



**CULTURAL RESOURCES ON THE
BUREAU OF LAND MANAGEMENT PUBLIC LANDS:**
An assessment and needs analysis

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An Assessment and Needs Analysis

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“With every year that passes, the diversity of our cultural resources is reduced, and we lose more of our ability to tell the story of the public lands”

BLM Cultural Resources at Risk – June 2000

EXECUTIVE SUMMARY

Of the 261 million acres managed by the federal Bureau of Land Management, only about 17 million acres across 11 western states have ever been inventoried or surveyed to identify cultural resources found there. Nevertheless, 263,000 cultural properties have been discovered on these lands, indicating that an enormous trove of publicly owned irreplaceable cultural resources remains to be identified, and preserved, on our public lands. The enormous scope of the cultural resources to be found on the BLM public lands continues to dwarf the staff and funds allocated to manage them.

BLM has assembled a well-qualified career cultural resources staff, mostly archeologists, to administer its cultural resources programs, but its ability to fully comport with the laws and regulations governing cultural resources on the public lands is seriously inhibited by several factors that compound its already huge task, including:

- Too few cultural resources management and law enforcement staff, spread too thinly across the West, resulting in too little inventory, monitoring, education, or protection of cultural sites.
- Too little funding for cultural resources work, with limited staff and too few funds focused on Section 106 compliance, especially in the BLM states with heavy oil and gas leasing programs.
- Many of the best cultural and natural resource areas managed by BLM, set aside in the National Landscape Conservation System, remain under-funded, inadequately protected, and unknown to the majority of Americans.
- The Administration's push for increased energy exploration and production, especially in the oil and gas leasing states, resulting in a decrease in the adequacy of Section 106 compliance, fewer National Register listings, and limited land use restrictions to protect cultural resources sites.
- Too much reliance on private industry land use permit applicants to conduct narrow land use project site cultural resources surveys, resulting in a scattered, rather than systematic, landscape-scale survey base.
- Little incentive, or funding, for landscape level cultural resource surveys that can assess larger scale sites, or address cultural sites thematically across whole states or regions of the West, especially traditional cultural properties still used by Native Americans today.
- With so little advance knowledge of cultural resource sites/significance, the planning process cannot serve its most useful functions for cultural resources management, designating sites for special recognition and protection before issuance of land use permits.



“The BLM manages the largest, most diverse and scientifically most important body of cultural resources of any federal land agency. However, much of this cultural resource base is seriously threatened.”¹

INTRODUCTION

Cultural resources (CR) found within Bureau of Land Management (BLM) public lands include sites covering the entire range of known human existence over the past 13,000 years in the continental US and Alaska. Most of the elements of this massive cultural resource collection, however, remain undiscovered, under-funded, threatened, are deteriorating, or have been lost. Modern Native American tribes still consider many of these sites to be sacred, or to be sites where traditions are maintained.

The BLM administers 261 million acres of federal public lands, about 1/8 of the Nation’s land base, mostly in 11 Western states. To date, BLM has enabled about 6% of these lands to be surveyed for CR, and has identified 263,000 cultural properties.² Of these cultural sites, over 90% are prehistoric Native American, or archeological sites, while under 10% are historic sites, mostly from the 19th and early 20th centuries.

Assuming the same concentration of cultural resource sites across all of the BLM public lands as have been found to exist upon those already surveyed, there are likely to be 4.5 million cultural sites on all public lands under BLM purview. At \$40/acre to conduct cultural resource surveys, the cost of surveying all remaining BLM lands would be over \$9 billion, if done in the conventional piecemeal manner. A new approach is recommended.



BLM currently has over 400 sites listed on the National Register of Historic Places, covering 4,247 properties. Of these, 20 have been further designated as National Historic Landmarks, marking them as nationally significant. In addition, five sites administered by BLM are classified as World Heritage Sites. Extrapolating for the totality of BLM public lands, if National Register eligible sites were to occur throughout un-surveyed BLM public lands at the same rate as on those lands already surveyed, there could be 68,000 as yet undiscovered CR sites eligible for listing on the National Register, of which as many as 3,600 sites could likely be of national significance, eligible for designation as National Historic Landmarks.

“Bureau of Land Management as the name of our agency is a misnomer, we are mostly a land use permitting agency, not a land managing agency.”

The recently-established National Landscape Conservation System (NLCS), consisting of about 10% of all lands under the BLM, including many of the best cultural and natural resources sites that have been given special management designations by Congress and Presidents, offers the agency a major opportunity to showcase its cultural resources management capabilities, and to demonstrate that it is able to conserve important cultural resource sites as a priority. Proactive management of the NLCS would enable BLM to justify increases in cultural resources management (CRM) funding, develop innovative funding and managing partnerships, expand the scope of its research, and improve its public visibility substantially.

¹ “Preserve America” Report, Executive Order No. 13287, Progress Report. September 2005. U.S. Bureau of Land Management

² The 1999 Report to Congress on the Federal Archeology Program estimates that of the 743 million acres of federal lands managed by all agencies, about 11% have been surveyed for CR sites.

Largely as a result of this formidable backlog of un-surveyed lands and its attendant cost, BLM can do relatively little proactively, instead relying on a patchwork of National Historic Preservation Act (NHPA) Section 106 surveys. These surveys are carried out within the context, and constraints, of approvals for public land use permits issued by the thousands annually to energy, mining, and grazing companies, for energy and mineral extraction, road, pipeline, and utility rights-of-way, and a host of other private, state and local activities.

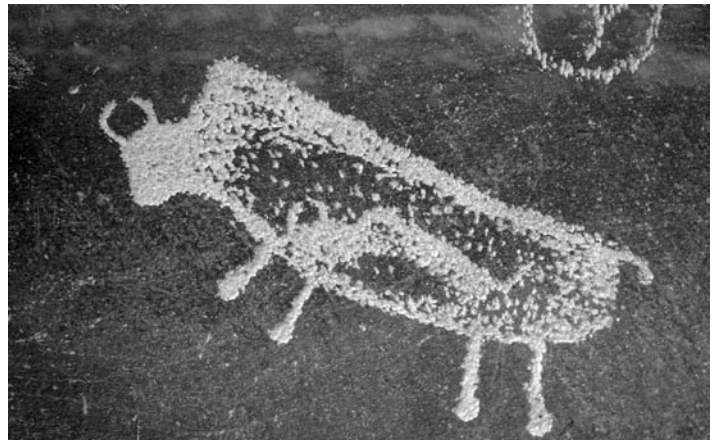
As one CR professional in BLM said, “BLM puts too much emphasis on Section 106 compliance, which is a process to get rid of cultural resources, and not enough on cultural resources work under Section 110, which calls for activities to identify and protect cultural resources. Further, the cultural resources 1050 sub-account funds should be a “sacred” account only used for proactive work, but BLM Field Office Managers have the ability to use these already limited funds to support compliance, planning, recreation, or other BLM activities, and do so.”

Recreation use of the BLM public lands is growing at a faster rate than on any other lands, and yet BLM does not have a regulatory framework within which to manage recreation use and its attendant impacts, especially to cultural resources. For much of the time that BLM has existed as an agency, the BLM lands have been thought to be too inaccessible and undeveloped to support substantial recreation use. Today, BLM lands are fully accessible due to the pervasive use of off-highway motorized vehicles and mountain bikes. One senior BLM official noted that “BLM has complete regulatory ability to control the impacts on cultural resources of its permit applicants; however the greatest threat to cultural resources today is coming from the rapid increase in recreational access, with essentially no regulatory control, or enforcement capacity in place to deal with growing impacts.”

BLM Cultural Resources Laws, Regulations, and Policies

In official terms at least, the basic federal laws governing historic preservation, archeological protection, and Native American cultural concerns apply equally to BLM-administered public lands as they do to every other federal land managing agency. In this sense, these various federal laws³ are generally sufficient to afford publicly owned cultural resources protection, when these cultural resources are known and their relative significance ascertained, and when these laws are administered in the public interest.

The “organic” law governing BLM, the Federal Lands Policy and Management Act of 1976 (FLPMA), established a clear policy of long-term retention and professional management of the lands and resources, including cultural resources, under the BLM. FLPMA made it clear that BLM lands were no longer to be disposed of as “the lands nobody wanted,” but were indeed wanted by the American people. While the general policy of “multiple-use” is BLM’s core mission under FLPMA, it was made clear in the statute that rare, special, sensitive, beautiful, or other specific places within the BLM lands could be protected from competing uses, or from destruction by development or overuse through various special management actions, such as designation of “areas of critical environmental concern” (ACEC).



³ Including the National Historic Preservation Act (NHPA), the Archeological Resources Protection Act (ARPA), the Indian Religious Freedom Act (IRFA), and the Native American Graves Protection and Repatriation Act (NAGPRA).

FLPMA contains a requirement that BLM fully inventory the resources of the public lands, including the cultural resources. The fact that only 6% of BLM lands have been surveyed for cultural resources stands in sharp contrast to one of the basic requirements of FLPMA.



More recently, BLM has administratively organized all of its special management areas, (those designated by Congress or the President) into a “National Landscape Conservation System” (NLCS) as a way to give more management attention and direction to these special places, and to the significant cultural resources in them.⁴ However, there is no statutory basis for the NLCS to be given special status within the agency, and it could be changed by a simple action of the Secretary of the Interior.

BLM has not promulgated and codified a comprehensive set of federal regulations assuring that it has fully enforceable cultural resources rules applicable to all of the users of the vast public lands under its purview. While the regulations governing resource development programs and various land use application processes have fairly good provisions allowing BLM to restrict or limit impacts on cultural resources, there are few if any rules in place regarding recreation activities on the public lands, which are burgeoning at an exponential rate. This failure to codify its policies, and interpret the historic preservation laws through regulations for recreational use of the public lands, compounds BLM difficulties with long-term CR preservation, and with short-term enforcement.

Instead of regulations, BLM has crafted a lengthy and detailed set of policy manuals governing its cultural resources management concerns, the 8100 Series Policy Manuals.⁵ A new edition was completed and published in December 2004, replacing a set of policies developed in 1997. To BLM’s credit, the Manual Series is comprehensive, and provides its Field Offices, the main point of policy implementation for the BLM, with basic information and general summary guidance necessary to attempt to consistently apply its policies toward cultural resources across the West.

Unfortunately, without corresponding regulations, many of its policies are not readily enforceable, except internally. BLM currently lacks sufficient regulatory control, or the will to exercise it, over a broad range of activities occurring on the public lands that often threaten or damage cultural resources. Even where penalties exist, such as for theft of archeological artifacts (e.g. “pot-hunting”), they hardly function as a deterrent because they are so mild. Further, with so few enforcement officers, much damage, theft, and vandalism occurs without penalty, or even knowledge, until well after the damage has been done. Third party enforcement of BLM CR policies would be extremely difficult without corresponding regulations.

⁴ The NLCS includes national monuments, national conservation areas, national historic trails, wilderness areas, wild & scenic rivers, and national recreation areas all managed by the BLM.

⁵ The Manual Series includes:

- 8100 – The Foundations for Managing Cultural Resources
- 8110 – Identifying and Evaluating Cultural Resources
- 8120 – Tribal Consultation Under Cultural Resource Authorities
- 8130 – Planning For Uses of Cultural Resources
- 8140 – Protection Cultural Resources
- 8150 – Permitting Uses of Cultural Resources
- 8160 – Preserving Museum Collections (Reserved) (i.e. not yet completed)
- 8170 – Interpreting Cultural Resources for the Public

One serious issue raised in Section 8100.09A1 of the Policy Manual is that “*The management of cultural resources shall be guided by and in accordance with approved BLM land use plans, principally Resource Management Plans (RMP).*” (emphasis added) Ideally, the BLM approach should be the reverse of this, with RMPs being guided by and in accordance with the 8100 Series Manuals’ policies. It is normal in government procedures that *policy* guides, constrains, limits, or compels agency decisions and actions taken through the planning process. On the face of it, this language seems to reverse normality, implying that whatever the RMP determines in its Record of Decision is the agency policy, regardless of what the CR Policy Manuals might state to the contrary.

One unusual policy for the management of cultural resources on BLM public lands offered in the Policy Manuals is that all known cultural resources must be assigned to one of several categories of “use”⁶ during the RMP planning process. According to the BLM approach, all cultural resources have uses, and the use identification process is the “*bridge to protection and utilization.*” BLM CR “use” categories include:

1. **Scientific Use**
2. **Conservation for Future Use**
3. **Traditional Use**
4. **Public Use**
5. **Experimental Use**
6. **Discharged from Management**

If a more complete inventory of cultural resources on BLM lands existed, then such a categorization method would allow the Field Office Manager and the corresponding State Historic Preservation Officer (SHPO) to reach advance agreement on CR priorities for protection and how land use conflicts affecting cultural resources will be dealt with when they arise in the future. Unfortunately, with so little known about the extent, type, and condition of cultural properties throughout BLM lands, this categorization method serves only a very small percentage of cultural resources under the agency. Conversely, a substantial new commitment by the BLM to landscape-scale inventories would serve to make this mechanism one of the most important tools at its disposal for making appropriate management decisions regarding cultural resources.

In Section 8130.06B of the Policy Manual, dealing with planning, BLM establishes a management standard for CR where land use conflicts occur to “*identify and seek to avoid adverse impacts*” on cultural resources. Given its broad mission, this is an appropriate standard, however, the agency’s limited budget and small proactive staff capacity make achieving this goal difficult at best.

Perhaps because the growth in recreational uses on public lands has occurred so suddenly, the 8100 Policy Manual series pays inadequate attention to policies, programs, and means to manage recreational uses so as to advance protection of CR. An additional section of the Manual Series should be developed focused entirely on managing CR in the face of growing public recreational uses of BLM lands.



⁶ Policy Manual 8110.41A-F

Given the threat to cultural resources posed by the recent rapid increase in recreation activity on BLM lands, the Policy Manual at 8130.13D (regarding the education and recreation demands for use of cultural sites) establishes that “*management actions should include the general steps that may be necessary before recreation and education activities can be accommodated at properties allocated to those uses, such as interpretive development, “hardening” sites to withstand increased visitation, data recovery, and preparation of field school agreements.*” However, this policy does not clarify whether BLM could choose more restrictive access alternatives, could use the ACEC designation to protect key CR sites from excessive or damaging recreational use, or could allow a predominant Native American concern for a traditional cultural property, for example, to result in a decision to preclude recreational use.



The Policy Manual at 8130.21B states that “*the scope and scale of cultural resources identification is much more general and less intensive for land use planning than for processing specific land use proposals.*” However, this broad statement does not take into account the CR identification benefit that is already being derived from landscape- scale CR surveys. Some RMPs currently being developed are being preceded by landscape-scale CR surveys that will give the Field Manager a more educated basis for making land use decisions than is otherwise the case. The planning stage would also be the ideal time to provide the most significant cultural sites with adequate protection through ACEC designation, withdrawal or other means.

Concerning threats to cultural resources that are posed by management decisions in RMPs, the Policy Manuals present something of an inherent conflict in themselves. Section 8130.21E2a states that “*all sections of the RMP that address the development of lands and resources will contain standard language stating that managers must not approve proposed activities until compliance with Section 106 of the National Historic Preservation Act has been completed and documented, including where applicable, consultation with the SHPO and federally recognized Indian Tribes.*”

However, while compliance with Section 106 generally compels the agency to either avoid or mitigate CR site damage, Policy Manual section 8130.21E2b introduces a very different decision standard, stating that “*where such alternatives would require undue cost or would be incompatible with competing goals, managers shall seek to balance goals, considering the magnitude of the harm to the cultural resource or its use, the significance of the resource or its use, the effect of mitigation activities on the competing use allocation, and public sensitivities.*”

What constitutes “*undue costs*” or what would be “*incompatible with competing goals*” leaves Field Managers with enormous latitude or discretion, almost as if there were no CR policy that intends preservation of these sites. The considerable weight given to “*undue costs*” looms even more importantly in the BLM decision process since the timing of 106 compliance comes well after the issuance of the initial lease, and not until the company or lessee is ready to begin development of the site. By then, the company will generally have a compensable right, and have invested considerable funds in project planning. At this stage, compliance with Section 106 makes the finding of adverse effect a foregone conclusion.

As seems obvious, and as intended under general ACHP guidance, as well as indicated in the legislative history of the National Historic Preservation Act, 106 compliance should occur at the earliest possible stage of site planning, which in the case of oil and gas development, would be at the time

BLM considers issuance of the lease, not, as is currently the case, at the time the leaseholder submits a site development or APD application for BLM review and approval.

The Policy Manual at 8140.06A, Protecting Cultural Resources, states that “*the Field Office Manager ensures that his or her land use decisions will not have an inadvertent adverse effect on the qualities that qualify cultural properties for the National Register...*” It is unclear how a manager could possibly ensure that something that is “inadvertent” will not happen. Given how little is known about the scope, condition, or significance of cultural sites on BLM lands, it seems unlikely that very many, if any, Field Office Managers can meet this policy standard. Much more CR survey work, at least at the landscape-scale, would be needed in order to meet this standard. Having better data, in advance of decisions about specific land use permits, would enable BLM managers to make key decisions benefiting cultural resources in the RMP itself, such as designation of ACECs.

Likewise, Section 8140.24 of the Policy Manual, regarding Determining Appropriate Treatment, states that “*the preferred strategy for treating potential adverse effects on listed or eligible properties is avoidance.*” Again, while this is a fine policy for known sites, given that so few are known, a higher priority must be placed on gaining greater knowledge of cultural properties across the BLM lands.

Given the vastness of the BLM lands, its shortage of CR funds, the paucity of professional CR staff, and the complexity of its multiple use mission, it would seem to be the most prudent course of action for the BLM to immediately begin to undertake comprehensive CR landscape-scale inventories of all of its lands, so that subsequent land use decisions, whether in RMPs or multiple land use permit applications, can be based on the best information possible regarding the likely location and significance of cultural resources. While the completion of all such surveys would be quite expensive, they could be phased in, with the highest priority given to areas receiving the greatest number of land use permit applications, and those areas already likely to contain high numbers of cultural sites.

Continued land use decision-making by the BLM in the face of such an absence of adequate CR information can only result in unintended damage or loss to significant cultural sites on the federal public lands.

A new Section of the Policy Manual Series, 8170 Interpreting Cultural Resources for the Public, provides an excellent recognition of the various values and benefits to cultural properties on BLM lands that can result from public education and interpretation of them. Education about the cultural resources on public lands is the best available tool BLM has for their protection, at least from inadvertent damage.

Recommendations

- **BLM cultural resources policy should guide planning decisions during the preparation of Resource Management Plans, rather than allowing the RMP to be determinative when planning decisions are in conflict with CR policy.**
- **BLM should develop a new section of its Policy Manual covering recreation management for protection of cultural sites, and corresponding recreation management regulations that assure protection of cultural resources from damage, with suitable penalties for violation, including revocation of OHV permits for violators.**

BLM Cultural Resources Program Funding and Staffing

BLM budgeting for CRM is a complex allocation process, with the CR line-item 1050 “sub-account” receiving just over \$15 million in FY 2006. Most of the funds in this budget account are divided up among the 11 BLM State Offices and are used to pay the salaries of the professional archeologists in the BLM. This sub-account has increased slowly over the past decade, barely keeping pace with inflation, but never providing sufficient funding for a truly effective pro-active cultural resources identification and protection program. In some BLM states, the use of these funds for proactive CR work is eroded further by the ability and willingness of Field Managers to use these limited funds for other (re-active) work, including planning, compliance, and maintenance.

By way of contrast, the National Park Service FY 2004 appropriation for cultural resource project funds (not counting salaries) was \$32,480,000. When salaries are added in, NPS spent roughly \$74 million on cultural resources management in 2004. In the same year, the US Forest Service allocated \$10.2 million to cultural resources project work, and an additional \$22.7 million to Section 106 compliance.

The BLM cultural resources 1050 sub-account is modestly supplemented by the aggressive and successful work of the dedicated career BLM CR staff in finding other funds to support their proactive work. *“Bureau-wide, volunteers and cost-share arrangements have augmented BLM capability by at least one-fourth, annually leveraging the cash equivalent of more than \$3 million in work for the benefit of the Cultural Heritage Program.”*⁷ In Colorado, for example, the BLM has received over \$730,000 in grants from the State Historical Fund to support cultural resources management partnerships.

Another problem exists with BLM maintenance account funds, a portion of which can be used to maintain or stabilize cultural resource structures. These funds currently can only be used for “historic” structures, and cannot be allocated for “prehistoric” structures, such as Native American ruin sites on BLM lands. This internal policy could be altered administratively, but despite attempts by the BLM CRM staff to get it changed, it remains an impediment to care of such prehistoric structures. In contrast, the National Park Service maintenance budget provides substantial funding for the care and stabilization of prehistoric ruins under its management.

On the positive side, in recent years BLM has begun to officially recognize that a few historic properties can be classified as capital structures, and can therefore compete for deferred maintenance funds through the annual budget process. Using deferred maintenance funds for repair and rehabilitation of historic structures not only serves to enhance the preservation of the historic structure itself, but can establish added benefits through enhanced adaptive use of these structures for interpretation/education/visitor contact, or even for administrative uses. However, most historic structures administered by BLM, unlike those in the National Park system, are not so classified, and therefore not eligible for deferred maintenance funds.

*“While standing historic and prehistoric structures are visited by and interpreted for tourists, in BLM, they are typically not used administratively as visitor centers, museums, interpretive centers, or contact stations. Therefore, they are not treated as capital assets and are not capitalized in BLM Facilities Maintenance Inventory System (FMIS). Inclusion in FMIS would automatically render such assets eligible for deferred maintenance and condition assessment funds.”*⁸

⁷ “America’s Priceless Heritage: Cultural and Fossil Resources on Public Lands.” BLM, November 2003. page 17

⁸ “**Preserve America Report**,” BLM. September 2004. page 25

For the historic structures under its care, BLM should adopt a new policy that aggressively embraces adaptive use of these buildings, either for its own administrative use, as visitor facilities, concessions, or leased to private entities for compatible commercial or non-commercial uses (that also brings routine maintenance funding to these structures as a part of the lease agreement).

Section 106 cultural resources compliance work is supposed to be paid for through funds derived from “benefiting accounts.” Eight other budget sub-accounts including Maintenance, Range, Oil & Gas, Lands, Planning, Recreation, Fire, and Mining can allocate funds to some CR activities. In theory at least, each of these sub-accounts should cover the costs of CR compliance work that is caused or required as a result of agency actions taken in their respective areas. Unfortunately, allocations from these other sub-accounts do not always occur, or are insufficient. For example, in FY 2006 only \$50,000 is being allocated from the Oil & Gas sub-account for Section 106 compliance work, a far cry from the level of funding support that is warranted by the tremendous increase in oil and gas leasing activity on BLM lands.

In addition, Section 106 compliance, including CR surveys necessitated at land use permits sites, are expected to be paid by the permit applicant, like an oil and gas company that seeks a drilling permit. While not a current practice, applicants seeking grazing permits should also cover the costs of CR surveys for their permit area, as well as for protective barriers, such as fencing, needed to protect cultural sites from damage by livestock.

With the rapid increase in permit application processing consuming so much BLM CR staff time, it is too often the case that not enough compliance is done, or it comes too late in the process to have a real benefit for the cultural resources that are discovered by the permit applicant’s field archeologist.

As noted, salaries of most of the 140 FTE in professional CR positions in the BLM are paid for from 1050 sub-account funds allocated to each BLM State and Field Office. Most BLM Field Offices have at least one CR professional, while some have two or three. For those Field Offices with only one CR professional, the BLM personnel interviewed for this report felt that these offices were seriously understaffed. It was suggested that every BLM Field Office have a minimum of two CR professionals, with one assigned to focus on the proactive CR work, partnerships, site protection, and heritage education, while the other focuses on 106 compliance, site development monitoring, and SHPO reporting and communications.

Recommendations

- **BLM budget sub-account 1050 appropriations should be increased, over five years, to an annual amount of \$50 million.**
- **BLM budget sub-account 1050 funds should be restricted exclusively to proactive cultural resources protection work as defined under Section 110 of the NHPA. Field Office Managers should not have the authority to divert these funds to other activities.**
- **Professional CRM staffing across the BLM should be increased so that there are a minimum of two CR professionals in each Field Office, and a minimum of three in each State Office (at least one CR professional FTE in each state office to focus on compliance and SHPO coordination, one for proactive Section 110 work, and one for heritage education and site steward programs).**
- **BLM should re-organize its base budget so that each unit of the National Landscape Conservation System has an annual line-item budget for staff and operations, including CR site management, protection, and visitor education.**
- **BLM should seek legislation authorizing establishment of a chartered public lands foundation, modeled after the National Fish & Wildlife Foundation, to serve as the principal fundraising partner of the agency, with a dedicated focus on cultural resource management and the NLCS units.**
- **As an alternative funding mechanism for comprehensive landscape surveys of all public lands, BLM should seek, perhaps via the proposed foundation, to have a pool of funds donated by land use applicants, perhaps augmented by donations from gaming tribes, that would be used exclusively for landscape-scale, proactive CR surveys of the public lands, again with the goal of complete public land inventories, early identification of Traditional Cultural Properties, and of sites eligible for nomination to the National Register.**
- **For its historic structures, BLM should revise its capital budget maintenance policies to consider all historic structures to be eligible for funding from backlog maintenance funds.**

BLM Cultural Resources Management

Under the BLM approach to land management, the local Field Office Manager is the line-officer who exercises the decision-making authority under FLPMA, NHPA, ARPA, NAGPRA and other laws governing the management and use of the public lands. As with other federal land managing agencies, these line-officers have tremendous discretion in setting priorities, allocation of funds and personnel, and in the actual land use decisions made either in RMP or in approval of land use permit applications at specific sites on the public lands. Generally, it is a necessary and appropriate procedure for these Field Office Managers to wield broad authority. However, broad discretion can also result in certain resources, such as cultural resources, getting an uneven share of policy attention, staffing, and funding.



For example, Field Office Managers have the discretion, even though it is contrary to provisions of the Policy Manual, to re-allocate sub-account 1050 funds to Section 106 compliance activities, recreation impact mitigation, or even to planning. Many CRM professionals have noted in interviews for this report that the 1050 account should be a “sacred” account, not available for any use except proactive CRM work, primarily related to implementation of the agency’s Section 110 obligations.

Currently BLM, at the insistence of the Bush Administration, has undertaken a major re-write of numerous RMP that were only developed in the 1990s, especially in those States with significant mineral and energy leasing activities, to make it less restrictive to more rapidly expand leasing of public minerals and energy reserves to private companies. A major goal is to decrease compliance “red-tape” (including CR compliance) and expeditiously expand leases issued by the BLM. This has been seen most notably in States such as Wyoming and Montana (among those known fondly within BLM as the “OPEC” States).

For example, the numerous new requirements given to the BLM under the Energy Policy Act of 2005 calling for rapid exploitation of domestic energy resources, gives the CR staff in BLM little or no time to conduct surveys or produce inventory data, and barely time to do site specific 106 compliance. The demand for energy represented in this new law, while understandable, should have come to the BLM along with sufficient new funds to assure that these energy resources will be developed, while still protecting cultural resources on the public lands. It did not do so.

The fact that far too many RMPs provide very little detailed management prescriptions for cultural resources within their area of coverage further diminish the ability of BLM managers to protect these sites. What you don’t know about, you can’t protect. Even with known sites, most RMPs make too little use of land use tools available under FLPMA that would give greater assurance of protection from competing land use decisions.

As a glimmer of hope for a new initiative on BLM cultural resources surveys, in an August 2005 speech before the Western Natural Gas Association, then-DOI Assistant Secretary Rebecca Watson (over the BLM), summarizing steps that BLM is taking to improve the efficiency of its internal processes for expediting leasing of the public lands stated, “*We are encouraging Plans of Development*

(or POD), Block Archeology Surveys, and Master Drilling Plans to eliminate redundant paper work and minimize surface disturbance.”

This speech was followed up with an August 31, 2005 “Instruction Memorandum” (IM) from the BLM Director, Kathleen Clark, to all BLM State Directors that was entitled “*National Historic Preservation Act Section 106 and Oil and Gas Permitting.*” The IM provisions are not binding policy directive but are suggested policies and actions called “*recommendations,*” with State Directors “*asked to assist in carrying forward these recommendations.*” While the stated goal of the IM is to expedite Applications for Permits to Drill (APD), based on the streamlining of energy production that was a hallmark of the recently enacted national energy legislation, there are provisions of the IM that can benefit BLM cultural resource management.

The IM notes that only nine BLM Field Offices conduct 80% of the APD business (out of 105 Field Offices agency-wide), and suggests a re-allocation of agency funds so that better and timelier Section 106 compliance can be completed in these Field Offices with the most APDs. Perhaps most importantly for BLM CR, the IM reiterates the agency’s support for new archeological “block surveys” and stresses the need for better regional planning.

To date, the IM has resulted in mostly talk and little on-the-ground action, particularly in Wyoming, the state with the largest increase in oil and gas leasing activity. The Buffalo, Wyoming Field Office has done block surveys in conjunction with the approval of coal bed methane projects, but at this writing, the Rawllins Field Office, where most oil and gas development is happening, has not conducted any block surveys. A pilot “block archeological survey” was initiated in 2006, in the Carlsbad Field Office (NM) area, but it is too soon to know whether the results of this new approach will allow for better land use allocation decisions, or produce a more efficient CR data collection process. BLM has ample justification for rapidly completing landscape-scale surveys of the public lands for cultural sites they may contain. If the Bush Administration is truly ready to support, and fund, this approach, as indicated by the former Assistant Secretary’s speech and the IM, then it may be possible to substantially increase the percentage of BLM lands surveyed at this larger scale over the next several decades.



Further, in BLM Field Office areas with multiple private companies leasing mineral resources, there continues to be unwillingness on their part to *share* in the cost of CR compliance using block surveys, even though they would be more cost effective and therefore, mutually beneficial. In New Mexico, BLM has had over \$100,000 set aside specifically for conducting block archeological surveys for over a decade, but release of the funds is dependent on approval by the oil and gas companies that contributed these funds, and thus far they have refused to support release until BLM agrees that once block surveys are completed, no future site specific surveys would be needed.

BLM should put a priority on clarifying the importance of these larger scale surveys, by seeking appropriated funds that it can match with private funds to expedite the large-scale survey process.

Perhaps more importantly, surveys required for 106 compliance need to be conducted at the earliest possible time in the agency’s land use decision making – the APD stage is far too late in the process. For oil and gas, or other mineral leasing, the right time for compliance is when the agency is

considering whether to lease (a discretionary decision), before there is a private property right in question, and before private investments have been made.



A recent report from the Government Accountability Office (GAO) regarding the BLM oil and gas leasing program cites serious weaknesses and reduced environmental (and cultural) compliance in their haste to process more drilling permits.⁹ The GAO Report notes that over the past six years, the total number of drilling permits issued by the BLM tripled, from 1,803 in FY 1999 to 6,399 in FY 2004. 95% of these leases occurred in five BLM states - Colorado, Montana, New Mexico, Utah and Wyoming. Over 75% of these drilling permits were issued by only eight BLM Field Offices in these states, and four of those Field Offices did not have any natural or cultural resource monitoring plans in place during this time. The GAO Report noted that the limited BLM staffers were too busy processing drilling permit applications to have time to develop monitoring plans.

Numerous BLM professionals interviewed for this report agreed with the GAO's conclusions about the intense pressure on the agency to expedite oil and gas leasing. For example, in FY 2005

Wyoming BLM carried out Section 106 compliance for 6,000 undertakings, nearly all related to oil and gas development. One recent BLM CR report¹⁰ states that *"in South Dakota, reviews for leasing found many locations to be rich in cultural resources and found the current NEPA documentation to be inadequate."*

The GAO Report does cite the new policy of authorizing "block archeological surveys" as a moderately positive step. The report notes that *"this policy recommended strategies for (1) identifying cultural resources early, and (2) using 'block' surveys to allow all of the components of a proposed project to be sited and to help better facilitate the protection of both environmental and cultural resources. According to BLM, where block surveys are used, the cultural resources of concern can be readily identified and companies can have more flexibility to move project components around without additional surveys."*¹¹

While the primary purpose of the block archeological surveys is to further streamline the leasing and drilling permit process, it does put BLM and the Administration on record as recognizing the need for these broader professional surveys to identify important cultural resources on the public lands (though not early enough in the process). Having a more complete survey of BLM public lands could greatly aid not only the efficiency of leasing programs, but the preservation of important cultural sites, if coupled with a policy that would withdraw the most important sites from mineral leasing, mining, or other potentially damaging permitted activities.

While only 6% of BLM lands nationally have been surveyed for CR sites, in New Mexico, 30% of several Field Office areas have been surveyed providing better information for sound management decision-making. Elsewhere, too many land use allocation decisions are being made through the permit application process, with too little information regarding the cultural resources likely to be affected.

⁹ GAO-05-418. Report dated June 17, 2005. "Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet its Environmental Protection Responsibilities."

¹⁰ Montana State Office FY 2004 Cultural Resources Management Annual Report (WO IB No. 2004-117)

¹¹ GAO Report 05-418 page 32

Initiating cultural resources surveys on a broader landscape-scale has come to fruition in several specific places, with 26 landscape-scale projects initiated since 2001. In southeast Utah, BLM has initiated a five-year cultural resources research project at Comb Ridge to expand its documentation of the extensive cultural sites already known there, including a comprehensive archeological survey of the area to expand that knowledge. In Oregon, BLM has used some of its line-item funding to initiate a “traditional cultural properties” study in cooperation with the Colville Tribes.

Expanding upon this initiative to provide BLM with the funding to conduct additional landscape-scale archeological surveys should be a high priority and would compliment the recommendation made by both the BLM Director and the GAO to conduct more block surveys.

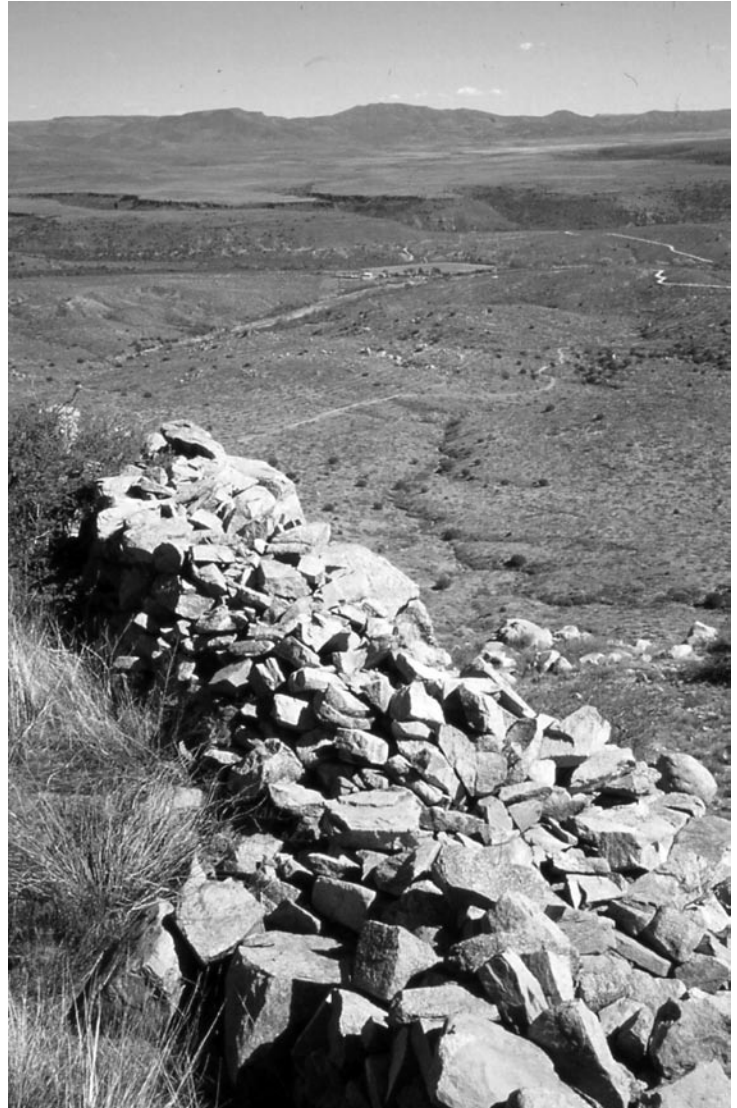
One of the most powerful land use management tools provided by FLPMA is the authority for the agency to designate “areas of critical environmental concern” (ACEC) during the planning process. ACECs can include appropriate controls or restrictions on the entire range of competing uses in order to manage and protect these special sites. Unfortunately, with the exception of some NLCS units, BLM has largely failed to use ACEC designations to protect cultural sites, although it has made reasonably good use of this authority to protect important wildlife habitat, special geological formations, or other natural resource places on the public lands.

Most BLM states are currently preparing revised RMPs, and this is a perfect time to use the ACEC designations to achieve a greater level of CR preservation. Some states, notably New Mexico, are doing so effectively. RMPs for BLM lands in New Mexico have designated nearly 100 ACECs for CR purposes, with 30 of those in the Farmington Field Office area alone. Colorado BLM has designated over 40,000 acres of ACECs specifically to protect cultural resources on public lands in the State.

In some BLM states, such as Colorado, individual cultural resource site management plans are being developed that can enable BLM to manage access routes (or even close routes to particularly sensitive sites) that are necessitated by the rapid increase in public recreational use, especially by off-highway vehicles and mountain bikes. However, this initiative is not reflected consistently across the agency.

The agency is expanding its commitment to use more partnerships and volunteers for cultural site stewardship as its signature approach to CRM. Increasingly, as necessitated by its relatively low number of CRM staff, BLM is dependent on volunteers for the support needed to achieve its CRM objectives. These volunteers include site stewards, community partner organizations and cultural heritage tourism collaborators.

One of the best aspects of the BLM CRM program, at least in some states, is the strong and effective “site steward” program, which utilizes volunteers, often archeologists themselves, as CR site monitors, maintainers, educators, and general volunteer managers and protectors of these places.



Overall, these site stewards can greatly augment BLM staff, and provide for CR needs. Arizona BLM, for example has over 800 active site stewards volunteers, providing coverage for nearly every known, significant cultural site in the State. California BLM has utilized funds from the state's "green sticker" OHV program to augment its site steward program, with several hundred individuals, many of whom are OHV enthusiasts themselves, volunteering to protect cultural sites. While the number of volunteer hours devoted to stewardship of BLM's cultural resources continues to increase in Arizona and California, states like Wyoming lag far behind. Some of the requested increase in CR funds sought for FY 2007 is targeted to these lagging states, so that they can attempt to establish effective volunteer partnerships for cultural resource management. Overall BLM received the benefit of some 147,000 volunteer hours in 2005 for CRM work, representing about 11% of all volunteer work on BLM lands.

With 2006 being the 100th Anniversary of the 1906 Antiquities Act, BLM has taken the lead among DOI agencies to celebrate that statute's numerous benefits to cultural resources preservation. BLM has greatly expanded its heritage partnerships with the tourism industry, and through its *Adventures in the Past* website, is beginning to build a much greater public awareness surrounding the huge inventory of cultural sites on the BLM public lands. Twelve significant BLM heritage tourism partnerships initiatives were begun in 2005 and continued in 2006, including:

- **Sitka Blockhouse, AK**
- **Swansea Townsite, AZ**
- **Punta Gorda Lighthouse, CA**
- **Canyon Pintado, CO**
- **Meadowood Farm, VA**
- **White Knob Mining District, ID**
- **Pompey's Pillar, MT**
- **Comstock Cemeteries, NV**
- **Museum of Natural History, NM**
- **Cape Blanco Lighthouse, OR**
- **Orson B. Adams House, UT**
- **National Historic Trails Center, WY**

Recommendations

- **BLM policy for compliance with Section 106 should be changed so that compliance is triggered at the earliest stage in the land use permit process, such as at the time of consideration of lease applications, rather than upon receipt of a site development plan, so that CR surveys can be completed in time to inform BLM decision-making prior to establishing a compensable private right to use public lands.**
- **All historic buildings should be re-evaluated for adaptive use as administrative facilities, visitor use facilities, or leased to the private sector for visitor service concessions, or leased for other appropriate private uses, whenever the lease agreement carries sufficient funding to maintain the historic structure.**
- **Either as an integrated component of the existing DOI inter-agency, university-based Cooperative Ecosystem Study Unit (CESU) Program, or through enactment of new legislation, as needed, BLM should seek to establish a network of university partners in each of the public land states that will offer greatly enhanced capacity for cultural resource inventory, survey, research, and data recordation. This program, which could be named the "cooperative heritage discovery initiative," should be funded by federal appropriations at the level of \$100 million per year until such time as all BLM lands have been subject to comprehensive CR surveys. In addition, BLM should fund and support the allocation of additional FTEs so that one CR professional can be duty-stationed at each university partner's campus to facilitate and coordinate the CR work under this initiative.**

The National Landscape Conservation System (NLCS)

In the late 1990s, as the number of special land management site designations being established on BLM lands was rapidly increasing, a special management category and organizational unit, the National Landscape Conservation System, was administratively established within the BLM. The purpose of this action by the Secretary of the Interior was to give national recognition to the fact that BLM public lands include many superlative natural and cultural sites, and to give BLM an administrative structure, staff, and budget that would allow the agency to differentiate its broad “multiple-use” mission from the management of these special places, giving a higher priority in the NLCS to cultural and natural resource protection, public education, and appropriate recreational uses.

The NLCS encompasses about 10% of all BLM lands, and considerably more if wilderness study areas (WSA) are counted (the status of WSA is in doubt, due to an effort by the Bush Administration to abolish this category, and due to resultant unresolved litigation). The NLCS public lands include 15 national monuments designated by the Clinton Administration between 1996 and 2001, covering 4.8 million acres; fourteen national conservation areas established by Congress covering about 13.7 million acres; 36 Wild & Scenic River segments, stretching more than 2,000 miles, 161 designated wilderness areas covering about 6 million acres, 10 national historic trails traversing about 5,000 miles of BLM lands, and two national scenic trails with short segments on BLM lands.

The national monuments and other NLCS unit plans being managed by BLM, in contrast to the larger acreages covered by RMP, focus considerable attention on the cultural resources in them and how they are to be protected and interpreted to visitors. Every NLCS unit contains cultural sites, and most of the national monuments were proclaimed, at least in part, because of both known and suspected cultural sites within them. Several BLM State Directors noted with pride during interviews for this report that these places were getting a decent level of staffing and funding to support management of the cultural resources there.

Coming either as a result of enactment of Congressional legislation, or from Presidential Proclamations of national monuments under the 1906 Antiquities Act, the various units of the NLCS represent the special places among the vast BLM public lands that have been deemed to be nationally significant and deserving of special management treatment by the agency.

Cultural resources within the NLCS receive a greater degree of recognition and attention than do those cultural resources that are discovered on other BLM public lands. Generally, these specially designated places are better staffed, have management plans that give a higher priority to management and protection of the resources found there, and attract more partnerships and partner funding for research, education, and protection.

However, under current BLM policies, national monument status is insufficient to assure CR site protection from competing resource uses. For example, in Canyons of the Ancients National Monument in Colorado, 85% of the monument lands are leased for oil and gas development.



The management plan for the monument is the critical decision tool, determining future development. However, much of the leasing here occurred prior to the monument designation, thus incurring private rights to drilling, with perhaps, additional management restrictions imposed because of the monument's special status.

Day-to-day management and operations within the NLCS designated units is hampered considerably by the fact that the budgets for these areas currently do not have line-item appropriations, but must rely on discretionary allocations from within larger BLM budget accounts, thus often competing directly for funds with more politically powerful and visible programs such as oil and gas leasing or mineral development.

In order for the NLCS to attain the visibility, prestige, and political clout that the superior cultural and natural resources contained in these areas have to offer to the American people, the NLCS needs an "organic" statute giving it permanence, line-item budgets for the various units of the system, and dedicated professional staff, effective fundraising and volunteer partnerships, and a clear statutory priority favoring preservation of cultural sites.

Recommendations

- **The National Landscape Conservation System should be established by a new "organic" law, with a clear preservation and appropriate uses mission, and a public planning process for identifying and recommending additions to the system to Congress.**
- **BLM national monument management policies should be changed to make these special places better protected from the competing energy and mineral interests that tend to dominate other BLM-managed lands.**

BLM and the National Register of Historic Places

As noted earlier, only about 6% of BLM-administered public lands have ever been surveyed for cultural resource sites and many professionals, both within and closely associated with the agency, are skeptical that BLM will ever be able to survey all of its lands. Certainly at the pace of surveys undertaken to date, and with the current process for evaluating and nominating sites to the National

Register, the task seems insurmountable. However, when BLM does carry out extensive landscape-scale surveys, as in the Tangle Lakes area in Alaska, the discoveries are often dramatic. The Tangle Lakes Archeological District, one of the largest National Register properties anywhere, includes over 500 archeological sites spanning over 10,000 years of human history in Alaska.

One person interviewed for this report said it was "ridiculous" to think that BLM would ever be able to conduct the needed surveys of all of its lands using the current approach. In discussing this dilemma, and the related one of seeking National Register eligibility determinations and nominations, a new approach began to take form.



Since the majority of CR on BLM lands are archeological, several CR professionals suggested that BLM work with the NPS to establish a new category of National Register sites that designate archeological or ethnographic landscapes that can be listed without the standard property-by-property detailed analysis currently required for specific sites. Identification of these landscapes would emerge from tribal consultations and from landscape-scale surveys, ethnographic studies, and a thematic consideration of the known shared history of regions of land under the BLM.

Adoption of this approach could also assist in alleviating the perceived inadequate tribal consultation situation facing the BLM, by establishing a process to fully engage tribes well before a particular land use permit application is under active consideration by the agency. At the same time BLM could use the process to gain a more definitive understanding of which tribes are affected by potential agency actions or decisions in each state, resource area, or Field Office jurisdiction.

Conceivably, the various industries and classes of companies - energy, minerals, grazing, etc. - that have active interests in using the public lands could benefit from this process, and could be approached for the donation of funds to support and complete these designations. Delays and lack of certainty are among the challenges facing industry users of public lands, thus gaining early knowledge of culturally significant sites would benefit these groups. Perhaps some of the tribes with gaming income would be willing to share a portion of the costs of completing public land surveys to identify significant sites important to their own heritage.



BLM's Programmatic Agreement with the Advisory Council on Historic Preservation obligates the agency to consult directly with the Council whenever any undertaking involves potential impacts to a designated National Historic Landmark. Further, Section 110(f) of the NHPA requires the BLM to minimize harm to any NHL to the maximum extent possible. An annual report to Congress is prepared documenting the status and condition of NHLs nationwide. In the 2004 report, of the 21 NHLs on BLM lands, three are rated as "Threatened," six are rated "Watch" - recommended for closer scrutiny and protection, and one is in an "Unknown" condition; the remainder are currently rated "Satisfactory."

Recommendation

- **BLM and NPS need to establish a new way to nominate to the National Register typical prehistoric CR sites that occur on BLM lands. A landscape- scale "prehistory" category is needed that avoids the property-by-property detailed analysis that is so labor intensive and costly.**

BLM Operations under the ACHP Programmatic Agreement

In 1997 BLM negotiated a “Programmatic Agreement” (PA) with the federal Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO), which effectively gives BLM nearly full autonomy in the implementation of its responsibilities under the National Historic Preservation Act, especially those regarding compliance with Section 106. The PA effectively supplants, with some exceptions, the applicability of the ACHP government-wide regulations under the National Historic Preservation Act (36 C.F.R. § 800), and replaces them with the BLM Policy Manual Series.



Perhaps the best practice in cultural resource management to result from the PA has been the web-based database application (known as CRMTracker) that was developed to increase efficiency in collecting, reporting, and transmitting cultural resources project information among the BLM, SHPOs, and permit applicants. CRMTracker was developed with funding from the Department of Energy based on the need to reduce information barriers to energy production. This on-the-ground data function provides timely information to all parties (though good site management decisions still must depend on site-specific CR surveys to produce data that generally comes too late in the decision-making process.)

By its own admission, under the PA the ACHP has far less involvement in overseeing Section 106 compliance in BLM than it does in other federal agencies. However, the ACHP did reserve for itself the right to become involved in a 106 compliance issue when a National Historic Landmark is threatened by a proposed action on BLM land.

Following signing of the PA, each BLM state office developed a set of “protocols” with that State’s SHPO, setting out the terms and conditions, goals and objectives, under which BLM would operate the program in that State. These protocols also defined the circumstances when BLM would consult the SHPO, and/or the ACHP over specific activities under the PA.

In some BLM states, notably California and Arizona, strong and effective protocols have resulted in very cooperative relationships with the SHPOs, while in other states, problems exist. In states with expanding oil and gas leasing programs, BLM’s Section 106 compliance has sometimes taken a backseat to speedy permit approval. In addition, compliance with Section 106 does not occur at the time of issuing a lease, but much later, when the company files a site development plan which is often too late in the process to preserve an important site identified during a survey at this late stage.

As one ACHP official noted, “*all serious clashes with BLM over compliance have occurred because of the time lag between leasing and site development. With Section 106 compliance coming in the latter stage, after considerable investment by the permittees, it’s too hard for BLM to make changes to protect cultural sites.*” Clearly, a policy change in BLM is needed in order to comply with the requirement for Section 106 compliance to occur “at the earliest stages of project planning.”

It is equally fair to say that, given the focus of SHPOs on 106 compliance, BLM’s proactive efforts to be good stewards of cultural resources, though limited, have often gone unacknowledged (and thus unrewarded) in the SHPO’s annual evaluation reports under the PA.

The protocols may be problematic since there is no provision for them in the ACHP regulations, which could call into question their legitimacy as an official means for BLM to engage with the SHPO under the PA. There is no provision in ACHP regulations spelling out how or when a protocol agreement could be amended, how other interested parties are informed or involved, or what to do if disagreement arises.

BLM Consultation with Tribes

Several CR professionals interviewed for this report noted that the number one need within BLM under the ACHP Programmatic Agreement is to fix the tribal consultation requirements. This need is also stated as an objective of the recently completed BLM Task Force on the NHPA and oil and gas, which called on the agency to “*Clarify tribal consultation requirements for oil and gas actions, including planning, leasing, and APD approval.*”

For tribes, a key component of any long-term cooperative relationship with the BLM is dependent on a timely and effective process to identify traditional cultural properties (TCP) on BLM land that a tribe may seek to utilize in a customary manner, or even to cooperatively manage with the BLM. For BLM, an effective tribal relationship will transcend mere consultation with associated tribes, and will strive to insure that all TCPs are well-managed and protected.

Currently, tribes feel they have been cut out of their appropriate role in the 106 process by the PA, since their normal access to the federal land 106 compliance decision-making process has been through the SHPO, or via their own Tribal Historic Preservation Officer (THPO), when they have one. One THPO noted that BLM Field Offices tend to “*cherry-pick*” over what and when they consult with tribes under the PA, but that a more thorough and standardized process is required by law and regulation.



If the SHPO is further removed from the 106 compliance process under the PA, then often so are the tribes. Further, there is no special provision under the PA that acknowledges a difference between the role of SHPO and role of the THPO. At the time the PA was being developed by the BLM and the ACHP, one THPO was told “*not to worry*” about the lack of a special provision for tribal consultation, because it would be taken care of in the state protocols. When the state protocol was developed for his state, he was told by BLM in that state that provision for tribal consultation in the protocol was not appropriate, because it was not provided for in the PA.

On a more positive note, the BLM State Director for New Mexico issued a new Instruction Memorandum (IM) to all of her District and Field Managers on June 3, 2005, entitled, “*Strategies to Ensure Adequacy of Native American Consultation.*” Essentially, the IM requires that BLM in New Mexico consult with tribes at the earliest stages of planning, or updating of plans. The IM states in part,



“The best time to foresee and forestall potential conflicts between BLM authorizations, such as oil and gas development and sacred sites and TCPs, is during land-use planning and its associated environmental review. Early in the process of development or updating of RMPs, the District Office (DO) or Field Office (FO) shall consult with all Indian tribes having religious, cultural, or historical connections to public lands managed by that DO/FO. The purpose of such consultation generally is to define the areas of future actions Tribes wish to be consulted on and, specifically, to identify any sensitive TCPs or sacred sites whose management, preservation, or use would be incompatible with proposed developments on surface lands or minerals managed by the Bureau. Such information will be used to identify locations that should be exempted from development or where stipulations are needed to protect these sensitive resources.”

This IM is currently only in effect for BLM lands in New Mexico, but it is of such significance that it should be adopted by BLM for all of its States and lands.

A key change that has occurred since the original 1997 PA between BLM and ACHP was signed has been the official recognition, and partial federal funding, of the Tribal Historic Preservation Officers (THPO) program and the establishment of their national representative organization, the National Association of Tribal Historic Preservation Officers (NATHPO). This major change mirrors the SHPO and NCSHPO programs but is not currently recognized by the PA. The PA was signed a year before NATHPO was established, and well before most of the tribes with THPOs had designated them. To date, BLM has taken no direct action with NATHPO, or with most THPOs that would begin to establish a strong consultation program between BLM and Tribes.

A critical action for the BLM is to expeditiously adopt consultation requirements with THPO and with NATHPO, if it hopes to avoid serious problems under the PA. NATHPO, which represents the tribes with officially recognized THPO programs, can serve as a “one voice” organization with which BLM can consult for guidance on the best and most efficient means to conduct tribal consultations at the State and local Field Office levels.

In the absence of a more definitive determination of which tribes are concerned or affected by particular land use allocation decisions, many BLM officials are cautious of deep engagement with tribes for Section 106 compliance. In order to improve this situation, BLM should undertake more direct tribal consultation through each of its Field Offices, supplemented with ethnographic studies, to better

understand the cultural affiliations and regional interest of tribes associated with particular public land areas. The ethnographic survey work that the BLM Utah State Office has undertaken (with sub-account 1050 funds) in its Vernal and Price Field Offices beginning in 2002 can serve as a model on which to base such a new national approach to tribal consultation. From an initial list of 30 possibly interested tribes, through ethnographic study, interviews and consultations, the Field Offices were able to reduce the number of tribes that need to be consulted to only 12. As a result, the Field Offices agreed to consult these 12 tribes on any and every land use decision that could affect their interests or concerns.

Another important policy change that has just recently been adopted by the BLM concerns re-burial of human remains. Until recently, BLM has staunchly maintained the policy of prohibiting re-burial of human remains discovered on the public lands. While some tribes prefer to take custody of culturally affiliated human remains and funerary objects for their own reburial, other tribes strongly prefer that when remains of their ancestors are inadvertently discovered on public lands, they be reburied on site as soon as possible.

Recently, one BLM State Director emphatically reiterated the policy prohibiting re-burial. The critical factor has been when such remains or objects become “property” and are assigned to “ownership” of a tribe. It seems now, based upon a May 2005 letter from the AZ State Director to the Chairman of the Hualapai Tribe, that human remains can be re-buried on public lands in the vicinity of the discovery site, even if cultural affiliation has been determined, if a tribe has not “taken possession” of them.

The letter states: *“We are very pleased to inform you that BLM reburial policy has been revised to allow reburial of human remains and associated funerary objects on BLM-administered land when those remains have not been removed from the immediate vicinity of their original location following inadvertent discovery.”*

This new policy does not apply to previously-discovered human remains already in the possession of a tribe, or to remains that may have been in a museum collection for decades. Some BLM officials have indicated that the agency is considering the possibility of further modifying its policy in these cases, but no decision has been made.



Once important cultural sites are discovered on the public lands, and particular tribal cultural affiliations established for them, the BLM should make better use of its authority to enter into cooperative management agreements for long-term preservation of these sites with the very tribes most interested in assuring this preservation. The Tribal Self-Governance Act of 1994 allows BLM and other agencies in the Interior Department (other than the Bureau of Indian Affairs, which is required when asked by a tribe) to choose to “compact” (tribal contract) with nearby tribes for a variety of programs, services, or functions that would otherwise be performed by agency personnel to carry out the mission of the federal site.

Some BLM State Offices have reached out to Tribes directly to make key determinations of significant cultural sites. In Montana, BLM has contracted with the Confederated Salish and Kootenai Tribal Preservation Department to develop an ethnographic study of southwestern Montana, focused on the headwaters region of the upper Missouri River tributaries, the Madison, Jefferson, Big Hole and Beaverhead Rivers. The Tribe will employ a combination of methods, including historical

research, oral histories, language studies, geographic information system technology, and ethnobotanical studies.



Tribes with a recognized THPO program are in a particularly good position to seek a cooperative partnership with the BLM, especially when the Resource Management Plan for the area specifically seeks such partnerships. For example, the BLM Management Plan for the California Coastal National Monument calls for local “Steward” partnerships to take on day-to-day management of sections of the coastal rocks, sea-stacks, and islands that comprise the Monument. The Yurok Tribe on the North Coast of California is currently seeking to be the Steward partner for approximately 50 miles of coastal rocks, sea-stacks, and small islands that lie within their ancestral territory, many of which are considered sacred sites, have traditional tribal names, and are integral to tribal lore and to modern ceremonial practices.

Several special designations for sites on BLM public lands are available to the agency that could further improve its relationships with adjacent tribes. In 2002, BLM completed a study entitled “*Imperial Sand Dunes as a Native American Cultural Landscape*,” which recognized that seven tribes residing nearby

today have a long history of association with this southern California desert area. Seventeen cultural sites were identified, including 7 religious and ritual sites among the Dunes.

After substantial consultation, BLM initially concluded that the Imperial Dunes did not qualify for the National Register but suggested the need for additional ethnographic study and more extensive consultation to determine if the Dunes could qualify as a TCP. The new study found that quite good “integrity of relationships” still exists between the Imperial Dunes and adjacent tribes. However, the study also concluded there is deteriorating “integrity of condition” due to extensive recreational use of the Imperial Dunes by Off-Highway Vehicles. Since this is already an officially designated OHV Recreation Site, BLM should move quickly to develop its own management capability, or seek cooperative management support from one or more of the culturally affiliated tribes, before the integrity of the Dunes is lost entirely. A TCP designation for the Imperial Dunes would offer the BLM an opportunity to better balance the competing use with cultural resource management needs.

In New Mexico, BLM has contracted with the Cochiti Pueblo for co-management of various aspects of site management in the Kasha-Katuwe Tent Rocks National Monument. Because public access to the monument is through the Pueblo, the tribe has agreed to manage aspects of visitor use, and to provide unique educational opportunities.

Recommendation

- **The basic provisions of the New Mexico State Office Instruction Memorandum “Strategies to Ensure Adequacy of Native American Consultation” (June 3, 2005) should be adopted agency-wide. BLM should expand and strengthen tribal consultation so that culturally associated tribes are engaged at the earliest stages of land use planning and decision-making. A comprehensive study should be under-taken across the BLM lands to identify TCPs, before conflicting land uses are authorized.**

BLM Cultural Resources and the Threat of Recreation

Nearly every BLM CR professional consulted for preparation of this report cited the recent rapid increase of easy recreational access to the BLM public lands as a serious threat to cultural resources. Most felt that the BLM did not have the staffing, funding, policy or regulations in place sufficient to effectively manage and mitigate these recreational use impacts on cultural resources.

“Increasing visitation to the public land is resulting in both intentional and inadvertent damage to these resources from collection, vandalism, surface disturbance, and other depreciative behavior. Remote areas, once protected by their distance from populated areas, are now within easy reach of the hardy and well-equipped hiker, off-highway vehicle user, and urban and suburban resident.”¹²

At the same time, many of these CR professionals expressed enthusiasm for positive effects of their heritage education programs on recreational users. They believe that education will reduce the potential negative impacts of public recreational use on public lands. They felt most of the inadvertent damage to cultural resources could be averted through various education initiatives that are underway. They believe when the public is made aware of the fragility, and uniqueness, of these cultural resources, they will take care not to damage them.

The Federal Lands Recreation Enhancement Act of 2004 authorized a fee-based permit specifically for off-highway vehicles on the federal public lands, but this provision has yet to be implemented. Further, it is not at all clear that DOI will use the OHV permit as a management tool (permit revocation for repeated abuses of public land resources, for example) rather than simply as a new revenue-generating program. In either the short or long run, the most important benefit of the new OHV permit, once it is in place, may be its management support use, rather than its revenue generation potential.

Two non-profit partners of the BLM - Tread Lightly, Inc., and the Leave No Trace Center for Outdoor Ethics, Inc. - function chiefly to educate recreational visitors about how to use the public lands without damaging them, and how to avoid diminishing the quality of the recreation experiences on the public lands for others. Recently, the BLM staff liaison for these programs developed a set of educational messages specifically for cultural resources. BLM plans to begin using these materials aggressively, and through its partners, reaching recreation users through equipment manufacturers, retail stores, and affinity organizations. Such efforts can help to prevent inadvertent damage to cultural resources on the public lands.

Other BLM CR managers, though, expressed frustration that there are insufficient funds to support more direct management actions, such as closing roads or trails, building enclosures, fences with gates, or other physical barriers that can prevent CR site damage. If the OHV permit fees were devoted to resource damage restoration, as well as tourism promotion and visitor education, this could prove to be a very valuable justification for the new OHV fee, and a visible means of support for cultural resources management by the recreation users. Certainly the positive experience that BLM



¹² “America’s Priceless Heritage: Cultural and Fossil Resources on Public Lands.” BLM, November 2003. page 4

managers in California have had with obtaining funds for cultural resources programs from the CA “Green Sticker” program (a state OHV fee-based permit) has shown the potential benefit such a new federal fee-based permit could have for cultural resources.

BLM California, for example, has nearly 100 interpreted cultural resource sites across the state, many of them in the popular California Desert National Conservation Area, that not only educate visitors but advise them on the need to avoid damage to these fragile resources.

The effective use of volunteer “site stewards” by some BLM State CR program managers, most notably in Arizona and California, has proven to be a very useful recreation management tool that enhances BLM’s ability to manage CR sites spread across the vast BLM public lands. Site stewards are often the front line educators of recreational visitors, and can monitor and report on site damage for action by enforcement personnel.

Recommendation

- **OHV permit fees, authorized by the new Federal Lands Recreation Enhancement Act, should be retained by the agency and apportioned to the Field Offices based on volume of OHV use, with a majority of the fee revenue being applied to cultural sites management, protection, and restoration of damage caused by recreation users.**

BLM Law Enforcement for Cultural Resources

In recent years, BLM enforcement personnel have had some highly publicized and successful enforcement actions taken against organized thieves stealing archeological artifacts from the public lands. To their credit, BLM enforcement personnel are dedicated, professional, and deeply committed to protecting the resources of the public lands. Unfortunately, there are far too few of them. On a state-by-state basis, most BLM enforcement personnel are assigned to cover a minimum of 1 million acres, and often much more. For every criminal caught in an ARPA violation, it is believed that many more violations go un-discovered, much less un-prosecuted.

In the present enforcement climate, enforcement personnel are being spread even more thinly across the public lands with the priority directed to drug interdiction, homeland security concerns, and control of illegal aliens.

BLM does a very good job of working with other federal enforcement agencies as well as state and local police and sheriff’s departments on a variety of concurrent jurisdiction law enforcement matters. However, even with the full cooperation of all of these other enforcement agencies, the BLM has insufficient funds and staff resources to deal with the range of threats to cultural resources on the public lands. This is especially true with the recent rapid rise in public land recreational access.

Through regulations, BLM has the ability to enforce its CR standards against land use permittees who abuse public land resources beyond the scope of their permit. However, BLM currently does not have in place a full set of enforceable regulations that can be brought to bear against recreation users of these public lands when they abuse the privileges afforded there. Without requirement of a recreation permit, there is nothing to revoke or deny for habitual or repeat recreation offenders who damage cultural resources.

Conclusion

BLM has an exemplary cultural resources program staff trying valiantly to make the best of a situation that finds them under-staffed and under-funded to effectively deal with the enormity of the task before them. Here again, the BLM professionals have said it best.

“By failing to address the critical and enormous cultural resource preservation and protection needs, we condemn our Nation’s legacy to the mantelpiece of posterity.”

“The OIG (Office of Inspector General) found that BLM cultural heritage staff spends 70 to 99 percent of their time on Section 106 compliance work, as opposed to proactive cultural program work.”

“Section 106 compliance work is being funded improperly with cultural program (sub-activity 1050) dollars, while proactive work is being accomplished largely through external funding sources, volunteer labor, and time contributed by BLM employees.”

“In many ways, Section 106 compliance is the very opposite of management.”

“Bureau of Land Management as the name of our agency is a misnomer; we are mostly a land use permitting agency, not a land managing agency.”

“We are losing our ability to tell the complete story of our nation’s history on the public lands by not fully meeting our responsibilities under the Federal Land Policy and Management Act and Section 110 of the National Historic Preservation Act to proactively manage this fragile legacy.”

“BLM’s ability to compete for additional cultural resource funds outside the normal budget is hindered by a bias against funding historic preservation work for the type of cultural resources which BLM predominantly manages, namely, prehistoric resources.”

“A proactive program would be one where the majority of our work is not driven in reaction to the demands of other BLM sub-activities, but rather where cultural resources would be managed for their many benefits to today’s and tomorrow’s publics, including for their scientific and educational values.”



While the great majority of BLM cultural professionals know what is needed to manage these rare and fragile resources, they lack the capacity to do so. Policy changes, sufficient staffing, adequate funding, and heritage education are all critically needed components of a comprehensive solution to the agency's cultural resources dilemma. BLM needs the added funding and staffing to implement a full-scale proactive cultural resources program. Resources are being lost, but it is not too late to act. Effective partnerships can bring new funding sources, new visibility for BLM cultural resources, and new political clout – all three essential components of the solution.



For its predominantly prehistoric, Native American cultural resources, BLM has a real opportunity to develop an expansive new set of partnerships with tribes for identification, preservation, interpretation, and cooperative management of this invaluable record of our shared history. The scale and scope of such a partnership program would be unprecedented, but it's time has come and the opportunity awaits the leadership of the agency to make it happen. Everyone, inside and outside the BLM would benefit, now and for the future.

Given the multiple-use mission of the BLM, coupled with the Administration's expansion of energy development on the public lands, it seems logical to reach out to the various segments of industry that use public lands for significant financial support for identifying and sustaining the cultural resources of the public lands. Many of the country's well-endowed foundations gained their financial capacity through companies or individuals who made their fortunes from resources on the public lands. It's time they gave back to sustaining these landscapes and icons of our collective heritage.



The showcase lands of the BLM, those areas that comprise the National Landscape Conservation System, ought to be made into an even greater component of the BLM mission and business. Heritage tourism is already the fastest growing segment of the national tourism industry, and outdoor recreation on BLM land is growing at a faster rate than anywhere else. The NLCS units need, and deserve, substantially increased staffing and funding, budget line-items for operations and management, and deep recognition within the culture of the agency that these places are too important, too beautiful, too fragile, and will soon be too popular to be treated as if they are just another piece of BLM multiple use real estate.

Finally, for a task of such monumental scale, leadership from the highest levels is essential. There is no doubt about the professionalism and program management objectives of the BLM cultural resources management staff. What remains in doubt is whether the higher levels of the Department of Interior and the Administration share their concern, and will respond with the requisite staff and funds to carry out the spirit and letter of the federal laws regarding identification and care of the cultural heritage resources on the public lands owned by all of us.

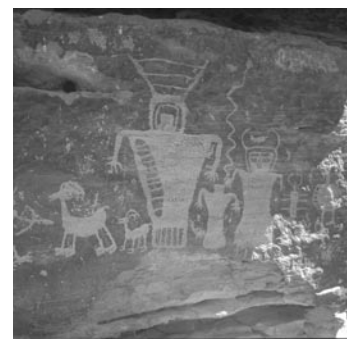


The President and Congress must address their responsibility for preserving our Nation's history. The President's proposed Fiscal Year 2007 Budget for the Bureau of Land Management requests an additional \$3 million for proactive (Section 110) cultural resources work, and an additional \$24 million in program increases for expanded oil and gas activities on the BLM lands, which is to include some funding for Section 106 compliance.

Without leadership from the highest levels and support for additional congressional funding, the BLM is likely to continue to struggle just to keep up with increasing demands, and will slip further and further behind a backlog of mounting cultural resources needs. BLM cultural resources, known and unknown, represent the full range of American's past history on the continent. Now is the time for BLM to meet its stewardship responsibilities for this "enduring legacy" of cultural resources. Without action, the agency will be a bystander to the loss of this irreplaceable legacy.

Summary of Recommendations

1. BLM cultural resources policy should guide planning decisions during the preparation of Resource Management Plans, rather than allowing the RMP to be determinative when planning decisions are in conflict with policy.
2. BLM budget sub-account 1050 appropriations should be increased, over five years, to an annual amount of \$50 million.
3. BLM budget sub-account 1050 funds should be restricted exclusively to proactive cultural resources protection work as defined under Section 110 of the NHPA. Field Office Managers should not have the authority to divert these funds elsewhere.
4. Professional CRM staffing across the BLM should be increased so that there are a minimum of two CR professionals in each Field Office, and a minimum of three in each State Office (at least one CR professional FTE in each state office to focus on compliance and SHPO coordination, one for proactive Section 110 work, and one for heritage education and site steward programs).
5. BLM should re-organize its base budget so that each unit of the National Landscape Conservation System has an annual line-item budget for staff and operations, including CR site management, protection, and visitor education.
6. The National Landscape Conservation System should be established by a new “organic” law, with a clear preservation and appropriate uses mission, and a public planning process for identifying and recommending additions to the system to Congress.
7. BLM national monument management policies should be changed to make these special places better protected from the competing energy and mineral interests that tend to dominate other BLM-managed lands.
8. BLM should seek legislation authorizing establishment of a chartered public lands foundation, modeled after the National Fish & Wildlife Foundation, to serve as the principal fundraising partner of the agency, with a dedicated focus on cultural resource management and the NLCS units.
9. Either as an integrated component of the existing DOI inter-agency, university-based Cooperative Ecosystem Study Unit (CESU) Program, or through enactment of new legislation, as needed, BLM should seek to establish a network of university partners in each of the public land states that will offer greatly enhanced capacity for cultural resource inventory, survey, research, and data recordation. This program, which could be named the “cooperative heritage discovery initiative,” should be funded by federal appropriations at the level of \$100 million per year until such time as all BLM lands have been subject to comprehensive CR surveys. In addition, BLM should fund and support the allocation of additional FTE so that one CR professional can be duty-stationed at each university partner’s campus to facilitate and coordinate the CR work under this initiative.





10. As an alternative funding mechanism for comprehensive landscape surveys of all public lands, BLM should seek, perhaps via the proposed Foundation (see Recommendation # 8), to have a pool of funds donated by land use applicants, perhaps augmented by donations from gaming tribes, that would be used exclusively for landscape-scale, proactive CR surveys of the public lands, again with the goal of complete public land inventories, early identification of Traditional Cultural Properties, and of sites eligible for nomination to the National Register.
11. BLM and NPS need to establish a new way to nominate to the National Register typical prehistoric CR sites that occur on BLM lands. A landscape-scale “prehistory” category is needed that avoids the property-by-property detailed analysis that is so labor intensive and costly.
12. BLM should develop a new section of its Policy Manual covering recreation management for protection of cultural sites, and corresponding recreation management regulations that assure protection of cultural resources from damage, with suitable penalties for violation, including revocation of OHV permits for violators.
13. OHV permit fees, authorized by the new Federal Lands Recreation Enhancement Act, should be retained by the agency and apportioned to the Field Offices based on volume of OHV use, with a majority of the fee revenue being applied to cultural sites management, protection, and restoration of damages caused by recreation users.
14. BLM policy for compliance with Section 106 should be changed so that compliance is triggered at the earliest stage in the land use permit process, such as at the time of consideration of lease applications, rather than upon receipt of a site development plan, so that CR surveys can be completed in time to inform BLM decision-making prior to establishing a compensable private right to public lands.
15. The basic provisions of the New Mexico State Office Instruction Memorandum “Strategies to Ensure Adequacy of Native American Consultation” (June 3, 2005) should be adopted agency-wide. BLM should expand and strengthen tribal consultation so that culturally associated tribes are engaged at the earliest stages of land use planning and decision-making. A comprehensive study should be undertaken across the BLM lands to identify TCPs, before conflicting land uses are authorized.
16. For its historic structures, BLM should revise its capital budget maintenance policies to consider all historic structures to be eligible for funding from backlog maintenance funds.
17. For its historic structures, all such historic buildings should be re-evaluated for adaptive use as administrative facilities, visitor use facilities, or leased to the private sector for visitor service concessions, or leased for other appropriate private uses, whenever the lease agreement carries sufficient funding to maintain the historic structure.

Appendix 1

Methodology & Acknowledgments

In order to develop the background, current information, and data necessary to formulate the conclusions and recommendations of this Assessment, most of the recent BLM published cultural resource reports, budgets, legislation, regulations, and policy manuals were read and analyzed.

Interviews were carried out with a variety of BLM professional and management staff, both in Headquarters and in the field. In particular, interviews were conducted with management and cultural resources staff in the Washington, D.C. offices of BLM, and with every BLM State Director and State Archeologist. In addition, interviews were completed with staff of the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and with several individual State Historic Preservation Officers, and several Tribal Historic Preservation Officers.

Several recently retired BLM Headquarters CR Staff, State Directors, and State Archeologists were also interviewed, and provided very useful background and perspective on cultural resources management in the BLM.

Key cultural resources personnel in the U.S. Forest Service, U.S. Fish and Wildlife Service, and National Park Service were also consulted, for comparative program information.

The staff of the National Trust for Historic Preservation, both in its Washington, D.C. headquarters, and its Mountains/Plains Office in Denver, provided important resource materials for this Assessment, as well as invaluable insights, suggestions, and edits.

Appendix 2

Interview Questions

Two sets of questions were developed for this Assessment, in consultation with staff of the National Trust for Historic Preservation, one set specific to Headquarters staff, and another used for field staff:

Headquarters

How is BLM organized at the HQ, State, and Resource Area levels to survey/nominate/monitor/manage cultural resources?

From which budget accounts does BLM derive funding for cultural resources? Sub-accounts? Is CRM \$\$ based on line-items or general account allocations? How often are funds re-programmed for CR? Away from CR? What other accounts in the BLM budget fund CR issues, such as 106 work...Leasing? Land Use Applications?

How are sites eligible for NR nomination identified?

What are the impediments to NR nominations? Perceived benefits?

Which states have strong programs? Weak ones? Why?

How are CR constraints made known to grazing, mining, or timber permit applicants/leasees? Monitored? Enforced?

How does BLM deal with historic structures? Adaptive uses? Hist. leases? Give examples.

How is basic CR research conducted? Coordinated? Contracted? Monitored? Results compiled and made known to management?

What is *Project Archeology* and how does it benefit CR? What other heritage education and tourism programs benefit CRM?

What are the new revisions to BLM's 8100 CRM Guidance, and what are the differences between the 1997 version and the new one?

Will be 8100 changes necessitate changes to the 1997 Programmatic Agreement with ACHP? How does the ACHP oversight roles work from the BLM perspective?

To what do you attribute the large disparity in NR listings among the BLM states? 1 in WY, 92 in NM, 16 in AK, 45 in OR???

How does BLM deal with LE for CR sites?

For Native American sites on BLM lands, what is the consultation process being utilized? Any co-management agreements?

Identify supplemental funding sources from non-BLM federal funds...from non-federal public funds...from private sources.

What partnerships exist to assist with CRM?

Do the NLCS monuments, NCA, or other specific legislative site designations of places managed by BLM have any more \$\$ or FTE for management and protection than the rest of BLM lands and their CR sites?

Field

What is your State Office level of funding from the 1050 sub-account?

What sources and how much funding do you average annually for cultural resources (CR) program activities from other sources than the 1050 sub-account? Which benefiting accounts provide CR funding in your State (e.g. planning, recreation, etc.)?

What is the rough percentage of BLM CR work in your State, divided between proactive work and 106 compliance?

What is the CR professional FTE allocation for BLM in your state, and how are they allocated among the state and field offices? (How many field offices and CR professionals in each)

Describe briefly the relationship with the SHPO under the protocols of the Programmatic Agreement with ACHP and NCSHPO. Identify any issue(s) that have arisen in your state in which the ACHP has played a role under the PA.

What landscape scale CR studies have been carried out in your State? Describe briefly the scope, sites/themes covered, and how these studies were funded. Are there other such studies that are a priority in your state?

How has Law Enforcement (LE) in you state served protection of cultural resources? Describe the LE FTE allocation in you State and briefly identify LE priorities for you state in addition to CR matters.

Identify recent examples of tribal consultation, TCP identification, NAGPRA repatriations, etc.

Provide some examples that highlight recent CR accomplishments in your state.

Appendix 3

Summary Chart of BLM Cultural Resources Acreage, Inventories, and National Register Listings*

BLM State Office	Acreage	Acres Inventoried	NR Listings	NHLs
Alaska	86 million	95,757	20	3
Arizona	11.6 million	782,576	20	1
California	15 million	1,690,099	47	2
Colorado	8.4 million	1,317,626	29	3
Idaho	11.9 million	1,861,954	22	1
Montana**	8.3 million	1,249,923	21	3
Nevada	47.8 million	1,913,078	31	1
New Mexico	13.4 million	1,304,648	92	2
Oregon/Washington	16.5 million	1,400,034	45	0
Utah	22.9 million	1,613,887	43	2
Wyoming	18.4 million	2,257,709	30	2

* 2003 data

** includes North and South Dakota BLM lands

Appendix 4

Comparison Chart of CRM in Federal Land Managing Agencies

	Acres Managed	NR Listings	NHL Listings	Survey %	CR FTE
BLM	261 million	367	20	6%	140
FS	191 million	3397	19	18%	300
NPS	83 million	1365	179	10%	671
FWS	96 million	157	24	3%	20



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