

## 7 CONSULTATION AND COORDINATION

### 7.1 PUBLIC INVOLVEMENT

An NOI to prepare a PEIS and possible land use plan amendments for allocation of oil shale and tar sands resources on lands administered by the BLM in Colorado, Utah, and Wyoming was published in the *Federal Register* on April 14, 2011 (BLM 2011). The NOI articulated a preliminary purpose and need for the proposed action of amending land use plans; identified planning criteria; initiated the public scoping process; and invited interested members of the public to provide comments on the scope and objectives of the PEIS, including identification of issues and alternatives that should be considered in the PEIS analyses.

During the scoping period, the BLM conducted public meetings in April and May of 2011, in Salt Lake City, Vernal, and Price, Utah; Rock Springs and Cheyenne, Wyoming; and Rifle and Denver, Colorado. Approximately 28,800 people participated in the scoping process by attending public meetings and/or submitting comments. The BLM published a scoping report in October 2011, summarizing and categorizing issues, concerns, and comments, and considered them in developing the alternatives in this 2012 PEIS. A summary of scoping comments is provided in Section J.3 of Appendix J of this document.

The BLM published a Notice of Availability for the *Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming* (BLM 2012a) on February 3, 2012, and announced a 90-day public comment period that closed on May 4, 2012. Open house meetings were held during March 2012 to provide additional information on the Draft PEIS. Approximately 160,000 comment letters were received, about 600 of which contained substantive comments, and roughly 160,000 appeared to be similar or identical to one another (i.e., form letters). Comments on the Draft PEIS received from the public, cooperating agencies, other federal agencies, and from internal BLM review were considered and incorporated, as appropriate, into this Proposed RMP Amendments/Final PEIS. Issues identified in the comments include air quality, climate change, water quality and quantity, socioeconomic concerns, wildlife concerns, and cultural resources concerns, as well as concerns related to the agency's compliance with FLPMA, NEPA, and the Energy Policy Act of 2005. These issues are summarized and the resolution of them described in the Comment Response Document in Volume 5 of this Final PEIS.

As a result of public comments and upon further review, corrections/revisions were made to the alternatives and changes were made from what was presented as the Preferred Alternative in the Draft PEIS. These changes have resulted in a Proposed Plan Amendment that references new acreage figures.

## 7.2 GOVERNMENT-TO-GOVERNMENT CONSULTATION

The BLM works on a government-to-government basis with federally recognized Indian tribes. As a part of the government's "treaty and trust" responsibilities, the government-to-government relationship was reaffirmed by the federal government on May 14, 1998, with E.O. 13084, and was strengthened on November 6, 2000, with E.O. 13175 (U.S. President 1998, 2000). DOI recently issued the *Department of the Interior Policy on Consultation with Indian Tribes* (DOI 2011). The BLM coordinates and consults with tribal governments, native communities, and tribal individuals whose interests might be directly and substantially affected by activities on public lands. It strives to provide the Indian tribes with sufficient opportunities for productive participation in BLM planning and resource management decision making. In addition, Section 106 of the NHPA requires federal agencies to consult with Indian tribes on undertakings on tribal lands and on historic properties of significance to the tribes that may be affected by an undertaking (36 CFR 800.2 (c)(2)). BLM Manual 8120 (BLM 2004a) and Handbook H-8120-1 (BLM 2004b) provide guidance for Native American consultations.

The BLM developed a process to offer specific consultation opportunities to "directly and substantially affected" tribal entities, as required under the provisions of E.O. 13175 and to Indian tribes as defined under 36 CFR 800.2(c)(2). Beginning in July 2011, the three BLM State Directors contacted the 25 federally recognized tribes located in or with historical or cultural ties to the three-state study area. The letters sent by the BLM State Directors provided notification of the BLM's intention to take a fresh look at the land use allocation decisions regarding the management of oil shale and tar sands resources made in 2008. The BLM has followed up with additional letters, e-mails, telephone calls, and meetings for tribes who have expressed a wish to continue government-to-government consultation. Once the Draft PEIS was completed (BLM 2012a), a second mailing was sent to all federally recognized tribes with interests in the area under consideration. Follow-up meetings and discussions occurred after the Draft PEIS was issued. Table 7.2-1 lists the tribes that were contacted by state and describes the status of the ongoing consultations with each tribe.

Eight tribes have responded by letter, e-mail, or telephone to communications from the BLM, or have met with local BLM personnel. Three tribes (the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, and the Ute Indian Tribe) have met with the BLM to discuss and field visit wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado, and discuss their protection. The Ute Indian Tribe also discussed the leasing of split estate lands on their reservation (Section 3.10.2). Interaction with the Ute Indian Tribe is ongoing. Through the response form, two tribes (the Hopi and Eastern Shoshone) expressed an initial interest in meeting with the BLM to discuss the project. The Hopi did not respond to follow-up communications, and the Eastern Shoshone were unable to meet with the BLM. One Navajo Chapter (Navajo Mountain) requested additional information, which they received. The BLM followed up with all three tribes, providing information about the project. Two tribes (the Pueblo of Santa Clara and the Paiute Indian Tribe of Utah) have indicated through the Tribal Response Form that further consultation is not needed. The remaining 10 tribes (Kaibab Paiute Tribe, Northern Arapaho Tribe, Northwestern Band of the Shoshone Nation, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Zia, Pueblo of Zuni, San Juan Southern Paiute Tribe, Shoshone-Bannock Tribes, and White Mesa Band of Ute Mountain Ute Tribe) and 7 Navajo Chapters

**TABLE 7.2-1 Government-to-Government Consultation Summary**

Tribes Contacted for Consultation on the PEIS	Status of Consultation Process
<b><i>Tribes with Ties to Colorado</i></b>	
Eastern Shoshone Tribe, Fort Washakie, WY	The tribe initially expressed a desire to be a cooperating agency. They did not sign the required MOU. Invited to but did not participate in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado. Consultation is ongoing.
Southern Ute Indian Tribe, Ignacio, CO	Invited to and participated in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado. Follow-up consultation is ongoing.
Ute Mountain Ute Tribe, Towaoc, CO	Met with the BLM for project overview. Requested that the BLM meet with the Ute Mountain Ute Tribe, the Southern Ute Tribe, the Ute Indian Tribe (Uintah and Ouray Reservation), and the Eastern Shoshone Tribe to field visit wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado, and discuss their protection. Invited to and participated in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area. Consultation is ongoing.
Ute Indian Tribe (Uintah and Ouray Reservation), Fort Duchesne, UT	Contacts continue regarding potential leasing for commercial oil shale and/or tar sands development on split estate lands located in the Hill Creek Extension of the Uinta and Ouray Reservation. Invited and participated in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado. Consultation is ongoing.
<b><i>Tribes with Ties to Utah</i></b>	
Hopi Tribe, Kykotsmovi, AZ	The tribe initially indicated it desires further contact regarding the EIS but has not responded to follow-up communications. Consultation opportunities will continue to be provided.
Kaibab Paiute Tribe, Fredonia, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.

**TABLE 7.2-1 (Cont.)**

Tribes Contacted for Consultation on the PEIS	Status of Consultation Process
Navajo Nation, Window Rock, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Aneth Chapter, Montezuma Creek, UT	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Dennehotso Chapter, Dennehotso, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Mexican Water Chapter, Teec Nos Pos, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Navajo Mountain Chapter, Tonalea, AZ	The chapter requested further information, which was provided. Consultation opportunities will continue to be provided.
Navajo Nation, Oljato Chapter, Monument Valley, UT	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Red Mesa Chapter, Montezuma Creek, UT	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Navajo Nation, Teec Nos Pos Chapter, Teec Nos Pos, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Northwestern Band of Shoshone Nation, Pocatello, ID	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Paiute Indian Tribe of Utah, Cedar City, UT	The tribe has indicated that further consultation is not needed.
Pueblo of Laguna, Laguna, NM	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Pueblo of Nambe, Santa Fe, NM	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.

**TABLE 7.2-1 (Cont.)**

Tribes Contacted for Consultation on the PEIS	Status of Consultation Process
Pueblo of Santa Clara, Espanola, NM	The tribe has indicated that further consultation is not needed.
Pueblo of Zia, Zia Pueblo, NM	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Pueblo of Zuni, Zuni, NM	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
San Juan Southern Paiute Tribe, Tuba City, AZ	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Ute Indian Tribe (Uintah and Ouray Reservation), Fort Duchesne, UT	Contacts continue regarding potential leasing for commercial oil shale and/or tar sands development on split estate lands located in the Hill Creek Extension of the Uinta and Ouray Reservation. Invited to and participated in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado. Consultation is ongoing.
White Mesa Band of the Ute Mountain Ute Tribe, Blanding, UT	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
<b><i>Tribes with Ties to Wyoming</i></b>	
Northern Arapaho Tribe, Fort Washakie, WY	No response to letters and follow-up phone calls. Consultation opportunities will continue to be provided.
Eastern Shoshone Tribe, Fort Washakie, WY	The tribe initially expressed a desire to be a cooperating agency. They did not sign the required MOU. Invited to but did not participate in the field trip with the BLM to consult on wickiup sites and cultural landscapes in the Yellow Creek area, Rio Blanco County, Colorado. Consultation opportunities will continue to be provided.

(Aneth, Dennehotso, Mexican Water, Oljato, Red Mesa, Teec Nos Pos, and Window Rock) have yet to respond to the BLM's request for consultation.

The BLM will continue to provide consultation opportunities for interested tribes and will continue to keep all tribal entities informed about the NEPA process for the PEIS. In addition, the BLM will continue to implement government-to-government consultation on a case-by-case basis for site-specific oil shale and tar sands resource development projects (see Appendix L for copies of the correspondence).

### **7.3 COORDINATION OF BLM STATE AND FIELD OFFICES**

This PEIS is being prepared by the BLM to evaluate potential land use plan amendments for oil shale and tar sands resources on public lands in three states. The BLM Washington, D.C., Office has worked extensively with BLM state offices and multiple district and field offices throughout the course of this PEIS to ensure adequate coordination. BLM state office, district and field office representatives have worked directly with the BLM Washington, D.C., Office staff to share relevant information about the existing planning documents and decisions, the location and nature of natural and cultural resources within the study area, and other land uses within the study area.

In addition, the BLM Washington, D.C., Office Public Affairs Division has coordinated with Public Affairs Office staff from each of the state offices. Jointly, these staff members have been responsible for coordinating all public involvement activities related to the PEIS (e.g., public meetings, local public notifications, and advertisements). Coordination with BLM state, district, and field office staff continued throughout the preparation of the PEIS to ensure that the analysis adequately reflects state- and local-level concerns and issues regarding oil shale and tar sands resources development.

### **7.4 AGENCY CONSULTATION AND COORDINATION**

The BLM invited approximately 55 federal, tribal, state, and local government agencies to participate in preparation of the Oil Shale and Tar Sands PEIS as cooperating agencies. Fourteen agencies expressed an interest in participating as cooperating agencies, and MOUs between these agencies and the BLM were established. The following 14 agencies are participating as cooperating agencies on the PEIS:

- NPS;
- USFWS;
- State of Colorado, Department of Natural Resources and Department of Public Health and the Environment;
- State of Utah;

- State of Wyoming;
- Garfield County, Colorado;
- City of Rifle, Colorado;
- Carbon County, Utah;
- Duchesne County, Utah;
- Grand County, Utah;
- Uintah County, Utah;
- Lincoln County, Wyoming;
- Sweetwater County, Wyoming; and
- Coalition of Local Governments (Wyoming).

Interactions with the cooperating agencies have included notification of the opening of the scoping period; briefing on the draft alternatives; review of preliminary, internal drafts of the PEIS; and informal meetings and discussions.

As required under Section 106 of the NHPA of 1966, as amended, the BLM has initiated consultation with those parties identified in 36 CFR 800.2(c). These parties include the Colorado, Utah, and Wyoming SHPOs, the tribes listed in Section 7.3, and other parties with an interest in consulting under this authority regarding the proposed plan amendments discussed in Chapter 2 and Appendix C. The BLM has also notified the public, in the NOI, that it will use and coordinate public participation opportunities offered and consistent with NEPA and land use planning process to assist the agency in satisfying public involvement requirements under Section 106 (36 CFR 800.2(d)). Consultation with these and other identified parties will be ongoing throughout this project review. (See Appendix L for copies of the correspondence.)

Section 202 of FLPMA, and BLM's planning regulations, require that BLM land use plans, including amendments, be consistent with the planning of other federal departments and agencies, and of the states and local governments, to the extent practicable and consistent with the laws governing the administration of the public lands, including their purposes, policies, and programs. Appendix M presents an explanation of differences between the current proposed land use plan amendments and state and local plans in the study area. Appendix M also includes comment letters submitted by cooperating agencies on the January 2011 Draft PEIS, wherein issues related to these differences were raised.

In addition to coordination with each of the three states in preparation of the PEIS, prior to the approval of proposed plan amendments, the governor of each state will be given the opportunity to identify any inconsistencies between the proposed plan amendments and state or

local plans and to provide recommendations in writing (during the 60-day consistency review period).

## **7.5 EXPLANATION OF THE PUBLIC PROTEST PROCESS FOR THE PROPOSED LAND USE PLAN AMENDMENTS**

As discussed in Chapter 2 and Appendix C, the BLM proposes to amend 10 land use plans in Colorado, Utah, and Wyoming to adopt specific decisions rendered in the PEIS related to land use designations for oil shale and tar sands resources.

Pursuant to BLM's planning regulations at 43 CFR 1610.5-2, any person who participated in the planning process for these Proposed Plan Amendments and has an interest that is or may be adversely affected by the proposed planning decisions may protest approval of the planning decisions within 30 days from date the Environmental Protection Agency (EPA) publishes the Notice of Availability in the *Federal Register*. The regulations specify the required elements of your protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents or available planning records (e.g., meeting minutes or summaries, correspondence) associated with your protest.

E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mailed or faxed protest as an advance copy and will afford it full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of Brenda Hudgens-Williams, BLM protest coordinator, at 202-245-0028, and e-mailed protests to Brenda\_Hudgens-Williams@blm.gov.

All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to one of the following addresses:

Regular Mail:

Director (210)  
Attn: Brenda Hudgens-Williams  
P.O. Box 71383  
Washington, D.C. 20024-1383

Overnight Mail:

Director (210)  
Attn: Brenda Hudgens-Williams  
20 M Street SE, Room 2134LM  
Washington, D.C. 20003

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, be advised that your entire protest – including your personal identifying information – may be made publicly available at any time. While you can ask us in your protest to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The BLM Director will make every attempt to promptly render a decision on each protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the BLM Director shall be the final decision of the

Department of the Interior on each protest. Responses to protest issues will be compiled and formalized in a Director's Protest Resolution Report made available following issuance of the decisions.

Upon resolution of all land use plan protests, the BLM will issue an Approved RMP and ROD. The Approved RMP and ROD will be mailed or made available electronically to all who participated in the planning process and will be available to all parties through the "Planning" page of the BLM national Web site (<http://www.blm.gov/planning>), on the project Web site (<http://ostseis.anl.gov>), or by mail upon request.

## **7.6 ENDANGERED SPECIES ACT SECTION 7 REQUIREMENTS**

Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 USC 1536), directs each federal agency, in consultation with the USFWS or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any listed threatened or endangered species or result in the destruction or adverse modification of critical habitat. Under Section 7 of the ESA, those agencies that authorize, fund, or carry out the federal action are commonly known as "action agencies." If an action agency determines that its federal action "may affect" listed species or critical habitat, it must consult with the USFWS or NMFS (collectively known as the "Services"), or both, whichever has jurisdiction over the species or habitat that may be affected (see 50 CFR 402.02, 402.13–14). If an action agency determines that the federal action will have no effect on listed species or critical habitat, the action agency may make a "no effect" determination. In that case, the action agency does not initiate consultation with the Services and its obligations under Section 7 are complete.

In complying with its duty under Section 7, the BLM, as the action agency, has examined whether amending land use plans to identify lands as available for application for commercial leases for oil shale or tar sands development would have any effects on listed species and/or critical habitat. In making this determination, the BLM also reviewed USFWS' guidance concerning emissions of greenhouse gases and any effects they may cause on listed species and critical habitats, in particular the polar bear, because if and when oil shale and tar sands resources are developed those development activities may result in the emissions of greenhouse gases (Caswell 2008; Hall 2008). As a result of these reviews, the BLM has determined that its proposed action of amending land use plans to allocate areas as available or not available for application for oil shale and tar sands leasing would cause no effect on any listed species or critical habitat.

Because of the nascent character of any oil shale or tar sands industry, it is impossible at present to determine what biological effects on listed species or critical habitat might be "reasonably certain to occur" (50 CFR 402.02). That is, there is no proven commercially viable technology for extracting liquid fuels from oil shale and tar sands. This circumstance is described in the 2008 OSTs PEIS and ROD associated with land use plan amendments to address the management of oil shale and tar sands on the public lands, as well as in the preamble to the 2008

oil shale regulations. Even today, despite ongoing research efforts, there is no such proven technology.

As a result, the specifics of the technology or technologies that may be shown in the future to be commercially viable cannot be predicted with any certainty at this time. Neither can the specific areas (among those generally available) most likely to be developed or the possible environmental consequences of such development be predicted at this time. Therefore, the NEPA analysis associated with the current land use planning initiative, like the 2008 NEPA analysis, will be based for analytical purposes on very general assumptions about the possible technologies, areas, and environmental consequences involved in management of oil shale and tar sands resources.

With respect to compliance with the ESA for this land use planning initiative, the BLM considered preparing a biological assessment (BA) and initiating consultation with the USFWS under Section 7(a)(2) of the ESA. After discussing various approaches in light of the nascent character of the development of oil shale and tar sands resources, and closely examining the regulations for implementing the ESA, the BLM determined, however, that preparation of a BA before a lease- or site-specific project had been proposed would be based largely on conjecture and speculation. There simply would be no way to know before such a proposal is made whether the impacts to be assessed would be those that would actually occur as a result of a proposal by a future proponent. Further, without knowing the specifics of when and where a project would occur, it would be impossible to know what species or habitat, if any, would be affected by the project. The BLM considered whether it made sense to make assumptions for the purposes of a BA, but was left with no credible basis on which to make such assumptions. The BLM determined such assumptions would be speculative and not linked to the federal action of amending land use plans. Any BA would be a speculative assessment of the effects from future site-specific projects, not of the current proposed action. Therefore, the BLM has determined that the land use plan amendments to identify lands as available for application for commercial leasing for oil shale or tar sands development would have no effect on listed species or critical habitat.

Moreover, as noted in the 2008 OSTTS PEIS, this land use plan amendment is solely an allocation decision; it does not establish a precedent or create any legal right that would allow ground-disturbing activities without further agency decision making and compliance with applicable statutes, including the ESA, NEPA, and other applicable authorities. Further, apart from possible socioeconomic impacts associated with speculative investments in lands adjacent to lands allocated for oil shale and tar sands development, there are no environmental consequences at all from the administrative action of amending land use plans in the manner described. Therefore, the NEPA analysis being prepared focuses on the potential effects associated with possible future leasing and development, in order to inform the decision-maker regarding the allocation decisions.

This determination of “no effect” is consistent with the determination made with respect to the planning initiative that was completed in 2008. At the outset of the development of the 2008 OSTTS PEIS, when the BLM planned to issue leases on the basis of the analyses conducted in that document, the BLM began the process of consultation with the USFWS pursuant to its

obligations under Section 7 of the ESA. During this preliminary consultation, the BLM and USFWS jointly developed conservation measures to support conservation of species listed under the ESA. During preparation of what became the 2008 OSTs PEIS, the decision to be made (the proposed action) was limited to the amendment of land use plans setting out the allocation of areas that would be available for application for leases; therefore, during that period, the BLM determined that the proposed action would result in no effect on listed species or critical habitat.

The BLM recognizes that listed species and critical habitat are likely to be present in the lands described in the land use plan amendment. Tables 4.8.1-6 and 5.8.1-6 in the 2008 OSTs PEIS identify the listed species that occur in the states of Colorado, Utah, and Wyoming where the land use plan amendments would allocate lands for either oil shale or tar sands leasing. Portions of the designated areas are occupied by listed species or contain designated critical habitat. Therefore, the BLM fully expects that if in response to a call for nominations, an application for a lease, permit, or other authorization is received by the BLM for oil shale or tar sands development within lands identified as available for application, procedures to comply with Section 7 of the ESA would be initiated at that time. Such procedures may take the form of a “no effect” determination by the BLM, informal consultation with USFWS, or formal consultation with USFWS. At such time as any “no effect” determination is made, or informal or formal consultation occurs, such determination/consultation would be made based on a full record describing the proposed lease, project, site, method of construction, and other relevant information—all features that are lacking at the present time. Such a determination would take place following a full policy and legal review.

Further, if analysis undertaken in consideration of a definitely proposed lease or project area or technology warrants, the BLM may impose conservation measures upon potential lessees through lease stipulation or other means. In fact, as in the 2008 OSTs PEIS, the BLM has included Appendix F, which presents conservation measures developed through coordination with the USFWS during the oil shale and tar sands planning process that culminated in the 2008 land use plan amendments, as well as additional conservation measures that have been developed during more recent coordination. These measures have been included in Appendix F, both for the new NEPA/planning process and to provide the public and any potential lessees with some sense of what conservation measures might be imposed, if warranted.

The BLM, in coordination with USFWS, intends to ensure that the conservation measures presented are consistent with those currently applied to other land management actions where associated impacts are similar. However, it is presumed that potential impacts from possible development alternatives (described based on assumptions made for analytical purposes in the NEPA analysis) are likely to vary in scale and intensity compared with previously considered land management actions (e.g., oil and gas exploration and production, surface mining, and underground mining). Hence, final conservation measures will be developed commensurate with the anticipated level of impact from actual future site-specific projects developed under the selected alternative, as analyzed in those site-specific project level analyses, and will be consistent with agency policies. For instance, current BLM guidance on similar actions (e.g., projects involved in the development of fluid mineral resources) requires that the least restrictive stipulation that effectively accomplishes the resource objectives or resource uses for a given alternative should be used in order for a project to remain in compliance with the ESA.

## 7.7 NATIONAL HISTORIC PRESERVATION ACT SECTION 106 REQUIREMENTS

Section 106 of NHPA requires federal agencies to take into account the effects of their undertakings (actions or authorizations) on any district, site, building, structure or object that is included in or eligible for inclusion in the NRHP, and to provide the ACHP a reasonable opportunity to comment. The procedural requirements for compliance with Section 106 of the NHPA are set forth in the ACHP's Section 106 regulations at 36 CFR Part 800. The BLM has initiated the Section 106 process pursuant to these regulations and has reviewed existing information regarding historic properties in the Area of Potential Effects (APE) for this proposed amendment of land use plans. The APE has been defined as the most geologically prospective areas for oil shale and tar sands in Colorado, Utah, and Wyoming. The BLM has initiated consultation with the SHPOs, tribes, and other consulting parties. (Appendix L describes the consultation process.) The BLM has reviewed existing information on historic properties within the APE, incorporating information gathered through consultation with the consulting parties. The findings of the review are presented in Sections 3.8, 3.9, and 3.10.

Based on the review, the BLM has identified historic properties within the APE, and that additional unidentified historic properties are likely present within the APE. The BLM has determined that this decision to allocate lands as open or closed for oil shale and tar sands potential leasing and development does not affect these historic properties. As articulated in the BLM's finding letters sent to the Colorado, Utah, and Wyoming SHPOs pursuant to 36 CFR 800.4(d)(1), the BLM bases its determination on the following: (1) the decision to allocate lands as open or closed to potential oil shale and tar sands leasing does not approve any on-the-ground activities and does not restrict any managers' authority to fully consider the potential effects on historic properties prior to the potential offer for leasing or development, including the ability to approve, modify, or deny a lease application or development proposal based on consideration of such effects; and (2) the current status of oil shale and tar sands development technology is not sufficiently defined to identify with certainty the types of impacts that might occur on historic properties if areas were leased and developed. Therefore, while they may inform future decisions, the analyses in this document are more likely to be added to, or elaborated upon, prior to any future leasing or development decisions, which will be subject to full compliance with Section 106 at that time.

Oil shale and tar sands development would require a three-stage decision-making process. The first stage, which is the subject of this PEIS, is the proposed amendment of land use plans to allocate lands as open or closed to potential oil shale and/or tar sands leasing and, where leases are acquired, potential development. Compliance with Section 106 for this stage is at a level appropriate for this decision. The BLM recognizes that the decision to allocate lands does not identify or authorize any future leasing or development, and that the technology for such development is subject to change from that reviewed in this study. Accordingly, the BLM has determined that no historic properties would be affected by amending the land use plans.

The second stage requires full compliance with Section 106 of the NHPA prior to the BLM issuing a lease for potential oil shale or tar sands development. The APE for a potential lease would be determined based on the extent of the proposed lease. Government-to-government consultation with affected tribes concerning a proposed lease area would occur at

the second stage. The second stage would require consultation with all interested parties. Documentation and inventory would occur at the second stage in order to identify, evaluate, and mitigate any historic properties in the APE. This effort would include an analysis of existing overview information and a current records and literature search. A Class II or Class III inventory or visual resource inventory may also be required, if necessary, to determine the undertaking's effect on historic properties. Lease areas may be subject to stipulations or other requirements identified during the leasing process.

The final stage is the potential approval of a specific plan of development. A plan of development would identify specific locations, facilities, and timing for development. This decision would also require compliance with Section 106 of the NHPA prior to approval, and may also be subject to stipulations or other requirements identified during the leasing stage to avoid, minimize, or mitigate impacts on historic properties. Government-to-government consultation with tribes would occur during this stage to determine whether the plan of development would have an effect on properties of concern. Consultation with interested parties would also take place. Detailed field review will take place at this stage, including Class III cultural resource inventories, visual resource inventories, and other site-specific reviews, as needed.

The BLM will complete comprehensive identification (e.g., field inventory), evaluation, protection, and mitigation, following the policies and procedures contained within the 2012 BLM National Programmatic Agreement (BLM 2012b) and as indicated in any lease stipulations. In addition, the BLM will continue to implement government-to-government consultation with tribes and with other consulting parties on a case-by-case basis for plans of development.

The BLM does not approve any ground-disturbing activities that may affect any historic properties, sacred landscapes, and/or resources protected under the NHPA, American Indian Religious Freedom Act, NAGPRA, E.O. 13007 (U.S. President 1996), or other statutes and Executive Orders until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or it may disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized, or mitigated.

## 7.8 REFERENCES

*Note to Reader:* This list of references identifies Web pages and associated URLs where reference data were obtained. It is likely that at the time of publication of this PEIS, some of these Web pages may no longer be available or their URL addresses may have changed.

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