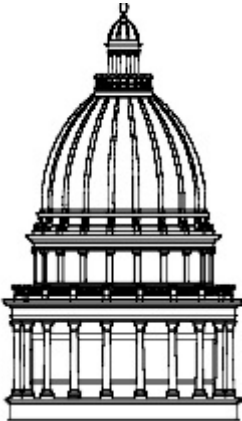


Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER 2006-04
March 2006

Archaeological Surveys in Utah



The Department of Community and Culture's Division of State History is responsible for advising state agencies on how to comply with state and federal historic preservation laws. For the most part, it has carried out its responsibilities without significantly increasing the cost or time of completing state projects. There have, however, been concerns that the division goes beyond offering advice about the protection of cultural resources and instead pressures agencies to do additional work that affects project outcomes. Some archaeologists feel if they did not follow the advice of the Division of State History they could be at risk of losing their archaeology permits.

House Bill 139, First Substitute (H.B.139S1), passed during the 2006 Legislative Session, provides two remedies to address the Division of State History's conflicting roles as advisor and regulator. First, the new law authorizes the governor's Public Lands Policy Coordinating Office (PLPCO) to review the comments made by the State Historic Preservation Officer (SHPO) and mediate any disputes between the SHPO and a state agency. Second, the new law removes the division's authority to issue archaeology permits and refocuses the division on its advisory role. There are, however, several policy issues that remain unresolved and should be addressed by the PLPCO, the Division of State History, and land-managing state agencies.

Recent Legislation Addresses Major Concerns

H.B.139S1, passed during the 2006 Legislative Session, addresses the two primary concerns with how archaeological surveys are overseen in Utah. First, the bill addresses the need to separate the division's regulatory and advisory functions. Assigning the regulatory function to a separate agency will enable the division to focus on its mission of advising agencies as to how they can fulfill their obligation to protect cultural resources. Second, the bill clarifies the standards for obtaining an archaeological permit in Utah. This change brings Utah's standards in line with those of surrounding states.

The Division Should Act as an Advisor To State Agencies, Not as a Regulator

The Division of State History handles approximately 1,700 cases each year, which include project notifications, requests for advice, and agency project logs. Most cases require little attention from the SHPO because no cultural properties are affected or the division chooses not to offer comment regarding the impact of the project on cultural resources. Figure 1 shows that very few of the cases have an adverse effect on cultural resources.

Figure 1. About 25 Projects Adversely Affect Cultural Resources Each Year. Only about one percent of cases reviewed by the division each year affect cultural resources.

Year	Cultural Resource Cases Processed by the Division of State History	Cases with Adverse Effect on Cultural Resources
2000	1603	34
2001	1692	27
2002	1659	19
2003	2345	20
2004	1264	23
2005 (9.5 Months)	1427	9
Annual Average	1728	22

**In most cases, the
Division of State
History helps
agencies minimize a
project's effect on
cultural resources.**

One of the Division's main responsibilities is to provide agencies with advice regarding historic preservation.

Figure 1 shows that the Division of State History receives about 1,700 communications each year regarding government projects that could affect state cultural resources. Of those, there are only about 22 cases each year (or about 1 percent) in which an undertaking is actually expected to have an adverse effect on a cultural resource.

Most cases in which cultural sites are disturbed are addressed without conflict. However, a test of 32 adverse effect cases from 2004 and 2005 identified five cases in which the Division of State History insisted that the agency perform a more intensive survey or mitigation work than is required by statute. While relatively few in number, these cases have defined the division's influence over state agencies. As a result of this influence, agencies often find it easier to follow the division's advice rather than risk the expense of having a project delayed.

The Division of State History Is an Advisor to State Agencies.

State law does not give the division authority to regulate how other state agencies handle the cultural resources that may be affected by their activities. Instead, the division is required to advise state agencies regarding how to comply with the state and federal historic preservation laws. Specifically, *Utah Code 9-8-404(1)(b)* requires that state agencies give the Division of State History "a reasonable opportunity to comment" before they proceed with a construction project or other "undertaking." The SHPO described the process as follows:

Our office operates much like your CPA; we give advice and provide comment, but the decision and the responsibility for compliance with state and federal law rests with the lead state agency, i.e. DWR, State Parks, SITLA, etc. We have no enforcement responsibilities, but we can and do offer advice and when requested assist agencies in fulfilling their responsibilities.

For the most part, the Division of State History does provide good advice and the majority of cases move ahead without major disagreement. Archaeology is a field in which professionals can often benefit from the advice of others because there are many different options regarding how to carry out their work. For this reason, the law requires that agencies seek the comments from the SHPO regarding how the agency's activities may affect cultural resources. Occasionally, however, the comments from the Division of State History have taken on a regulatory tone. Instead of offering advice, the section has insisted that agencies follow the

archaeological methods preferred by the division. In these cases, the division appears to have crossed the line from being an advisor to being a regulator.

Sometimes the Advice from the Division of State History Takes on a Regulatory Tone. Concern with the division's aggressive behavior towards state agencies is based on a small portion of surveys in which an agency's undertaking was expected to affect cultural resources. In addition to the five identified in our test of 32 adverse effect cases, we are concerned about another adverse-effect case in 2002 in which the division insisted that the Utah Department of Transportation (UDOT) conduct a more intensive examination of a site than was necessary. Our concern also stems from informal consultations regarding survey activities for various projects. From a limited review of cases, we found that the division demanded a more intensive search for cultural resources than is normally performed.

During one UDOT construction project, the Deputy SHPO insisted that a site be excavated even though other state and federal agencies disagreed.

In 2002, UDOT had a road project in the mountains near Ephraim, Utah. The project was briefly interrupted when the deputy SHPO disagreed with the methods that UDOT planned to use as it examined an ancient rock quarry alongside the project right-of-way. Although the archaeologists from the Federal Highway Administration, the Forest Service, and UDOT all agreed that the site could be properly surveyed without subsurface excavation, the deputy SHPO disagreed. He asked that UDOT conduct a thorough archaeological survey with some sub-surface excavation. The deputy SHPO said he would not sign an interagency agreement, required by the Federal Highway Administration, unless UDOT complied with his request.

According to federal law, UDOT could have appealed to the Advisory Council on Historic Preservation. However, UDOT decided that an appeal would probably take several months and delay the project. For this reason, UDOT chose to comply with the deputy SHPO's demands. According to UDOT, additional survey work did not produce additional archaeological information, and it delayed the completion of the archaeological survey work. While the additional survey work increased the cost of the survey by a small margin, UDOT reports that it was insignificant when compared to the overall cost of the road project. However, the example does demonstrate how the division can influence agencies to conduct more archaeological testing than what is required.

The Division of State History also uses a regulatory tone when offering informal advice to state agencies. Because these consultations are often handled over the phone or during informal discussions, it was difficult to document the extent to which the section archaeologists made excessive demands of agencies. The Division of Wildlife Resources (DWR) documented one such incident. The archaeologist for DWR developed a survey plan in which the field workers would inspect a parcel of land by walking the site and visually inspecting the ground at a distance 30-meter intervals called “transects.” Although the division had previously recommended 15-meter transects, the archaeologist felt that the 30-meter transects were justified. The parcel was known to have many large archaeological sites that would be identified whether surveyors walked 30 or 15-meter transects. In addition by walking wider transects, they would minimize the cost of the survey.

Despite the arguments offered by DWR, the deputy SHPO was insistent that DWR "stay with 15-meter transects. DWR's archaeologist conducted the survey according to the section's recommendation. According to the DWR archaeologist, the results of the survey supported her argument for larger transects. The vast majority of identified sites were quite large and would have been identified regardless as to whether they had done a survey with 30 meter transects or 15. The agency believes the added cost of that extra survey work took away funds that should have been used for wildlife rehabilitation projects.

The Division’s Responsibility to Issue Archaeology Permits Conflicts with its Role as Advisor to State Agencies. In addition to acting as an advisor to state agencies, the Division of State History has performed a regulatory function, issuing permits to archaeologists in the state. The two roles are not compatible. As an advisor to state agencies, the division is required to work cooperatively with state agencies to strike a balance between historic preservation and other agency needs. They must balance the need to protect cultural resources with an agency’s need to carry out its objectives. As an advisor, the division does not have the authority to decide how agencies conduct archaeological surveys.

In contrast, as a regulator responsible for issuing permits to archaeologists in the state, the Division of State History does have authority to require that archaeologists follow established standards. The problem is that it can be difficult for some archaeologists to know whether the division is acting in its advisory role or in its regulatory role. We

There is an inherent conflict in the agency’s roles as regulator and advisor.

A limited review of case files suggests the division's "advice" sometimes takes a regulatory tone.

interviewed 23 permitted principal archaeologists who perform a large percentage of the work in Utah. Six of these individuals said that they felt threatened that they might lose their permits if they did not follow the advice of the archaeologists within the Division of State History.

We also conducted a brief test to determine how often the division acts in a regulatory mode when providing advice to state agencies. Specifically, during our review of 32 cases with an adverse effect (described previously on page 3) we found five cases in which the advice from the division was quite prescriptive as one would expect from a regulator, not an advisor. Since H.B.139S1 addresses our initial concerns about the dual roles of the division as advisor and regulator, conducting additional audit work to document the extent of the issue was unnecessary.

The new law transfers the section's permitting authority to the PLPCO, allowing the Division of State History to focus on its other roles. The new law also allows the PLPCO to intervene if the SHPO and the division disagree with an agency's strategy for conducting an archaeological survey or other work.

Utah's Requirements for an Archaeology Permit Have Been Restrictive and Inconsistently Applied

The requirements for becoming a permitted archaeologist in Utah have been too strict and have not been fairly applied. Like most other states and the federal agencies that manage public lands, Utah requires permitted archaeologists to hold a graduate degree. However, unlike the others, Utah does not allow applicants to substitute equivalent training and experience for the higher degree. Utah's lack of flexibility on this matter has resulted in a reduction in the number of permitted archaeologists in the state. In addition, there is no evidence that the archaeologists who qualified for a permit through a combination of an undergraduate degree and professional experience are performing poor archaeology; therefore, there is little justification for a higher permit standard. We also found that permits were given to two individuals who did not meet existing requirements. All of these issues appear to be addressed by H.B.139S1.

A change to *Administrative Rule 212-4-5* increased Utah's permit standards above those required by other states.

Utah's Permit Qualifications Are High. In an effort to raise the quality of archaeology work in the State of Utah, the Board of State History approved a change to *Administrative Rule 212-4-5*, which now requires permit-holding archaeologists to join the Register of Professional Archaeologists (RPA). This rule change, which took effect on January 1,

2005, increased Utah's permit standards above those required by other states and by the federal land management agencies. Figure 2 compares Utah's permit requirements with those of several surrounding states and federal agencies.

Figure 2. Utah Permit Standards Higher than Other States.
The lack of an equivalent experience provision makes Utah's requirements stricter than the requirements of other entities.

Permitting Entity	Archaeologists	Recommended Degree	Experience in Lieu of Degree?
Utah	All	Graduate	No
BLM*	Project Directors	Graduate	Yes
BLM*	Field Supervisors	Baccalaureate	No
National Park Service**	All	Graduate	Yes
Arizona	All	Graduate	Yes
Colorado	Principal Investigators	Graduate	Yes
Colorado	Project Archaeologists	Baccalaureate	Yes
New Mexico	Principal Investigators	Graduate	Yes
New Mexico	Site Supervisor	Baccalaureate	Yes

* Idaho and Wyoming were not included because they have no permitting standards. Instead, they defer to the BLM and Forest Service on most issues.

** Nevada uses the standards set by the Secretary of the Interior, which are established by the National Park Service.

The key difference between Utah's requirements and other entities' requirements is that Utah does not allow equivalent experience to replace a graduate degree. Since Utah does not have this provision, a graduate degree becomes the requirement. Other entities treat a graduate degree as a recommendation, since a baccalaureate degree is acceptable with equivalent training.

The Number of Permitted Archaeologists Decreased in 2005. We reviewed archaeological permits that were issued during the past three

The rule change in 2004 resulted in a decrease in permitted archaeologists.

years. We counted how many archaeologists were permitted on January 1 2004, 2005, and 2006. From 2004 to 2005, the number of permitted archaeologists increased significantly, from 196 to 247. This increase can be attributed, in part, to the anticipation of more rigorous requirements coming the next year.

From January 1, 2005, when the Division of State History began requiring RPA membership, until January 1, 2006, the number of permitted archaeologists in Utah decreased from 247 to 226. The decrease in permitted archaeologists does not seem to be attributable to workload. From 2004 to 2005, the number of cases that were reviewed by the Division of State History increased from 1,264 to 1,843. This increase in the number of cases seems to eliminate the possibility that the decrease was due to a reduction in work for the industry. We contend it was a result of the more rigorous permit requirements.

We also conducted a review of the seven most recent cases in which the Division of State History took action against an individual's permit. Our review of these administrative actions suggests that possession of a graduate degree is not a good indicator that a person will do good archaeological work. All seven of the archaeologists who had action taken against their permits held graduate degrees. Of the 12 percent of permittees with less than a graduate degree, none have had any action taken against their permits.

Two archaeologists were given archaeological permits and did not meet the established permit requirements.

Inconsistent Application of Permit Requirements. Of the 226 archaeologists who applied for and received Utah permits in 2005, two archaeologists were issued permits even though they did not meet the requirements. Neither archaeologist qualified for an RPA exemption under the permitting rule's grandfather clause. We verified with the RPA that neither were members. The division gave us no explanation regarding why the two archaeologists were granted a permit, but under *Administrative Rule 212-4-5*, they should not have received permits.

In addition, we identified two archaeologists who were denied permits in 2004 even though they met the permit requirements in effect at that time. The Division of State History applied a higher standard to these two archaeologists than the rules required. The section required that the two archaeologists hold a master's degree or that they have their research published in some type of a cultural resource management publication. Internal correspondence between two division officials states the reason

given for denying the permits. The documents indicate their concern that the firm employing those two archaeologists was “try[ing] to get people listed during the ‘grace’ period. For these, I am inclined to say no. No M.A., No outside CRM publications.” In other words, the division denied their permits because they had no Masters of Arts degree and were not published in a journal for cultural resource management.

The rules in effect in 2004 allowed applicants to substitute equivalent training or experience for the required graduate degree. Both applicants in this case held bachelor’s degrees and had about 10 years of experience. We have found neither statute nor rule that requires an applicant to have published articles in cultural resource management publications.

H.B.139S1 addresses our concerns that the requirements for an archaeology permit in Utah have been too strict and have not been fairly applied. The new law establishes a graduate degree or equivalent training and experience as the requirement for a permit. Specifics regarding what qualifies as equivalent training are yet to be determined by the PLPCO.

Additional Policy Guidance Is Needed

While H.B.139S1 clarifies several disputed policy issues, additional issues will need to be resolved by the PLPCO, the Division of State History, and state agencies. The new law calls for improved standards for archaeological surveys by defining survey objectives and site management but is not prescriptive in how the work should be performed. The law also does not address the need for user agencies to develop their own cultural resource management protocols nor does it address the use of off-site mitigation.

Guidelines and Standards for Survey

Clarification of previous guidelines is necessary to resolve disagreement between the Division of State History and site archaeologists of user agencies regarding certain aspects of survey methodology. One of the disagreements involves the issue of whether the principal investigator must always be on site to directly supervise field workers. Other states have issued guidelines regarding the supervision of workers in the field, and H.B.139S1 provides similar clarification on the

No written guidance has been issued to address issues raised by the archaeological community.

Other states have drafted policies that give direction on particular issues pertaining to archaeological surveys.

issue. The bill also allows PLPCO to establish additional administrative rules that address other issues.

Utah Has Not Established Formal Guidelines and Standards for Archaeological Surveys. According to the SHPO, each state agency is responsible for establishing its own guidelines for how to conduct archaeological surveys. In addition, several professional archaeologists have told us that it is not appropriate for the division to establish guidelines and rules for survey work because each area is unique and must rely on the professional judgement of an archaeologist.

However, we found that several other states, as well as two federal agencies, have established guidelines and procedures for the conduct of archaeology. For example, Colorado has published a handbook, and New Mexico has put its standards in administrative rule. Both sets of guidelines address various issues, including those found in the following example regarding the proximity of a permitted archaeologist to an archaeological site. The Bureau of Land Management and the National Park Service have also established guidelines and procedures for any archaeological work carried out by archaeologists employed by those agencies.

Clarification Regarding Site Supervision Is Needed. The Division of State History contends that an archaeologist must be in direct supervision of staff conducting an archaeological survey. This position needs to be clarified in rule, because a lack of clarification has allowed for confusion to exist regarding the issue. One example involved a survey headed by a local university professor. In order to minimize the cost of the survey, he limited his time in the field, allowed students to do as much work as possible, and verified their work for accuracy. According to the division, the principal investigator was in violation of his permit because he was not in close enough proximity to the staff on the project site.

The provisions governing archaeology permits can be found in *Utah Code* 9-8-305 and in *Administrative Rule* 212-4. Neither specifies the proximity a permit holder must have to a site. However, *Administrative Rule* 212-4-8(A) states that “a permittee shall provide reports documenting the results of the work and data obtained” This provision does not require the archaeologist to be on site but places responsibility for the resulting documentation on the permittee. If it was

the division's intent to have permittees on site while work was conducted, we recommend that those intentions should be specified in rule.

Other States Have Outlined a Set of Permit Standards in Their Administrative Rules. Colorado and New Mexico require the permitted archaeologist to be on the survey site any time work is being conducted. On the other hand, Arizona allows a permitted archaeologist to designate a member of the survey team to act in his or her behalf as the site supervisor on their permit. H.B.139S1 resembles Arizona's standard. The bill specifies that the principal investigator may allow others to conduct survey work, as long as those individuals are under the direction of the principal investigator. Further clarification can be placed in the administrative rules by defining standards that apply to principal investigators as they provide direction to workers in the field.

H.B. 139S1 gives PLPCO the authority to draft rules that address the concerns raised by the archaeological community.

H.B.139S1 also stipulates that the PLPCO can create rules regarding survey methodology. These rules can be an effective tool to help resolve disagreements on unclear issues. For example, one of the archaeologists we talked with said that the archaeological community has concerns regarding how they should respond when they find rock chips and other types of "lithic scatter" that provide evidence of prehistoric human activity. PLPCO has the ability to provide guidance on such issues in a manner similar to the guidance provided by other states.

Arizona, for example, has set guidelines for site significance. A portion of their site significance standards stipulates if a site has fewer than 30 relatively common artifacts of the same class within a diameter of 15 meters, it is not necessary to consider it eligible for historic recognition. This standard also provides enough flexibility to allow archaeologists to use their professional judgement. We believe that Utah needs to develop similar standards.

Procedural Clarification Needed For Off-Site Mitigation

One policy issue that still requires some clarification is the practice of off-site mitigation. Off-site mitigation is the practice of mitigating damage to a historic resource by paying the cost of recovering another historical resource. It is commonly used to mitigate damage to the natural environment. For example, damage to a wetlands area can be mitigated by creating new wetlands on another site.

The federal government has established guidelines regarding off-site mitigation.

Guidelines have been established at the federal level for off-site mitigation of both environmental and historical sites. The Environmental Protection Agency (EPA) has developed standards and procedures to direct off-site mitigation of wetlands. The standards provide assurance that the loss of a critical wetlands area is adequately addressed through a mitigation plan. In a similar vein, the Code of Federal Regulations, specifically 36 CFR 800.14, establishes guidelines for addressing mitigation alternatives when historic resources are concerned. Specifically, an agency is required to assemble a broad group of interested parties in order to evaluate strategies to mitigate the loss of a historic resource.

Since historical preservation in Utah is patterned after the federal system and uses the EPA's mitigation of wetlands as a justification for its own off-site mitigation of historic resources, similar policies could be drafted to guide any off-site mitigation proposed by either the Division of State History or land-managing state agencies. The division's current administrative rules allow the agency to "seek creative solutions" and "encourage alternative proposals" when cultural resources must be destroyed. However, the rules do not provide any guidance or procedures that might help the agency avoid promoting mitigation strategies that are inappropriate or that do not benefit the public.

Concerns about Off-Site Mitigation must Be Addressed. We discussed off-site mitigation with nine archaeologists who work in Utah and in other states. Seven said off-site mitigation was not appropriate. Of the two who approved of the technique, one acknowledged there is a potential that the technique could be misused and that organizations may be tempted to pay for off-site archaeological work in order to avoid their obligation to preserve the resources directly affected by the agency's undertaking.

A common view is that each historical site contains unique information, the loss of which cannot be recovered by working on another site. Critics of off-site mitigation also believe the method gives the appearance that the Division of State History is willing to put a price on each potential historic site. If an agency is willing to pay for the archaeology done on another site, the division may agree to the loss of a historic resource that is obstructing an important construction site.

Lack of guidance regarding off-site mitigation leaves the possibility for abuse.

Off-Site Mitigation Proposed for Buckskin Ridge. One case in particular has raised concerns about the promotion of off-site mitigation by the Division of State History. Buckskin Ridge is a 2,800-acre parcel that was part of a land exchange involving the DWR and a similar parcel owned by a private company. The DWR conducted the required archaeology survey of the site, but the Division of State History expressed strong opposition to the manner in which the study was conducted.

Two officials from the Division of State History suggested that if the Department of Natural Resources (DNR) would transfer to the Division of State History its interest in the nearby Range Creek Canyon, it would excuse the department's obligation to recover historic artifacts on Buckskin Ridge. Though the Division of State History maintains that it was merely offering a creative mitigation strategy, DNR officials believed the offer was an inappropriate attempt to force their agency to relinquish its ownership of a very valuable public resource.

Additional Policy Guidance Needed. We recommend that additional policies and guidelines be established before off-site mitigation is widely used as a tool in cultural resource preservation. As with the mitigation of environmental resources, certain procedures need to be established before an agency is allowed to justify the loss of historic resources at one site by restoring resources at an unrelated site. We recommend that the Division of State History, the PLPCO and state agencies work together to develop policies and guidelines governing the use of off-site mitigation.

Agencies Should Develop Internal Policies For Cultural Resources

Our review of state agencies found that many lack sufficient internal policies regarding cultural preservation. Although UDOT and many federal agencies have well-developed policies regarding cultural preservation, several state agencies such as the DNR and the Department of Facilities Construction and Management do not have such policies and guidelines. In fact, it appears that some agencies do not even consider a project's impact on cultural resources unless they are forced to by an outside entity.

In our view, if each state agency had its own internal policies, similar to those developed by UDOT, they would be much more effective in

Internal policies by land-managing state agencies would help streamline projects involving cultural resource management.

addressing their responsibility to account for any cultural resources that may be affected by their operations. They would also be less likely to have cultural resource issues adversely affect their project schedules and budgets. Prior to adoption, the new rules should be reviewed by the PLPCO and the SHPO.

Recommendations

1. We recommend that state agencies with regular undertakings that impact public lands develop a set of internal policies and guidelines describing how they will carry out their responsibility to account for a project's impact on cultural resources.
2. We recommend that the Division of State History, the Public Lands Policy Coordinating Office, and state land managing agencies work together to develop policies and guidelines governing the use of off-site mitigation.

Agency Response



Department of Community and Culture

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22 May 2006

John M. Schaff, CIA
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Salt Lake City, UT 84114-5315

Re: Archaeological Surveys in Utah. Office of the Utah Legislative Auditor General Report 2006-04.

Dear Mr. Schaff:

The Division of State History is pleased to respond to this report. We endorse the report's observation that "for the most part, it [Division of State History] has carried out its responsibilities without significantly increasing the cost or time of completing state projects." This concern formed the basis for the initial request for an audit of State History and the State Historic Preservation Office (SHPO). The audit report supports the Antiquities Section and the Division in their roles as advisors to other state agencies. The mission statement of the Division is "**preserving the past for the present and future.**" Under UCA 9-8-201, the Division "shall be the authority of the state for state history. . ." With these mandates, the Division seeks to keep the public interest in mind when dealing with the state's valuable cultural resources.

We respectfully disagree with several observations and interpretations in the report. In the 2002 example, for instance, UDOT did not seek to resolve the issue with the SHPO. UDOT could have appealed to the Advisory Council on Historic Preservation or asked the SHPO to assist. In this case, as in the DWR case cited later, the agencies apparently disagreed with SHPO advice but followed it anyway; that is not something SHPO has any control over. Second, in reference to the Buckskin Ridge issue, the Division of State History has provided auditors a memo for record from that date clearly demonstrating the Division advised the agency of at least four alternatives they might consider. The Division was merely exploring with agency officials possible courses of action. The option cited in the report was quickly rejected, and another option was followed. We often are involved in wide ranging discussions with agencies to consider options and

perhaps find new ways not previously considered. However, what is clear from the record is that at least four alternatives were discussed.

Third, the contention that the Division's advice sometimes takes a regulatory tone remains undocumented. The statement that in five cases the Division "...insisted that the agency perform a more intensive survey or mitigation work than is required by statute," cites no evidence of such "insistence." In fact, no survey or mitigation is required by statute meaning no agency can insist on more or less than is required by statute.

Fourth, the statement that some archaeologists felt that they might lose their permits if they did not follow the Division's advice depends on what they were considering to be advice. If the advice regarded meeting permit stipulations, then yes, failure to follow that advice might result in a loss of permit. This confuses two separate functions: advice is offered by statute to agencies, not permit holders.

Fifth, regarding restrictive permit requirements, the audit seems to advocate that lower standards for archaeologists would be better, because less-qualified individuals can be hired for less money. This is true, but it may also reduce the quality of the work. Those standards were arrived at through a public process, with the full endorsement of the archaeological community. The Division values Utah's archaeological resources, and contends that decisions regarding these valuable resources should be made by well-qualified individuals, not marginally qualified ones. Whether the stiffer standards increased or decreased the number of practicing archaeologists in the state depends on how the count is made (all archaeologists, consultants, government archaeologists...). Lacking analysis of what caused the observed change (standards, business climate, normal fluctuation), no conclusions as to its relevance can be reached.

Sixth, the allegation that two individuals were denied permits for not having Master's degrees and appropriate publications is correct – those are valid reasons to deny a permit. In our judgment the experience cited by the individuals was not equivalent to having a Master's degree. Regarding the allegation that two individuals who were not Registered Professional Archaeologists were improperly issued permits; we agree that these individuals should not have been added to the permits. One submitted a copy of an application for RPA status with the permit application; knowing the individual and the individual's qualifications, we assumed that RPA would approve the application and we approved the permit. For some reason the application was apparently never approved by RPA. The other was added to a permit shortly after it was renewed, and since the individual had been on their permit before, we added him without checking his RPA status, which was a mistake.

Finally, we concur with the report's recommendation that, "...state agencies with regular undertakings that impact public lands develop a set of internal policies and guidelines describing how they will carry out their responsibility to account for a project's impact on cultural resources." We disagree that additional policy guidance regarding off-site mitigation is needed, as this kind of mitigation, while commonly used in historic preservation, is rightly rarely used in archaeological cases. However, we believe the

process identified in the audit recommendation is workable, if proponent agencies wish to develop policies and guidelines. We are available to assist agencies and the Public Lands Policy Coordinating Office (PLPCO), and agree with the audit recommendation that all agencies involved work together.

The Division recognizes that there is an opportunity for improved communication among the various agencies. We appreciate advice on ways to improve dialogue and protocol and welcome and generally agree with the findings of the audit.

Respectfully Submitted,

A handwritten signature in black ink that reads "Philip F. Notarianni". The signature is written in a cursive style with a large initial "P".

Philip F. Notarianni, Ph.D., Director
Division of State History
Department of Community and Culture

cc: Richard Bradford, Executive Director, DCC
Ally Isom, Deputy Director, DCC
Neil Ashdown, Chief of Staff, Governor's Office

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