

# THE UPAC NEWS

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Steve Simms, President  
Signa Larralde, Editor

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## PRESIDENT'S MESSAGE

**Fall Meeting Notes:** The fall business meeting of UPAC (November 6) had its moments of both passion and boredom, but a number of issues were discussed and/or acted upon.

The Saturday current research slide shows included more presentations than usual, as well as some new players. Thanks to Stan MacDonald for organizing the current research session and thanks especially to the people who presented for the first time.

Since only a few weeks have passed since the meeting, I can only mention some of the action taken and indicate a few areas in which I hope discussion can continue at the next UPAC meeting to be held in Cedar City on March 12-13, 1993 (Yes, March - the date has been pushed back by popular demand).

**State Lands Rules:** UPAC members agreed to support the proposed rules for the Utah Division of State Lands (these rules were printed in the Sept. 1992 issue of the UPAC News). Members also desired some comment on the rules to identify certain passages that remain subject to interpretation and will be worthy of monitoring by UPAC. I will write a letter to the Division in support of the rules and include the additional comments desired.

**Student Members:** A motion was passed to put the question of whether to provide full voting benefits to student members on the ballot. Balloting is necessary because this

action will modify the bylaws. The change would enable student members to receive both the journal and UPAC News for \$12,00/year. This would apply to everyone currently registered as a student, whether located in Utah or elsewhere.

A ballot for all voting members is enclosed this issue. Please vote on the bylaw change, as well as for two UPAC officers, and return your ballot to Julie Howard by January 15.

**New Fellow:** Dr. Richard Thompson was unanimously voted as a UPAC Fellow, joining a small list of archaeologists of notorious service to Utah archaeology. A letter will be going out, and there will be a biography of Dr. Thompson in an upcoming issue of the News.

**Interim Editor:** Kevin Jones will be the interim editor for the journal, Utah Archaeology, through the publication of the 1993 issue. The membership voted that we would defer nomination and election of a new editor until the Fall 1993 meeting to ensure that there is smooth production of the next issue and to allow time for individuals interested in the nomination for editor to inquire about the necessary support required to edit the journal.

**CRM Abstracts:** A decision was made to include a new section in Utah Archaeology devoted to abstracts of cultural resource management reports that would be of interest to a wider audience of archaeologists and perhaps the public. This seems like one small way UPAC can join the national effort to make it easier to

archaeologists faced with a narrow corridor of direct disturbance running through an unproductive section of a site to expend some of their efforts outside of the corridor, core a nearby bog to reconstruct the past environment, and conduct a survey to locate the lithic sources utilized by the inhabitants of the site. I suspect all would agree that greater flexibility in developing and executing research designs is beneficial.

On the other hand, I can also imagine a much darker, more disturbing scenario. Suppose the next Director of the Division of State History has little interest and no sympathy for archaeological research, but is eager to develop the Division's missions related to education and public outreach. As a consequence, whenever two or more alternatives for mitigation are proposed, the Director's staff invariably chooses the alternative that includes the most significant investment in education or museum development, irrespective of its scientific merit and regardless of its implications for the archaeological record. Obviously a fictitious example, but a possible one given the broad and vague statements currently available concerning alternative mitigation.

The Division is asking members of the local professional community for comment, if not agreement on an incompletely articulated policy, the implications of which are a matter of speculation and controversy. The Division (and relevant federal agencies) can take an important step toward improving the situation by offering a full statement including its goals, implementation, and safeguards. Ideally the statement would include examples illustrating the range of implications flowing from the adoption of alternative mitigation. Such a statement would also be a significant step toward ending the vitriolic and inflammatory rumors which have abounded over the past year. Absent such a statement, the local professional community might well be justified in maintaining its increasingly skeptical perspective about the Division's goals, policy and commitment to its basic mission.

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#### **David Madsen, Antiquities Section, Division of State History:**

To start with the obvious, there is no "right" way to excavate an archaeological site. There are an infinite number of approaches which can be employed, and which vary depending on the nature of the questions asked. At any particular site some questions are certainly more appropriate than others but many questions, while markedly different, may be of relatively equal utility. Not all of these questions can be addressed in a single project. Indeed, many are contradictory and in addressing one, others may be excluded. That is, there are viable "alternatives" to every project, and, in our view, what Alternative Mitigation is all about is being able to compare and evaluate these viable alternatives and select the one which may be most appropriate to the site(s) at hand.

Note that in my view of Alternative Mitigation, the alternatives to be evaluated are those most appropriate to the site, not those that may be most viable for any particular set of regulatory rules. That is, evaluations must be based on archaeological parameters, not on developmental parameters. That, in turn, necessarily means that mitigation projects must be directed at a site as a whole, not just that portion of a site within a construction zone or a right-of-way. The "area of potential effect" is just that; it is the area potentially affected, not merely the limits of a pipeline trench or a road construction zone. What is affected is the site; when a site's integrity is disturbed or destroyed the entire site is affected.

In my view there is no essential difference between a mitigation project and a research project. The design and evaluation of the project should, above all, consider the site as a whole, with little or no consideration for such arbitrary boundaries as the limits of construction zones. Put another way, Alternative Mitigation will allow archaeological recovery projects to treat sites as if the impending highway or transmission line did not exist. The treatment would be the

same as that used when approaching the site from a research standpoint. To employ a current example, should a highway project endanger a site with Clovis points on the north side of the right-of-way, other tools and lithic debris within the ROW, and an associated bog to the south of the ROW, an appropriate research/mitigation design would include an investigation of the points and the bog rather than just the ROW lithic material alone.

By focusing on sites holistically, by remembering that the APE is the area of the site that is affected, and by recalling that sites may be investigated in a number of different, often competing, manners, we can begin to be much more effective with our cultural resource management programs. To understand how this might work, consider, for example, a couple of alternative treatments for the often large, but also common, surface lithic scatter. One might be the traditional treatment which involves the surface mapping of all the larger items and the excavation of a variety of test units to determine if there are any subsurface features. Another might involve an investigation of site structure based on the differential distribution of larger and smaller elements. Yet a third might focus on lithic technology and on-site work limited to collecting a sample of tools, flakes, and shatter, but including an additional sample of materials from the quarry the toolstone was taken from. In other words, there are a number of alternatives, including off-site work, that should be competitively evaluated. The most viable alternative can then be selected.

Alternative Mitigation, in the sense I use the term here, carries with it a number of potential problems. Not the least of these is that if mitigation designs and research designs are essentially the same thing, then CRM projects must be able to compete with designs that are funded by granting institutions such as NSF. Many commonly used mitigation plans are essentially ways of collecting and cataloging information [e.g., Problem Domain I - Chronology; Problem Domain IV - Subsistence], and do not consist of testable ideas derived from higher order theory. As such, they would have trouble competing with normal research designs, and there may be some concern that competing on this level will entail a lot more work. There may also be the fear that competing proposals will be evaluated by some deranged kook in the Antiquities Section and would not receive a fair reading. We cannot provide a solution to the former concern; in evaluating and selecting competing alternatives, one will always be selected over another. We can, however, ensure that the evaluation and selection process is a fair one. There is no reason that UPAC must leave the development of a selection process to government agencies. UPAC can develop a process which involves UPAC members on an evaluation team, and can insist that management and permitting agencies adopt it. There is no reason to oppose adoption of alternative mitigation programs because of the fear that some off-the-wall archaeologist will be the final arbiter. UPAC can structure a process it feels comfortable with.

There is also the fear that non-archaeological management concerns may begin to drive the selection of mitigation alternatives; that a tourism oriented manager will decide that the money to be spent on an archaeological recovery operation could be better spent on a museum exhibit. However, the fear of a rogue manager choosing a favored idea is much like the fear of an off-the-wall archaeologist selecting the appropriate alternative. UPAC merely has to create a selection process that will prevent that from happening. UPAC can make Alternative Mitigation work; the real question is does it want to.

Cookbook archaeology is easy. A contractor [or the management agency for that matter] knows exactly what has to be done, how long it will take to do it, how many people the job will take, and how much it will cost. Unfortunately, they also know exactly what the results will be. Given a good site description, I can produce the results of the average mitigation project in my office without ever going into the field. I can describe the lithic tools, the subsistence remains, the chronology, with a relatively high degree of accuracy. There may be an occasional surprise, but not enough to warrant the expenditure of millions of dollars of both public and private funds annually. We already know that Rose Springs points are common at Fremont sites, and that Fremont folks ate rabbits

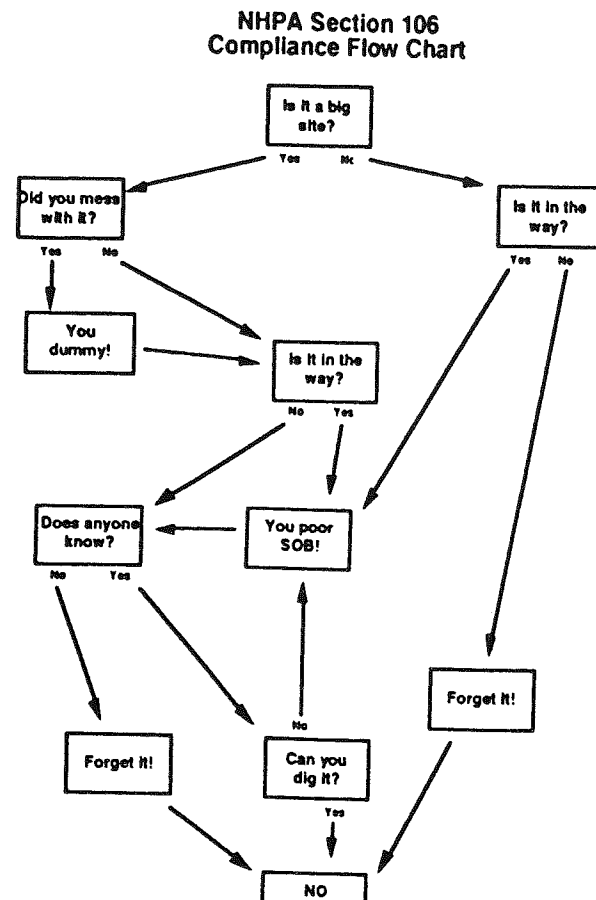
to happen, developers, having paid their dues, would simply go ahead with their construction work in whatever fashion they please. It would be the responsibility of the archeological community to insure that any significant sites within the proposed development were somehow identified and mitigated prior to construction. At this point, there would no longer be a direct link between a particular site being damaged and a developer expending funds for archeology. This is worrisome because it is this direct link which triggers the laws requiring funds to be expended on data recovery at significant sites that will be impacted. It would just be a matter of time before the developers mounted a major lobbying effort to change the laws and end archeology on public lands as we know it today.

Finally, while we think that archaeologists have an obligation to involve the public in as many facets of archeological investigation as possible, and interpret sites for public appreciation, we are very concerned about the possibility of alternative mitigation being used as a means of getting money to build museums, fund public education, or develop interpretive sites in lieu of conducting data recovery at significant sites in project right-of-ways. At a recent Antiquities Task Force meeting, Mr. Max Wilson stated that his division has insufficient funds to carry out its mandated task of developing interpretive sites. He went on to say that we need alternative mitigation as a means of getting money to develop interpretive sites; this will be done as an alternative for and replacement to conducting data recovery at significant sites that will be damaged by development. Sacrificing data recovery at sites to get money for interpretation assumes that we know all there is to know about the past. Also, how long before the developers become hostile that supposedly significant sites in their right-of-way are being used to generate money for the state to carry out its legally mandated tasks?

We recognize that there is tremendous room for improvement in the assessment of site significance, the evaluation criteria applied to significant sites, the development and implementation of research designs, and critical analysis and interpretation. But if we cannot solve these issues within the current framework and structure of federal preservation laws, it is doubtful that we can solve these problems by developing museums and interpretive sites, or excavating sites outside of the area of direct impact. Our relationship with developers paying for archeology is already more fragile than most archaeologists realize. We believe that implementation of alternative mitigation, as we currently understand it, is misguided, could backfire on the archeological community, and have highly undesirable consequences. Alternative mitigation is not an alternative for professional archeology.

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[Editor's note: Perhaps the following comment on the 106 process is appropriate here, from the NM Archaeological Council newsletter:]



### UDOT'S ISTE A ENHANCEMENT PROGRAM

A major transportation bill entitled the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) provides significant funding for a broad spectrum of environmental Transportation Enhancement activities. ISTEA is in effect until 1997, when the legislation must be renewed or rejected by Congress.

Title I is the Surface Transportation Program or the STP. It is a block grant type program that States and localities may use for any Federal-aid roads that are not classified as local or rural minor collectors. Out of these funds, 10% must be utilized by the state on so-called Transportation Enhancements on an exclusive range of environmental related activities.

No moneys were appropriated by Congress in 1991, but in FY 92 the Enhancement apportionment was about 3.8 million dollars for Utah. Utah's Transportation Enhancement apportionment of STP funds in the current FY 93 is just over 3 million dollars, and projected Enhancement funding levels for FY 94 through FY 97 total about 3.6 million dollars each year.

Transportation Enhancement funds are "use it or lose it," and although they may not be used for any other activity, unused appropriations may roll over into next year's fund, up until 1997. No Transportation Enhancement projects have been funded as yet in Utah, since the UDOT is still developing the Program.

What are Transportation enhancements, and how can you apply for funding? There are 10 exclusive environmental activities that were established by the ISTEA legislation as eligible for Transportation Enhancement funding. These are:

1. bicycle and pedestrian facilities;
2. acquisition of scenic easements and scenic or historic sites;
3. historic preservation;
4. scenic or historic highway programs;
5. landscaping;
6. rehabilitation and operation of historic transportation buildings,

7. preservation of abandoned transportation corridors, as in rails to trails programs;
8. archaeological planning and research;
9. control and removal of outdoor advertising;
10. mitigation of water pollution due to highway run-off.

The Utah Transportation Commission recently adopted a Policy on Enhancements, which has established an Enhancement Advisory Committee who will recommend policy, and an annual program to the Commission to implement the ISTEA Enhancements Program. Advisory Committee memberships include two appointees representative of historic and archaeological preservation interests, chosen by the Transportation Commission. The Commission is currently accepting letters of recommendation with resumes until December 31 of this year; appointees shall initially serve a one-year term, expanded to two years thereafter. The UPAC membership is encouraged to submit nominations to the following address:

Doug Anderson, P.E.  
UDOT Engineer for  
Transportation Planning  
4501 South 2700 West  
Salt Lake City, UT 84119

The UDOT Policy requires that private groups find an appropriate public agency as their sponsor, and that applications for projects in urban areas be processed through a Metropolitan Planning Organization. A given Project Sponsor must be a public agency, and will commit a minimum of 20% project costs in a hard match. Hard matches may be cash or real estate.

The Enhancement Advisory Committee will develop a specific application form to be completed by a given Sponsor. The Planning section of UDOT shall accept and review submittals for basic acceptability.

Successful Transportation Enhancements will likely benefit a relatively large area of the region of State's population, enhance travel and tourism efforts in Utah, and contribute to a wide geographic

dispersion of Enhancement funds within the State. Projects which are supported by other local governments in the project vicinity will be weighed more favorably.

Other important factors include support of public or not-for-profit organizations of statewide or regional scope, extra efforts or contributions above minimum matching requirements, and those projects which coordinate more than one eligible Enhancement activity into a single endeavor.

It is anticipated the Committee will be convened in January, after the Transportation Commission has selected appointees. Hopefully, the UDOT will be able to accept applications by late February or early March. The Transportation Commission will review the Enhancement Advisory Committee's recommended program and will decide which projects will be included in the annual statewide program. Once a project has received State and Federal approval, the project sponsor will work with UDOT to prepare plans and construct the project.

I am very excited about the emphasis on historic preservation and archaeological research in the Enhancement legislation, and I encourage the membership to propose projects. If you would like additional information about the program, contact me at 965-4157.

--Susan Miller

UDOT Archaeologist

#### VOTE FOR VP AND SECRETARY

A ballot for voting members is included at the back of this newsletter. Nominations for Vice-President for Government Affairs are Duncan Metcalfe, Bill Fawcett, and Charmaine Thompson. Nominations for Secretary are Everett Bassett and Dennis Weder. The ballot includes a vote to change the bylaws on student membership. Ballots are due back to Julie Howard by January 15.

#### PAPERS FOR

#### UTAH ARCHAEOLOGY SOLICITED

Please submit complete, high quality papers to editor Kevin Jones for the

1993 issue of Utah Archaeology. Further details about 1993 submissions will be printed in the February UPAC News. Call Kevin if you wish to help with the various tasks related to journal production.

#### ARPA NEWS

##### Judge Hands Out Disappointing Sentence in Escalante ARPA Case

A federal judge in Salt Lake City slapped two Escalante men on the wrist on October 6 for illegally digging artifacts on federal land in Garfield County.

Judge J. Thomas Greene placed David Woolsey and Jim Barney on probation and ordered them to perform 1,000 hours of community service for their felony convictions. There was no fine or restitution ordered for the \$6,650 damage that prosecutors say was done at an archaeological site near Boulder Creek in May 1991.

The U.S. attorney's office sought to make an example of the two to draw attention to destruction of sensitive [archaeological sites] in Utah by amateurs and professional excavators working for the black market.

But the judge suggested prosecutors picked the wrong case.

"There was no evidence of repeated acts over a period of time," Judge Greene said. "There was evidence that the damage that was done was not done entirely by these defendants."

The judge noted that a search warrant executed at the home of one of the men yielded little in the way of illegally dug remnants.

The U.S. attorney's office - which held a news conference in August to spotlight the case, but displayed artifacts from other investigations for cameras - had no comment on the sentence.

"[This case] will send a message to the amateurs, but I doubt it will send a message to the professionals because [commercial pothunting is] too lucrative," said defense attorney Ed Brass.

Woolsey, 25, a truck driver, and Barney, 32, a lumber-mill hand, each could have received six months in jail as well as fines.

They were arrested after a group of

Malcom Adair, R. Thomas Euler, and Robert Euler.

The monograph, published as Cultural Resource Management Report Number 13, is available from the Cultural Resources Section, USDA Forest Service, 517 Gold SW, Albuquerque, NM 87102.

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#### ZINJ MAGAZINE: IT'S OLD. IT'S NEW. IT'S THE COOLEST THING TO DO.

The Interagency Task Force on Cultural Resources announces the upcoming publication of its way cool magazine about archaeology and paleontology for children (although you will probably want to read it, too) at the incredible bargain price of \$6 per year. Buttons and T-shirts with eye-boggling graphics are also available. An order form is included with this issue of UPAC News.

#### NATIVE PLANT STUDY FUNDING AVAILABLE

The Utah Native Plant Society will have funding available in 1993 for study, education or conservation of native plants. Please submit proposals to UNPS, P.O. Box 520041, Salt Lake City, UT 84152-0041.

#### "SEEDS OF CHANGE" EXHIBIT

The Salt Lake City Public Library was chosen as one of only sixty sites in the United States to hold the national traveling exhibit "Seeds of Change: 500 Years of Encounter and Exchange." The exhibit is based on a major exhibition at the Smithsonian's National Museum of Natural History in Washington, D. C. It will be on display at the Main Library from January 30 through February 28, 1993.

"Seeds of Change" visually examines the global and irreversible changes put into motion when Columbus set sail from Spain in 1492. Five key "seeds" - corn, potatoes, diseases, horses, and sugar - form the core of this exhibition which presents the significance of the 500 years of their exchange between the Old and New Worlds and the impact upon history.



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Woolsey, 25, a truck driver, and Barney, 32, a lumber-mill hand, each could have received six months in jail as well as fines.

They were arrested after a group of Salt Lake City hikers on an outing noticed them digging with a shovel and hoe. One hiker photographed their ATV registrations and notified federal investigators.

Their convictions are the first in Utah under the 1979 U.S. Archaeological Resources Protection Act. U.S. Attorney David Jordan said in August that several other cases, apparently unrelated to the Woolsey-Barney incident, are under investigation.  
--Ted Cilwick  
Salt Lake Tribune  
October 7, 1992

#### ARPA Course in St. George

The 40-hour Archaeological Resources Protection Act training course conducted by the Federal Law Enforcement Training Center (FLETC) of Glynco, GA will be held in St. George, Utah from March 22 through 26, 1993. This excellent course is targeted toward law enforcement officials and archaeologists and is some of the best training available. It is taught by Woody Jones of FLETC, an assistant U.S. attorney and an archaeologist, all familiar with ARPA cases.

The course is normally held in Marana, Arizona, Artesia, New Mexico, or Glynco, Georgia. The \$175 tuition charge may be waived for local law enforcement officials.

If you are interested in attending the course, contact Diana Christensen at (801) 673-3545. Federal agency folks wishing to attend must be nominated and selected by their agency representative to FLETC. They will need to insure their own nominations.

#### Vandalism Monograph Published

The Southwest Region of the U.S. Forest Service announces the publication of a new monograph, Pothunting in Central Arizona: The Perry Mesa Archaeological Site Vandalism Study, by Richard Alstrom,

Malcom Adair, R. Thomas Euler, and Robert Euler.

The monograph, published as Cultural Resource Management Report Number 13, is available from the Cultural Resources Section, USDA Forest Service, 517 Gold SW, Albuquerque, NM 87102.

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The public is invited to see the exhibit at an opening reception from 2-5 p.m. on Sunday, February 7th. A six-week lecture series, a book discussion series, and art exhibit are also planned in conjunction with the exhibit. Admission to the exhibit and all related programs are free and open to the public. For more information, contact the Main Salt Lake City Library at 524-8200.

**CALENDAR**

Now through February 21: Aztec Exhibit, Denver Museum of Natural History. Call (303) 322-7009 for more information.

January 15: UPAC Ballots due back to Julie Howard for UPAC election.

January 18: Dr. Steven Simms, USU Professor of Anthropology, will discuss Fremont sites along the Great Salt Lake and will challenge the notion of pristine landscape. Utah Museum of Natural History Winter Lecture Series: 500 Years at the Edge. East High School Auditorium, 7:30 p.m., Admission \$5 (Admission to all four lectures in the series can be purchased in advance for \$15. Please call Marlene at 581-4887 for more information).

January 21: "Ethic of Conquest: European Background and Reaction to Columbus Discovery" by Professor Glenn Olsen, University of Utah. Main Library Lecture Hall, 209 East Fifth South, SLC, 7 p.m., no admission charge.

January 25: Dr. Garry Rogers, author of Then and Now: A Photographic History of Vegetation Change in the Central Great Basin Desert, will provide a unique visual presentation of repeat photography. East High School Auditorium, 7:30 p.m., Admission \$5.

January 30 - February 28: "Seeds of Change" exhibit, Salt Lake City Main Library, 209 East Fifth South, SLC. No admission.

February 1: Allan Savory, director of the Center of Holistic Resource Management, New Mexico, will address the issue of range animals and their impact on erosion and plant diversity. East High School

Auditorium, 7:30 p.m., Admission \$5.

February 4: "Encounter of Cultures, View of Indigenous Peoples" by Dr. Gary L. Parnell, Snow College. Main Library Lecture Hall, 7 p.m., no admission charge.

February 8: William Kittredge, author of Hole in the Sky will present an original piece written for this event. He will also address the question of sustainability and the role of the community in that process. East High School Auditorium, 7:30 p.m., Admission \$5.

March 12-13: UPAC Spring Meeting, Southern Utah State University campus, Cedar City, UT. Details in February UPAC News.

April 14-17: Society for American Archaeology Annual Meetings, St. Louis, Mo.

Week of May 3: Utah Archaeology Week Contact Kevin Jones at the Division of State History for more information.

**ARCHAEOLOGY JOBS**

Director of Archaeological Services, Western Wyoming Community College, Rock Springs, WY. This is a full-time, 12-month per year position with duties to commence on or before March 15, 1993. The primary responsibility of this position is the administration of the cultural resources program. Duties associated with this position include all aspects of contract research including cost estimates, contract negotiations, personnel supervision, technical guidance in research projects, field supervisor of projects and supervision of lab analysis and project reports.

Minimum qualifications for this position include a Master's Degree in Anthropology with a specialization in New World Archaeology or equivalent plus five years of professional work experience in contract archaeology.

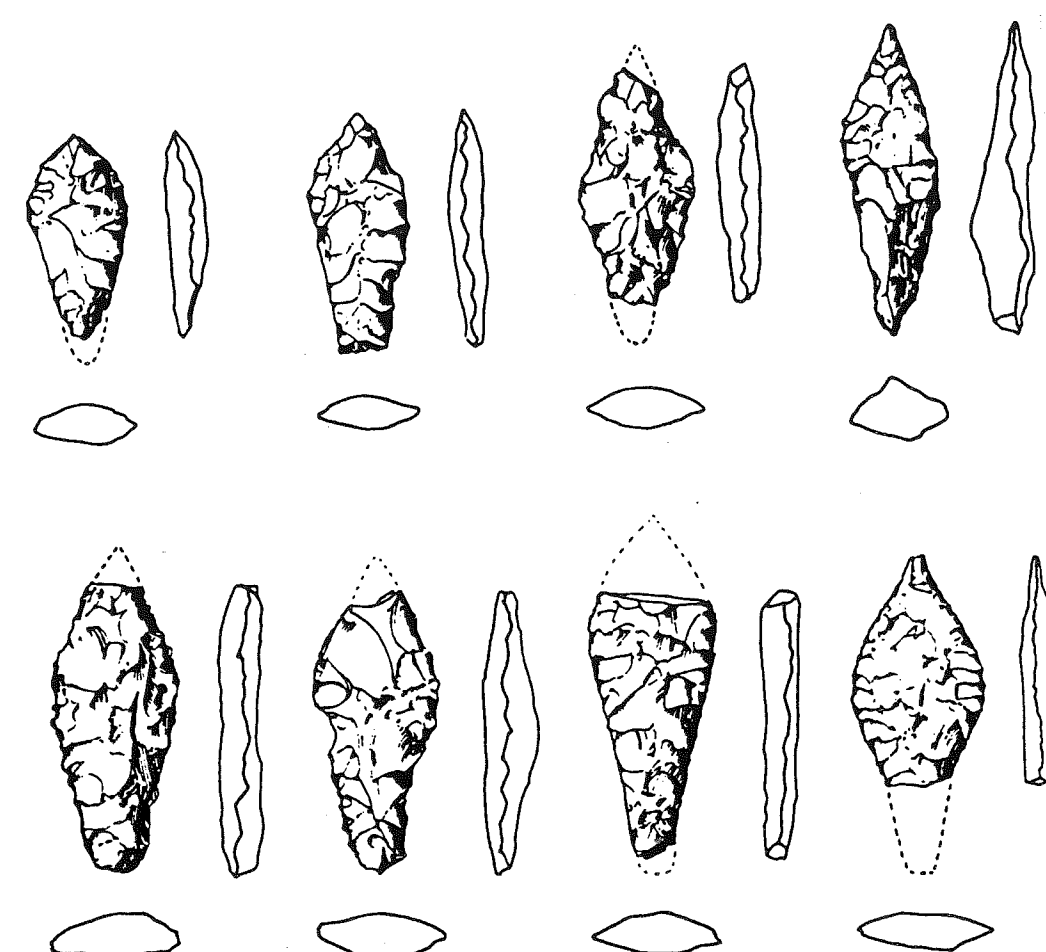
Closing date for receipt of completed WWCC application forms is December 15, 1992. Letter of application, resume, academic transcripts are also required.

For further information regarding this position, application forms and a detailed position description, please contact: Personnel Office, Western Wyoming Community College, P.O. Box 428, Rock Springs, Wyoming 82902-0428 or call (307) 382-1610.

**LIST OF ITEMS APPENDED TO THE DECEMBER '92 UPAC NEWS:**

1. Ballot for Voting Members
2. Letter from Advisory Council on Historic Preservation to Wilson Martin re: first draft PA, 6/11/92.
3. Letter from Wilson Martin to Steve Simms re: "creative mitigation," 6/25/92.
4. Memo from Wilson Martin re: Policies Governing the Antiquities Section, 7/20/92
5. UPAC fall Treasurer's Report
6. Draft Programmatic Agreement, fall '92 version.
7. Zinj Magazine order form.

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**UTAH PROFESSIONAL ARCHAEOLOGICAL COUNCIL**  
**PRESIDENT:** Steve Simms, Dept. of Sociology/Anthropology, Utah State University, Logan, UT 84322-0730 (801) 750-1277  
**VICE-PRESIDENT FOR MEMBERSHIP AND ETHICS:** Stan McDonald, Manti-LaSal National Forest, 599 W. Price River Dr., Price, UT 84501 (801) 637-2817  
**VICE-PRESIDENT FOR GOVERNMENTAL AFFAIRS AND RESEARCH:** Betsy Tipps, P-III Associates, 2212 South W. Temple, Suite 21, Salt Lake City, UT 84115 (801) 467-5446  
**SECRETARY:** Julie Howard, Grand Resource Area, BLM, Sand Flats Road, PO Box M, Moab, Utah 84532 (801) 259-8193  
**TREASURER:** Evie Seelinger, Division of State History, 300 Rio Grande, Salt Lake City, UT 84101 (801) 533-4563  
**JOURNAL EDITOR:** Joel Janetski, Museum of Peoples and Cultures, Brigham Young University, Provo, UT 84602 (801) 378-5188  
**NEWSLETTER EDITOR:** Signa Larralde, Salt Lake District, BLM, 2300 West 2370 South, Salt Lake City, UT 84119  
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# Advisory Council On Historic Preservation

The Old Post Office Building  
1100 Pennsylvania Avenue, N.W. #809  
Washington, DC 20004

Reply to: 710 Simms Street, #401  
Golden, Colorado 80401

June 11, 1992

Mr. Wilson G. Martin  
Deputy State Historic Preservation Officer  
Department of Community and Economic Development  
300 Rio Grande  
Salt Lake City, Utah 84101-1182

REF: Programmatic Agreement Regarding Compliance with Section 106 of the National Historic Preservation Act and Other Historic Preservation Authorities in the State of Utah (January 1992)

Dear Mr. Martin:

On February 6, 1992, we received the referenced document for our review and comments. We regret the delay in our response to the draft. Clearly, the committee that produced the draft invested considerable time and effort into it, and we wanted to provide the same careful consideration in our review. Consequently, we circulated the draft to our offices in Washington, D.C., to obtain as broad a Council staff perspective on the draft as possible.

The comments we received from Council staff outside the Western Office, and our own perception of the draft are in agreement. The purposes of the draft agreement are valid and worthy of our support, and the concept of using "protocols", in part to accomplish these goals, has merit. However, the draft agreement fails to achieve its identified purposes. Instead, it establishes a standard process with a maze of decision points, cross-referenced with a series of protocols that imparts greater confusion, complexity and uncertainty than the normal Section 106 review process.

The draft agreement presents important concepts for its implementation that remain undefined, fall-safe and review mechanisms have been deleted from the earlier draft, the public is not provided with an "improved" manner of participation in consultation, and many elements of the draft lack clarity and logical consistency. The Appendixes lack contextual justifications and are methodologically weak with a clear archaeological bias. These problems and deficiencies lead us to conclude that even with substantial revisions, consultation will take considerably more time and effort, and the likelihood of developing an acceptable agreement remains in doubt.

Item 2



Norman H. Bargerter  
Governor  
Max J. Evans  
Deputy

Department of Community & Economic Development  
Division of State History  
Utah State Historical Society

300 Rio Grande  
Salt Lake City, Utah 84101-1182  
(801) 532-5755  
FAX (801) 364-6436

Steve Simms  
Associate Professor and President  
Utah Professional Archaeological Council  
Utah State University  
Logan, Utah 84322-0730

June 25, 1992

Dear Mr. Simms:

I appreciate your letter of May 26, 1992, concerning our Programmatic Agreement. We are pleased that UPAC likes the concept of alternative mitigation. We would prefer to call it creative mitigation as we continue to evolve this idea.

We also appreciate the professional involvement of the archaeological community in cultural resource management. The archaeological community is one of many important partners in proper cultural resource mitigation. There is also a broad general public who are interested in seeing cultural resource management return product for their enjoyment. These products can vary from information and interpretation, to experiences. Of course it is hoped that we have good archaeological research foundation for these products. Our hope is that through creative mitigation, we will reach a much wider audience and serve the broader purposes of the historic preservation acts. We welcome the support of the Utah Professional Archaeological Council to achieve these goals.

In your letter you mentioned many problems with the way cultural resource has been handled in Utah. We have moved hard and aggressively to try to overcome some of these problems. In July 1988, all the archaeological comment functions were moved under the State Archaeologist. Since that time the State Archaeologist has been responsible for all our archaeological comments. There may be some misunderstanding among the Utah professional archaeological community concerning our policy regarding this. We have never wanted to screen or filter, or in anyway rewrite the professional archaeological comments. To clarify this point, we supported the new legislation which strengthens this area. Under our organizational structure, the Antiquity Section is more than just the State Archaeological Office, it also functions as the Archaeology Section for all federal funded programs including 106 Review and State Review under the new 404 provisions of 9-8-404. We now include in our 106 letters an indication when the Antiquity Section has chosen not to comment. We, of course, would like to hear from you when comments are not fully provided in order that the best professional approach may be followed in cultural resource management cases.

The Council, SHPO and agencies continue to have several other options available. We could work more closely with the agencies to develop more effective compliance with the normal process at 36 CFR § 800.4 through 800.6. Also, the regulations provide for development of a State substitute review process pursuant to 36 CFR § 800.7. Alternatively, we could re-examine Tom King's 8/27/91 draft, and attempt to develop a document more consistent with the specificity and direction it provides.

A fourth option also remains open for consideration. Given the complexity of subsuming the review of four major agencies' undertakings under one agreement, and the diversity of their needs and programs, the agencies may be better served by initiating consultation with the Council for the development of agency-specific programmatic agreements. Under this option, the Council, SHPO and individual agencies would be able to devise more efficient and effective review processes under the terms of agency-specific programmatic agreements that are tailored to their programs, management needs, missions and mandates. We believe this option has the greatest potential of succeeding, and urge the participants to reconsider pursuing it.

We invite all of the participants to express their views to us. Thus far we have received no formal comments about this agreement from any of the Federal agencies involved. We have received comments from the Utah Professional Archaeological Council and P-III Associates who share many of the concerns expressed briefly here.

If you have questions regarding these matters, please contact Alan Stanfill at (303) 231-5320.

Sincerely,

Claudia Nissley  
Director, Western Office  
of Project Review

cc:

Steven R. Simms  
Associate Professor & UPAC President  
Anthropology  
Utah State University  
Logan, UT 84322-0730

You also bring up an important point about reallocation of resources. Of course our position would be that the reallocation of resources saved through streamlining should serve the broadest needs of preservation.

Archaeology is one of the main role players in this process. I am sure the SHPO, Federal managers, and others will reallocate the resources based upon the public's interests and demands for services including those from the archaeological community.

The reallocation of resources will largely be a federal option, since the State Historic Preservation Officer does not own or control land, nor does the cultural resource management process allow the state to make the final decision for the federal agency. The role that archaeologist will play will be dependent upon the credibility and professionalism in the institutions in which they are housed, BLM, Forest Service, National Park Service or other Federal agencies that have archaeological consultants, such as the Soil Conservation Service. As archaeologists become generalists rather than specialists, they will be better positioned to be a part of resource allocation. As any managers know, no one interest can dominate the decisions of resource allocation.

We expect to see much from the research archaeological community that can be helpful as we strive to implement new more broadly based cultural resource management policies. We would hope that UPAC would recognize that there are many players at the table and would recognize the need to include a broad public involvement, public participation, public product, and tourism. Products such as these are all important and essential in quality cultural resource management.

Sincerely,

Wilson G. Martin  
Associate Director

cc: David Madsen  
Barclay Gardner  
Max Evans



37-5000-0000  
Salt Lake City, Utah 84111-0000  
801-532-5700  
439-3400 344-4474

M E M O R A N D U M

DATE: July 20, 1992  
TO: Board of State History  
FROM: Wilson Martin  
SUBJECT: Policies governing the Antiquities Section.  
GOAL: Through the use of a Task Force, examine the new Antiquities Protection Act and develop recommended policies to guide the Division in the implementation of that Act and present these policy recommendations to the Board for further consideration and/or adoption.

Now that this important legislation has passed and rules have been enacted, it is clear that several policy issues need to be examined. Therefore, we recommend to the Board that a Task Force be established for a period not to exceed four months. Enclosed is a list of 14 Task Force members.

Staff support would be provided as follows:  
Wilson Martin, Associate Director, Division of State History  
Tom Roberts, legal counsel, Attorney General's Office  
David Madsen, State Archaeologist  
David Gillette, State Paleontologist

Issues to be examined by the Task Force:

- Permits:  
State law specifies that the Division issue permits. State Archaeologist supervises field work and Antiquities Section provides application forms for permits. In addition, State Lands now issues permits for school and institutional trust lands. Also, the Museum of Natural History has a role to play in curating of specimens and artifacts coming from permitted projects.  
There is a need to address many questions regarding permits. Who does what, when, and where does the role of the Division of State History stop and the Museum of Natural History begin? What curatorial responsibility should we assume for archaeological and paleontological resources? How should permitting and maximizing science work, etc?

Board of State History - President: Allen - Members: C. Barrett - Bob E. Leach - David A. Blackler -  
Theodore G. Gammill - Peter J. Van - Donald R. Housman - David L. May - Ann Allen Perry - Dennis Sanderson - Jerry White

Item 4

UPAC  
Financial Statement  
November 6, 1992

Balance - November 6, 1992: \$5,173.78  
Expenses 3/21/92 - 11/6/92

Advertising	30.00
Legal Costs	150.00
Non-Profit Corp. Fee	10.00
Office (Copying, Phone, Postage, Stationery)	143.91
*UPAC/CCAP Meeting	156.75
UPAC Newsletter, 2 Issues	346.74
Utah Archaeology 1991	125.00
Total Expenses	\$961.40

Deposits 3/21/92 - 11/6/92

Interest	102.14
Membership Dues	875.00
*UPAC/CCAP Mtg. Reg.	52.00
Utah Archaeology Sales	140.00
Total Deposits	\$1,169.14

3/20/92 Balance: \$4,966.04  
Expenses -961.40  
Deposits 4,004.64  
11/6/92 Balance \$5,173.78

\*Total UPAC/CCAP Meeting Costs - \$22.75 (156.75/Expenses minus 134.00/Total Registration Fees Received)

111 current UPAC members:

1 Affiliate
4 Associate
18 Complimentary
3 Fellows
84 Voting
1 Subscriber

Membership Summary

- State law provides that the Antiquities Section be responsible for the collection, preservation, and administration of specimens until they are placed in a repository or curation facility.  
What role should we play here? How long should we retain before curation? What policies should be established in this area? Should we be a curation facility?
- State law provides that we cooperate with state, local, and federal agencies in carrying out the purpose of this Act.  
Should the Division provide services to state and local agencies? Should we conduct surveys and excavations for state and local agencies and if so, who should conduct post-field work analysis and study and what time frames should be allowed?
- State law specifies that the Antiquities Section stimulates research, study, and activities in the field of Antiquities.  
Currently Antiquities Section solicits grants for research projects. What should be the policy on application for research grants? Does this compete with universities and other research centers? Should we conduct research and study or is it our role to stimulate these efforts?
- UOOT, state lands and federal agencies have archaeological staff.  
What are problems and guiding policies regarding these agencies? Should we take on permitting for state lands or federal lands?
- There is currently a new Paleontological Protection Act being considered on the national level.  
What policies should guide the Division in this area?
- State law provides that the Antiquities Section mark, protect, and preserve sites.  
One way is nomination to the State and National Register. What policies should guide us in state nominations and state landmark designation. There are other activities which protect sites. What policies should guide this effort, i.e., 106 Review and State Review under 404.
- State law provides that the Antiquities Section administer site survey and excavation records and the editing and publishing of Antiquities records.  
Should these records be defined as site survey and excavation records only or should a broader interpretation be applied?
- State law provides that we coordinate with medical examiners regarding burial discoveries.  
What policies should guide us here?
- Considering these and other policy issues, where is the best location for the Antiquities Section State Archaeologist, State Paleontologist? Museum of Natural History, State Parks, new division or here?  
A question worthy of discussion after above policies are addressed.
- Staff support is willing to produce white papers outlining policies for consideration and providing justification for positions.

PROGRAMMATIC AGREEMENT

BETWEEN  
THE STATE OF UTAH, DIVISION OF STATE HISTORY,  
HISTORIC PRESERVATION OFFICER;

AND

THE UNITED STATES DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, INTERMOUNTAIN REGION;

THE UNITED STATES DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, UTAH;

THE UNITED STATES DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, ROCKY MOUNTAIN REGION; and

THE UNITED STATES DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION, UTAH DIVISION

REGARDING SIMPLIFICATION OF CONSULTATION UNDER  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

AND OTHER HISTORIC PRESERVATION AUTHORITIES

IN THE STATE OF UTAH

THIS PROGRAMMATIC AGREEMENT IS ENTERED INTO, by and between the State of Utah, through the State Historic Preservation Officer ("the SHPO"), and the following Federal Agencies: The United States Department of Agriculture, Forest Service, Intermountain Region; The United States Department of the Interior, Bureau of Land Management, Utah; The United States Department of the Interior, National Park Service, Rocky Mountain Region and The United States Department of Transportation Federal Highway Administration, Utah Division, ("the Agency" or "the Agencies").

THIS AGREEMENT IS ENTERED INTO pursuant to the provisions of Utah Code Ann. (1993, as amended) § 11-13-1 et seq and in reference to a Memorandum of Understanding (signed 4-11-88) between these parties wherein they agree to coordinate management and development of cultural resources and the general terms and authorities described in Section 2 of the National Historic Preservation Act of 1966 (P.L. 89-665; STAT 915; 16 U.S.C. & 70 as amended).

WHEREAS, the purposes of this agreement are, (1) to simplify routine Section 106 review of undertakings in Utah in order to reduce paperwork and to increase efficiency and effectiveness; and (2) to facilitate better coordination and

Item 5

Item 6: Note - signature page was omitted to save space.



#### E. Dispute Resolution

1. Should an Agency object to any action carried out, proposed, or directed by another Agency, the two parties shall consult with each other to resolve the objection. If it is determined that the objection cannot be resolved, the Agency shall forward all documentation relevant to the dispute to the SHPO. Within 30 days after receipt of all pertinent documentation, the SHPO will either:
  - a. provide recommendations, which the Agencies will use to reach a final decision regarding the dispute; or
  - b. comment on the matter pursuant to 36 CFR § 800.6 (b), with reference only to the subject of the dispute. The Agency's duty to carry out all other actions under this Agreement which are not the subject of the dispute will remain unchanged; or
  - c. refer to Advisory Council.
2. If, at any time during implementation of the provisions of this Agreement, an objection to any such measure or its manner of implementation by or on behalf of an Agency is raised by a member of the public, the Agency shall take the objection into account and consult as needed with the objecting party, the SHPO, other agencies, or other interested parties.
3. Should an objection be raised by an Agency or a member of the public with regard to SHPO performance under this agreement, the SHPO will consult as needed with the objecting party and others to resolve the objection.
4. Should the SHPO raise objections about how an Agency may be performing under this Agreement, the SHPO, the Advisory Council and the Agency will consult as needed to resolve the objection.

#### F. Conflicts With Other Agreements

1. Should a conflict occur between the terms of this Agreement and the terms of another Programmatic Agreement or Memorandum of Agreement executed in accordance with 36 CFR § 800, the signatories to this Agreement will consult with the parties to the conflicting agreement to seek resolution of which terms should be followed, and shall document the results of their consultation.

#### G. Termination, Withdrawal, and Failure to Carry Out Terms

1. The SHPO may terminate this Agreement by providing thirty (30) days notice of the intent to terminate to the other parties to

the Agreement. The parties will consult during the thirty (30) day period prior to termination to seek agreement on amendment of the Agreement or other action that could avoid termination. In the event of termination, the agencies will comply with 36 CFR §§ 800.4 through 800.6 with regard to Individual Undertakings previously covered by this Agreement.

2. An Agency may withdraw from participation in this Agreement by so notifying the other signatories. In the event of withdrawal, the withdrawing Agency is obligated to comply with 36 CFR § 800.4 through 800.6 with regard to all Undertakings previously covered by this Agreement.

3. In the event an Agency is determined to be deficient in complying with the terms of this Agreement, the SHPO may withdraw consultation under the terms of this Agreement. Withdrawal of consultation would require the Agency to comply with 36 CFR §§ 800.4 through 800.6 with regard to Undertakings previously covered by this Agreement.

#### H. Informal Consultation

1. Nothing in this Agreement shall be construed to prohibit or discourage informal communication and consultation among agencies, the SHPO, the Advisory Council, and others during the identification and management of historic properties. Rather, it is the intent of this agreement to facilitate productive communication and consultation.

#### I. Effective Date

1. This Agreement is effective as of the last date written below. It will continue in force in perpetuity until and unless terminated by the provisions included in this Agreement.

#### J. Release of Duties Otherwise Required by Section 106

1. Execution and implementation of this Agreement evidences that the undersigned Agencies have satisfied their Section 106 responsibilities for identifying historic properties and for all individual undertakings which are identified as no historic properties, or no effect to historic properties.

#### Appendix I: MANAGEMENT PROTOCOL FOR THE IDENTIFICATION OF UNDERTAKINGS NOT SUBJECT TO FURTHER REVIEW.

##### PURPOSE

To define Agency activities which may meet the technical definition contained in 36 CFR 800.2(o) but which have so little potential to affect historic properties that they will not be considered "undertakings" or be subject to review under 36 CFR Part 800 by mutual agreement of the Agencies signatory to this Agreement.

##### PRESCRIPTION

1. Each Agency may develop a list of activities which the Agency believes should be exempted from further review. The SHPO shall comment on the proposed list. After agreement on the list is reached the SHPO shall ensure that the Agencies' lists are available to the public, and that the public has reasonable opportunity to comment on the proposed list.
2. The Agency shall ensure that all comments by the SHPO, comments by other participating agencies, and public comments are addressed prior to final submission of the list to the SHPO.
3. Each Agency shall provide a summary report of the application of this protocol as part of an Annual Report to include any written comment the Agency may have received about an Undertaking or any issue which requires special attention.
4. Projects on the approved list do not require any other action by the Agency, unless further action is triggered by SHPO consultation.

##### STANDARDS AND GUIDELINES

1. In order to identify Undertakings Not Subject to Further Review the submitted list should include the proposed category using an accurately descriptive title, followed by a definition and description of the activity(s).
2. The Agency's cultural resource staff is authorized to prepare the Agency's proposed list of categories if the Agency's lead cultural resource specialist approves of the proposed list.
3. The lists shall identify when specific projects may be inappropriate for this protocol and when further action, such as SHPO consultation, is necessary.
4. Only a Professional Cultural Resource Specialist has the authority to apply this protocol. It is the duty of that specialist to see that the protocol is applied correctly in each circumstance. If there is any question about how to apply this protocol contact the SHPO.
5. If there are any questions about whether this protocol applies to a particular activity, contact the SHPO. When this protocol is followed as outlined above, 106 consultation has been satisfied.

#### Appendix II: MANAGEMENT PROTOCOL FOR EFFORTS NECESSARY TO IDENTIFY HISTORIC PROPERTIES

##### PURPOSE

To clarify how Agencies may determine the level of survey or information needed to satisfy the Section 106 process.

##### PRESCRIPTIONS

1. Establish the Undertaking's area of potential effect (APE).
2. Review existing information on historic properties potentially affected by the Undertaking, including any data concerning the likelihood that unidentified historic properties exist in the APE.
3. Seek information in accordance with Agency planning processes from local governments, Indian Tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the APE.
4. Based on this assessment, determine any need for further actions such as field surveys and predictive modeling to identify historic properties.
5. Document the project for Agency project files and provide a brief, narrative report on how this Protocol was applied as part of an annual report.

##### STANDARDS AND GUIDELINES

1. When defining the (APE) include an assessment of the following:
  - a. the cumulative effects;
  - b. the size, scope and nature of the Undertaking;
  - c. the impact on the region's cultural resources
2. Generally, the level of survey will be commensurate with the likelihood of Historic Properties being present, the degree of potential effect on Historic Properties, and the nature and distribution of the Historic Properties.
3. No field inventory is required when:
  - a. previous ground disturbance has modified the surface so extensively that the likelihood of finding cultural properties is negligible and no standing structures exist within the project area.
  - b. an adequate inventory has previously been performed.
  - c. an area is not likely to contain historic properties.
  - d. monitoring is an acceptable substitute.
4. With the concurrence of the SHPO, a phased-survey approach may be appropriate for select Undertakings. This can involve a sample or overview inventory at the time of the NEPA assessment, followed by a more intensive inventory, if warranted, following project approval but prior to project implementation.

Document the reason for determining that no survey is required. When properly documented and reported in the Agency's Annual Report, Section 106 consultation has been satisfied.

If a survey is required, proceed as outlined in this Agreement either with another protocol or under normal 36 CFR 800 procedures.

**Appendix III: MANAGEMENT PROTOCOL ESTABLISHING THAT THERE ARE NO SITES OR HISTORIC PROPERTIES ELIGIBLE FOR INCLUSION ON THE NATIONAL REGISTER.**

**PURPOSE**

All sites, features, and artifacts have the potential to yield information important to understanding Utah's history and prehistory. However, this protocol defines some classes of cultural phenomena that typically lack integrity or fall below the threshold definition of a "site." This protocol will identify sites which are present, but not eligible and projects where there is no "site" of any kind.

**PRESCRIPTIONS**

1. Examine the property to determine if it meets any of the criteria below.
2. Document the find to Agency standard.
3. Document the determination of "no site," or "no Historic Property" in the Agency project file.
4. Document all action taken and provide a summary report of the application of this protocol to SHPO part of an Annual Report.
5. Notify all who have expressed an interest in an Undertaking that background research, field survey and consultation with concerned parties has revealed no evidence of historic properties within the area of potential effect. Include in the notification the location(s) where the survey report can be reviewed and how copies can be obtained.
6. If no properties are encountered, proceed with the project. If properties are encountered which are not eligible for the National Register proceed with the project.

**STANDARDS AND GUIDELINES**

1. Properties are generally not eligible when they are:
    - a. Less than 50 years of age.
    - b. Isolated artifacts--fewer than 10 artifacts within 100 square meters.
    - c. Disturbed subsurface archaeological deposits.
    - d. Buildings and structures moved from their original location when the new location is not compatible with the historic nature of the building or structure, or unless movement has taken place within the historic past.
    - e. Buildings or structures with substantially modified exteriors.
  2. All sites must be evaluated by a qualified professional cultural resource specialist.
  3. Less than full IMACS and/or UHCS site documentation is acceptable, provided enough documentation exists to show that the standards have been met.
- When these procedures are followed and documented the 106 consultation process has been satisfied.

**Appendix IV: MANAGEMENT PROTOCOL FOR ESTABLISHING THAT AN UNDERTAKING WILL HAVE "NO EFFECT" ON A HISTORIC PROPERTY.**

**PURPOSE**

This protocol provides for a process to determine whether an Undertaking will have no potential to effect a Historic Property.

**PRESCRIPTIONS**

1. Analyze the potential effect of an Undertaking, including effects that result directly from construction to less immediate impacts that occur due to the project.
2. Notify all those consulted during identification, and any others who have expressed interest in the Undertaking that background research, field survey, and consultation with concerned parties have resulted in the determination that the Undertaking will have no effect on historic properties. Explain the rationale for this determination.
3. Include in the notification a description of any actions the Agency will take to ensure that no effect occurs, such as project modification, fencing to avoid intrusion onto an archaeological site during construction, etc. Whenever such protective action is necessary, provide specific mechanisms to ensure that the action is actually taken at the appropriate point in implementing the Undertaking. Include in the notification the location at which a copy of the survey report can be reviewed, and any limitations on such a review. Include in the notification the statement that anyone who questions or objects to the determination may contact the Agency or the SHPO.
4. To ensure that this Protocol is used effectively document that "no effect" will occur to any Historic Property in the Agency file and proceed with the project. Include a report on how the protocol was implemented in the Agency's Annual Report.
5. Include in the notification the location at which a copy of the survey report can be reviewed, and any limitations on such a review. Include in the notification the statement that anyone who questions or objects to the determination may contact the Agency or the SHPO, and provide addresses for both.

**STANDARDS AND GUIDELINES**

If these procedures are followed and properly documented 106 consultation has been satisfied.



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