

**WYOMING STATE PROTOCOL
APPENDIX K
STANDARD DISCOVERY PLAN**

I. Introduction

- A. Surface disturbing activities have the potential to affect historic properties though unanticipated discoveries. Unanticipated discoveries typically occur when previously undetected cultural resources are exposed during construction or other permitted surface disturbing activities, but after the federal agency has completed the Section 106 process. Cultural resources may be discovered by construction personnel, an archaeological monitor, a BLM inspector, or others who may be present during construction activities. This appendix serves as a basic Discovery Plan for federal undertakings authorized by the BLM, and may be used if there is no undertaking-specific Discovery Plan. In response to this potential for discoveries, we are addressing discoveries programmatically per 36 CFR 800.13(a)(1). This standard Discovery Plan is optional and may not be applicable in all circumstances or for all BLM undertakings.
- B. This Discovery Plan is intended to address typical cultural resources such as prehistoric or historic features, artifacts, discovery of a previously unknown portion of a historic property, or other cultural materials that are most likely to be discovered during surface disturbing activities. Discoveries can also take other forms including activities that go beyond permitted boundaries and encroach upon a historic property or an unevaluated site, and/or activities that cause unexpected additional effects (physical, visual, audible, or atmospheric effects) to a historic property.

II. Planning for Discoveries

- A. The BLM will encourage development of undertaking-specific discovery plans for large and complex undertakings and those involving land disturbance in areas suspected to contain buried sites. Undertaking-specific discovery plans will be forwarded to the SHPO for a 30 day review along with BLM's determination of effect for the undertaking as specified in Section VI of this Protocol.
- B. Undertaking-specific discovery plans must include at a minimum the following components:
 - i. Monitoring methods that will be used during surface disturbing activities
 - ii. Communication strategies in the event of a discovery
 - iii. Training plan for personnel working in the area regarding disturbance of cultural resources
 - iv. Testing and evaluation strategy
 - v. Discovery of human remains
 - vi. Reporting methods
- C. When an undertaking-specific discovery plan has been accepted by the BLM and SHPO, the BLM will reference the plan in the project stipulations (conditions of approval, terms and conditions, etc.) The BLM will follow the plan when cultural resources are discovered during implementation of the undertaking. The BLM shall take prudent and feasible steps to ensure

that the undertaking does not further harm the cultural resource until treatment is completed in accordance with the discovery plan.

III. Unanticipated Discoveries

- A. If cultural remains, or possible cultural remains, are discovered during surface disturbing activities, all construction activities will be halted immediately within a minimum of 100 feet of the discovery and the BLM Authorized Officer will be notified within 24 hours. The BLM will notify the SHPO of the discovery by telephone and/or email within 48 hours after receiving the initial notification. The discovery will be secured until it can be evaluated by the BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant. The project applicant is responsible for informing all persons in the area who are associated with the project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. Construction activities may continue in other areas of the project a minimum of 100 feet from the discovery, but may be subject to an archaeological monitor at the BLM authorized officer's discretion.
- B. The BLM Cultural Resource Specialist or a BLM-permitted archaeological consultant will determine if the discovery is cultural, and if so, record and evaluate the discovery and make a recommendation of eligibility and effect. BLM will consult with appropriate Indian tribes and consulting parties at this time. The discovery will be evaluated under all four criteria eligibility and all seven aspects of integrity. Evaluative testing may be necessary to determine the nature and extent of the cultural materials. Consultation with the applicable field office will occur to determine the level of permit necessary for the evaluative testing. Evaluative testing will follow the *Wyoming Bureau of Land Management Field Guide for Evaluative Testing of Archaeological Sites*. The results will be reported following the *Wyoming State Historic Preservation Office Format, Guidelines, and Standards for Class II and III Reports*. The BLM will make the determination of eligibility and effect and will consult with the SHPO as specified in Sections III.B.i, III.B.ii, or III.B.iii below.

i. Discovered Property is Not Eligible with a No Historic Properties Affected Determination

If the BLM determines that the discovery is not eligible for inclusion in the NRHP, a "No Historic Properties Affected" determination will be made. The BLM will submit the documentation to WYCRO as specified in Section V.E.iv of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

ii. Discovered Property is Eligible with a No Adverse Effect Determination

If the BLM determines that the overall cultural resource is eligible for inclusion in the NRHP, but the discovery does not contribute to its eligibility, a "No Adverse Effect" determination will be made. The BLM will submit the documentation to WYCRO as specified in Section V.E.v of this Protocol. The BLM Authorized Officer will issue a written notice to proceed to the project applicant and construction will be allowed to resume in the area of the discovery. Additional

construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

iii. Discovered Property is Eligible with an Adverse Effect Determination

- a. If the BLM determines that the discovery is eligible for inclusion in the NRHP or that it contributes to the eligibility of a known historic property, and was adversely affected by the undertaking, a determination of "Adverse Effect" will be made. The BLM will submit the documentation to the SHPO (Cheyenne) as specified in Section V.E.vi of this Protocol. If the SHPO does not respond within 15 days, the BLM may assume concurrence with the determinations of eligibility and effect.
- b. The project applicant will develop a mitigation plan and/or data recovery plan (see the procedures specified in Section V.F.i of this Protocol). Mitigation/data recovery plans should contain provisions for stabilizing and/or protecting the resource until the appropriate plan can be implemented. The BLM should combine consultation with the SHPO on the eligibility and effect and the consultation on the data recovery plan, in which case the SHPO will have 30 days to review and comment on the eligibility and effect, and the treatment plan together. If submitted separately, SHPO will have 30 days to review each document.
- c. Upon SHPO concurrence with the treatment plan, the BLM will notify the project applicant that the plan is acceptable. The project applicant's archaeological consultant will notify the BLM through the fieldwork notification procedures in CRMTracker to implement the plan. The applicant will be responsible for the cost of any mitigation required by the Authorized Officer. When the terms of the treatment plan have been completed, the BLM Authorized Officer will issue a written notice to proceed to the applicant and construction will be allowed to resume in the area of the discovery. Additional construction activities may be subject to an archaeological monitor at the BLM Authorized Officer's discretion.

IV. Human Remains

A. Inadvertent Discovery of Human Remains on Federal Lands

- i. If human remains, funerary objects, sacred objects, or objects of cultural patrimony, or suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony, are discovered during surface disturbing activities on BLM lands, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and a reasonable effort will be made to protect the discovery. The BLM will contact and coordinate with the appropriate Law Enforcement Agency and the appropriate coroner's office. The BLM will notify the DPO and SHPO of the discovery by telephone and/or email within 48 hours.
- ii. If the appropriate Law Enforcement Agency determines the human remains are not part of a crime scene and the appropriate coroner releases the human remains, the BLM will

determine if the human remains are Native American. If it is determined that the human remains are not Native American, the BLM will proceed in a similar manner to the Unanticipated Discovery procedures listed in Section III above. If it is determined that the human remains are Native American, or if the discovery includes funerary objects, sacred objects, or objects of cultural patrimony, the BLM will follow the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (43 CFR Part 10). Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.

B. Inadvertent Discovery of Human Remains on Non-Federal Lands

- i. If human remains, or suspected human remains, are discovered during surface disturbing activities on non-federal lands as part of a federal undertaking, the BLM Authorized Officer will be contacted immediately by telephone and notified of the discovery with written confirmation. All activity will be halted within a minimum of 300 feet of the discovery and all reasonable efforts will be made to protect the discovery. The BLM will contact and coordinate with the appropriate Law Enforcement Agency, the appropriate coroner's office and the appropriate land owner.
- ii. If the Law Enforcement Agency determines the human remains are not part of a crime scene and the appropriate coroner releases the human remains, the BLM will proceed in a similar manner to the procedures listed in Section IV.A above, but will include consultation with the appropriate land owner. If the human remains are Native American, additional consultation with the appropriate Indian tribes will be necessary, with land owner consent. Construction activities will not be allowed to resume within 300 feet of the discovery until written authorization is provided by the BLM Authorized Officer.