 are applicable throughout this SLA; and

WHEREAS, the State of Wyoming and the SHPO do not waive their sovereign immunity by entering into this SLA, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this SLA; and

WHEREAS, this SLA represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral regarding consultation between the SHPO and NRCS on the effects of federal undertakings within the State of Wyoming. It does not supersede NRCS agreements with other agencies, or other SHPO agreements, specific to property type or certain activities.

NOW THEREFORE, the NRCS, and the SHPO agree that execution of this SLA provides for implementation of policies and procedures developed by NRCS to more effectively ensure that effects of conservation activities on historic properties are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

I. NRCS RESPONSIBILITIES AND STIPULATIONS

A. Internal Responsibilities

1. NRCS State Conservationist will issue policy and procedure directives and guidance to improve and maintain a high degree of consideration and NRCS

agency advocacy for the protection of cultural resources.

2. The NRCS State Conservationist is the NRCS authority for approving, modifying and/or terminating agreements for the agency in Wyoming.

3. The NRCS Cultural Resources Coordinator (CRC) is the point of contact for addressing historic properties, cultural resources, and Section 106, 110, and 112 compliance and will be responsible for all communication with and documentation provided to the SHPO.

4. On Federal or Tribal lands the NRCS will consult with the land managing agency's Cultural Resource Specialist (CRS) and follow procedures consistent with the land managing agency's Cultural Resource Program. NRCS will document that consultation in the annual report per Section III.A of this SLA. All federal agency comments will be submitted to SHPO with the subsequent report. The NRCS will provide for public participation as per 36CFR § 800.2 (c) and (d).

5. NRCS agrees to maintain regular and continuing access to a CRS. This person or persons will meet the qualifications contained in "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines - Professional Qualifications Standards." NRCS will maintain this access by 1) systematically contracting needed investigations and surveys for actions beyond the scope of NRCS employee qualifications, certifications and responsibility, as agreed by the SHPO and/or 2) hiring permanent, temporary or intermittent employees with appropriate qualifications.

6. An NRCS technical employee, defined as someone who has completed the NRCS National Cultural Resources Training Program, supplemental NRCS Wyoming State training, and is responsible for field assessment of cultural resources, will be referred to as an NRCSTE in this SLA.

Training on this agreement will be provided in cooperation with the Wyoming SHPO to appropriate NRCS staff.

B. Exemptions:

1. Those undertakings not considered as having the potential to affect historic properties and those considered as having the potential to affect historic properties except when non-intrusive will not require cultural resources inventory and documentation. These undertakings are listed as "N" and "PNI" respectively in Attachment 1 "Classification of Undertakings (Conservation Practices) Effects on Cultural Resources."

2. Those undertakings considered as having minimal potential to affect historic properties, as listed in "Undertakings (Conservation Practices) exempt from case-by-case review in Wyoming" (Attachment 2), will generally not require cultural resources documentation dependent on CRS review.

C. Identification and Determination of Eligibility:

1. A Cultural Resource Review will be conducted for all Areas of Potential Effects (APE) by the NRCSTE. If the cultural resource review reveals previously recorded resources in the area, a CRS will be contacted to determine if the undertaking has the potential to affect the cultural resources, taking into consideration not only direct physical impacts, but also visual, auditory, and atmospheric effects. In cases where effects to cultural resources are possible, a CRS will conduct the surface investigations unless the cultural resources have been previously determined ineligible to the National Register of Historic Places (NRHP) with previous SHPO concurrence.

2. NRCS field inspections will be completed for the APE of all practices included in Attachment 1 which are found to be intrusive; and will be conducted at the Class III level. The field inspection will be performed by a NRCSTE or a CRS.

3. If the field inspection does not locate cultural resources, or locates cultural resources on the "Defined Non-Sites and Property Types Requiring No Formal Documentation" listed in Attachment 3, the field personnel will document findings in the case file or in the NRCS's "Cultural Asset Resource Locator" (CARL), and provide a completed WY-ECS-41 Part 2 or equivalent to the CRC

4. If the field inspection locates cultural resources, the field personnel will document findings in the case file and provide a completed WY-ECS-41 Part 2 or equivalent to the CRS or CRC. The NRCSTE will consult with the CRS to determine if the project can be redesigned to avoid cultural resources within the APE. The CRS will review the reported boundary of the cultural resource taking into consideration the nature of the resource, the quality of the documentation, the quality of the field inspection, visual contrasts, and potential for intact buried archaeological materials.

5. If the field inspection locates cultural resources and the project cannot be redesigned to avoid the cultural resources in APE, the CRS will prepare a report following the "Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and III Reports" (WY Report Standards found at <http://wyoshpo.state.wy.us>) and submit the documentation to the SHPO for review and comment per 1.D(1)(c), 1.D(2) and 1.D(3). All cultural resources will be evaluated for the NRHP and documented by the CRS on the "Wyoming Cultural Properties Forms" (found at <http://wyoshpo.state.wy.us>). The CRS or a qualified historian will evaluate each cultural resource for listing in the NRHP per National Park Service, NRHP Bulletin 15, "How to Apply the National Register Criteria for Evaluation."

D. Determination of Effect:

1. No Historic Properties Affected

a. Per the negative results in Section I.C.3 above, the CRS reviews the results of the cultural resource review and field inspection, and having made a determination of "No Historic Properties Affected", the NRCS may proceed with the undertaking without formal SHPO review and comment.

b. If the field inspection locates cultural resources and the project can be redesigned per Section 1.C.4 above, the CRS reviews the results of the Cultural Resource Review and field inspection, and having made a determination of "No Historic Properties Affected", the NRCS may proceed with the undertaking without formal SHPO review and comment.

c. If the field inspection locates cultural resources which are not historic properties, and the project cannot be redesigned per Section 1.C.5, a determination of "No Historic Properties Affected" is appropriate. The NRCS will submit the documentation required in Section 1.C.5 to the SHPO for review and comment. If no response is issued to the NRCS within 30 calendar days by the SHPO, concurrence may be assumed and the NRCS may proceed with the undertaking.

2. No Adverse Effect

If the CRS determines there are historic properties in the APE, but the project **will not** 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, the CRS will prepare a report to the SHPO following the *WY Report Standards in Section 1.C.5* and submit the documentation to the SHPO for review and comment. A NRCS determination of "No Adverse Effect" is appropriate. If no response is issued to the NRCS within 30 calendar days, SHPO concurrence may be assumed and the NRCS may proceed with the undertaking.

3. Adverse Effect

If the CRS determines there are historic properties in the APE and the project **will** 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, and association, the NRCS will follow the procedures found at 36 CFR § Part 800.5-.9 for determining effect and proposing treatments. The CRS will prepare a report to the SHPO following the *WY Report Standards in Section 1.C.5* and submit the documentation to the SHPO. An NRCS determination of "Adverse Effect" is appropriate. Consultation under 36 CFR § 800.6 to develop a memorandum of agreement will be initiated with the SHPO and consulting parties.

E. Tribal Consultation:

Provision for consultation with Indian Tribes will be made consistent with Section 101(d)(6)(B) of the National Historic Preservation Act and 36 CFR § Part 800 or Indian Tribal consultation protocols executed between the NRCS and the Indian Tribes that attach cultural and religious significance to historic properties in the state.

F. Confidentiality:

Information concerning the location and nature of cultural resources will be restricted consistent with Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act.

G. Public Participation:

Consistent with 36 CFR § Part 800.2, the NRCS will seek and consider the views of the public on potential effects to historic properties when carrying out actions under the terms of this SLA. Interested parties shall be invited to participate in the consultation process outlined in this SLA if they have a demonstrated interest in a NRCS undertaking or action involving historic properties. Such interested parties may include, but are not limited to, local governments, NRCS clients, owners of affected lands or land surfaces, and other interested parties determined jointly by NRCS and SHPO.

In making determinations of effect under this SLA, NRCS may request comments of interested parties. When NRCS makes a determination of adverse effect they will request comments of interested parties. NRCS will maintain lists of interested parties based on their identified interests.

H. Procedures for Handling Discoveries:

1. Non-Human Remains: If previously unidentified cultural resources (other than human remains or associated grave goods) are encountered during implementation of a practice, the NRCS will immediately cease technical assistance and will request that contractors under the control of the NRCS client cease working in the immediate vicinity of the discovery. Field assessment of the potential eligibility of the discovery and determination of effect will be initiated within 2 business days by a CRS and the SHPO will be notified. If the cultural resource is determined to be a historic property and there is an adverse effect, a treatment plan will then be developed and submitted to the Wyoming SHPO for expedited review. If the SHPO concurs with the adverse effect determination, a Memorandum of Agreement will be negotiated per 36 CFR § Part 800.6.

2. Human Remains: If human remains are identified in the APE during planning or during implementation of a conservation practice, the NRCS will request all activities cease and the following steps be taken:

- a. The county Sheriff and appropriate Tribal legal authority, if applicable, will be immediately contacted by NRCS personnel to determine whether remains are part of an ongoing investigation;
- b. The SHPO, and designated Tribal representative, if applicable, will be notified of the discovery;
- c. NRCS field personnel will request that the NRCS client take appropriate measures, such as erecting protective fence or barriers, to protect the remains until the plan for treating the remains, is completed;

- d. A CRS will be retained by the NRCS to determine tribal affiliation, if any, and approximate age of deposition;
- e. If the remains are determined to be of Native American descent, the NRCS will follow 43 CFR 10, the Native American Graves Protection and Repatriation Act (NAGPRA), consult with the appropriate Native American representatives, and with the SHPO, to develop an appropriate treatment plan;
- f. If the remains are not part of an ongoing police investigation, and are not of Native American descent, the NRCS will consult with the SHPO in the development of an appropriate plan for treating the remains;
- g. Planning and construction activities at the site can recommence only after NRCS staff, the NRCS client, the Wyoming SHPO, and if applicable, the designated Tribal representative, agree that the plan for treating the remains has been properly implemented.

3. **Monitoring:** The NRCS will ensure that particular care is taken during construction to avoid affecting any archaeological remains that may be associated with projects covered by this SLA. In high site potential areas, suitable arrangements for archaeological monitoring will be made in consultation with the SHPO prior to ground disturbing activities in the area. At a minimum, such monitoring will include recording and reporting of major features or artifact concentrations uncovered, and recovery/curation of a sample of materials uncovered where practicable.

4. **Emergencies:** Defined as a natural occurrence causing imminent threat to life and property. The procedures found at 36 CFR § 800.6 will be followed by NRCS in emergency situations.

I. Curation Arrangements:

1. The NRCS will ensure that all materials and records resulting from cultural resources surveys or data recovery activities on federally owned property are curated by The University of Wyoming Archaeology Repository or an equivalent curation facility in accordance with 36 CFR § Part 79.

2. The NRCS will refrain from collecting artifacts on private property, except in cases where artifact destruction is imminent or similarly imperiled. All collection activities must have landowner permission. In instances where artifacts are collected, the CRS will ensure that all records resulting from collection activities on private property are curated by The University of Wyoming Archaeology Repository (UWAR) in accordance with 36 CFR § Part 79, and that all materials resulting from the cultural resources surveys or data recovery activities are maintained by UWAR in accordance with 36 CFR § Part 79 until their analysis is complete and they are returned to their owner(s). It is understood that materials collected on private land remain the property of the landowner(s). Owners will be encouraged to donate artifacts to a curation facility. If the landowner chooses to donate collections, the CRS will insure proper donation records and signed forms

accompany the collection. Collections will be submitted to the UWAR or an equivalent curation facility by the NRCS within 60 calendar days of project report submission to the SHPO. Records and materials resulting from investigations on Tribal lands will be curated in accordance with protocols established with the Tribe(s).

II. SHPO RESPONSIBILITIES

A. The SHPO will continue to provide access to current cultural resources records as contained in the Cooperative Agreement with Wyoming NRCS, dated May 23rd 1989.

B. The Wyoming SHPO agrees to review training materials and to assist in training of NRCS personnel as needed.

C. The Wyoming SHPO will assign a representative to participate with Quality Improvement Teams, and other working groups as needed. The NRCS will use the Guidelines for Quality Assurance of NRCS Cultural Resource Compliance in Wyoming (Attachment 4), as well as Standard Cultural Resources Procedures for Wyoming NRCS Personnel (Attachment 5) and Classification of Conservation Practice Effects on Cultural Resources to help ensure quality of compliance. The Wyoming SHPO may monitor activities carried out pursuant to this SLA, and the ACHP may be asked to review such activities by either party. The NRCS will cooperate with the ACHP and the Wyoming SHPO in carrying out their monitoring and review responsibilities.

III. ADMINISTRATIVE

A. Annual Report: The CRC will provide SHPO with a yearly report containing summary information on all undertakings. The NRCS will list the number of cultural resources reported, resources impacted, resources found eligible, resources adversely impacted, resources avoided and negative inspections. The list will also include the number and type of contacts made by CRSs as well as the results of Quality Assurance Reviews. NRCS will document consultation in the annual report. The report will be due by January 30.

The WY-ECS-41 Part 2, equivalent forms, or other appropriate summary information will be provided within 30 calendar days upon written request from the Wyoming SHPO

B. Annual Meeting: The NRCS will contact the SHPO, coinciding with the annual report, to discuss any modifications, problems or concerns with this SLA, and meet as needed. Any modifications to the SLA must be agreed to by both parties and filed as amendments to the SLA.

IV. DISPUTE RESOLUTION

Should either of the parties object to any of the measures pursuant to this SLA, the parties will consult to resolve the objection within thirty (30) calendar days. If it is determined that the objection cannot be resolved, the parties will request further comments of the ACHP pursuant to 36 CFR § Part 800.6(b). Any ACHP comment provided in response to such a request shall be taken into account by the NRCS in accordance with 36 CFR § Part 800.6(c)(2) with reference only to the subject of the dispute; the NRCS responsibility to carry out all actions under this SLA that are not

subjects of the dispute will remain unchanged.

Nothing in this Section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any party to this SLA.

V. GENERAL PROVISIONS

- A. Assurance: NRCS and SHPO certify and warrant, that no gratuities, kickbacks and/or contingency fees were paid in connection with the SLA, nor were any fees, commissions, gifts or other considerations made contingent upon the reward of this SLA.
- B. Adherence to Law: The laws of the State of Wyoming and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this SLA. In performing this SLA, both parties agree to comply with all applicable Wyoming, federal, local, and tribal laws, rules and regulations.
- C. Assignment of Responsibilities: Neither party may assign this SLA without prior written consent of the other party.
- D. Amendments: Amendments to this SLA and/or attachments shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
- E. Duration: This SLA will remain in effect for five (5) years from the date of the last signature, unless terminated or altered as per Stipulations V.D., V.F., or V.G.
- F. Term Extension: By mutual agreement, the parties can, by written modification extend the term of this SLA, for a period not to exceed an additional five (5) years.
- G. Termination: Either party to this SLA may terminate it by providing sixty (60) days written notice to the other party, provided the terminating party will consult with the other party during the period prior to termination to seek agreement on amendments.
- H. Entirety of Agreement: This SLA, consisting of ten (10) pages and attachments one through six, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- I. Prior Approval: This SLA shall not be binding upon either party unless this SLA has been reduced to writing before performance begins as described under the terms of this SLA, and unless this SLA is approved as to form by the Attorney General or his representative.
- J. Severability: Should any portion of this SLA be judicially determined to be illegal or unenforceable, the remainder of the SLA shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- K. Third Party Beneficiary Rights: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this SLA shall not be construed so as to create such status. The rights, duties and obligations contained

in this SLA shall operate only between the parties to this SLA, and shall inure solely to the benefit of the parties to this SLA. The provisions of this SLA are intended only to assist the parties in determining and performing their obligations under this SLA. The parties to this SLA intend and expressly agree that only parties signatory to this SLA shall have any legal or equitable right to seek to enforce this SLA, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this SLA, or to bring an action for the breach of this SLA.

- L. Nondiscrimination Statement: By signing this agreement, the SHPO assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

VI. Principal Contacts; The principal contacts and members for this instrument are:

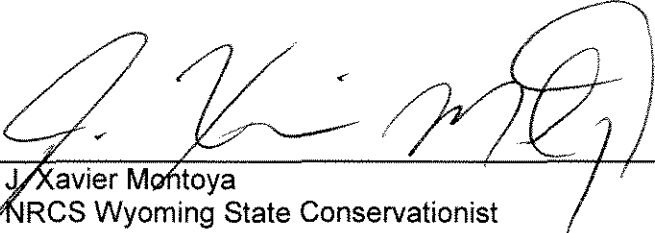
Gerald Jasmer
U.S. Department of Agriculture
Natural Resources Conservation Service
P.O. Box 33124
Casper, WY 82602
Phone: 307-233-6768
Email: gerald.jasmer@wy.usda.gov

Mary Hopkins, Interim
State Historic Preservation Officer
2301 Central Avenue
Barrett Building, Third Floor
Cheyenne, Wyoming 82002
Phone: 307-777-6311 or 307-766-5324
Email: hopkins@uwyo.edu

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The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of the Agreement.

Signatories:



J. Xavier Montoya
NRCS Wyoming State Conservationist

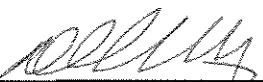
Date: 06/23/08



Mary Hopkins Interim
Wyoming State Historic Preservation Officer

Date: 6/27/08

Wyoming Attorney General's Office

 #18749

Donald Gerstein, Assistant Attorney General

Date: 6/24/08

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ATTACHMENT 1

CLASSIFICATION OF UNDERTAKINGS (CONSERVATION PRACTICES) EFFECTS ON CULTURAL RESOURCES

The following listing of conservation practices indicates the potential of each practice to have an adverse effect on historic properties (cultural resources that are considered eligible for the National Register of Historic Places) if any are present in the area of potential effects. Detailed definitions for the three classification categories are as follows:

Conservation Practices Considered as Having the Potential to Adversely Affect Historic Properties by NRCS - HP

Some conservation practices have a high potential (HP) to affect cultural resources when installed according to NRCS standards & specifications because they are generally ground disturbing practices. Such practices are considered Potentially Adverse and cultural resource documentation is required.

Conservation Practices Considered as Having the Potential to Adversely Affect Historic Properties, Except When Non-intrusive - PNI

Some conservation practices have potential to affect cultural resources (PNI) unless they are installed under either of two different situations:

1. Installation of the practice will not exceed the depth, extent, or kind of previous cultivation or
2. The land has not been previously cultivated and the installation of the practice will result in no ground disturbance.

If either of these situations apply, no further cultural resource documentation is needed. If they do not apply cultural resource documentation is required.

Conservation Practices Not Considered as Having the Potential to Adversely Affect Historic Properties - N

Some conservation practices are primarily management related and will not have any physical effects or alteration to a cultural resource (N). Some of these practices are not just benign, but provide beneficial effects by affecting soil or cover stability. Such practices do not require cultural resources considerations.

The following practice list should be used to determine whether the Cultural Resources Review Worksheet should be used for planning a conservation practice:

Legend:**HP - High Potential to Affect because practice is generally ground disturbing****PNI - Potentially can be installed in a Non-Intrusive manner****N - No potential to adversely affect**

Practice Name and Unit(s)	Cultural Resource Affect Potential	Practice Code
Access Road (ft)	HP	560
Alley Cropping (ac)	N	311
Amendments for Treatment of Agricultural Waste	N	591
Anaerobic Digester, Ambient Temperature (no)	N	365
Anaerobic Digester, Controlled Temperature (no)	N	366
Animal Mortality Facility (no)	PNI	316
Animal Trails and Walkways (ft)	PNI	575
Anionic Polyacrylamide (PAM) Erosion Control (ac)	N	450
Aquaculture Ponds (ac)	HP	397
Atmospheric Resources Quality Management (ac)	N	370
Bedding (ac)	HP	310
Brush Management (ac)	PNI	314
Channel Bank Vegetation (ac)	N	322
Channel Stabilization (ft)	PNI	584
Clearing & Snagging (ft)	PNI	326
Closure of Waste Impoundments (no)	N	360
Composting Facility (no)	PNI	317
Conservation Cover (ac)	N	327
Conservation Crop Rotation (ac)	N	328
Constructed Wetland (no)	HP	656
Contour Buffer Strips (ac)	N	332
Contour Farming (ac)	N	330
Contour Orchard and Other Fruit Areas (ac)	N	331
Cover Crop (ac)	N	340
Critical Area Planting (ac)	N	342
Cross Wind Ridges (ac)	PNI	589A
Cross Wind Trap Strips (ac)	N	589C
Dam, Diversion (no)	HP	348
Dam (no & ac-ft)	HP	402
Deep Tillage (ac)	N	324
Dike (ft)	HP	356
Diversion (ft)	HP	362
Drainage Water Management (ac)	N	554
Dry Hydrant (no)	HP	432
Early Successional Habitat Development/Mgt. (ac)	N	647
Feed Management (no & au)	N	592
Fence (ft)	PNI	382
Field Border (ft)	N	386
Filter Strip (ac)	N	393

Practice Name and Unit(s)	Cultural Resource Affect Potential	Practice Code
Firebreak (ft)	HP	394
Fish Passage (no)	PNI	396
Fish Raceway or Tank (ft & ft ³)	PNI	398
Fishpond Management (no)	PNI	399
Forage Harvest Management (ac)	N	511
Forest Slash Treatment (ac)	PNI	384
Forest Stand Improvement (ac)	N	666
Forest Trails and Landings (ac)	HP	655
Fuel Break (ac)	PNI	383
Grade Stabilization Structure (no)	HP	410
Grassed Waterway (ac)	HP	412
Grazing Land Mechanical Treatment (ac)	PNI	548
Heavy Use Area Protection (ac)	PNI	561
Hedgerow Planting (ft)	N	422
Herbaceous Wind Barriers (ft)	N	603
Hillside Ditch (ft)	HP	423
Irrigation Canal or Lateral (ft)	HP	320
Irrigation Field Ditch (ft)	HP	388
Irrigation Land Leveling (ac)	HP	464
Irrigation Regulating Reservoir (no)	HP	552
Irrigation Storage Reservoir (no & ac-ft)	HP	436
Irrigation System	PNI	
Microirrigation (no & ac)	PNI	441
Sprinkler (no & ac)	PNI	442
Surface & Subsurface (no & ac)	PNI	443
Irrigation System, Tailwater Recovery (no)	PNI	447
Irrigation Water Conveyance	PNI	
Ditch and Canal Lining	PNI	
Plain Concrete (ft)	PNI	428A
Flexible Membrane (ft)	PNI	428B
Galvanized Steel (ft)	PNI	428C
Pipeline	PNI	
Aluminum Tubing (ft)	PNI	430AA
Asbestos-Cement (ft)	PNI	430BB
Nonreinforced Concrete (ft)	PNI	430CC
High-pressure, Underground, Plastic (ft)	PNI	430DD
Low-pressure, Underground, Plastic (ft)	PNI	430EE
Steel (ft)	PNI	430FF
Reinforced Plastic Mortar (ft)	PNI	430GG
Rigid Gated Pipeline (ft)	PNI	430HH
Irrigation Water Management (ac)	N	449
Land Clearing (ac)	PNI	460
Land Reclamation, Landslide Treatment (no & ac)	HP	453
Land Reclamation, Toxic Discharge Control (no)	PNI	455
Land Reconstruction, Abandoned Mined Land (ac)	HP	543
Land Reconstruction, Currently Mined Land (ac)	HP	544

Practice Name and Unit(s)	Cultural Resource Affect Potential	Practice Code
Land Smoothing (ac)	HP	466
Lined Waterway or Outlet (ft)	PNI	468
Manure Transfer (no)	N	634
Mine Shaft & Adit Closing (no)	PNI	457
Mole Drain (ft)	HP	482
Monitoring Well (ea)	HP	353
Mulching (ac)	N	484
Multi-Story Cropping	N	379
Nutrient Management (ac)	N	590
Obstruction Removal (ac)	PNI	500
Open Channel (ft)	HP	582
Pasture & Hay Planting (ac)	N	512
Pest Management (ac)	N	595
Pipeline (ft)	PNI	516
Pond (no)	HP	378
Pond Sealing or Lining	N	
Bentonite Sealant (no)	N	521C
Flexible Membrane (no)	N	521A
Soil Dispersant (no)	N	521B
Compacted Clay Treatment (no)	N	521D
Precision Land Forming (ac)	PNI	462
Prescribed Burning (ac)	PNI	338
Prescribed Grazing (ac)	N	528
Pumping Plant (no)	PNI	533
Range Planting (ac)	N	550
Recreation Area Improvement (ac)	PNI	562
Recreation Land Grading and Shaping (ac)	PNI	566
Recreation Trail and Walkway (ft)	PNI	568
Residue and Tillage Management, No Till/Strip Till/Direct Seed (ac)	N	329
Residue and Tillage Management, Mulch Till (ac)	N	345
Residue and Tillage Management, Ridge Till (ac)	N	346
Residue Management, Seasonal (ac)	N	344
Restoration and Management of Rare or Declining Habitats (ac)	N	643
Riparian Forest Buffer (ac)	N	391
Riparian Herbaceous Cover (ac)	N	390
Rock Barrier (ft)	PNI	555
Roof Runoff Structure (no)	PNI	558
Row Arrangement (ac)	N	557
Runoff Management System (no & ac)	PNI	570
Salinity and Sodic Soil Management (ac)	PNI	610
Sediment Basin (no)	HP	350
Shallow Water Development and Management (ac)	PNI	646
Silvopasture Establishment (ac)	N	381
Solid/Liquid Waste Separation Facility	HP	632

Practice Name and Unit(s)	Cultural Resource Affect Potential	Practice Code
Spoil Spreading (ac)	HP	572
Spring Development (no)	HP	574
Streambank and Shoreline Protection (ft)	PNI	580
Stream Crossing (no)	PNI	578
Stream Habitat Improvement and Management (ac)	PNI	395
Stripcropping (ac)	N	585
Structure for Water Control (no)	HP	587
Subsurface Drain (ft)	HP	606
Surface Drainage, Field Ditch (ft)	HP	607
Surface Drainage, Main or Lateral (ft)	HP	608
Surface Roughening (ac)	PNI	609
Terrace (ft, m)	HP	600
Tree/Shrub Establishment (ac)	N	612
Tree/Shrub Preparation	N	490
Tree/Shrub Pruning (ac)	N	660
Underground Outlet (ft)	HP	620
Upland Wildlife Habitat Management (ac)	PNI	645
Use Exclusion (ac)	N	472
Vegetative Barrier (ft)	N	601
Vertical Drain (no)	HP	630
Waste Facility Cover (no)	N	367
Waste Storage Facility (no)	HP	313
Waste Treatment	N	629
Waste Treatment Lagoon (no)	HP	359
Waste Utilization (ac)	N	633
Wastewater Treatment Strip (ac)	N	635
Water Harvesting Catchment (no)	PNI	636
Watering Facility (no)	PNI	614
Water and Sediment Control Basin (no)	HP	638
Waterspreading (ac)	HP	640
Water Well (no)	HP	642
Well Decommissioning (no)	N	351
Well Water Testing (no)	N	355
Wetland Creation (ac)	HP	658
Wetland Enhancement (ac)	PNI	659
Wetland Restoration (ac)	PNI	657
Wetland Wildlife Habitat Management (ac)	PNI	644
Wildlife Watering Facility (no)	PNI	648
Windbreak/Shelterbelt Establishment (ft)	PNI	380
Windbreak/Shelterbelt Renovation (ft)	PNI	650

ATTACHMENT 2

UNDERTAKINGS (CONSERVATION PRACTICES) EXEMPT FROM CASE-BY-CASE REVIEW IN WYOMING

Pursuant to Section I.B.2 of this SLA, the CRS, after determining information needed to identify and evaluate cultural properties, determines if specific projects or activities should be exempted from case-by-case review. The CRS may have justification to require an inventory and evaluation of cultural resources in these cases. The following actions are, in most circumstances, exempt from case-by-case review.

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. Acquiring lands and easements
3. Minor, routine, or preventive operations and maintenance activities requiring no new surface disturbance and where facilities being maintained are not historic properties
4. 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.
5. 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.
6. Activities limited within stream channels, not including terraces and cut banks.
7. 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.
8. 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.
9. New fence construction and modifications of existing fence lines that do not require surface disturbance (i.e. blading, grading, brush removal) beyond placement of posts and will not result in concentration of animals or creation of two track trails from vehicles.

ATTACHMENT 3

DEFINED NON-SITES AND PROPERTY TYPES REQUIRING NO FORMAL DOCUMENTATION

A CRS 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, 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. Stock dams, troughs, spring boxes, and associated windmills that post date 1930
4. Elevation, bench, and section 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 all 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. Agricultural irrigation ditches (generally unnamed field ditches) that are ephemeral in nature or may have changed location over time
13. Bear baiting sites
14. Trash dumps or historic artifact scatters older than 50 years for which historic significance cannot be demonstrated and/or the trash dumps do not provide any significant information (e.g. truck clean-out sites, strips and disks, etc.). This applies regardless of the number of

associated artifacts

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

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

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

18. Engineered roads built as part of the State Highway System (generally after 1928, the year the privately administered Lincoln Highway Association was dissolved) do not require any documentation beyond what is on file at the Wyoming Department of Transportation. Roads built during the Great Depression (e.g. CCC, WPA – generally these are not on the State Highway System) require documentation and evaluation.

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ATTACHMENT 4

GUIDELINES FOR QUALITY ASSURANCE OF NRCS CULTURAL RESOURCE COMPLIANCE IN WYOMING

Program responsibility for cultural resources and conducting quality assurance reviews belongs to the State Resource Conservationist.

NRCS District Conservationists, RC&D coordinators and Soil Survey Party Leaders are responsible for the quality of work, and cultural resource compliance, in their respective offices.

1. Activities to be reviewed: All undertakings as defined by NRCS policy and Section 106 of the National Historic Preservation Act, as amended, are subject to Quality Assurance Reviews.
2. Frequency: Quality assurance reviews are to be conducted by a CRS or designee for each employee who has had the cultural resources training and will occur at a minimum of 25% of the field offices based on the fiscal year. The reviews will cover as many different practices as possible, demonstrating the employees' proficiency for compliance with cultural resource regulations in varying circumstances.
3. SHPO Involvement: SHPO may initiate quality assurance reviews on any NRCS undertaking after notifying the CRC. Onsite visitations will require landowner permission for both NRCS and SHPO personnel.
 - a. If errors or deficiencies are found, additional undertakings in the same category will be checked until reasons for deficiencies are defined and corrected.
 - b. Quality assurance reviews will exclude undertakings where advanced reviews or inspections were conducted by the CRS.
4. Methods: Cultural resources Quality Assurance Reviews will be combined with other program reviews.
 - a. The WY-ECS-41 Part 2 or equivalent will be checked for consideration of cultural resources. Cultural Resources documentation will be checked for accuracy and completeness.
 - b. Field checks will be made of the area of the undertaking to confirm accuracy of information on the WY-ECS-41 Part 2 or equivalent.
5. Quality: The quality assurance review will check the cultural resource evaluation. If there are deficiencies such as incomplete or inaccurate documentation, error in description or size of APE, etc., then the Quality Assurance Review report is to include:
 - a. Details of deficiencies in relation to compliance with National policy and established State procedures.
 - b. Recommendations for corrective actions needed to meet policy and section 106 compliance.

c. Suggested training needs for specific persons or staffs to help prevent recurrence of deficiencies.

d. Deficiencies that result in possible adverse effects to cultural resources will be documented with notification of the SHPO and the Advisory Council on Historic Preservation, if needed.

- i) Corrective or necessary mitigation actions will be scheduled as part of the follow-up.
- ii) The quality assurance review will be drafted before leaving the NRCS office and will be reviewed by the NRCS office supervisor and quality assurance review team leader.

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ATTACHMENT 5

STANDARD CULTURAL RESOURCE PROCEDURES FOR WYOMING NRCS PERSONNEL

1. The NRCSTE or a CRS will determine whether or not the planned action/practice is listed as having the potential to adversely effect cultural resources
2. The NRCSTE or a CRS will then determine whether the section(s) contain previously documented historic resources using the WYCRO database provided by the Cultural Records Office of the SHPO. If the list indicates that cultural resources are present, a file search will be requested. A field inspection will be conducted to determine if cultural resources are present in the Area of Potential Effect (APE) or if the APE has characteristics that warrant field inspection by a specialist.
3. If no cultural resources are present and the APE has no characteristics that warrant field inspection by a specialist, then the field office personnel will document that information on a WY-ECS-41 Part 2 or equivalent and proceed with the undertaking.
4. If cultural resources are present and/or if the APE has characteristics that warrant field inspection by a specialist, then field office personnel will notify the CRC. The CRC will review the information and determine the proper course of action. If further work is required, the CRC will notify the District Conservationist (DC) who will:
 - a. Re-evaluate alternatives to planned action(s) with landowner, in lieu of conducting further investigation
 - b. Inform the CRC of decision regarding alternatives
5. If alternative, non-sensitive location or non-ground disturbing action can be planned, the DC documents alternative, and proceeds with assistance.
6. If no feasible alternative can be found, the CRC will arrange for a Cultural Resource Specialist (CRS) to proceed with the investigation, if NRCS funding and/or personnel are available.
7. If NRCS Funding/Staff is not available the CRC will arrange for the following:
 - a. A site visit by a CRS to obtain additional technical information and/or confirm the SHPO's recommendation about the sensitivity or likelihood of the APE having significant cultural resources.
 - b. The CRC will obtain a cost and time estimate for further investigation. The CRC will discuss the need and feasibility of further investigation with the DC who informs the landowner of NRCS requirements and asks if they are willing to pay for the work.
8. If funding from the NRCS or the landowner is available, but the landowner does not wish NRCS to proceed according to policy, then NRCS will withdraw assistance related to the undertakings.
9. If the landowner decides to proceed, then NRCS CRC may coordinate arrangements or contracts with person(s) who meet the qualifications contained in "Archeology and Historic

Preservation; Secretary of the Interior's Standards and Guidelines - Professional Qualifications Standards.”

10. All cultural resources within the APE will be evaluated for inclusion in the National Register of Historic Places (NRHP).
11. The preferred option is to avoid the cultural resource by redesigning the project.
12. If the cultural resource cannot be avoided and is determined eligible for the NRHP, then the NRCS, in consultation with the SHPO, shall develop an MOA to mitigate any adverse effects upon the resource.
13. As part of an MOA between the NRCS and SHPO, the following will be considered Best Practices for reducing visual effects to historic properties:
 - a. Reduce the amount of surface development by consolidating facilities
 - b. Use low profile facilities.
 - c. Proper siting and location to maximize the use of topography and vegetation to screen development. Design projects to blend with topographic forms and existing vegetation patterns.
 - d. Use environmental coloration or advance camouflage techniques to break up visual intrusion of facilities that cannot be completely hidden.
 - e. For livestock control, use electric fencing with low-visibility fiberglass posts and environmental colors (e.g., sage green).
 - f. Design linear facilities to run parallel to key observation points rather than perpendicular.
 - g. Modify the orientation of facilities to present less of a visual impact (e.g., a facility with several tanks lined up so that one obscures the visibility of the others).

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GLOSSARY

ACHP (Advisory Council on Historic Preservation)

The independent Federal agency charged with the responsibility of advising the President, Congress, and Federal agencies on historic preservation policy and reviewing agency programs and activities related to historic and cultural properties. The ACHP was established pursuant to Title II of the National Historic Preservation Act of 1966 (NHPA, 80 Stat. 915, 16 U.S.C. 470) and, with considerable public participation, authored the regulations for implementation of Section 106 of the NHPA. The Council has twenty members, including selected positions from the Cabinet, such as the Secretary of Agriculture. The Council also has support staff in Washington, D.C. who work directly with agencies, State Historic Preservation Officers (SHPOs), Tribes (including THPOs), local governments and members of the public in advising on compliance with Section 106 of the NHPA and other related matters.

Area of Potential Effect

The area of potential effect (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)].

Class III survey: A class III survey is a pedestrian survey with transects conducted at a spacing of 30 meters or less with the purpose of identifying all cultural resources within the area of potential effect.

Cultural Asset Resource Locator (CARL)

System for compiling and completing electronic cultural resource forms (ECS 41 Part 2 or equivalent).

Cultural Resources Review is an examination of existing information to determine the likelihood that cultural resources are, or may be, present in an area that may be affected by an NRCS undertaking. This review includes checking the current National Register of Historic Places, as well as equivalent state level registers and state site files, consulting the State Historic Preservation Officer, and talking with the landowner(s)/cooperator(s). It should also include obtaining the views of the State archeologist, State historian, and State archivist and other knowledgeable individuals and organizations; archeological and historical societies; and other appropriate individuals or organizations. It also includes research on the history, prehistory, ethnography, and ecology of the area. Thus, the review also includes files searches, records searches, review of past research reports, unpublished compliance reports and monographs, and published articles and books. A cultural resources specialist (CRS) or NRCS personnel who have completed the required NRCS cultural resources training conduct the review.

Cultural Resources

All eligible, unevaluated, and not eligible resources including buildings, structures, sites, objects, districts and landscapes.

Cultural Resource Coordinator

The NRCS staff member officially designated by the State Conservationist as the point of contact for addressing historic properties, cultural resources, and Section 106, 110, and 112

compliance.

Cultural Resource Specialist

An individual (NRCS staff or consultant who works closely with the CRC) who meets the Secretary of the Interior's Standards and Guidelines requirements in archeology and historic preservation.

Eligible Properties (see Historic Properties)

Properties that have been evaluated through the process by which the significance and integrity of a prehistoric or historic property are judged as eligible for listing in the National Register of Historic Places. Such properties are also legally designated "historic properties." A property may be determined to be eligible under any of four Criteria:

Criterion A

The property is associated with events that have made a significant contribution to the broad patterns of our history. Criterion A also includes traditional cultural properties, a property associated with cultural practices, beliefs, the sense of purpose, or existence of a living community that is rooted in that community's history or is important in maintaining its cultural identity and development as an ethnically distinctive people. Traditional cultural properties are ethnographic resources eligible for listing in the National Register.

Criterion B

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

Criterion C

The property exemplifies a distinctive type, period, or method of construction, or the work of a master, or a high artistic quality.

Criterion D

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

Historic Property

Any prehistoric or historic district, site, building, structure, or object eligible for inclusion or enrolled in the National Register of Historic Places.

Interested Parties

An interested party has a demonstrated interest in an NRCS undertaking or action on a historic property. Interested parties may include, but are not limited to, local governments, grantees, permittees, owners of affected lands or land surfaces, Indian tribes, and other groups.

Interested parties provide input and information to the consulting parties before an agreement is prepared. However, they may not necessarily be invited to become a concurring signatory on the agreement document.

National Historic Landmarks

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

National Register of Historic Places

The official Federal list of districts, sites, buildings, structures, and objects significant in

American history, architecture, archaeology, engineering, and or culture maintained by the Keeper of the National Register, National Park Service.

Natural Resources Conservation Service Technical Employee

NRCS employee who has completed the NRCS National Cultural Resources Training Program and supplemental NRCS Wyoming State Training. NRCSTEs are responsible for field assessment of cultural resources where NRCS undertakings are not exempt from review under Section 106 of the NHPA and the Wyoming SLA.

Not Eligible Properties

Properties that have been evaluated through the process by which the significance and integrity of a prehistoric or historic property are judged as not eligible for listing in the National Register of Historic Places.

SHPO (State Historic Preservation Office or Officer)

Established by the National Historic Preservation Act of 1966 as an agency within each State government charged with enforcing the provisions of the Act. SHPO's receive Federal funds from the National Park Service and allocate matching funds and grants to Certified Local Governments (CLGs) for the protection of sites eligible for listing in the National Register of Historic Places.

Wyoming Cultural Records Office is a section of the Wyoming State Historic Preservation Office which maintains the WYCRO database and a statewide inventory of cultural resources, and associated inventories.

Acronyms

- ACHP – Advisory Council on Historic Preservation
- APE – Area of Potential Effect
- CRC – Cultural Resource Coordinator
- CRS – Cultural Resource Specialist
- DC – District Conservationist
- MOA – Memorandum of Agreement
- NAGPRA – Native American Graves Protection and Repatriation Act
- NCSHPO – National Council of State Historic Preservation Officers
- NEPA – National Environmental Policy Act
- NHPA – National Historic Preservation Act
- NRCS – Natural Resources Conservation Service
- NRCSTE – Natural Resource Conservation Service Technical Employee
- PA – Programmatic Agreement
- SHPO – State Historic Preservation Office or Officer
- UWAR – University of Wyoming Archaeological Repository
- WYCRO – Wyoming Cultural Records Office, SHPO
- WYCPR – Wyoming Cultural Properties Form
- WYIRF – Wyoming Isolated Resource Form