

**WYOMING STATE PROTOCOL
APPENDIX F
AGREEMENT DOCUMENT PROCEDURES AND CHECKLIST**

Project Name: _____

NOTE: Please use the Agreement Document Template found in Appendix G. Preparation of a MOA or PA follows consultation between the Signatories, Invited Signatories and the Concurring Parties. Generally the MOA/PA will be drafted by the responsible Field Office, who will also keep all parties apprised of the document's progress, and will schedule any necessary meetings and calls.

Before starting the Agreement Document process:

Action	YES	NO	Dates/Comments
Have SHPO concurrence on determination of eligibility and adverse effect that requires an agreement document, or have SHPO concurrence that a formal agreement document is required.	<input type="checkbox"/>	<input type="checkbox"/>	
Formally invite SHPO to participate in the agreement document	<input type="checkbox"/>	<input type="checkbox"/>	
Review the thresholds for ACHP participation-are they met?	<input type="checkbox"/>	<input type="checkbox"/>	
Review the thresholds for ACHP participation-are they met? If thresholds are met, invite ACHP via formal letter, including the information required at 800.11(e)	<input type="checkbox"/>	<input type="checkbox"/>	
Is ACHP Participating?	<input type="checkbox"/>	<input type="checkbox"/>	
Will this agreement be done under the Protocol or the Regulations?	Protocol	Regs	

MOA or PA

	Comments
Does this agreement need to be a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA)? Look at definitions of the two types at: 36 CFR Part 800.6(c) and 800.14(b).	
MOA	
Records the terms and conditions agreed upon to resolve the adverse effects of an undertaking on historic properties; and lays out how the undertaking will avoid, minimize, and/or mitigate those known effects. An MOA is likely when:	
Is this a discrete undertaking?	
Has there been a complete inventory and have all historic properties been evaluated for eligibility and effect, and BLM has SHPO concurrence on both.	

PA	
Records the terms and conditions agreed upon to resolve the potential adverse effects of an agency program, complex undertaking or other situations in accordance with 800.14(b); and lays out processes to determine eligibility, effects and ways to avoid, minimize and mitigate effects. A PA is likely when:	
Is this a complex undertaking?	
Is this a phased undertaking?	
Effects cannot be determined in advance	
Effects on historic properties are similar or repetitive, or are multi-state or regional in scope	
Nonfederal parties are delegated major decision making responsibilities	
Routine management activities are undertaken at Federal installations, facilities, or other land management units	
Other circumstances warrant a departure from the normal section 106 process	
May incorporate provisions from the State Protocol	
Will likely require a Historic Properties Treatment Plan	
Remember, ALL project specific PAs must now be done under the 106 Regulations at 36 CFR Part 800	

Setting up the Agreement Document:

Action	YES	NO	Dates/Comments
Work with SHPO to obtain an initial list of consulting parties and Indian tribes	<input type="checkbox"/>	<input type="checkbox"/>	
Send letters inviting consulting parties/Tribes to participate in the resolution of adverse effects (give them a respond by deadline)	<input type="checkbox"/>	<input type="checkbox"/>	
Compile lists of consulting parties who have and have not agreed to participate	<input type="checkbox"/>	<input type="checkbox"/>	
Send invites out for first meeting/conference call	<input type="checkbox"/>	<input type="checkbox"/>	
At first meeting: try to set a standard day/time and conference line/passcode numbers for each subsequent meeting /call	<input type="checkbox"/>	<input type="checkbox"/>	
Provide frequent drafts to all participants, and continue to do so throughout the consultation process until all parties approve document	<input type="checkbox"/>	<input type="checkbox"/>	
All parties will consult until an agreement is reached. Accept comments/edits during the meetings and in writing on drafts of the document	<input type="checkbox"/>	<input type="checkbox"/>	

The Agreement Document:

Topic/Section	YES	NO	Dates/Comments
Title, Preamble:			
Are all Signatories named in the title? (e.g. Federal Agencies, SHPO/THPO, Applicant/s, ACHP if participating, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the entire undertaking and the nature of the Federal involvement described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the agreement note whether the agreement was developed pursuant to the State Protocol or the Section 106 Regulations at 36 CFR Part 800?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the responsible Federal agency identified?	<input type="checkbox"/>	<input type="checkbox"/>	
If a multi-agency undertaking, has BLM been identified as the lead Federal agency? Identify the roles of other delegating agencies (see 36 CFR Part 800.2(a)(1)).	<input type="checkbox"/>	<input type="checkbox"/>	
Is an applicant for Federal permits, licenses, grants, or other assistance identified? Make sure to describe their roles and responsibilities clearly.	<input type="checkbox"/>	<input type="checkbox"/>	
Has the appropriate SHPO/THPO been identified?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all other consulting parties identified? (see 36 CFR Part 800.2)	<input type="checkbox"/>	<input type="checkbox"/>	
Have the historic properties affected by the undertaking been identified?			
If doing a PA with phased identification, is the need for such an approach described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the preamble acknowledge historic properties will or may be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a reference included to the agency's public involvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>	
Stipulations:			
Are the stipulations preceded by a clear statement that the Federal agencies shall ensure that these terms are carried out?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all of the provisions agreed upon during consultation included? Make sure they are grouped logically.	<input type="checkbox"/>	<input type="checkbox"/>	
Does each stipulation clearly identify who is responsible to carry it out?	<input type="checkbox"/>	<input type="checkbox"/>	
Do all tasks have clear time frames for initiation and completion?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all stipulations written in the active voice?	<input type="checkbox"/>	<input type="checkbox"/>	
Are tasks assigned only to those parties that will sign the agreement (Signatories and Invited Signatories)?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the use of qualified professionals been stipulated where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	

If archaeological data recovery is stipulated, is the data recovery plan attached to or referenced in the document?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the process for a post-execution decision making described in a complete, logical and organized way? (Who makes what decisions? Who is consulted with? When do decisions need to be made? What information is needed?)	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for consulting party involvement included for any ongoing reviews carried out according to the agreement's terms?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for responding to the unanticipated discovery of historic properties or adverse effects to identified historic properties included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a dispute resolution procedure included?	<input type="checkbox"/>	<input type="checkbox"/>	
Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project?	<input type="checkbox"/>	<input type="checkbox"/>	
Are provisions for the amendment or termination of the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the duration specified, and does it allow adequate time for the terms to be completed?	<input type="checkbox"/>	<input type="checkbox"/>	
Do the stipulations conclude with an affirmation statement consistent with the template agreement document?	<input type="checkbox"/>	<input type="checkbox"/>	

Completing the Agreement Document (housekeeping, approval, signatures):

Action	YES	NO	Dates/Comments
Housekeeping:			
Are all parties assigned responsibilities in the agreement document either a Signatory or Invited Signatory?	<input type="checkbox"/>	<input type="checkbox"/>	
Does each signature line include the printed name, title, agency/organization and date of signature?	<input type="checkbox"/>	<input type="checkbox"/>	
Are Signatories, Invited Signatories and Concurring Parties clearly separated from each other?	<input type="checkbox"/>	<input type="checkbox"/>	
Have all terms and references been used correctly and accurately?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all acronyms and abbreviations identified and used consistently?	<input type="checkbox"/>	<input type="checkbox"/>	
Double check spelling, grammar, formatting, pagination, section numbers, etc. including on Appendices; remove all "draft" notations	<input type="checkbox"/>	<input type="checkbox"/>	
Are all attachments and appendices cited correctly, and	<input type="checkbox"/>	<input type="checkbox"/>	

are they attached?			
Could a “cold reader” understand the agreement and what it requires?	<input type="checkbox"/>	<input type="checkbox"/>	
Approvals/Signatures:			
ALL Signatories have reviewed the document and approved it	<input type="checkbox"/>	<input type="checkbox"/>	
As applicable, email to DOI solicitors (SOL) for review and approval (through FM or DM) (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Email to SHPO to send for AG review and approval (if they make changes, send it back out to all parties for review and approval)	<input type="checkbox"/>	<input type="checkbox"/>	
Have Wyoming Attorney General (AG) approval	<input type="checkbox"/>	<input type="checkbox"/>	
Send “Draft Final” document back out to all parties for one more look, request they respond via email/in writing of their approval (specify timeframe)	<input type="checkbox"/>	<input type="checkbox"/>	
Make enough originals to send around for signature for primary Parties to keep (SHPO, company/ies, Field Office and ACHP if participating), all others will receive a copy including the signatures	<input type="checkbox"/>	<input type="checkbox"/>	
Order of Signatures:			
BLM Field Manager	<input type="checkbox"/>	<input type="checkbox"/>	
BLM District Manager, as appropriate			
Applicant/s	<input type="checkbox"/>	<input type="checkbox"/>	
All other Invited Signatories	<input type="checkbox"/>	<input type="checkbox"/>	
Any Concurring Party that wants to sign (they do not <i>have</i> to sign)	<input type="checkbox"/>	<input type="checkbox"/>	
Send to State Office SHPO Liaison to obtain signatures:	<input type="checkbox"/>	<input type="checkbox"/>	
DSD for Resources Policy and Management	<input type="checkbox"/>	<input type="checkbox"/>	
State AG	<input type="checkbox"/>	<input type="checkbox"/>	
SHPO	<input type="checkbox"/>	<input type="checkbox"/>	
ACHP (if participating)	<input type="checkbox"/>	<input type="checkbox"/>	
Once all signatures are obtained, WSO or ACHP (if participating) will send originals back to Field Office for distribution (minus the SHPO copy), and will scan document and email to Field Office	<input type="checkbox"/>	<input type="checkbox"/>	
Once the document is fully signed/executed, then Section 106 has been completed. Any decision document (e.g. ROD/DR, FONSI, CX, etc.) can then be signed and shall reference the agreement document.	<input type="checkbox"/>	<input type="checkbox"/>	

Even if the ACHP did not participate, the Field Office shall send a copy of the fully executed document to them	<input type="checkbox"/>	<input type="checkbox"/>	
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Tips:

Do not include information that is not relevant to Section 106

Do reference other laws as needed, but don't go into detail about how they will be carried out

Bind sidebar agreements (e.g. HPTPs) to ROD/DR