



State Historic
Preservation Office

MONTANA HISTORICAL SOCIETY

Montana SHPO Consultation Guide

A HANDBOOK FOR CULTURAL RESOURCE REVIEW AND
COMPLIANCE IN MONTANA



MONTANA STATE HISTORIC PRESERVATION OFFICE

PO BOX 201201 – 225 N. ROBERTS ST. – HELENA, MT 59620

Email: mtshpo@mt.gov – Phone: (406) 444-7715

Website: <https://mhs.mt.gov/shpo>

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This document is a summary of accepted Montana standards for compliance and data management for historic properties. Individual state and federal agencies may, and often do, establish their own internal guidelines for cultural compliance, and it is the responsibility of the consultant to meet and exceed those standards.

VERSION UPDATES: 260X.1

This version of the Montana SHPO Consultation Guide combines the previous guide with contents from various appendices and supplemental guidance documents. Revisions are ongoing to improve clarity, meet ADA accessibility standards, and remove redundancies from combining documents.

This guide and its associated forms and templates are dynamic documents subject to ongoing review, amendments, and updates.

Ensure that you are using the most current versions before each new undertaking
<https://mhs.mt.gov/Shpo/Forms>.

We welcome your feedback during the revision process--please send an email to mtshpo@mt.gov with “Compliance Guide Feedback” in the subject.

Now included in this document:

Site Record & Smithsonian Number Standards

(formerly “Creating a Complete Site Record”)

Using the MCRD Portal: Upload & Track Your Project

(formerly “Cultural Resources Database Guide” and “Quick Reference” guides)

Cellular Towers and Antenna Structures: Special Considerations

(formerly Appendix H)

Linear Features: Special Considerations

(includes former Appendix I)

Now available on our website:

Answers to Frequently Asked Questions about Section 106 Compliance in Montana

<https://historicpreservation.mt.gov/>

Researching Your Historic Montana Property for Nomination to the National Register

<https://historicpreservation.mt.gov/News/news-articles/Researching-Montana-Historic-Properties-for-Nomination>

Preservation Laws and Regulations in Montana: Overview & NEPA/NHPA Integration

<https://historicpreservation.mt.gov/News/news-articles/Preservation-Laws-and-Regulations-in-Montana>

Resources: Find Information, Documents and Forms for Download, and Contacts and Websites

<https://mhs.mt.gov/Shpo/Forms>

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FIND MORE RESOURCES AT <https://mths.mt.gov/shpo>

- [MT SHPO Website](#)
- [Downloads – Contacts – Reference](#)
- [MCRD Portal](#) (upload)
- [FAQs: Answers to Frequently Asked Questions about Consultation](#)
- [Researching Your Historic Montana Property for Nomination to the NR](#)
- [Preservation Laws and Regulations in Montana, and Nepa/NHPA Integration](#)

Introduction & Overview

The Montana State Historic Preservation Office (SHPO) is responsible for working with others to comply with the provisions of the National Historic Preservation Act (NHPA) and to carry out duties described in the Montana State Antiquities Act (MTAA). Because many cultural resources and properties in Montana have not been identified, are irreplaceable, and are highly sensitive to ground disturbance, it is essential that these valuable resources are properly identified, evaluated, and reported prior to any action that may affect their significance and associated integrity or condition.

Preserving Montana's historic and heritage properties is guided in part by laws and regulations, but also by our shared motivation to learn from and preserve our collective identity as Montanans. While Montana SHPO's responsibilities lie with the historic properties and the regulatory procedure, we strive to find common ground with consulting parties through transparency and open communication. Our ultimate goal is to help parties successfully navigate the consultation process while protecting remnants of our past.

Across Montana, preservationists must engage with each other equitably and inclusively to protect our important places. All of us at SHPO strive to promote and support sustainable preservation of our diverse historic and cultural properties.

WHY PRESERVATION MATTERS

The Montana SHPO facilitates the preservation and protection of cultural resources to the greatest extent possible. Historic preservation's core principles are about preserving our history by keeping our important heritage places. Historic places connect us to our history and identity as Montanans. The past brings meaning to our lives and helps guide our future. Our historic, precontact, and traditional cultural places are tangible links to who we are and what we are becoming as a community and a state. Cultural resources enhance economies and contribute to ways of life. Numerous studies show that historic preservation adds value to communities and brings economic benefits and opportunities for local people.

Preservation and protection of a place begins by recognizing the place as historic and worthy of preservation. From there, the property owners and decision makers must have the desire and will to preserve. Instilling a will to preserve in others is at the heart of SHPO's mission. Preservation means meeting the resource on the resource's terms. Preservation sometimes requires a significant effort to accomplish; other times, preservation occurs by stepping away from the resource and letting it remain untouched.

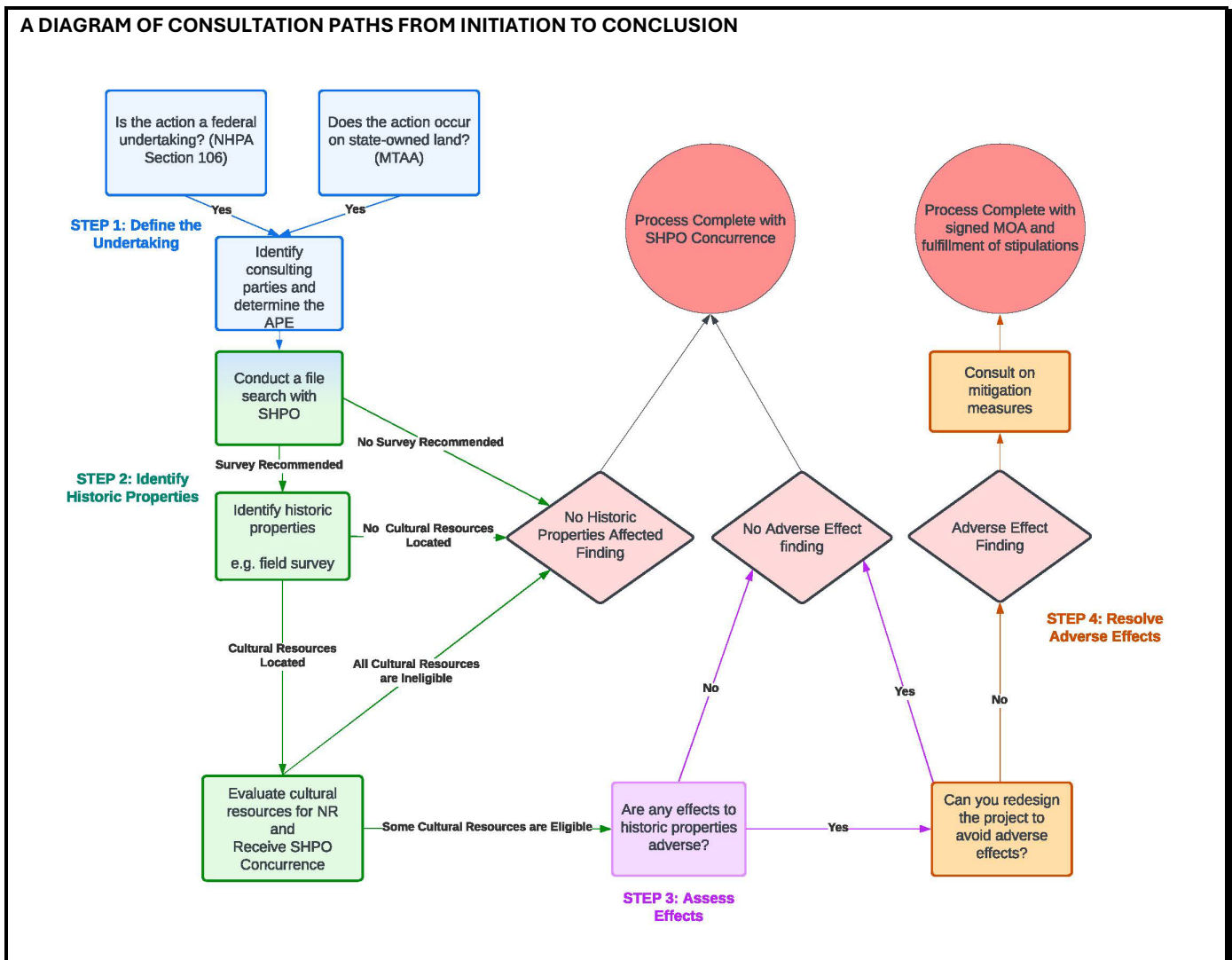
This guide establishes Montana SHPO's expectations on consultation procedures, preparing cultural resource inventory reports, and all aspects of compliance with Section 106 of the NHPA and the MTAA. The following contents reflect Montana SHPO's value of open dialog with all parties, compliance with the National Park Service (NPS) and Advisory Council on Historic Preservation (ACHP) guidance, and decisions based on best science and industry standards.

Chapters 1 through 4 of this guide follow the four steps of the consultation process:

- Step 1: Initiate consultation, define the undertaking and the area of potential effect
- Step 2: Identify and evaluate historic properties within the area of potential effect
- Step 3: Assess effects to historic properties
- Step 4: Resolve adverse effects to historic properties

Remaining chapters provide additional information and guidance for preparing and submitting documentation for review by SHPO, rules and procedures regarding human remains and other inadvertent discoveries, and special considerations for documenting linear features, cell tower and antenna consultation, and more.

This document synthesizes compliance processes dictated by the NHPA Section 106 and the Montana Antiquity Act. Both laws follow the same general four-step process—determine the undertaking, identify historic properties, assess effects, resolve adverse effects—but consultation may not necessarily follow a linear progression.



CONSULTATION TIPS

Regardless of the path, the following reminders will help you successfully navigate the consultation process.

1. **SHPO is here to help!** We want you to be successful in implementing your project while protecting cultural resources. Please reach out to our compliance team for clarification and answers to your questions about any aspect of the consultation process.
2. **This guide is dynamic** and will be updated periodically to reflect changing needs and circumstances. Please let us know when you have suggestions for improving this guide and sign up to be notified when new versions of this guide are released.
3. **Downloading new forms** for each new consultation is highly recommended, as these are dynamic documents as well.
4. **Initiate consultation EARLY**—BEFORE the project is approved.
5. **Be thorough and inclusive when identifying consulting parties** and other interested parties and ensure that you are fulfilling notification requirements throughout the consultation process.
6. **Enlist qualified personnel** for inventories and research. Individuals who are identifying historic properties need to have background, training, and skills that align with the type of cultural resources and landscapes likely found in the project area. Take the time to find professionals that will uphold industry standards and provide comprehensive and high-quality documentation.
7. **Provide sufficient rationale to justify choices and decisions made throughout the consultation process.** Explain any decisions made to survey or not survey, or why a site is eligible or not eligible. Insufficient justification for decisions made about subjective aspects of inventory work is the primary reason SHPO requests additional information from agencies, potentially delaying review.
8. **Respect and protect confidentiality** and integrity of sensitive and vulnerable sites.
9. **Save time by providing thorough documentation**, quality photographs, and well-designed maps that convey enough detail for SHPO to concur or comment on your findings.
10. **First strive to avoid**, then work to minimize and mitigate adverse effects to historic properties.

ACRONYMS, ABBREVIATIONS, AND TERMS USED BY MONTANA SHPO

The following abbreviations, acronyms, and terms are frequently used by Montana SHPO and found throughout this document. Definitions for the Montana Cultural Resources Database (MCRD) are described in Chapter 9.

Abbreviations, Acronyms

ACHP Advisory Council on Historic Preservation
AE-R Architecture and Engineering Record
ARM Administrative Rules of the State of Montana
ARPA Archaeological Resource Protection Act
APE Area of Potential Effect
BIA Bureau of Indian Affairs
BOR Bureau of Reclamation
CD Consensus Determination
CE Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CLG Certified Local Government
CS-R Cultural Site Record
CU-R Cultural Site Update Record
DATA-F Digital Data Request Form
DNRC Montana Department of Natural Resources and Conservation
DOE Determination of Eligibility
DUA Data Use Agreement
EA Environmental Assessment
EIS Environmental Impact Statement
FILE-F File Search Request Form
FONSI Finding of No Significant Impact
FWP Montana Fish, Wildlife, and Parks
IF Isolated Find (IF-R, Isolated Find Record)
MCA Montana Code Annotated
MEPA Montana Environmental Protection Act
META-F Report Metadata Submittal Form
MOA Memorandum of Agreement
NR / NRHP National Register National Register of Historic Places
NEPA National Environmental Policy Act
NHL National Historic Landmark
NHPA National Historic Preservation Act
NPS National Park Service
PA Programmatic Agreement
PI Principal Investigator
ROD Record of Decision
SHPO State Historic Preservation Office
TCP Traditional Cultural Property/Place
THPO Tribal Historic Preservation Office

Terms

Action: Any undertaking, including a project or action considered under the Montana Environmental Policy Act, which has the potential to alter or affect the heritage values of heritage properties or paleontological remains.

Adverse effect: the effect wrought on a historic property by a project that results in the loss or diminution of the very characteristics that made the property eligible for listing in the National Register of Historic Places in the first place. The criteria of adverse effect as well as examples of adverse effects are defined in regulation at 36 CFR §800.5. Examples include physical destruction or damage to all or part of the property; alteration of the property that is inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties; removal of a property from its historic location; change in the use of a historic property; change to the physical features within the property's setting that contribute to its significance; introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's character-defining attributes; neglect that leads to deterioration in instances other than those where neglect and deterioration are recognized qualities of a property of religious or cultural significance to an Indian tribe or Native Hawaiian organization; transfer, lease, and/or the sale of a property out of federal ownership or control without sufficient enforceable measures in place to ensure the long-term preservation of the property's significance.

Advisory Council on Historic Preservation (ACHP): an independent federal agency that serves as the chief policy advisor to the U.S. President and Congress on historic preservation matters. There is permanent ACHP staff as well as a presidentially appointed member Council comprised of the heads of federal agencies, select cabinet members, and subject-area experts.

Agreement documents: agreement documents are documents that serve to streamline and customize the Section 106 compliance process. These are legally

binding documents that assign particular roles and responsibilities to the organizations and/or agencies who negotiate and sign them. Agreement documents can be project-specific (e.g., a Memorandum of Agreement to mitigate the adverse effects of the demolition of a particular historic property as part of an undertaking), can speak to an entire class of undertakings within a particular APE whose effects on historic properties are not known at the outset (e.g., a Programmatic Agreement for grazing allotment permit renewals on a lands managed by a specific federal agency is a defined location), can be multi-party, multi-agency, and even multi-state. Some documents, such as Nationwide Programmatic Agreements, are written by federal agencies to guide cultural resource management practices across the country. Others, such as Program Comments, are created by bodies such as the Advisory Council on Historic Preservation after seeking input from other agencies, SHPOs, and organizations or may be crafted by a particular agency to address resources distinct to their installations, their mission, and their agency history. The ACHP website maintains a list of Nationwide Programmatic Agreements, Department of Defense Program Comments, and a host of other useful resources. All executed MOAs are forwarded by the lead federal agency to the ACHP for filing.

Anticipatory Demolition: The willful destruction of heritage properties or paleontological remains prior to an action.

Area of potential effect (APE)--this is defined in regulation as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any are present within the area. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects cause by an undertaking. The APE is not an arbitrary buffer or search area, instead, it is influenced by the scale and nature of the undertaking and should consider site-specific variables such as topography, height of components of the undertaking, and similar project-specific details. There is no "one size, fits all" APE for projects of a specific type, and the APE may not be a uniform shape.

Artifact: portable evidence of human activity. For example: projectile point, metal can, broken ceramic sherds.

Building: A property that was created principally to shelter any form of human activity.

Certified Local Government (CLG): A local government whose local historic preservation program has been certified by SHPO and National Park Service. It is the local government, and not the Commission, that is certified. 36 CFR 61.

Character-defining attribute: a trait or feature of a historic property that contributes to its physical character and significance (e.g., interior finishes, decorative detail or ornament, distinct material or building fabric).

Compliance: this refers broadly to conforming to the requirements of cultural resource law and regulation. The term is commonly used in reference to Section 106 compliance but can be used to refer any of a host of different cultural resources laws (e.g., ARPA, NAGPRA, NEPA, NHPA, etc.) with which agencies and cultural resources professionals must comply.

Consultation--this is the process of seeking, discussing, and considering the views of other participants and, where feasible, seeking agreement or compromise with them regarding matters arising in the section 106 process. The NHPA contains provisions for both public and tribal consultation on the proposed undertaking as the consultation process may well assist the federal agency in its identification efforts as well as in avoiding, minimizing, or mitigating adverse effects.

Criteria considerations--despite the fact that certain types of properties are not typically considered for listing in the National Register of Historic Places (e.g., religious properties, properties that have been moved, birthplaces or gravesites of famous individuals, reconstructed properties, commemorative properties, and properties of less than 50 years of age), there are seven criteria considerations (a - g, inclusive) outline circumstances under which those seven "typically not considered" properties might well be deemed eligible for listing in the National Register.

Cultural resource management (CRM)--broadly speaking, this is the management of cultural resources as well as the potential effects they may experience as the result of day-to-day human activity, development, and change.

Cultural resources: a cultural resource refers to any historical, archaeological, or traditional cultural place or object whether it is listed or determined eligible for listing in the National Register. These are things made and/or assigned value to by humans (e.g., historic places, buildings, documents, roads, artifacts, battlefields and other landscapes, hunting camps,

mines, sites, or places that are tightly bundled up with a community's ongoing identity, etc.). Cultural resources can be both tangible things as well as cultural practices (e.g., both pine needle baskets as well as the practice of annually harvesting the pine needles by basket makers in a particular basket-making tradition).

Cumulative effects: this is a term that is used under the National Environmental Policy Act (NEPA) and, while not defined in the Section 106 regulations, can be understood to denote the incremental impacts or effects of an action when added to other past, present, and reasonably foreseeable future actions. It is important to remember that individually minor impacts can collectively result in substantial long-term impacts or effects.

Demolition by neglect: the process of allowing a building or structure to deteriorate to the extent that it comes to represent a public health and safety risk and must be demolished.

Determination of effect: the decision resulting from consideration of all project components and potential for direct and indirect effects, the duration of those effects (if any), the presence/absence of historic properties in the area of potential effect, that ultimately results in a decision regarding whether a proposed undertaking will result in no potential to effect historic properties, no historic properties affected, no adverse effect, or adverse effect.

Determination of eligibility: the process by which the significance of a resource is determined in relation to its eligibility for listing in the National Register of Historic Places.

Direct APE: after considering all project components (e.g., staging areas, access to the site, lay down areas, etc.), this is the resulting bounded geographic area within which direct physical effects (e.g., ground-disturbance, demolition, relocation of historic materials) will be experienced.

District: A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

Documentation: the act of recording historic and/or cultural resources, frequently through such means as measured drawings, photographs, sketches, etc.

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register

Evaluation--refers to the process of determining whether a cultural resource (or group of resources comprising a district) is or is not eligible for listing in the National Register of Historic Places based on meeting particular Significance Criteria or criteria considerations and retention of some or all of the seven aspects of integrity.

Feature: non-portable evidence of human activity. For example: hearth, cabin, adit, midden, or culturally modified tree.

Foreclosure: An action taken by an agency official that effectively precludes the ACHP from providing comments which the agency official can meaningfully consider prior to the approval of an undertaking.

Ground disturbance: any activity that compacts, disturbs, or displaces the soil within a project area. Ground disturbance can also be caused by the use of hand tools (shovels, pickaxe, posthole digger, etc.), heavy equipment (excavators, backhoes, bulldozers, trenching and earthmoving equipment, etc.), and heavy trucks (large four-wheel drive trucks, dump trucks and tractor trailers, etc.).

Head of the Agency: The chief official of the federal agency responsible for all aspects of the agency's actions. If a state, local, or tribal government has assumed or has been delegated responsibility for Section 106 compliance, the head of that unit of government shall be considered the head of the agency.

Heritage Property: is a term specific to the Montana Antiquity Act and includes all historic properties and significant paleontological sites

Heritage Values: The economic, educational, scientific, social, recreational, cultural, or historic qualities possessed by buildings, districts, sites, structures or objects possessing sufficient significance to warrant consideration under these rules as heritage properties or paleontological remains.

Historic preservation: Includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding these activities or any combination.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the

Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an American Indian tribe and that meet the National Register criteria.

Indirect APE: after considering all project elements and potential indirect effects (e.g., visual intrusions, noise, vibration, smell, dust, etc.), this is the resulting bounded geographic area within which those effects will be experienced.

Indirect effect(s): these are the visual, auditory, and/or atmospheric impacts that may result from a proposed undertaking. Indirect effects may be either permanent or temporary in nature and, in the context of a Section 106 review, it is useful to identify the anticipated duration of any indirect effects.

Integrity: the ability of a site or property to convey its historic significance as a result of its retention of sufficient aspects of its historic location, design, setting, workmanship, materials, feeling or association.

Interested Parties: Applicants, tribes or groups directly involved in the action or landowners, tribes, groups, agencies, or institutions with a clear and reasonable interest in the consideration of heritage properties or paleontological remains associated with an action.

Inventory: broadly speaking, an inventory is a list of the cultural resources, by type, age, and/or eligibility, within a given survey area or region. Different levels or classes of inventory are defined by federal agencies for particular types of investigation.

Keeper of the Register--in addition to being possibly the coolest job title ever, the title refers to the individual at the National Park Service to whom any disputed determinations of eligibility are forwarded for a final decision as to whether the resource(s) are eligible for listing in the National Register of Historic Places.

Memorandum of Agreement (MOA): A document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties

Mitigation: is used to refer to specific process and strategies outlined in an agreement document (most commonly a MOA) in order to ameliorate, offset, compensate for, or ease the adverse effects of a

proposed undertaking on a historic property or properties.

Montana State Antiquity Act:

National Historic Preservation Act (NHPA) of 1966, as amended: this is a piece of federal legislation that, among other things establishes and defines the nation's historic preservation program, the National Historic Landmark and National Register of Historic Places programs as we know them today, authorized the creation of State Historic Preservation Offices and Tribal Historic Preservation Offices, created the National Center for Preservation Technology and Training, and includes Sections 106, 110, and 304 for taking into consideration the effects of federal undertakings on historic properties, requires that federal agencies engage in survey and inventory so as to know what resources lie within and on the lands they manage, and contains provisions for not making public certain information about cultural resources and practices.

National Register of Historic Places (NRHP): this is the nation's listing of districts, sites, buildings, structures, and objects of national, regional, state, and local significance in the areas of American history, architecture, archaeology, engineering, and culture. The NRHP is managed at the national level by the National Park Service and at the state level by a coordinator who is typically housed within the State Historic Preservation Office.

Object: A construction that is primarily artistic in nature or relatively small in scale and simply constructed. Although it may be, by nature or design, moveable, an object is associated with a specific setting or environment.

Preservation treatments (preservation, restoration, rehabilitation, and reconstruction): there are four commonly recognized interventions in the field of historic preservation. These are preservation (stabilizing or sustaining the existing form or condition), rehabilitation (finding a compatible use for a historic property through repair, alteration, and addition while retaining its character-defining attributes), restoration (returning a property to its appearance at a particular period in time via removal of all features from subsequent periods and possibly reconstructing any features missing from the target date or period), and reconstruction (creating anew via replication the form, features, or details of a non-surviving resource based on detailed historical research and other empirical evidence).

Principle Investigator (PI) a secretary of interior qualified individual primarily responsible for an inventory and report.

Programmatic Agreement (PA): A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a federal agency program, complex undertaking, or other situations in accordance with 36 CFR Part 800.14(b).

Project Area: all areas where project activities will occur, including: the actual construction activities, permanent easements, temporary construction easements, staging areas for supplies and equipment, and borrow pits.

Property: See historic property

Restore: Conduct major repairs, reconstruction, structural or other improvements on a building, district, object, site, structure, or feature possessing heritage values with the intention of preserving or reconstructing physical features representing those values.

Significance criteria: these are the criteria of inclusion for listing in the National Register of Historic Places. There are four Significance criteria (A, B, C, and D), and each is defined and guidance for the evaluation of resources against these criteria is provided in National Register Bulletin 15. In short, Significance Criterion A relates to important events in the patterns of our history, Criterion B refers to events or places associated with important people in the nation's past, Criterion C relates to distinct types, periods or methods of construction in architecture and engineering, and Criterion D relates to information important in history or prehistory.

Site: The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure. Includes cultural resources, historic properties, and heritage properties.

Site Form: inclusive term for cultural site record forms, site updates, and historic property record forms.

SOI professional qualification standard: established by the National Park Service and appearing in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, these are the qualifications that define the minimum educational and professional experience

requirements necessary to perform identification, evaluation, registration, and treatment activities in a cultural resource management and or historic preservation context. To date, standards have been established for the fields of History, Archaeology, Architectural History, Architecture, and Historic Architecture.

SOI Standards for Rehabilitation: established by the National Park Service, and codified in federal regulation at 36 CFR 67, define the parameters for rehabilitation of historic buildings of all periods, styles, materials, and sizes. These standards are required for a host of preservation and compliance activities, spanning everything from the avoidance of adverse effect in a Section 106 context to qualification for the federal Historic Preservation Tax Incentive program.

SOI Standards for the Treatment of Historic Properties: prepared by the National Park Service and codified in federal regulation at 36 CFR 68, these are the detailed instructions for "best practices" in each of the treatments or intervention strategies for historic properties (i.e., preservation, restoration, rehabilitation, and reconstruction).

State historic preservation office (SHPO)/state historic preservation officer (SHPO): this refers to both the office within each state and U.S. territory that administers the state historic preservation program (which is home to a Certified Local Government program, a state and National Register of Historic Places Program, a Historic Preservation Fund grant program, a data management program, review and compliance, and other programs. The latter term refers to the individual who directs that office and oversees management of each of its programs.

Structure: A functional construction made usually for purposes other than creating human shelter.

Traditional cultural landscape (TCL)--as defined by the Advisory Council on Historic Preservation, unlike an ethnographic landscape--which is a property type as treated by the National Register program--TCLs are viewed as a type of significance that may be associated with multiple property types (e.g., individual sites or districts). It is possible that the much-anticipated updated National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties and associated FAQs that will accompany its distribution when finalized may provide additional guidance on the inclusion of

TCLs in the nation's National Register inventory and associated cultural resources compliance efforts.

Traditional cultural place/traditional cultural property (TCP): these are historic properties or places that are eligible for listing in the National Register of Historic Places because of their association with the cultural practices, belief systems, and ongoing identity of a cultural group or community.

Tribal historic preservation office (THPO)/tribal historic preservation officer (THPO): as defined in the National Historic Preservation Act, a Tribal Historic Preservation Office is the equivalent of a State Historic Preservation Office for federally recognized Indian tribes. The Tribal Historic Preservation Officer is the director or administrator of that office. Not all federally recognized tribes have THPO programs. The

tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the NHPA.

Tribal Lands: All lands within the exterior boundaries of any American Indian reservation and all dependent Indian communities. ADD?

Undertaking: A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.

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Online Resources: Visit our website for links to online resources.

- 36 CFR 800
<https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf>
 Administrative Rules of Montana 10.121.9
<https://www.achp.gov/>
 Advisory Council on Historic Preservation
<https://mtarchaeologicalsociety.org/>
 Montana Code Annotated Title 22-3-4
https://leg.mt.gov/bills/mca/title_0220/chapter_0030/part_0040/sections_index.html
 National Association of Tribal Historic Preservation Officer
<https://www.nathpo.org/>
 National Conference of State Historic Preservation Officers
<https://ncshpo.org/>
 National Park Service, publications of the National Register of Historic Places
<https://www.nps.gov/subjects/nationalregister/publications.htm>
 National Trust for Historic Preservation
<https://savingplaces.org/>
 Preserve Montana
<https://preservemontana.org/>



1 Step 1: Define the Undertaking & Initiate Consultation

In general, projects, activities, or programs funded by or under the jurisdiction of a federal agency; and projects on state-owned property require consultation with the Montana SHPO.

To get started, consulting parties need to agree on the definition of the undertaking, the area potentially affected by the project, and what parties need to be involved. Clear definition of the potential impact of the project, combined with initial inquiries into the known or potential occurrence of cultural resources, helps determine whether consultation will proceed to Step 2: Identifying Historic Properties.

Consultation must be completed **before** the action is approved or authorized if agencies are to consult effectively. If you are unsure whether an action qualifies as an undertaking or if that undertaking has the potential to affect historic properties, contact SHPO early in planning. Waiting until after an action has been approved but before action is taken is inappropriate. If actions have already occurred prior to consultation, our office is unable to provide input on the steps of the process that are required to occur prior to implementation, such as defining the area of potential effect and identification efforts. This may also constitute *foreclosure*, which is when the ACHP is precluded from commenting.

If rules or procedures guiding federal and state agency compliance with cultural resource requirements seem in conflict with the 36 CFR 800 regulations or this guidance document, contact SHPO for clarification. 36 CFR 800 regulations determine SHPO procedures.

1.1 CONSULTATION UNDER STATE LAWS: MTAA AND MEPA

State agencies in Montana are required to consult with the SHPO by rules developed under the Montana State Antiquities Act (MTAA) (MCA 22-3-421 to 442) and the Montana Environmental Policy Act (MEPA – MCA Title 75, ch.1), concerning the identification and preservation of *Heritage Properties*.

Under the **Montana State Antiquities Act (MTAA)**, state agencies are to consult with the SHPO regarding efforts “*to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties...on lands owned by the state...*” (MCA 22-3-424). Some state agencies have their own implementing regulations or rules for the Montana State Antiquities Act – e.g., Montana Fish, Wildlife and Parks (FWP), and the Trust Lands Division of the Department of Natural Resources and Conservation (DNRC). All other state agencies responsible for state property and which do not have agency rules, must follow rules developed by the SHPO in 1998 (22-3-423 through 424 MCA).

All state agencies under the State Antiquities Act are required to consult with the SHPO regarding potential impacts to the possible Heritage Properties on state lands.

The MTAA applies to projects on state-owned property only. The Act provides for the review of agency-proposed projects and mitigation plans by the SHPO, the issuance of Antiquities Permits (required for the excavation, removal, or restoration of any *Heritage Property* on state lands), agency notification requirements to private landowners whose properties are being considered for eligibility to the National Register by an agency, and an appeal process. All state agencies under the State Antiquities Act are required to consult with the SHPO regarding potential impacts to possible Heritage Properties on state lands.

Some permits, licenses, or reclamation applications on non-state lands could require review under the **Montana Environmental Policy Act (MEPA)** or specific agency regulations. Questions regarding the relevance of MEPA to the proposed undertaking should be directed to the approving state agency.

Some state agencies also must comply with federal Section 106 regulations because they use federal funds, permitting, approvals or delegations. For example, Montana Department of Transportation work under the Federal Highways Administration, and—under certain circumstances—the Montana Department of Environmental Quality (DEQ) Coal Program are required to meet federal Office of Surface Mining Reclamation and Enforcement standards. DEQ may also consult with the SHPO and others such as Tribes under the **Major Facilities Siting Act** (Montana Code Annotated 75-20-102) and **Open Cut Rules** (gravel pits) (Administrative Rules of Montana 17.24).

In general, guidance for consulting under the federal Section 106 review process also applies to consultation under state laws. There are differences between the MTAA and Section 106 process regarding response timelines and the resolution of Adverse Effects (Step 4).

1.2 CONSULTATION UNDER FEDERAL LAWS

The National Historic Preservation Act (NHPA) defines procedural obligations that are ultimately the responsibility of the federal agency involved in the undertaking. The federal agency is responsible for complying with the legislation and formally consulting with SHPO and other consulting parties.

The SHPO considers 36 CFR part 800 and the ACHP to be the authority on the NHPA Section 106 process. The National Park Service is the authority on the eligibility assessments of historic properties.

The Montana SHPO does not routinely review National Environmental Policy Act (NEPA) documents. NHPA and NEPA are two separate federal regulations. The SHPO serves a specific role in the NHPA process but does not have a corresponding role in NEPA. We will occasionally review or comment on NEPA documents when concerns are brought to our attention.

The NHPA process needs to be completed before the NEPA process is concluded with either a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS).

1.3 CONSULTATION RESPONSIBILITY AND DELEGATION AGREEMENTS

When the undertaking is subject to consultation under state or federal laws, the responsibility for initiating consultation rests with the agency involved in the undertaking. While some federal agencies may delegate authority to applicants or consultants to act in place of the federal agency, **the agency is ultimately responsible for complying with the legislation and formally consulting with SHPO** and other parties.

There are situations where there are multiple federal agencies involved in a single undertaking. For example, if there was a FHWA funded project occurring on BLM owned lands. FHWA is involved because they are a federal agency providing funds for the undertaking. BLM is involved because they own and manage the land on which the undertaking will occur. When there are multiple agencies involved some or all agencies may choose to designate a *Lead Federal Agency*. The lead federal agency acts on behalf of the other agencies, fulfilling their collective responsibilities. Those agencies that do not designate a lead federal agency remain individually responsible for Section 106 compliance. If an agency has been designated the Lead Federal Agency, consultation with SHPO must include letters from the other agencies acknowledging and ceding this status.

Some agencies have legal delegation agreements established in Programmatic Agreements (PA) at the state or national level. When a federal agency has formally delegated some or all responsibilities under Section 106, it retains legal accountability and is required to try to resolve any disagreements that might arise.

The party delegated to is responsible for understanding the agreement, its parameters, and specifying which agreements apply when consulting with SHPO. Each agreement specifies instances where it is necessary for the agency to directly enter the consultation process, such as when an adverse effect finding is expected.

Unless specified in a PA, or other formal program alternative, SHPO will not evaluate the adequacy of avoidance stipulations, the eligibility of cultural resources, or the effect to eligible properties solely in consultation with proponents or their consultants. While a proponent or their consultant may make recommendations to the agency concerning eligibility or effect, the agency is solely responsible for reaching and stating their own findings and requesting SHPO's comment or concurrence. In the absence of a PA, the agency must review the adequacy of identification efforts and findings prior to action by the agency or the proponent.

Blanket delegations of authority—where the federal agency delegates the entire Section 106 review process to the applicant—are typically only used by non-land managing federal agencies. A federal agency must have a previous agreement in place with the ACHP and SHPO prior to utilizing a Blanket Delegation of Authority. Some agencies that commonly use blanket delegations of authority are:

- Federal Communications Commission (FCC) and Cell Tower Projects, and
- Department of Agriculture Rural Development (USDA/RD)
- Department of Agriculture Rural Utility Service (USDA/RUS).
- Department of Housing and Urban Development (HUD) and community development block grants.

To avoid delays, applicants and agencies must identify who will initiate consultation with the SHPO. Federal agencies should notify the SHPO as early as possible when forming any delegation agreements.

1.4 DEFINE THE UNDERTAKING

Under federal law, consultation with the Montana SHPO begins with identifying and defining the undertaking. While the first step of “define the undertaking,” is not explicitly described under state law, it is a practical and necessary step for initiating consultation for state projects.

The National Historic Preservation Act (NHPA) defines undertakings requiring consideration under the NHPA as *a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency.*

Undertakings that require consideration under the NHPA include those that:

1. take place on federally owned land
2. require a federal permit, license, or approval
3. receive federal funding or financial assistance
4. are carried out by or on behalf of the agency
5. are subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

Undertakings include everything from federal technical assistance projects, loan guarantees, property transfers, special use permits, and 404 permits, to large-scale ground-disturbing activities such as coal mining, infrastructure development, and logging.

1.4.1 Undertakings with No Potential to Cause Effects

36 CFR 800.3(a)(1) acknowledges that many *undertakings* do not have the potential to cause *effects* on *historic properties*. To meet the criteria for this determination it must be assumed that historic properties are present.

Examples of undertakings with “No Potential to Cause Effects” are a federal agency ordering their office supplies or hiring new staff. The decision regarding whether an activity has the potential to cause effects rests solely with the federal agency. Because there is no potential to cause effects in these circumstances, Section 106 review with the Montana SHPO is unnecessary. However, undertakings involving any ground-disturbing activity and most repair, routine maintenance, or other work on historic properties has the potential to cause effects and is therefore subject to Section 106 review. We encourage discussions with SHPO staff if an agency is unsure when this designation applies.

1.5 DEFINE THE AREA OF POTENTIAL EFFECT (APE)

Once an agency has determined that a proposed action is an *undertaking* under federal law, and that the undertaking has the potential to cause effects to historic properties, the agency then must consider and define the *Area of Potential Effect*.

The Area of Potential Effect IS ...

1. *the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist (36 CFR 800.16(d))*
2. influenced by the scale and nature of the undertaking and site- and project-specific variables
3. determined at the beginning of consultation with SHPO; often alongside a file search request
4. comprised of all locations where the undertaking may result in direct or indirect effects
5. determined by the potential for an undertaking to result in changes anywhere that would affect historic properties that may be subsequently found to exist

The Area of Potential Effect IS NOT ...

1. constrained by administrative boundaries, ownership, or to discretionary actions
2. defined by consideration of the presence or absence of cultural resources
3. an arbitrary buffer or search area
4. one-size-fits-all for all projects
5. required to be a single contiguous area
6. always the same as an area of impact defined under NEPA.

Complete and accurate project descriptions are key to defining suitable APEs and readily identifying and assessing potential effects of the undertaking within the APE.

The APE includes identified *Historic Properties* (NRHP eligible or listed precontact and historic sites) directly within the area of project construction, and historic properties nearby which could be affected by the development of staging areas, access roads, noise, visual intrusion, or other indirect effects.

A project has a single APE, however the types of effects each of those areas may experience may differ. Agencies much consider both direct effects and indirect effects when defining their APE.

- The **Direct Effect Area** typically includes all areas of ground disturbance, staging areas, heavy equipment use, and access roads.
- The **Indirect Effect Area** includes areas that are within sight of the proposed undertaking, may be impacted by vibration, sound, and increased/decreased activity.

The APE is determined in consultation with the SHPO/THPO:

Determine scope of identification efforts. The Agency official shall consult with the SHPO/THPO to:(1) Determine and document the area of potential effects, as defined in §800.16(d); (36 CFR 800.4(a))

Because defining the APE is critical to all later steps, SHPO strongly recommends early consultation with SHPO regarding the APE definition, the identification of known cultural resources within the APE, and the

possible need for further identification efforts before conducting any field work or deciding no further identification efforts are warranted.

Similar considerations should be used to define the project area under State law (MTAA and MEPA), with the exception that in most cases consideration is confined to State Lands. Montana DEQ permitted actions on private lands follow DEQ rules except for delegated 106 approval such as coal mining.

Where disagreements on the APE occur between consultants and SHPO, direct agency consultation is necessary since consideration of effects to historic properties is an agency responsibility under Section 106 and 36 CFR 800. With few exceptions established by law, agencies cannot delegate this responsibility to others.

1.5.1 Area of Direct Effects

Direct effects are caused by the action and occur at the same time and place as the undertaking. This includes the geographic location where all physical project actions will take place. This includes staging areas, access to the site, borrow areas, and lay down areas. Some examples of direct physical effects are ground disturbance, demolition, and relocation of historic materials.

1.5.2 Area of Indirect Effects

Indirect effects include reasonably foreseeable impacts caused by the undertaking but that occur later in time or further removed in distance. Indirect effects may include visual intrusions, noise, vibration, smell, and dust. This includes all project elements and potential indirect effects within a geographic area which will experience those effects.

The recommended *minimum* Indirect APE for most projects is ¼ mile, however project-specific details will often require increasing this distance. Many federal agencies offer guidance on how to determine the Indirect APE for a project.

In consultation or reports on a project, describe how potential indirect effects were factored into the APE definition, some common methods are: GIS tools with viewshed analysis, standard diameters based on construction height agreed upon in PAs, balloon test or other marker with photos of the proposed work area.

1.6 IDENTIFY AND INVOLVE CONSULTING PARTIES

Once an agency has established that it has an undertaking with the potential to cause effects to Historic Properties, the agency must notify SHPO and/or relevant Tribal Historic Preservation Office (THPO) in writing. However, consultation with SHPO/THPOs alone is not enough to ensure compliance with the NHPA or 36 CFR 800. Federal agencies must seek and consider the views of potentially interested parties.

Consultation is more than a simple notification about a planned undertaking. Consultation is a process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process (36 CFR 800.16(f)). Consultation should not simply be a matter of providing project information to the parties, but instead should be an

active effort to learn about their concerns and include those concerns in agency planning. Consultation is meant to be an interactive movement towards a collaborative solution.

Consulting parties often include:

- Federal and State agencies
- Native Nations / Indian Tribes
- Relevant THPO or SHPO
- Applicants for federal assistance/permits/licenses
- Representatives of local governments
- ACHP
- Public
- Parties with legal or economic interest in the undertaking or affected historic properties
- Other people or groups under 36CFR 800.2(c) with special knowledge or interest in the undertaking or historic properties

The agency is responsible for keeping a record of consultation efforts. When requesting SHPO's concurrence, include a summary of consultation activity and copies of written correspondence (letters and emails).

While SHPO staff will informally discuss projects, all formal consultation must be written. **Phone conversations, because of the danger of misunderstandings, do not represent formal comment or consultation;** verbal requests for information, comment or recommendation need to be followed up in writing. Furthermore, public notices, scoping alerts, newspaper ads, or other requests for information aimed at a broad audience do not constitute SHPO consultation or notification.

Consultation is a process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.

1.6.1 Native Nations

Under 36 CFR 800 federal agencies are required to consult with Native Nations and Indian Tribes, regardless of whether or not the project is located within reservation boundaries. Agencies are also required to consult with Tribes regardless of whether or not that Tribe has established a THPO.

The ACHP provides detailed guidance on the consultation process including consultation with Indian Tribes. See *Consultation with Indian Tribes in the Section 106 Process: The Handbook*, *Section 106 Applicant Toolkit*, *Section 106 Consultation about Archaeology*, and other documents available from the ACHP.

Consultation with Native Nations is required for all federal undertakings, regardless of whether the undertaking's APE includes federal, Tribal, state, or private lands. Section 106 of the NHPA requires federal agencies consult with Native Nations that attach religious and cultural significance to historic properties that may be affected by the agency's undertakings.

While the regulations and legal language use the term *Indian Tribes*, the Montana SHPO prefers the term *Native Nations*, because it emphasizes sovereignty and minimizes potential for misconceptions about the term ‘tribe’. SHPO may still use the term Indian Tribe when referencing legal language or guidance from other agencies.

An agency’s interactions with federally recognized Nations must take place on a government-to-government basis. The federal agency staff responsible for carrying out Tribal consultation should be familiar with the history of the relationship between the U.S. Government and that Nation, and the applicable treaties, court decisions, and statutes that influence the relationship.

Under the U.S. Constitution, treaties with Native Nations have the same weight as federal statutes. This means that federal agencies are bound to give effect to treaty language and, accordingly, must ensure that federal agency actions do not conflict with Tribal treaty rights.

Some cultural resources require Tribal consultation when applying the National Register criteria and evaluating them. This is particularly true of Traditional Cultural Places (TCPs) and precontact sites. All requests for SHPO concurrence on the eligibility of a TCP or precontact site must include a summary of consultation efforts and a list of THPOs, Tribal cultural specialists, or Nations who were consulted on assessing the eligibility of that site.

“.... Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them” (36 CFR 800.4(c)(1))

In addition to the eight reservations and Nations currently identified in Montana, there are many more Nations with ancestral and cultural ties to places in the state (see table). THPOs whose current headquarters are outside of Montana may need to be consulted.

All requests for SHPO concurrence on the eligibility of a TCP or precontact site must include a summary of consultation efforts.

Reservations and Nations in Montana:

- Fort Peck Tribes of the Fort Peck Reservation, Assiniboine and Sioux
- Blackfeet Tribe of the Blackfeet Nation
- Fort Belknap Indian Community of the Fort Belknap Reservation, home of the Nakoda and Aaniiih Nations
- Apsáalooke Nation of the Crow Reservation
- Northern Cheyenne Tribe of the Northern Cheyenne Reservation
- Chippewa Cree Tribe of the Rocky Boy’s Reservation
- Confederated Salish and Kootenai Tribes of the Flathead Reservation
- Little Shell Tribe of Chippewa Ojibwe people (no reservation)

Partial List of Nations with Concerns in Montana:

- Red River Band of Lake Superior Tribe of Chippewa Indians
- Cheyenne-Arapaho Tribes of Oklahoma

- Crow Creek Sioux Tribe
- Eastern Shoshone
- Keweenaw Bay Indian Community
- Kiowa Indian Tribe
- Lower Brule Sioux Tribe
- Northern Arapaho
- Northwestern Band of Shoshone Nation
- Prairie Island Indian Community
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Rosebud Sioux Tribe
- Shoshone-Bannock Tribes Heritage Tribal Office
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
- Spirit Lake Nation
- Standing Rock Sioux Tribal Council
- Turtle Mountain Band of Chippewa
- Nez Perce Tribe Cultural Resource Program
- Mandan, Hidatsa, and Arikara Nation

1.6.2 Tribal Historic Preservation Offices (THPO)

If an undertaking will occur within the boundaries of a reservation in Montana, then the concurrence of the THPO, rather than SHPO, is necessary. The NHPA (Section 101 (d)(2)) provides that Native Nations may assume all or any part of the SHPO's functions with respect to Tribal lands if the Secretary of Interior acting through the Director of the NPS finds that the Tribe can carry out the proposed functions.

While Montana SHPO office cannot offer concurrence on projects within reservation boundaries, we do encourage agencies to submit reports and/or site records from projects within reservation boundaries, so they can be added to the Montana Cultural Resources Database (MCRD).

1.6.3 Montana State Historic Preservation Office (SHPO)

Under the NHPA, the SHPO is charged with advising, assisting, and cooperating with federal, state, Tribal, and local authorities to ensure that historic properties and heritage properties in Montana are taken into consideration at all levels of planning and development. SHPO works to reflect the interests of the state and its citizens in the preservation of their cultural heritage (36 CFR 800.2(c)(1)). This most often takes the form of concurrence on an undertaking's effect on historic properties or the eligibility of an individual site.

Under the Montana State Antiquities Act, the SHPO is tasked with assisting state, federal, and other agencies in preserving heritage properties and paleontological remains. Additionally, SHPO encourages avoidance, whenever feasible, of actions that substantially alter heritage properties or paleontological remains on lands owned by the State of Montana.

SHPO maintains a survey and inventory program and is a repository of GIS and site information. Staff establish historic contexts and nominate eligible properties for listing in the National Register of Historic

Places. The Historic Architecture Specialist provides technical advice on the preservation of historic architecture and is the state liaison between the NPS and applicants for the Federal Historic Rehabilitation Tax Credit program. The State Archaeologist is staff to the State Burial Preservation Review Board and provides advice regarding treatment of archaeological properties and artifacts.

1.6.4 Applicants and Consultants

Federal agencies, rather than applicants or consultants, are responsible for consulting with the SHPO on all undertakings assisted, funded, undertaken, permitted, or licensed by the lead federal agency. In some instances, however, the lead federal agency delegates some or all of the Section 106 review process to the recipient (applicant) of the funding, license, or permit. See section 1.3 Consultation Responsibility and Delegation Agreements.

1.6.5 Certified Local Governments (CLG)

Certified Local Governments (CLG) are community-driven groups that have been certified by the NPS and SHPO as active partners in historic preservation. **If a project's APE is within the area of interest of a CLG, the CLG should be consulted.** However, the concurrence of a CLG is not a substitute for SHPO consultation or concurrence.

CLGs included sixteen counties, cities, and communities in Montana.

- | | |
|----------------------------------|-----------------------------|
| 1. Anaconda / Deer Lodge County | 9. Hardin / Big Horn County |
| 2. Billings / Yellowstone County | 10. Havre / Hill County |
| 3. Bozeman | 11. Lewis and Clark County |
| 4. Butte / Silver Bow County | 12. Lewistown |
| 5. Carbon County | 13. Livingston |
| 6. Columbus / Stillwater County | 14. Miles City |
| 7. Deer Lodge | 15. Missoula |
| 8. Great Falls / Cascade County | 16. Virginia City |

1.6.6 Advisory Council on Historic Preservation (ACHP)

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that oversees Section 106 review and issues the regulations that implement it. The ACHP must be notified when an undertaking may adversely affect historic property. The ACHP exercises its discretion in deciding to participate in consultation. The ACHP issues formal comments to the head of an agency when an agreement is not reached on how to resolve an undertaking's adverse effects. The ACHP also participates in the development of program alternatives under the regulations, and coordinates with federal agencies and consulting parties on these program alternatives. The ACHP provides technical assistance to all parties on the Section 106 review process.

Whether or not the ACHP becomes involved in consultation, anyone may contact the ACHP to express your views or to request guidance, advice, or technical assistance. Regardless of the scale of the project or the magnitude of its effects, the ACHP is available to assist with dispute resolution and to advise on the Section 106 review process for federal undertakings.

If you suspect, but have been unable to verify, federal involvement, or if you believe the federal agency or one of the other participants in review (including the Montana SHPO) has not fulfilled responsibilities under the Section 106 regulations, you can ask the ACHP to investigate. Be as specific as possible and have the following information available: name of the federal agency responsible and how it is involved; description of the project; historic properties involved; and a clear statement of your concerns about the project and its effect on historic properties.

1.6.7 Public

The views of the public are essential to informed federal decision making in the Section 106 process. **The regulations call for the federal agency official to actively seek and consider the view of the public during the review process.** This is especially important when developing Memorandums of Agreements (MOAs) and Programmatic Agreements (PAs).

At a minimum, the agency official must provide an opportunity for the public to examine the results of the agency's effort to identify historic properties, evaluate their significance and assess the undertaking's effects upon them.

When adverse effects are found, the agency official must also make information available to the public about the undertaking, its effects on historic properties and alternatives to resolve any adverse effects.

Additionally, the public must be afforded an opportunity to express their views on resolving adverse effects. 36 CFR 800.2(d) asks that the agency consider several factors in determining the level of public involvement including: the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the undertaking, and the presence of any confidentiality concerns.

1.7 REQUEST A FILE SEARCH

After SHPO and consulting parties have agreed upon the undertaking's APE, an agency designee, applicant, or consultant requests a "File Search" from SHPO. This step typically occurs at the same time as the agency engages other consulting parties about the undertaking.

A "File Search" refers to a query of the Montana Cultural Resources Database and reveals the presence or absence of documented historic, archaeological, or Traditional Cultural Property sites, and reports on results from previous surveys in the area. Searching the MCR Database of previously recorded sites and inventories provides agencies with baseline information to aid in project planning and often saves agencies time and money in the long-term.

Montana SHPO requires all undertakings to receive a file search as part of meeting the requirements under 36 CRF 800.4a and b to seek information from SHPO about historic properties documented within the project area.

In some cases, the federal or state agency may require its licensees, grantees or borrowers, or project proponents to initiate some of the agency's historic preservation responsibilities. Applicants or their professional consultants may be directly involved in interaction with the SHPO regarding cultural resource

identification during the early stages of project review if the federal agency has directed them to do so. However, the ultimate responsibility for this consultation rests with the federal agency.

1.7.1 File Search Request Forms, Data, and Fees

File search requests for compliance purposes require a completed **File Search Request Form** (FILE-F) and a map showing the proposed project area. An invoice for the file search will be sent with the SHPO's response and the file search results. To request any data indicated as present by a file search, you will need to complete a **Data Request Form** (DATA-F) and a signed Data Use Agreement (DUA).

To complete the request form, you will need to prepare the following information about the project and consulting parties:

1. Name, address, and telephone number of the person making request
2. Name(s) of the federal or state agencies involved in the undertaking
3. Approximate date of proposed undertaking's initiation
4. A description of the undertaking that identifies and explains ground disturbing activities, demolition or modification of buildings, structures, or objects. If no ground disturbance, or demolition or modification of existing buildings will take place, please say so;
5. A description of any previous disturbance and current land use and condition
6. Legal location (Township, Range, and Section) of the project area; Consider including an expanded search area. SHPO recommends that the File Search area include township, range, and sections or quarter sections within and adjacent to the project boundaries (APE). An expanded file search area helps identify sites that overlap or cross over the APE boundaries, and site types likely to occur in the APE. The Montana Cultural Resource Database system searches to quarter section.
7. Land ownership (federal /state /private / Tribal / other)
8. An image and the names of relevant U.S. Geological Survey (USGS) 7.5' quadrangle maps showing the project location. Urban projects must appear on a city map.
9. Provide a justified definition of the APE and delineate boundaries on the 7.5' USGS map. Clearly identify ancillary project locations such as access roads, borrow sources, staging areas etc. related to the undertaking.
10. Submit photographs and property addresses when requesting information on structures 50 years or older.
11. Include a description of cultural resources known or suspected by the agency or applicant to exist in the APE.
12. Upload a completed File Search Request Form (FILE-F) and a map using the Montana Cultural Resource Database portal. Select "File Search" as the submittal type.

Remember!

- **File Search results contain sensitive information** and are therefore released only to personnel meeting Archaeological Resource Protection Act or Secretary of the Interior standards. Agencies must notify SHPO in writing when the agency delegates consultation to another qualified party (36 CFR

800.2(c)(4)). Please refer to confidentiality standards above concerning release and use of File Search and other cultural resource data.

- **Expect File Search results within 15 days.** In emergencies or under special circumstances, SHPO may be able to provide some preliminary information over the phone. However, telephone responses to inquiries are considered to be informational only.
- **Data from a File Search generally expires after one year.** After one year, depending on the project and its location, SHPO may ask for an additional record search. Discuss with SHPO whether a multiyear project would require additional file searches.
- **A lack of previously recorded sites in an APE** does not mean that an agency can assume there are no historic properties present or that their identification efforts are complete.
- **SHPO archives the information submitted by consulting parties.** Submission of incomplete, illegible, or confusing project information will delay the review process until consulting parties provide accurate information.

1.7.2 File Search Results and Recommendations to Identify Historic Properties

Within 15 days of receiving a request for File Search, SHPO will review project plans and inform the consulting party in writing of presence or absence of any documented sites, previous surveys, and other information relevant to the project area. SHPO usually makes recommendations regarding the adequacy of information or the need to conduct further investigations—such as a field survey, historic map review, oral history interviews, and consultation with others knowledgeable about the area—to further identify historic properties.

Under 36 CFR800.4 the agency shall consider recommendations by SHPO and other consulting parties to make additional efforts to identify Historic Properties. If the agency believes that SHPO’s recommendation for additional consultation, inventory, or other consideration of possible historic properties is unwarranted, the agency should document a reasonable and good faith consideration of historic properties for further SHPO consultation (36 CFR 800.4(d)).

Generally, SHPO will recommend survey in areas that have not been recently inventoried unless there are clear indications the APE has been heavily disturbed. In some cases, only a portion of the project will warrant inventory.

Sensitive areas where inventory is typically RECOMMENDED include:

- Locations of, and the area around, known sites
- Areas around concentrations of sites
- Resources known to have been important to either historic or precontact populations
- Un-surveyed historic section of a town
- Areas of historic means of travel
- Certain landforms within areas near present or past bodies of water (places where people were likely to live, camp, work, or build)

- Areas on or around unusual or locally prominent landforms (places potentially used for burials, ceremonies, or viewpoints)
- Areas for which there is no official record of sites but there are artifact collections, or documents or other information indicating the probable presence of sites
- Areas that have never received a professional survey and do not have significant prior ground disturbance

Circumstances when inventory is typically NOT RECOMMENDED include:

- Areas with previous adequate survey and reporting sufficient to document a finding of No Historic Properties present
- Projects involving work only in an existing constructed roadside ditch, or road pavement and shoulders; *NOTE that a distinction is made between existing ditches/shoulders and the legal description of the right-of-way which may or may not be entirely disturbed, some right-of-way still has the potential for sites*
- Temporary light fencing activities, with little or no ground disturbance
- Projects located on artificial embankment, or fill/cut or other areas previously substantially modified
- Projects in an area or of a type specified in a formal agreement recognizing its low potential to affect historic properties
- Projects with scopes of activities unlikely to affect cultural resources. Aerial chemical weed control projects are an example.

Remember, as archaeologists and historians continue to survey the state, new information determines high and low probability locations for sites. Geographic areas and types of landforms previously thought to have a low potential for containing sites may have a higher potential than previously realized, and vice-versa. This change in information will ultimately be reflected in project reviews. Thus, areas not requiring a survey now or in the past may require a survey in the future.

If a previous inventory is more than ten years old, its usefulness needs to be reviewed for changing standards, changing exposures of buried sites, and changing integrity of structures. Since understanding of significance changes over time, some sites, buildings, structures, or features, which were not recorded in the past, may have become historic, and now require consideration. The passage of time may also call for a reassessment of cultural resources previously determined Eligible or Not Eligible for listing in the NRHP (36 CFR 800.4(c)).

SHPO's criteria for recommending or not recommending surveys are subject to reinterpretation and modification as the database and our knowledge and understanding of the resource and potential impacts grows.

For example, ground disturbance in plowed fields is a subject of ongoing review and discussion. Currently, Montana SHPO believes that plowed fields warrant inventory except in areas of very limited soil deposition, such as upland glacial till. While disturbing shallowly buried archaeological deposits, plowing may also reveal otherwise buried sites with intact cultural deposition below the plow zone. There are numerous archaeology sites across Montana with intact features and artifacts beneath the plow zone.

Another example where ideas about appropriate levels of inventory are in development is prescribed fire management. The impact of low-intensity controlled burns on cultural resources is currently understood to be selective and therefore identification efforts may be directed only towards those resources that would likely be impacted by burning. At the same time, research is needed to better determine the range of impacts from prescribed burn. Moreover, in some cases prescribed fires can be justifiably argued to have limited impact on certain kinds of sites. However, a “prescribed” fire that gets out of control may have significant impacts.

Conditions to control a prescribed fire must be met and promises kept before an agency can conclude that it has sufficiently considered the potential impact of prescribed fire on cultural resources. Failure to meet prescriptions or protection of cultural resources as stipulated in a prescribed fire plan would not constitute compliance with federal and state preservation requirements.

A lack of previously recorded sites in an APE does not mean that an agency can assume there are no historic properties present or that their identification efforts are complete.

The passage of time may also call for a reassessment of cultural resources previously determined Eligible or Not Eligible for listing in the NRHP.

1.7.3 Predictive Modeling

SHPO is developing a predictive model for precontact site locations in Montana. This model is based on nearest-neighbor algorithms of slope, distance to water, and recorded site locations. This predictive model will guide the advice that SHPO provides to agencies regarding inventory needs and the probability of precontact archaeological sites in the project area.



2 STEP TWO: Identify Historic Properties

In step 1, you initiated consultation by defining the undertaking and the APE (area of potential effect), identifying and involving consulting parties, and requesting a file search. If your project is an *undertaking* that is subject to consultation under state or federal laws and has the *potential to cause effects* to historic properties then consultation proceeds to Step 2: Identify Historic Properties.

Based on the results of the file search, SHPO makes recommendations regarding the adequacy of available information about the project area or the need to conduct further investigations. Scenarios when SHPO may or may not recommend further efforts to identify properties are discussed in Chapter 1. Under 36 CFR800.4 the agency shall consider recommendations by SHPO and other consulting parties to make additional efforts to identify Historic Properties.

Cultural resources are the remains of past human activity, and may include buildings, structures, archaeological sites, rock inscriptions, earthworks, symbols, traditions, and cultural landscapes. The term, cultural resources is applied regardless of its National Register status.

Historic Properties are legally defined as *cultural resources* that have been determined eligible for, or are listed on, the National Register of Historic Places.

Heritage Properties is a term specific to the MTAA, which is equivalent to Historic Properties. It is defined as any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

Site is another inclusive term describing the location of a cultural resource, historic property, or heritage property.

Identification efforts need to include both cultural resources and historic properties. The process for identifying *cultural resources* in the APE may include methods like file search, field survey, historic map review, oral history interviews, or consultation with those familiar with the area. However, identifying a *Historic Property* also requires evaluating the resource's eligibility for listing on the National Register.

This section provides guidance to identify Historic Properties by: (1) recording cultural resources within the APE and (2) evaluating their eligibility for the National Register.

The presence or absence of cultural sites and their National Register eligibility status can determine whether consultation ends with a “No Historic Properties Affected” finding, or if consultation proceeds to Step 3, determining and evaluating effects.

2.1 CONFIDENTIALITY AND RESTRICTED INFORMATION

The Archaeological Resource Protection Act (ARPA) of 1979 prohibits releasing information concerning the nature and location of archaeological resources on federal lands. This restriction applies to releases of information to both consultants and the public. This is most pertinent to NEPA documents and cultural resource reports. In general, specific site locations may not be disclosed on maps intended for public release, like EAs or EISs.

If consulting parties request SHPO File Search information for federal or tribal lands, they should first receive permission and instruction from the appropriate agency or Tribe on the use of that information. Similarly, under the NHPA Section 304, agencies have the responsibility to protect, and withhold as is prudent, information gathered in the course of their NHPA responsibilities. Confidentiality of information when gathered, or later requested, is further addressed at 36 CFR 800.4(a)(4) and .11(c). See also National Register Bulletin 29, *Guidelines for Restricting Information about Historic and Prehistoric Resources*.

State Heritage Properties are also protected from public disclosure when prudent in meeting the intent of the State Antiquities Act (MCA 22-3-423(12)).

Access to some site information in the Montana Cultural Resource Database (MCRD) may be restricted. Often, restricted sites include those that have burials, sensitive religious or cultural significance, or sites where the property owner has requested information be withheld. These site records or reports will have the word “Restricted” in the file name and will not be available for download. A minimal description and generalized location are available on the database. If you need additional information about a restricted site, contact the State Archaeologist.

SHPO will not release site location information if there is any question regarding its use or disclosure.

2.2 CONDUCTING A FIELD SURVEY

The terms *survey* and *inventory* are used interchangeably in this document and refer broadly to a list—or the process of compiling a list—of cultural resources, by type, age, and/or eligibility, within a given survey area or region. A field survey or inventory, performed by qualified personnel, is the primary method for identifying unknown cultural resources in the APE. This identification effort is predicated on the definition of the undertaking, the APE, and initial information collection (such as file search results) illustrating previous inventory and sites in the vicinity.

Conversations with landowners, or land-owning agencies may provide insight into what types of cultural resources may occur in the area and therefore help align qualified personnel and appropriate methodology for executing the survey work.

An intensive field survey seeks to identify **all cultural resources and historic properties in the surveyed area**, and **results in a detailed report** on each historic building, structure, district, object, or traditional cultural place, and the methods used to identify them. The basic requirement of a Cultural Resource Inventory Report is to establish a firm and clear basis for reporting agency findings to SHPO and other consulting parties. The following general guidelines for conducting a field survey will help consulting parties meet this requirement.

2.2.1 Timing: When to Survey

Agencies can avoid project scheduling delays by submitting projects and any new inventory work to SHPO for review as early in the planning process as possible. Identifying a project's potential to affect important cultural resources early allows agencies to exercise options which may not be available after planning has proceeded so far as to make modifications unlikely.

Weather and the seasonal timing of pedestrian inventories impact the efficacy of the work. SHPO does not consider archaeological inventory conducted when snow obscures the ground surface as valid.

2.2.2 Qualifications of Survey Personnel

The qualifications of survey personnel must match the type of inventory being proposed.

Foresight regarding the type of cultural resources that are likely to be identified in an area can help ensure qualified individuals are enlisted to record those sites. For example, a survey of a downtown main street should include a SOI (Secretary of Interior)-qualified historic architect, and a survey in native prairie should include a SOI-qualified archaeologist. Surveys in areas with traditional cultural places should include a qualified traditional cultural specialist.

Principal Investigator—Cultural resource surveys must be carried out under the professional direction of a Principal Investigator (PI). The qualified PI must directly supervise inventory personnel. Failure to follow this prescription risks reports being returned, recommendations questioned, and other delays.

The PI should have documented experience identifying and recording Northern Plains and Rocky Mountain site types; and must meet SOI (Secretary of Interior) standards outlined in *Archaeology and Historic Preservation; Secretary of Interior's Standards and Guidelines, Federal Register 1983, Vol. 48, No. 190, pages 44738-44739* for the specialty particular to the survey (archaeology, architectural history, historical architecture, or history). PIs often verify their qualifications by submitting a vita to SHPO. However, **SHPO does not have the authority or responsibility to certify professional consultants.**

Paraprofessionals—If an agency has paraprofessional training programs, SHPO must vet those programs to determine if the program qualifies for a formal agreement with SHPO that permits the use of paraprofessionals.

Tribal Representatives—Tribal representatives who do not meet the Secretary of Interior Standards for history or archaeology may still be qualified by THPOs to inventory or evaluate properties of religious or cultural significance to Tribes.

Consultants—Federal agencies, as well as applicants, often rely on the services of consultants and contractors to carry out research and prepare the necessary analyses and recommendations needed to inform the federal agency’s Section 106 review. But regardless of who carries out the studies and prepares the Section 106 documentation for review, the federal agency is responsible for ensuring that its content meets applicable standards and guidelines (36 CFR § 800.2(a)(3)).

2.2.3 Survey Strategies and Agency Standards

Standard field survey methods are described in the Secretary of the Interior Guidelines and Standards at Federal Register, Part IV 48(2): 44716-44740. Specific and comprehensive guidelines for identifying and recording various categories of resources—such as buildings, structures, objects, and districts—are described in the National Register Bulletin series.

Federal agencies define different levels or classes of inventory for particular types of investigations. When conducting inventory, survey testing, and recording sites on public lands, consultants must be familiar with the specific requirements established by the respective federal and state land managing agency. Agencies often refer to survey strategies as Class I (document survey), Class II (windshield survey), and Class III (pedestrian survey). Because these terms are inexact and vary between different entities, inventory reports must discuss the specific methodology used during the survey.

Whichever methods are selected, they should be described in detail within the Cultural Resources Inventory Report. Be sure to include: rationale for selecting survey techniques; justification for any deviations from transect standards or APE coverage described below; descriptions of archival or legal documents that were referenced, or other research; and explanations for why you did or did not conduct subsurface testing.

To identify cultural resources and historic properties in the APE, the survey area should generally include the entire area where direct effects are likely to occur. When circumstances require deviations from standard survey coverage and methodology, clearly and thoroughly describing and documenting surveyed areas is especially important.

In the report, be sure to:

1. Clearly describe areas that were and/or were not surveyed and mark the location(s) on a 7.5’ quadrangle map.
2. Provide legal descriptions and total acreage (rounded to the whole acre) for the area(s) surveyed.
3. In undertakings with more than one survey area, report acres for **each** survey area.
4. If the entire APE, or portions of the APE, was not surveyed, explain why.
5. If more than one survey method was used, indicate on the map their use in each survey area.

Surface visibility conditions (GSV or Ground Surface Visibility) throughout the survey area must be described in detail in the report, especially when conditions affect variations in methodology. Photos of the ground surface, exposures and vegetation must be included in the report. Incomplete information on ground surface visibility may delay the review process.

2.2.3.1 Survey Transects and APE Coverage Standards

Transects for an intensive field survey should, in general, be no more than 25 meters (approximately 80 feet) apart and should (in the absence of explicitly stated reasoned considerations) cover the entire area of direct effects. Any deviations from complete Direct APE survey coverage or the advised 25m transect interval standard need to be justified in the report narrative and the deviation(s) located on a 7.5' quadrangle map.

Some common reasons for deviation from standard transect spacing or APE coverage may include:

1. Slopes greater than 30% grade
2. Plow zone over upland glacial till
3. Areas historically built of fill material
4. Poor surface visibility
5. Dense unsafe deadfall-covered forests

2.2.3.2 Surveying Beyond the APE

When a site is located near or on the edge of the APE, and access is permitted, site boundaries should be inventoried and mapped, both inside and outside the APE, to properly record the nature and qualities of the cultural resource. Similarly, sites lying adjacent to but outside the APE should be recorded to confirm that the boundaries do not extend into the APE, or more importantly to demonstrate that the qualities and characteristics of the site will not be inadvertently affected. In which case, the definition of the APE will need to be adjusted accordingly.

2.2.3.3 High Probability Areas

Some landforms warrant more intensive survey coverage due to a higher probability of cultural resource occurrence. If any of the following high-probability areas are excluded from an inventory, the rationale needs to be provided in the report: rolling finger ridges, promontories, stream benches, fluvial-glacial terraces, plateau margins, ridge crests, saddles and approaches, confluences of streams (current and past), stream crossings and approaches, confluences of streams (current and past), stream crossings and approaches, resource procurement features such as lithic sources/outcrops, ethnobotanical plant communities, mineral and paint outcrops, and rimrocks, and locations of reported or known sites.

2.2.3.4 Transportation Rights-of-Way

A transportation or road right-of way does not always equate with a level of disturbance that would eliminate the need for inventory. If prior disturbance is suspected, consult with SHPO to determine if an inventory is warranted.

Cable placed entirely within a constructed drainage or borrow ditch parallel to a maintained road or within the existing prism of a constructed surface (top of cut to toe of fill), may not warrant an intensive inventory. However, in this circumstance, SHPO requires a field check of previous disturbance areas along a staked project line, and a site records check (File Search).

2.2.4 Survey Maps and GIS

Maps displaying accurate locations for project boundaries, affected areas, and cultural resources are critical, particularly if avoidance is proposed.

Cultural Resource Inventory reports must include maps at a scale of 1:24,000 overlaid on the relevant USGS 7.5' topographic maps. Maps should unambiguously convey the following elements:

1. Map title and legend that clearly convey the map's intent
2. Boundaries for the project area, APE, and surveyed area(s); clearly distinguish between the APE and survey area, whether or not these have the same boundaries
3. Location of known cultural resources within ¼ of a mile of the project area (located by survey or identified in the file search), including Isolated Finds (IFs)
4. Location of any subsurface testing
5. Ownership or administrative boundaries
6. Quad name for relevant 1:24,000 (7.5') topographic map
7. Legal description (township, range, and section)
8. Boundaries of previously disturbed areas, areas of proposed project disturbance, as well as proposed design changes or reroutes for avoidance must be clearly mapped in relation to known and newly identified cultural resources.

Additional exhibits may be warranted during site evaluation or effect determination such as:

1. Site distribution maps showing the spatial relationships between sites in the undertaking area
2. Aerial imagery of the project area
3. Smaller scale map showing the entire project area or indexing the location of other maps
4. larger scale maps detailing areas of high disturbance or avoidance methods
5. Archaeological probability areas as they apply to the APE
6. LiDAR imagery

SHPO recommends using GPS to record site datum and features. Digital shapefiles for site boundaries, inventory areas and the APE are required and should be formatted as polygons and submitted with the required digital copy of the report and site records.

When creating maps, follow modern cartographic design elements and readability rules, as described by the Geographic Information Technology Training Alliance and ESRI. Maps that are difficult to read will be returned to the agency with a request to improve legibility. Conveying too much information on a single map can make it difficult to read—presenting information on multiple maps may be preferable.

Photographic documentation conveys a visual perspective and can improve understanding of findings and field conditions during an inventory.

2.2.5 Photos

Digital photography technology provides ample opportunity for survey personnel to collect quality photographs that sufficiently document findings during a field survey. SHPO may require additional photographs (and fieldwork) if photographic documentation does not convey the necessary information.

Cultural Resource Inventory Reports should include at least one photograph of:

1. An overview of the APE
2. Each site within the APE
3. Relevant site details
4. Each feature within the site

Sketch maps, plan drawings, engineering schematics, and other graphical representations of the undertaking, the APE, or sites are encouraged, but not always applicable.

APE Overview Photographs help convey the general character of the project area. Images of major landforms, ground surface visibility, and any obstacles to inventory noted in the report (such as impassable vegetation or unsafe conditions which made survey impossible in an area) are essential to communicating visual perspectives from the field to the report.

Site and Feature Photographs must allow SHPO to generally corroborate on the site's type, condition, and significance. Photographs of site details and features may include: building foundation, window and door layout, construction techniques (e.g. notching on a log building), diagnostic artifacts, modern changes or disturbances, damage to site features (erosion, vandalism, etc.), and natural exposures used to evaluate subsurface potential or deposition.

Photo Captions should accompany each image and describe the subject of the photograph, indicate cardinal direction the photographer is facing, provide the date the photo was captured, and identify the photographer.

2.2.6 Subsurface Testing During Inventory or Survey

Initial survey and recordation will be based primarily on surface observations. Any excavation of archaeological sites located on federal, tribal, or state land without prior approval and necessary permitting violates federal (16 U.S.C. 470) or state law (MCA 22-3-432).

Procedures for collecting that information should be agreed upon before the inventory or subsurface testing begins. If partial excavation, or testing, by a professional archaeologist will be necessary, consultation regarding the scope and nature of that testing should involve the landowner or land managing agency, Tribes, SHPO, the proponent, and consultants. Based on this consultation, minimally destructive and necessary testing during inventory may be agreed upon. SHPO suggests submitting an archaeological testing plan to the State Archaeologist for review and comment. This allows SHPO to provide input regarding if the proposed plan would be sufficient to determine the site's eligibility.

Shovel probing, augering, or some other preliminary subsurface testing method may be acceptable as a step in intensive inventory. Such probing can be useful in exploring subsurface potential, substantiating surface observations, or used where vegetation obscures the ground surface. SHPO regards shovel testing and augering as being most useful in delineating site boundaries or as a means of evaluating the potential for soil deposition. **Shovel testing is not generally sufficient to demonstrate the lack of, or presence of, intact cultural deposits.**

Using **natural subsurface exposures**— like cutbanks, rodent holes, tree tips, etc. to assess subsurface deposits may also be useful but is seldom more than a complementary source of information and is seldom adequate as a primary source of information about subsurface potential. When used to assess subsurface potential, natural exposures should be described in detail, mapped, and photographed. Similarly, any combination of systematic and intuitive shovel testing should be described in detail, with rationale in the report.

Where surface visibility is low, SHPO may recommend a systematic shovel testing approach such as tests at 30-meter intervals on survey transects, but numerous probes should be based on consultation with SHPO and the agency.

SHPO recommends against extensive testing during survey within sites, though some testing is often warranted as an exploratory device within and between features or activity areas and to determine boundaries. All decisions to test or not to test should be justified. All testing spoil should be screened. The location of testing must have UTM coordinates and be referenced to a site datum located on the site plan map and on the USGS site location map.

There are also cases where formal square meter test units are more appropriate than shovel probes during inventory. However, formal test units will usually occur during eligibility evaluations, after the SHPO and other consulting parties have had a chance to comment on a testing design.

The SHPO recognizes that an appropriate testing proposal will be one that strikes the often-delicate balance between obtaining an accurate assessment of a site’s information potential, and the destructive nature of obtaining that information. The ACHP’s Notice of Guidance *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (Federal Register Vol.64, No. 95, 27085-7) is written primarily for those needing to address adverse effects but also offers useful background for the early steps of consultation including testing.

In meeting the balance, early consultation among the SHPO, tribes, agencies, proponents, and others is necessary to ensure that the fullest range of alternatives remain open for consideration. Extensive excavation or use of heavy equipment such as backhoes in a testing program without appropriate consultation may render SHPO comment meaningless and precipitate a need for ACHP participation (see 36 CFR 800.9(c)).

2.3 DOCUMENTING SITES

If cultural resources—buildings, structures, objects, or districts that are at least 50 years old—occur in the APE of the proposed undertaking, they must be documented. Their eligibility for the National Register will determine if the resource is—by definition—a “Historic Property.”

2.3.1 Define the Resource / Site Type

Cultural resources fall into one of two temporal categories—precontact or post-contact—depending on the time-period they were created. Precontact sites are those that were created **before** Europeans brought continent-wide changes to what would become Montana, whereas post-contact sites, often called Historic sites, are those resources that were built or created **after** these changes and are at least 50 years old.

Sites are further classified as Archaeological, Architectural, and Traditional Cultural Properties (TCPs). A “district” refers to a combination or collection of sites with a shared historic context. Paleontological resources—fossilized remains, traces, or imprints of organism—also require consideration.

Qualified personnel who are familiar with and understand eligibility criteria and considerations specific to the type of resource should prepare site documentation. This helps ensure the appropriate recordation methods and forms are used, and sufficient information is provided for eligibility determination.

2.3.2 Create Site Records

Complete site records are key to effectively recording, documenting, and tracking cultural resources in Montana—and to obtaining a Smithsonian number. Site record forms, appended by high quality photographs, maps, and GIS shapefiles of the site boundary, fulfill the requirement for requesting a Smithsonian number—a prerequisite before concurrence on a site’s eligibility or effect determination.

The general recommendation for when to record a resource as a “site” using a site form is, if a feature is present, it must be recorded as a site.

However, as per SHPO guidance, the following **do not require a site form** or state Smithsonian number:

1. Cultural resources less than 50 years old (unless they are of exceptional significance and may be eligible for the National Register)
2. Cultural resources without definable locations
3. Individual artifacts or features that are part of a larger site already assigned a Smithsonian number
4. Isolated non-historic age features (such as a field clearing pile less than 50 years of age) do not warrant site numbers. However, they must be described in the report narrative.

For those features that DO require a site record form, the following overview will help you decide which form is appropriate to use.

2.3.2.1 Cultural Site Record (CS-R) and Architecture/Engineering Record (AE-R)

SHPO provides standard forms for documenting cultural resources. In general, the Architecture and Engineering Record (AE-R) is used to document buildings and structures; and the Cultural Site Record (CS-R) is used for everything else—including railroads, ditches, roads, and other non-architectural sites. Exceptions include Isolated Finds (IF-R), Stone Circles (SC-R) and Paleontological Sites (PALEO-R), which are recorded using forms specific to these unique resources.

Findings that should be recorded as a site and assigned a Smithsonian number include, but are not limited to:

1. **Precontact archaeological surface artifact scatters** of five or more non-diagnostic precontact objects located within 50 meters of each other
2. **Two or more diagnostic artifacts** located within 50 meters of one another
3. **Minimal artifact scatters located with some feature of other cultural activity** such as a hearth or stone circle
4. **Features such as precontact hearths or cairns**, unless they are included as part of a larger, bounded and numbered whole, in which case they should be individually described and photographed as part of that site or district form.
5. **Paleoindian period points or other exceptionally rare, isolated finds**
6. **Historic debris** scatters with ten or more objects located within 50 meters of one another. Though if any items are diagnostic or appear to be associated with a feature, the number of objects can be less.
7. **All historic features, including isolated prospect pits outside known districts.** However, if several pits are located within 100 meters (about 330 feet) of one another or are located on the same landform and all appear to date from approximately the same period (based on vegetation growth or other indications) a single site number will usually be appropriate.
8. **Each historic building and structure**
9. **Bounded historic districts**, or a collection of individual sites or components with a thematic connection
10. **Linear features** that cross county lines and extend beyond the APE need to be recorded as per special guidelines in Chapter 10.

2.3.2.2 Isolated Find Record (IF-R)

Artifact scatters less dense than the conditions described above, such as single artifact finds, qualify as isolated finds (IF). A single item which was broken into multiple fragmentary pieces should be counted as one for the above metrics. For example, a single historic plate that broke into 12 pieces should be documented as one IF.

Exceptionally rare or unusual artifacts warrant individual Smithsonian numbers; however, the majority of IFs do not require Smithsonian numbers. A single Paleoindian period point is an example of an exception that warrants a site number.

Isolated Finds (IFs) must be plotted on survey maps and discussed in reports. Montana SHPO has an optional Isolated Find Record (IF-R) that can be used to document IFs, however, this same information can be provided in the body of the report in lieu of the formal form. The report must include a description, photo, and a map with the location of the IF.

2.3.2.3 Stone Circle Record (SC-R)

The Stone Circle Record provides a recommended attribute table for sites with many stone circles or cairns present. A stone circle is a descriptive term for a series of stone arranged in a circle, crescent, or oval shape. Some stone circles have known functions, such as tipi rings, sweat lodges, or ceremonial sites; however, when first identified it is often difficult or impossible to assign a specific function to a stone circle. The SC-R form should be used in conjunction with the CS-R form, when documenting sites with multiple stone circles or cairns.

2.3.2.4 Paleontological Site Record (PALEO-R)

The Montana Antiquity Act requires consideration of paleontological resources. When fossilized remains, traces, or imprints of organisms occur within the APE, they must be recorded and assigned a site number. SHPO recommends using the Paleontological Locality Record (PALEO-R).

2.3.2.5 Districts

A collection of individual sites or components that are related by theme (such as common site type, age, etc.) is referred to as a “district”. Any group of buildings such as schools or university campuses, airports, federal administration sites, residential or commercial neighborhoods, etc. must be documented as a district and receive a Smithsonian Number. Documentation of a district must explain the rationale for bounding a district. Each building or structure within the district must be documented on its own site record form that assesses whether it is a contributing or non-contributing resource to the district as well as discusses its individual National Register eligibility recommendation. Each building or structure within the district must receive its own Smithsonian number separate from the district number.

2.3.2.6 Human Remains

If human remains or a burial is suspected, immediately cease all activity at the location and call law enforcement. If the remains are located on federal land, then the landowning agency will complete responsibilities under the Native American Graves and Repatriation Act. For private and state land, the coroner must notify the State Archaeologist or the nearest Burial Board member within 24 hours.

2.3.3 Request Smithsonian Numbers for Sites

All cultural resources more than 50 years old in the APE must be documented on a site record form and assigned a Smithsonian number. The Smithsonian system is a nationwide registry system consisting of three parts: state number + county two-letter designation + consecutive number. It is often referred to as a Smithsonian trinomial or smith number for this reason. The state number for Montana is “24.” Examples of Smithsonian numbers for properties in Montana include 24YL0001 (Pictograph Cave) and 24DL0290 (Anaconda Smokestack). More than 65,700 Smithsonian numbers have been assigned to sites or properties in Montana, ranging from single buildings/sites to neighborhood districts made up of many different houses.

Before requesting concurrence on eligibility or effect determination, agencies or consultants must request from SHPO a Smithsonian number for the site.

SHPO will consider and assign Smithsonian numbers to sites with complete site records and GIS shapefiles of the site boundary. This is a separate process from submitting the final report and forms for SHPO review. Sites should already have Smithsonian numbers when the project report and site forms are sent to SHPO for concurrence on eligibility or effect. A complete site record includes a site form, USGS 7.5' Quad map, and current site photographs combined into a single PDF.

Linear sites and features crossing county lines present a unique numbering problem because Smithsonian numbers are county specific. SHPO divides these sites on county lines with each segment getting its own county-derived number. Site forms and reports must cross-reference the other county's Smithsonian numbers.

A complete legal description of all crossed townships, ranges, sections, and maps showing the full extent of the property within the county is required. A USGS map or maps outlining the entire route of the linear resource is expected. For example, when recording canals/laterals/ditches the entire site from point of diversion to its terminus. If the ditch extends into a different county, only the lineal feature within that county must be shown. The portion of the linear feature within another county should be recorded on a separate form and receive its own Smithsonian number. GIS shapefiles for the extent of the linear feature(s) are also required.

There are lineal sites that cross large tracts of land and present challenges when defining the width of these resources. Travel corridors did not typically have people walking long distances in a single-file line, and instead a dispersed area would be used. Two examples are the Lewis and Clark National Historic Trail and the Nez Perce Trail. When travel corridors are mapped in SHPO's database we require a width of the corridor. The site form must explain how both the length and width were determined. SHPO recognizes that associated features of these sites and effects to these sites may be present far outside their mapped widths. These individual associated features may receive a separate Smithsonian number than the travel corridor's number.

Please see our specific guidance regarding recordation and evaluation of linear resources in Section 10 *Blurred Lines: Clarifying Linear Resources*.

2.4 EVALUATING SITE ELIGIBILITY FOR THE NATIONAL REGISTER

A cultural resource's eligibility for the National Register of Historic Places (NR) determines if it is considered a "Historic Property." Therefore, to identify historic properties in the APE, cultural resources identified during a field survey must be evaluated for significance and integrity under criteria established by the National Park Service.

Once an adequate survey is completed and sites in the APE are recorded and assigned Smithsonian numbers, those sites must be evaluated for historic significance. Unless the Agency stipulates that the project is redesigned so that all effects are completely avoided (and there is SHPO concurrence with the adequacy of avoidance), the agency must submit a written request for SHPO's review of the agency's determinations of eligibility.

Under both state and federal regulations, determinations of eligibility are made by applying the criteria for listing in the National Register to the qualities of significance and integrity identified for each cultural

resource. All four of the significance criteria and all seven of the aspects of integrity must be considered when evaluating the eligibility of a site. Only after the question of significance is answered does the agency consider if the site retains enough integrity to convey that significance. If the site demonstrates both significance and integrity the site should be determined eligible for listing in the National Register.

“Determination” refers to the decision about whether a site qualifies (is eligible) or does not qualify (is not eligible) for listing in the NR. For the purposes of 36 CFR 800, eligible properties are referred to as “Historic Properties,” encompassing all types of properties including precontact archaeological or Traditional Cultural sites. In accordance with Executive Order 11593, unevaluated cultural resources must be treated as if they were found eligible for the National Register.

After the agency makes its determination, it must next seek SHPO concurrence in that determination. If the agency and SHPO cannot reach agreement or concurrence on eligibility, the agency must request the assistance of the Keeper of the National Register to resolve eligibility. The Keeper’s decision is final. Also, if the SHPO does not provide comments on a request for concurrence on eligibility within 30 days, the agency may assume SHPO concurrence and proceed accordingly.

For SHPO to review agency eligibility evaluations and provide concurrence, completed site record forms and GIS shapefiles of the site boundary must be submitted digitally to SHPO. A site determination made more than 10 years ago may need reevaluation.

The entire site must be inventoried to evaluate it, and current photos and information included on the appropriate form. AE-R forms should be used when documenting standing buildings. CS-R forms should be used in all other cases. Smithsonian site numbers are assigned to all properties, which allows SHPO to track the property’s eligibility in the Montana Cultural Resources Database.

The request for SHPO review of report adequacy and/or eligibility assessments should be explicit in a submission letter that accompanies the inventory report or site forms. Regardless of any consultant’s recommendations, the agency should make their own evaluations clear in the submission letter to the SHPO with their rationale.

...it is the sole responsibility of the agency to reach and state their own findings and request the comments or concurrence of SHPO.

2.4.1 Eligibility Determinations: Not Eligible, Eligible, Unevaluated, and Unresolved

Specific and explicit agency determinations and findings are required during both eligibility evaluation and effect assessments, as well as for all stipulations of avoidance, should projects require redesign to avoid historic properties. **Each cultural resource will have a single eligibility status.** The site is either Not Eligible, Unevaluated, or Eligible for inclusion in the National Register of Historic Places. Terms such as “potentially eligible” or “partially ineligible” can confuse the issue and the consulting parties. The agency should only use the terms Not Eligible, Unevaluated, or Eligible when seeking concurrence on site eligibility statuses.

Please remember that SHPO focuses on sites and structures that are either *listed* in the National Register of Historic Places, *eligible* for the National Register, or unevaluated and may be determined to be eligible in

the future. Until a site is formally determined *not eligible* for listing in the National Register, it must be treated as though it were eligible. SHPO's database reflects the official eligibility of a site, eligibility statements on site forms or reports reflect the recommendation of the author and may not match the official eligibility status of a site.

By statute and regulation, evaluations of eligibility are made by agencies directly, in consultation with SHPO, and sometimes the Keeper. While consultants may make recommendations, the agency in consultation with SHPO (or the Keeper alone) makes formal eligibility determinations in the Section 106 process.

An official determination requires sufficient documentation and SHPO agreement (concurrence). A qualified professional who understands the resource and eligibility criteria should document sites so that sufficient and appropriate information is provided. When an agency determines a site as eligible for inclusion in the National Register, they must state under which NR criteria that site is eligible.

Again, early planning and consultation well in advance of undertaking activities is prudent. If the undertaking is not redesigned to avoid impacts to cultural resources, identification efforts must continue until eligibility is resolved for all properties located in the defined APE.

The following four simplified scenarios illustrate most situations where sites are located during inventory and cannot be avoided. Overlap among them is also common in large undertakings where several sites may be located over a wide area.

2.4.1.1 Not Eligible

If the SHPO agrees or “concur” with the federal or state agency that the evaluated resources are not eligible under National Register criteria, the SHPO will respond in writing to the agency, concurring with the “Not Eligible” determinations.

If ALL of the cultural resources found in the APE are determined to be **Not Eligible** for the National Register, then the agency provides “No Historic Properties Affected” documentation as described at 36 CFR 800.11(d), which is subsumed in SHPO report and eligibility determination submission requirements. Consultation may then conclude with a finding of “No Historic Properties Affected”. If SHPO concurs or does not object within 30 calendar days, the Section 106 process is concluded, and the project proceeds as directed by the agency.

2.4.1.2 Eligible

If any cultural resources located within the APE are determined to be **eligible** for the National Register, and SHPO concurs, then “Historic Properties” have been identified, and parties will explore how to minimize the effect of the undertaking most realistically on these Historic Properties in an effect assessment and finding (step 3).

2.4.1.3 Unresolved: Additional Information Needed

In some cases, the eligibility of sites is not readily resolved with the information provided in an initial inventory report. For example, precontact archaeological sites may require additional subsurface testing

or Tribal consultation, or historic buildings may require additional recordation or archival research to resolve eligibility.

When requesting concurrence on an eligibility determination, it is important for the agency or applicant contracting for a cultural resource survey to ensure that its consultation provides sufficient information to convey and justify an eligibility determination. If the SHPO finds site forms or inventory reports insufficient for the purposes of resolving eligibility, we will ask the agency for additional information. This may require additional fieldwork and time.

2.4.1.4 Unresolved: SHPO and Agency Disagreement

For Federal Agencies - Under Section 106, determinations of eligibility are ultimately the responsibility of the federal agency, but the agency is required to reach this determination in consultation with the SHPO (and others), in what is known as a Consensus Determination (CD).

If a federal agency and SHPO cannot agree upon a determination, despite continued consultation, the agency must then request a formal determination of eligibility (DOE) from the Keeper of the National Register of Historic Places before proceeding. The Keeper's decision regarding eligibility is final.

- If the Keeper determines the property eligible, then consultation proceeds to the consideration of effect as described next in Steps 3 and 4 of this guide.
- If the Keeper determines the property Not Eligible, then SHPO is notified of that determination, and the agency proceeds as described earlier for situations involving no eligible sites.

Before going to the Keeper, the agency may also consider SHPO comments and resubmit their findings with additional information or rationale for reconsideration by SHPO. The Keeper, if consulted for resolution, may also request additional information before making a final decision.

For State Agencies - Under the Montana State Antiquities Act, state agencies are directed to consult with the SHPO on site significance for sites located on state land. SHPO and state agencies must jointly determine whether properties on state land are significant Heritage Properties. Pursuant to the State Antiquities Act, the findings of the SHPO during consultation may be appealed to the Montana Historical Society Director or subsequently to a district court (MCA 22-3-429 (5) -(7)).

2.4.2 Significance and Integrity: Eligibility Criteria and Considerations

Properties are eligible when they are found first to meet at least one NR criteria of evaluation (significance), and second to retain sufficient integrity to convey that significance. Evaluation of significance and assessment of integrity are two separate and sequential operations. Significance and integrity for properties involved in either state or federal undertakings are evaluated according to the National Register criteria and guidance.

Historic Properties determined by consensus to be Eligible for National Register listing are not actually listed in the Register but for the purposes of Section 106 are treated as though they were. To be listed in the Register, properties go through a separate nomination and review process involving the Montana Historic Preservation Review Board and the National Park Service.

The process of determining eligibility is best facilitated by providing SHPO with all the information that is available about a site. Remember, your site record may be the only documentation that the resource ever receives.

2.4.2.1 Significance Criteria

To qualify for the National Register, a property must be significant; that is, it must represent a significant part of the history, architecture, archaeology, engineering, or culture of an area, and it must have the characteristics that make it a good representative of properties associated with that aspect of the past.

The significance of a historic property can only be explained when placed within its historic context. Historic contexts are those patterns, themes, or trends in history under which a property's significance is determined. Historic contexts and a property's significance occur at the local, state, and national level. A property can be significant within more than one historic context. It is also important to compare related properties within that context.

Four criteria established by the National Park Service allow a property to express its significance. These are known as Criteria A, B, C, and D. A site may be significant under one or multiple criteria.

CRITERION A: Association with EVENTS that have made a significant contribution to the broad patterns of our history.

Examples of properties significant under Criterion A include: the site of a battle, a hilltop associated in oral historical accounts with the founding of a Native Nation or society, a trail associated with western migration, or a downtown building representing a town's growth as the commercial focus of the area, a stone circle site contributing to patterns of precontact landscape use.

CRITERION B: Association with the lives of PERSONS significant in our past.

Examples of properties significant under Criterion B include: the home of an important labor organizer, the studio of a significant artist, or the business headquarters of an important industrialist.

Properties eligible under Criterion B must be associated with a person's productive life, reflecting the time period when he or she achieved significance. In some instances, this may be the person's home, but in other cases a person's business, office, studio, or laboratory may best represent his or her contribution.

CRITERION C: Embodiment of the DISTINCTIVE CHARACTERISTICS of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

Examples of properties significant under Criterion C include: a house or commercial building representing a significant style of architecture, a designed park associated with a particular landscape design philosophy, a bridge or dam representing engineering or technological advances, or the only remaining example of a standard design type

CRITERION D: Yielded, or may be likely to yield, INFORMATION important in prehistory or history.

Examples of properties significant under Criterion D include: an archaeological site with sufficient material remains to test a hypothesis, corroborate current research, or reconstruct the sequence of archaeological cultures. An irrigation system significant for the information it will yield toward early engineering practices may be eligible even though it is now filled in and no longer retains the appearance of an open canal.

2.4.2.2 Integrity Criteria

Integrity is the ability of a property to convey its significance. Seven aspects of integrity combine to produce the necessary integrity thresholds:

1. **LOCATION:** place where the historic property was constructed or the place where the historic event occurred
2. **DESIGN:** combination of elements that create the form, plan, space, structure, and style of a property.
3. **SETTING:** physical environment of a historic property
4. **MATERIALS:** physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.
5. **WORKMANSHIP:** physical evidence of the crafts of a particular culture of people during any given period in history or prehistory.
6. **FEELING:** a property's expression of the aesthetic or historic sense of a particular period of time
7. **ASSOCIATION:** direct link between an important historic event or person and a historic property.

Integrity is based on significance: why, where, and when a property is important. Only after significance is fully established can you proceed to addressing the issue of integrity (NR Bulletin 15:45).

As described above, the evaluation of significance and integrity are related but different steps. One cannot assess integrity without first establishing significance by defining what qualities the property should convey. Moreover, once the physical features are recorded, and the property's significance identified within a historical context, the recorder of the property also must determine if the significance occurs at the local, state, or national level. Only with that information in hand may one then proceed to define the essential physical features that must be present for the property to represent or convey its significance and retain its integrity.

Integrity then is not simply the physical condition or appearance of a property as it is recorded in the field – it must be related to the criteria of significance identified by research for the property and its level of significance. Comparison with similar properties within the same context and similar patterns of association may also be useful in assessing integrity. A property with diminished integrity that is one of the only remaining examples of its type is still Eligible.

The necessary and essential physical characteristics of any given property can vary by criteria of evaluation, level of significance and the overall ability of the property to convey or identify that significance. Inadequate evaluations of eligibility often result from equating integrity with physical condition alone or attempting to assess integrity without having first established significance.

2.4.3 Considerations for Eligibility of Various Historic Property Types

Discussion of all aspects of eligibility evaluation and documentation for various property types is beyond the scope of these guidelines and we refer the reader to the NPS Bulletin series for more information.

The NHPA defines and refers to all places Eligible for listing in the National Register whether of historic, precontact, or traditional cultural importance as "Historic Properties." These guidelines also use the term "Historic Properties" in this general sense to refer to all eligible properties, but also use the terms "archaeological sites", "historical sites", and "traditional cultural properties or sites"—to refer more narrowly to different property types—when specific property categories are useful to achieve clarity.

Considerations for property eligibility vary somewhat by each property category; however, eligibility determinations for every property must consider and document the appropriate historical context, criteria of significance, and integrity. The process of determining eligibility is best facilitated by providing our office with all the information available about a site. Remember, your site form may be the only documentation that the resource ever receives.

All properties, regardless of type, must be evaluated under all four criteria. Furthermore, consultation with Native Nations or other consulting parties may be required to evaluate some properties. See ACHP Traditional Knowledge Bulletin 2021

As with all property types, the evaluation of the significance of historic places or sites is made within a historic context such as early exploration, mining, transportation, or homesteading. Within certain contexts, "nondescript" or "dilapidated" structures, those of modest or inconspicuous scale, and those of vernacular design and representative quality rather than high art, may also have significance and may convey that significance differently than properties evaluated as works of a master or of high artistic value.

There is no site type precluded from National Register Eligibility. There are eligible two-tracks, dumps, mine pits, roads, cabin remains, and utilitarian storage buildings.

2.4.3.1 Precontact Sites (created before ~1500)

Precontact sites are created before Europeans brought continent-wide changes (around 1500), and historic sites are created after the changes occurred. Examples of precontact sites include stone circles, trails/travel corridors, buffalo jumps, rock art, and traditional plant harvesting areas. In general, precontact sites are most often archaeological sites, Traditional Cultural Places, or both.

Because precontact sites were created by Indigenous Peoples, evaluating them often requires consultation with Native Nations. Native Nations possess special expertise in assessing the eligibility of historic properties that may have religious and cultural significance to them (CFR 800.4(c)(1)).

2.4.3.2 Historic Sites (created between ~1500 to 1975*)

Historic sites are those created after Europeans brought continent-wide changes to what we now call Montana, but not within the past 50 years. Examples of historic sites include: a home built by an Apsaalooke man at Fort Parker, a railroad, a 1970 commercial building, a mine, an irrigation ditch, a bridge, or a scatter of artifacts. Historic sites are defined by the time period they were created, not by the ethnicity

of the builders or the purpose behind construction. Historic sites may be architectural, archaeological, or Traditional Cultural Places.

Historical sites that are not archaeological are commonly listed in the Register because of the significance of one or more historic buildings, structures, or objects. Usually, historic sites will be considered significant if they meet one or more of the first three National Register criteria listed in section 2.4.2 (A-C). However, sometimes historical sites, especially those with archaeological components, may also be significant as locations containing valuable information about past human activities (Criterion D).

Historic sites significant under criteria A, B, or C must possess several, and usually most of the seven aspects of integrity - location, design, setting, materials, workmanship, feeling, and association (NR Bulletin 15:44).

Eligibility recommendations should explicitly place properties within a context and apply the appropriate criteria of significance. They should also document all basic structural elements (e.g., windows, roofs, facades, trusses, abutments, supporting piers, etc.) and contributing features while assessing integrity. The importance of excellent photographs or photocopies cannot be overstated in conveying the integrity of historic sites.

Please use AE-R forms for documenting historic buildings, bridges, and structures; use CS-R forms to document railroads, ditches, roads and other non-architectural historic sites.

2.4.3.3 Districts

“District” refers to a collection or combination of sites with a shared historic context. An individual building or site may not meet the National Register criteria of significance and integrity individually but does meet criteria when considered as part of a greater whole, or eligible district. In other words, sites may contribute to eligible historic districts, even if they are not eligible as a standalone individual site.

When identifying cultural resources in an APE, consideration of whether individual cultural resources may in fact be part of an eligible larger resource is important. Those resources may be evaluated as contributing or non-contributing to a Historic District (NR Bulletin 15:5-6, 16:15, see also NR Bulletin 24). Districts may extend beyond an APE, making assessment of Eligibility and Effect difficult if the nature and qualities of the Historic District itself are poorly recorded and understood.

SHPO cannot meaningfully comment on whether a property contributes to a “potential district”. If the district has not been recorded and assigned a Smithsonian number, SHPO lacks the required information to assess this potential.

2.4.3.4 Architectural Sites

Architectural sites are buildings or structures designed and constructed by humans. Most architectural sites in Montana are historic in nature. The few remaining precontact architectural sites, such as wipiups, are exceedingly rare. Architectural sites include residential buildings, commercial buildings, fire lookouts, bridges, and agricultural structures.

The most common architectural styles found in Montana are associated with the late nineteenth century and beyond. Many of our historic main streets contain excellent examples of buildings in the Western Commercial style, while residential areas run the range from Queen Anne to Craftsman to Ranch style houses. Just because a building is utilitarian or vernacular in style does not preclude National Register eligibility.

When photographing architectural sites, be sure to capture each of the structure's façades. When taking a photo of a building's elevation, make sure that the whole elevation is visible in the frame. Consider taking close-up shots of character-defining features like windows, doors, roof lines, and other elements unique to the building. Label a map showing the location and direction of each photo of the building. If proposing changes to an architectural property, include photographs of the features or elements that are going to be changed. Include drawings, spec sheets, and any other attendant information that might be necessary to convey how the building will change and how changes will impact its historic integrity.

While Criterion C is the most obvious contender for National Register eligibility for an architectural site, all four criteria can apply as demonstrated by the following examples.

- A homestead that precipitated settlement of a region may be eligible under Criterion A.
- The writing studio of a prominent local author may be eligible under Criterion B.
- A building typical of a particular style of architecture may be eligible under Criterion C.
- A building exhibiting a local variation on a standard design can be eligible under Criterion D if a study could yield important information, such as how local availability of materials or construction expertise affected the evolution of a local building development.

Architectural sites should always be recorded on an AE-R form.

2.4.3.5 Archaeological Sites

An archaeological site is a location that contains material remains or other evidence of past human behavior and lifeways. Frequently this will take the form of buried cultural materials, but it may also include other kinds of evidence of past human activity in an area or landscape, e.g., surface stone alignments or rock art, and house foundations or historical trash dumps. An archaeological site may represent historic times, precontact times, or both.

When documenting archaeological sites, include all features and diagnostic artifacts in the site map and as part of photographic documentation. Provide detailed descriptions of artifacts located at the site. This may include descriptions of debitage's reduction stages, lithic material type, ceramic temper used, and identifying maker's marks. Soil deposition and the likelihood of additional buried deposits should be noted.

Archaeological sites can qualify for the National Register under any of the four criteria. Examples of archaeological sites eligible under criteria A, B, C, and D include:

- The site of a battle or a site where precontact Native Americans annually gathered for seasonally available resources and for social interaction may be eligible under Criterion A.

- The location where a leader made an important proclamation that shaped future events might be eligible under Criterion B.
- A petroglyph site with well-preserved images, or an established village that illustrates the important concepts in precontact community design and planning may be eligible under Criterion C.
- A site that has information potential to address research questions and temporal information may be eligible under Criterion D.

Archaeological sites are most commonly included in the National Register if they have yielded, or have the potential to yield, information important to the understanding of the history or prehistory of the United States or Montana (Criterion D). An archaeological site eligible under Criterion D must contain sufficient material remains to address a research question posed.

Archaeological site reports should evaluate the potential of the site to yield important information by explicitly answering the following sorts of research questions:

1. What kind of data is the site known to contain? Discuss the major physical characteristics of the property. Describe features (e.g., hearths, stone rings or alignments, foundations, depressions, trash dumps, etc.). Address the following as appropriate: What types of artifacts were identified at the site? Are these datable or diagnostic finds? Can an assemblage (i.e., an inter-correlated group of artifacts) be identified? Can the artifacts or site formation processes be used to help establish a time frame for the site's occupation? What, if any, oral history or written documentation is known?
2. What kinds of data might the site be reasonably expected to contain? Does the site contain a subsurface component? Is more subsurface testing necessary? Is the matrix and cultural deposition intact? Is there any indication of datable organics or paleosols? What types of written, oral, or photographic documentation might exist for the site?
3. How does the known and expected data contribute to the general or specific understanding of the history or pre-contact history of the United States or Montana based on research needs or questions? Can the site contribute to our knowledge of settlement patterns, resource use, or intersite patterns? Can the artifact assemblage answer research questions on such topics as subsistence, lithic procurement or reduction strategies, trade, ethnicity, technological change, quality of life, consumer behavior, cultural values, etc.? How is the site best understood in relation to other sites and or patterns?
4. What is the general history of the site and how does it relate to cultural historical contextual themes (such as McKean Complex, homesteading, or placer mining)? Sites should be evaluated in terms of potential to add to our knowledge of different periods through research questions tailored to individual site potential.
5. What is the condition of the site and how does that convey its National Register significance? National Register integrity and intact cultural stratigraphy should not be assumed to be the same thing. Discuss the probable functions of the property from the time of initial use or construction until its abandonment, noting reuse, recycling, or temporary abandonment episodes. Discuss site formation processes and subsequent land use history of the location, assessing impacts on the preservation of artifacts, features, and other relevant data categories. Discuss any human impacts that have either enhanced or detracted from preservation.

Remember, only the potential to yield important information is required for site eligibility under Criterion D. Some archaeological sites will also hold religious or cultural significance to Native American Nations. Therefore, when evaluating certain sites such as cairns, stone circles, or precontact artifact scatters, SHPO expects the agency to conduct Tribal consultation efforts as part of their evaluation, especially when assessing significance under Criterion A. It is difficult to state a site lacks association with significant events or patterns in history without consulting Tribes who may have special knowledge about such events and patterns.

Use the supplemental SC-R form when recording stone circles. For all archaeological sites, including railroads, ditches, roads, and other non-architectural historic sites, use the Cultural Site Record (CS-R) form.

2.4.3.6 Traditional Cultural Properties/Places (TCP)

TCPs are defined as places eligible for the National Register because of their *association with cultural practices or beliefs of a living community that are 1) rooted in that community's history, and 2) are important in maintaining the continuing cultural identity of the community* (NR Bulletin #38). Traditional lifeways, traditional knowledge, continuing traditional plant use, and oral traditions are some of the contextual themes under which such sites should be considered. This category of properties is not limited to Native American sites, and many other examples are illuminated in National Register Bulletin 38.

The NHPA states that properties of traditional religious and cultural importance to Indian Tribes may be determined eligible for the National Register. Usually, traditional cultural significance evaluation occurs based on associations with events that made important contributions to the broad patterns of history (Criterion A), although traditional sites may also hold associations with significant individuals (Criterion B), and significant design or construction characteristics (Criterion C).

Traditional Cultural Properties are the location of events or activities where the location itself possesses historic or cultural value (NR Bulletin #15:5). Importantly, Bulletin #15 states that a site *need not be marked by physical remains if it is the location of a prehistoric or historic event or pattern of events and if no buildings, structures, or objects marked it at the time of the event* (#15:5). Thus, the statement in National Register Bulletin #38 that a TCP must be a tangible site with a historical and physical referent, does not mean buildings, structures, features, or objects need exist. Such sites need not contain physical evidence of the significant historic event or activities; the often-intangible beliefs or practices that give such sites significance must be considered together with the natural, spiritual, and physical referents or properties (NR Bulletin 38:9).

The property description for use in evaluating TCPs should include: contemporary appearance, historical appearance, traditional concepts of time and period of significance and how the property is described in relevant traditional belief, tradition, and practice. Also, like all other kinds of historic properties, Traditional Cultural Properties must be geographically bounded and evaluated for integrity of location, design, setting, materials, workmanship, feeling, and association.

TCPs must, in addition, possess integrity of relationship (does the property have an integral relationship to traditional beliefs or activities that continue in the present?), and integrity of condition (is the condition of the property such that the relationship survives?). Documentation of these two aspects of integrity

depends on careful and detailed consultation with the holders of the relevant traditional beliefs (NR Bulletin #38:10). Outside investigators not holding those beliefs or knowledge will be ill-equipped to identify the properties, their context, significance, or integrity without the help of those with the appropriate knowledge.

A relevant example of a TCP in Montana is the Fort Smith Medicine Wheel, listed in the National Register after being nominated by SHPO, at the request of the Crow Tribe, who provided critical supporting documentation.

SHPO concurrence does not substitute for a good faith effort to consult with interested parties, state or federal agencies, local government authorities and American Indian Tribes.

2.4.3.7 Exceptions to Eligibility Criteria

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that achieved significance within the past 50 years are not considered eligible for the National Register. However, such properties will qualify if they fall within the following categories:

- a) A religious property deriving primary significance from architectural or artistic distinction or historical importance
- b) A building or structure removed from its original location, but significant primarily for architectural value, or as the surviving structure most importantly associated with a historic person or event
- c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with their productive life
- d) A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, distinctive design features, or from association with historic events
- e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived
- f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance
- g) A property achieving significance within the past 50 years if of exceptional importance

2.4.4 Notification Requirements Regarding Evaluations of Eligibility

All reports and correspondence regarding evaluations of cultural resources must list all federal and state agencies involved in the project as well as other interested parties with land affected by the project. The 1992 amendments to the NHPA specify in Sections 106 and 110 that agencies specifically seek and consider the views of Indian Tribes, other agencies, CLGs, interested parties, and the public in their consultation. Furthermore, the Montana State Antiquities Act states that in cases where agencies request project impact reviews under Section 22-3-429 that:

At the time that the state or federal agency requests the views of the historic preservation officer as provided for in section (1) [regarding property eligibility, effects, and mitigation plans], the agency shall provide notice to the applicant, affected property owners, and other interested persons of the request for consultation and shall identify locations where the submitted material may be reviewed.



3 STEP THREE: Effect Determinations

When cultural resources are located within the APE and determined to be eligible for the National Register, then “Historic Properties” have been identified. The next step in the consultation process is to determine if the proposed undertaking will have effects on the Historic Properties—and if those effects are adverse.

After the agency’s identification efforts, two outcomes are possible:

1. The first possibility is that no sites were located within the APE. This is typically referred to as a “Negative” or “No Properties” inventory. The official effects determination for this is subsumed in the **No Historic Properties Affected finding** (36 CFR 800.4(d)(1)).
2. The second possibility is that sites were located. This is typically referred to as a “positive” inventory. In this circumstance the agency will then need to evaluate the historic significance and integrity of those sites to make an eligibility determination. The agency should provide a written statement describing if historic properties were identified within the APE when consulting with SHPO. If the agency is able to redesign or adapt their project to avoid effects to the historic properties within the APE, it may still reach a **No Historic Properties Affected finding**.
3. If the project cannot be designed to avoid impacting historic properties identified in the APE, this situation describes a case of ‘**Historic Properties Affected**’ (36 CFR 800.4(d)(2)) is the result of the identification efforts. Subsequently, the agency must determine if that Effect is *Adverse or Not Adverse* (36 CFR 800.5).

Agencies in consultation with SHPO, and sometimes the ACHP, are the only parties able to make formal assessments of possible effects to eligible properties. While SHPO can assist the proponent, the agency remains responsibility for making a finding of effect.

3.1 AVOIDING EFFECTS

Once the eligibility of all properties in the APE has been resolved, agencies must assess the effect of the proposed project on any Historic Properties not completely avoided. However, the Agency should document their consideration of the following options, along with their final effect finding.

- 1) Moving the undertaking to another location,
- 2) Using an alternative project design,
- 3) Designing a new undertaking to address the need,
- 4) Canceling the undertaking.

Parameters and commonly used tactics for avoiding effects are discussed further below. The earlier in the planning process that these options are considered with an informed awareness of possible effects to important cultural resources, the more likely reasonable alternatives can be designed. Once the agency has considered and rejected these options, the agency moves to consider the effects of the project on Historic Properties.

3.2 EFFECTS, ADVERSE EFFECTS, AND EFFECT DETERMINATIONS

An *effect* is defined as “an alteration to the characteristics of a historic property that qualify it for inclusion in or eligibility for the National Register of Historic Places.”

1. Effects are not constrained by administrative boundaries, ownership or discretionary action.
2. Effects can be direct or indirect. Direct effects occur at the time and place of the action. Indirect effects are removed in time or location, but still reasonably foreseeable.
3. Changes need not be negative to be Effects. The action must only alter the characteristics making the property Eligible in order to result in Effects.
4. Potential effects must also be considered under Section 106.

An *adverse effect* is when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.

When historic properties are located in the APE, and effects to them cannot be completely avoided, the effects of the project need to be assessed to determine if they are *adverse*.

Effect determinations encompass the entire undertaking and are not made on a site-by-site basis. However, when dealing with potential adverse effects, an explanation of which sites may or may not be adversely affected is important.

One of three possible Effect Determinations is made for an entire undertaking:

1. No Historic Properties Affected (no eligible sites were located, or effects to them are completely avoided)
2. No Adverse Effect (effects will not diminish the site’s integrity and eligibility)
3. Adverse Effect (effects will diminish site’s integrity and eligibility)

As part of an Effect Determination, it is the responsibility of the agency to obtain and consider the views of interested persons, Tribes, CLGs, local governments, as well as others who have notified the agency of their interest. Any participant may request ACHP advice, guidance and assistance including the resolution of disagreements regarding effects (36 CFR 800.2(b)(2)). In making an Effect Determination the agency should notify all consulting parties.

Documentation standards to be submitted to SHPO for a finding of No Adverse Effect or Adverse Effect are summarized in Chapter 5 and 36 CFR 800.11(e).

With concurrence on a finding of “No Historic Properties Affected” or “No Adverse Effect”, consultation concludes, and the project can proceed. However, “Adverse Effects” must be resolved with additional consultation.

3.3 “NO HISTORIC PROPERTIES AFFECTED” FINDING

3.3.1 No Sites Located: Negative Inventory

If no eligible cultural resources are identified during a survey, a “negative inventory” report should be sent to the SHPO along with a cover letter from the agency indicating acceptance of the report. Once the SHPO has concurred that there are No Historic Properties Affected due to no properties are located in the APE, the agency concludes its Section 106 responsibilities, and the undertaking may proceed.

Standards for submitting documentation to SHPO for a finding of No Historic Properties Affected by reason of no sites present are summarized in Chapter 5 and 36 CFR 800.11(d).

3.3.2 Sites Located, But Avoided: Undertaking Redesigned to Avoid Effects

All cultural resources within the APE should be evaluated for eligibility and must be assessed for effects. If the cultural resources are *completely avoided*, then a finding of No Historic Properties Affected may be appropriate.

Early survey and consultation with SHPO allows agencies to identify cultural resources and avoid effects to those resources by redesigning the project. This is in the best interests of both the agency and the resources. In such a case, the agency must provide SHPO with written stipulations of project redesign for complete avoidance. Only then can SHPO concur that the undertaking has been sufficiently redesigned to avoid effects to all Historic Properties.

Appropriately determining a No Historic Properties Affected finding result does not allow for excluding areas or corridors from consideration within the APE (cutting donut holes) or determining that portions of a site are noncontributing to the significance or eligibility of the site. This finding means there are no sites in the APE or that the Undertaking and APE have been modified to avoid all potential effects to any historic property.

This is particularly true for linear sites such as irrigation features where some segments may have been impacted by cumulative developments more than others. Rather than define segments with presumed less integrity as “noncontributing” or excluding parts of sites or the APE, we recommend concluding that there is a decreased likelihood that additional alterations will affect the overall integrity or significance of the site as a whole. This conclusion depends on the nature and scope of the undertaking. The appropriate effect finding avoids eliminating the portions of presumed reduced integrity from consideration.

3.3.2.1 Buffers

Some agencies utilize buffer zones, or areas around recorded sites within which certain project activities are prohibited. If a buffer zone is proposed as part of undertaking conditions or redesign, SHPO must be consulted. Thirty meters (30 m) is often proposed as an adequate buffer, but appropriateness depends on the nature of the undertaking and the site. SHPO is wary of the use of standard buffers, as they often ignore the individual characteristics and challenges of a particular site. When dealing with an archaeological site with a subsurface component one of the most important factors will be the presence, absence, or likelihood of finding subsurface materials. Landforms are often a better indicator of site boundaries and potential than an arbitrary distance.

3.3.2.2 Monitors

The use of monitors is another common method agencies use to ensure avoidance or proper implementation of other mitigation measures. A monitor is an individual who is present during project implementation and is assigned cultural resource tasks. They are responsible for ensuring avoidance of sites and documenting cultural resources. SHPO expects monitors to be SOI-qualified, have the authority to stop and modify implementation work, and submit a summary of the monitoring activities after completion.

The National Park Service's guide on *Cultural Resources Monitoring and Fire (2021)* describes that Monitoring is essential to:

- Ensure that standard cultural protective measures are effective;
- Experiment with and gauge the efficacy of new treatments for cultural resource protection;
- Test assumptions regarding the types of resources to be found within un-surveyed areas;
- Inventory areas that were visually and/or physically inaccessible prior to the activity;
- and protect cultural resources from looting, erosion, and vandalism

If a previously undocumented cultural resource is revealed or previously undocumented effects occur the monitor should contact SHPO within 48 hours and follow the steps in the chapter on inadvertent discoveries.

3.4 “NO ADVERSE EFFECT” FINDING

An *effect* is caused when a project action may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register. This effect may be adverse or not adverse. To reach a finding of No Adverse Effect, the agency seeks and obtains the concurrence of the SHPO and consulting parties.

The agency may propose that it has modified or conditioned an undertaking such that any effects on Historic Properties could be found to be Not Adverse. Two major examples include: 1) when the undertaking is limited to rehabilitation of structures and the work conforms with the Secretary of the Interior 's Standards, or 2) when the undertaking is limited to the sale, transfer, or lease of a federal historic property, and conditions are included to ensure preservation of the historic qualities of the property.

Data recovery at archaeological sites does not meet the criteria for a No Adverse Effect finding.

No Adverse Effect documentation is described at 36 CFR 800.11(e) and summarized in Chapter 5. This documentation includes explicit description of any conditions or stipulations necessary to be considered a No Adverse Effect and the views of consulting parties and the public. No Adverse Effect condition descriptions should include the details of actual actions proposed, such the window repairs for rehabilitation of a building, or the language of preservation easements for a land exchange.

No Adverse Effect conditions differ from “mitigation” in that the conditions must directly and completely preserve the significant qualities and integrity of eligible properties, whereas Adverse Effect mitigation encompasses actions to lessen adverse effects and may be considerably broader. See chapter 4.

3.5 “ADVERSE EFFECT” FINDING

While an *effect* is determined when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register, an *adverse effect* does so in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Adverse Effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative (36 CFR 800.5(a)(1)).

According to regulation, Adverse Effects on historic properties include, but are not limited to (36 CFR 800.5(a)(2)):

1. *Physical destruction of or damage to all or part of the property;*
2. *Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR 68);*
3. *Removal of a property from its historic location;*
4. *Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;*
5. *Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;*
6. *Neglect of a property which causes its deterioration;*
7. *Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.*

If consultation results in an “Adverse Effect” finding, notify the ACHP and proceed to Step 4: resolving adverse effects.

For State Heritage Properties reviewed under the State Antiquities Act, effect findings, mitigation or treatment plans for state Heritage Properties are reviewed by the SHPO, but decision-making authority and documenting justification rests with the state agency. Appeals to effect findings may be submitted under 22-3- 429-(5)-(7) MCA.

The discussion in this guide regarding the criteria and assessment of adverse effects apply primarily to federal undertakings under Section 106. In principle, however, the considerations are the same under state law. The biggest difference is that there is no consultation or involvement of the ACHP in state-only actions and undertakings. The criteria of adverse effect are the same.

3.6 ASSESSING EFFECTS TO NATIONAL HISTORIC LANDMARKS (NHLS)

National Historic Landmarks (NHLs) are designated by the Secretary of the Interior under the Historic Sites Act of 1935 (49 U.S.C. 303 PL 100-17, 1987). NHLs were added to the National Register of Historic Places when the NR was created under the NHPA in 1966. Since then, National Register properties with national significance are eligible to be nominated as NHL but must be done so through a separate NPS process. Montana currently has more than 28 NHLs, a few notable examples are: the Bannack Historic District (HD), Bear Paws Battlefield, Great Falls Portage, Virginia City HD, Fort Benton, Pictograph and Ghost Caves, Fort Union, the Hagan Site, Three Forks of the Missouri, Grant-Kohrs Ranch, and Granite Park Chalet HD.

Assessing impacts to National Historic Landmarks involves a special consultation process. Section 110(f) of the NHPA requires that federal agencies exercise a higher standard of care when considering potential adverse effects to NHLs. Agencies must “to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark.” (16 U.S.C. 470a-2).

In addition to consulting with SHPO when NHLs are involved, federal agencies are required to:

1. Notify the ACHP if any undertaking may cause Adverse Effects to an NHL and invite their participation,
2. Notify the Secretary of the Interior and invite their participation,
3. Consider the findings of the Interior and the ACHP if the ACHP has asked for a formal report from the Interior,
4. Advise all interested parties of potential Adverse Effects with complete background, alternatives and action taken to advance a preservation outcome,
5. Similarly notify the public, and
6. Inform the public of the outcome and include provisions of resulting MOA, PA or ACHP comment.



4 STEP FOUR: Resolve Adverse Effects

Adverse Effects are those that would diminish the integrity of the characteristics that make a Historic Property eligible for listing in the National Register of Historic Places. If in Step 3 the undertaking is found to meet criteria of Adverse Effect, then the effect is adverse. In Step 4, parties will notify the ACHP about the Adverse Effect finding and consult with SHPO and other parties to resolve the Adverse Effects. Resolution may include—but is not limited to—project redesign, relocation, or cancellation to avoid effects completely, or—when avoidance is not possible—forming agreements and making plans for mitigation.

Before considering how to mitigate an adverse effect, the agency should first consider, and document consideration of avoidance and minimization methods. Mitigation options should be sensitive to the qualities making the eligible properties important but should extend beyond the conditions and treatments common in No Adverse Effect agreements or avoidance measures. Moreover, because the scope of consultation broadens with Adverse Effects we refer readers to the ACHP's *Public Participation in Section 106 Review; A Guide for Agency Officials*.

4.1 NOTIFICATION REQUIREMENTS

Agencies are required to notify the ACHP as soon as an Adverse Effect is found and shall consult further to resolve adverse effects under 36 CFR 800.6. Upon receipt of the required information specified in 36 CFR § 800.11(e), the ACHP will determine if it will participate in consultation consistent with their *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*.

4.2 AVOIDING AND MINIMIZING EFFECTS

Both the Federal and State laws concerning cultural resources in Montana require agencies to consider alternatives to causing Adverse Effects to Historic Properties. Avoidance should always be the first consideration when dealing with impacts to Historic Properties. Section 1 of the NHPA states clearly that:

(4) the preservation of [our] irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetics, inspirational, economic and energy benefits will be maintained and enriched for future generations (16 U.S.C. 470).

The agency is responsible for considering alternatives in consultation with SHPO and others, although the PI's recommendations, as well as any other recommendations, should be carefully considered.

4.3 AGREEMENTS AND MITIGATION PLANS

Relevant laws recognize that it is not always reasonable, feasible, prudent or in the best interests of the public to avoid historic properties. Once an agency has determined that eligible properties will be affected and that avoidance alternatives are not reasonable, a treatment or mitigation plan to lessen the impact, if possible, must be considered.

Parties should seek a plan by common agreement that will serve the public good and demonstrate a good faith effort to consider the concerns of interested parties. A formal Memorandum of Agreement (MOA) stipulating the mitigation or treatment plan agreed upon is the general practice in resolving Adverse Effects. For details on drafting an MOA the reader is referred to the ACHP's *Preparing Agreement Documents*. For MOAs involving archaeological sites, see *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (Federal Register Vol. 64, No.95:27085-27087).

4.4 MITIGATION IDEAS FOR ADVERSE EFFECTS

There is no “standard mitigation”, nor should there be one.

Consultation on Adverse Effect mitigation is a process of negotiation and an open exchange of ideas. Mitigation hinges on the details of the property involved and the extent of the proposed Adverse Effect. The more that is known about the property and what qualities make it Eligible, the easier it will be to balance effects with limitations imposed by the undertaking in a way that is commensurate both with the scale of the undertaking and concerns of the public, Native Nations, and others.

Agency mitigation options may focus on what can be done to the property, or what can be done to the project, and may even include off-site proposals. There is no simple list of mitigation options or plans. Just as the qualities or characteristics making properties eligible vary, the feasibility or effectiveness of a treatment or mitigation plan will vary.

Suggestions and past treatments that have proven successful are offered below. By grouping possible mitigation efforts by significance criteria, treatment considerations are focused on the qualities adversely affected. Properties found eligible under multiple criteria will require additional consideration and use of multiple mitigation options.

Regardless of property type or undertaking, several factors are critical to the successful negotiation of mitigation. In almost all discussions about mitigation it is required to clearly articulate and accept all opportunities as well as limitations of the parties involved. There must also be an understanding of the qualities which make the properties significant and a strong willingness on everyone's part to exercise careful thought and creativity.

For Historic Properties found Eligible under Criterion A—association with events or trends— mitigation options may include treatment of properties or approaches to preserving and interpreting historical events if the property itself cannot be protected.

Some possible options are:

Step 4. Resolve Adverse Effects

1. Historically sensitive exterior rehabilitation
2. Interior modifications for new or reuse of the buildings
3. Modification of city codes to allow historic set-back and store front window treatments
4. Repairing historic street lighting and other historic street furniture
5. Restrictive easements
6. Sympathetic landscaping, speed controls, noise walls with historic texturing and coloring and unobtrusive signage to reduce the effects of adjacent modern travel corridors
7. Interpretive signage describing the significance of the area and efforts to preserve its qualities
8. Completion of National Register nominations for preserved eligible properties in the area
9. Conduct a historic survey in associated neighborhoods or with associated event(s)
10. Creation of an interpretive public website

For Historic Properties found Eligible under Criterion B—association with significant persons—an agency might consider:

1. Interpretive signage
2. Publications or educational film
3. Partial Reconstruction
4. Relocation, rehabilitation, or maintenance covenants.
5. Historic survey or National Register nominations for other locations associated with the significant person
6. Design and facilitation of a traveling museum exhibit about the significant person.

For Historic Properties found Eligible under Criterion C—embodiment of a type, period or method of construction—An agency might consider the following mitigation options:

1. Rehabilitation and design modifications preserving the visual qualities of the structure while meeting upgraded standards.
2. Relocation and reuse.
3. Change in the use pattern of the building or structure. For example, changing a vehicular bridge that is undersized for current traffic into a pedestrian walkway and scenic overview or changing the bridge to one way traffic and building a sympathetic bridge to handle traffic in the other direction.
4. If a number of examples of a property exist which are subject to similar effects - a programmatic treatment involving additional research, educational publications for the whole set of properties, or documentary films and systematic proactive commitments for preservation of the type elsewhere might also be appropriate.
5. Conducting Historic American Building Survey / Historic American Engineering Record / Historic American Landscapes Survey Documentation (HABS/HAER/HALS).

For Historic Properties found Eligible only under Criterion D—for their information value—consider their research potential carried out within the framework of a data recovery plan and methodology to share that newly recovered information. The data recovery plan must be reviewed by and accepted by SHPO and/or the ACHP before any work begins. The research design must be relevant to the targeted site and its identified research potential. Not all archaeological sites are important for the same reason. Sites can be significant because they contain different sorts of information, and the same data recovery plan will not fit

every site. For many archaeological sites, data recovery means excavation, although for others perhaps, additional surface mapping may suffice. Mitigation should also consider the best way to disseminate the results of the data recovery plan such as presentation at conferences, public educational opportunities, written reports, or articles

The presentation of the research design should include:

1. One or more hypothesis (proposed statement for testing)
2. Test Implications (if X is true, then...)
3. Data Requirements (collectable information necessary for the test implications)
4. Field Techniques (methods to be used to collect data)
5. Analytical Techniques (methods to analyze the collected data)
6. Reporting (documentation to describe and share results)

Excavation of archaeological sites—even with the best and most careful work—destroys a nonrenewable resource. The destructive nature of excavation is formalized in the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (Federal Register Vol. 64, No.95: 27085-27087). Excavation should not be accepted as mitigation without careful consideration of avoidance options. At the same time, avoidance must be complete before warranting no further consideration of treatment. Boring-under a site may not constitute avoidance without conclusive evidence about the depth of the site. Burial of archaeological sites under fill will not constitute avoidance in many cases, as changes may occur to sites by putting large volumes of dirt over them.

For Traditional Cultural Properties and Properties of Religious and Cultural Significance to Native Nations. Devising reasonable and feasible mitigation can be difficult for TCPs and other sites associated with special religious or cultural significance. The variety of cultures, lifeways, and traditions potentially significant under this site category adds to the complications involved.

Once avoidance is ruled out by an agency there is often a very real problem of identifying any acceptable mitigation, getting parties to identify and discuss the qualities that make TCPs significant, and negotiating treatment of Adverse Effects on those qualities.

Boundaries, if not adequately defined at the identification or evaluation stages, may also become points of controversy in discussing mitigation. Indirect, as much as direct, Adverse Effects are commonly involved with TCPs. These difficulties do not absolve agencies of their responsibility to attempt to lessen Adverse Effects to TCPs. Mitigating Adverse Effects to a TCP must involve consultation with the community that ascribes significance to the site.

Some past efforts to minimize Adverse Effects to Native Nations' TCPs have included:

1. Viewshed analysis followed by vegetative or other screening to minimize project intrusiveness
2. Timing the proposed undertaking to avoid the most critical traditional use periods
3. Use of off-site treatments. For example: aiding Nations in their efforts to set up THPOs, providing money for ethnographic study of traditional beliefs of the group involved, language or plant use and funding the efforts to pass this information on to younger people
4. Re-introduction or relocation of traditionally important plants

4.5 RESOLVING ADVERSE EFFECTS UNDER STATE LAW

The requirement for agencies to document their effect finding and apply the criteria of adverse effect is the same under the NHPA Section 106 process and the MTAA process. However, the process for resolving an adverse effect differs.

Under the Montana Antiquity Act if an adverse effect will occur to a heritage property or paleontological remains the agency must prepare a list of alternatives considered and a written explanation of why one of the following four actions will be taken (ARM 10.121.907):

1. Avoid the heritage property
2. Abandon the proposed action
3. Modify or redesign the action to avoid or lessen adverse effect or mitigate harm. This may include items such as: relocating the project, productive use of the heritage property, scientific excavation of the archaeological or paleontological deposits, production of a public education program about the property
4. Continuance of the project with no avoidance/mitigation measures.

The agency must submit the justification of its decision in a **single page mitigation plan** to SHPO for review and comment. Mitigation plans must include a discussion of the above four options and address whether the properties might be utilized for practical purposes. Practical purposes that must be considered are (ARM 10.121.907):

1. Whether there is potential for promotional, commercial, recreational, or other uses which may provide economic gain to citizens of the state or use by units of the government;
2. Embody educational information which may be applied to instruct children or adults in aspects of Montana's history or prehistory;
3. Have social associations which illustrate the interaction and behavior of people in Montana's history of prehistory;
4. Possess attributes which support the appreciation of heritage values through sightseeing, photography, painting or other means of personal experience or artistic expression;
5. Have cultural associations which illustrate and contribute to the understanding of human cultures;
6. Contribute to the understanding of paleontological resources.

The SHPO will comment on the mitigation plan within 10 days of receipt. The agency and SHPO are to seek agreement and resolve any differences regarding adverse effect resolution. Should agreement not be reached, the agency decides how to proceed and provides SHPO with a copy of its final decision.

SHPO encourages state agencies to utilize a memorandum of agreement (ARM 10.121.911) to document the resolution of adverse effects and mitigation strategies.

5 Inadvertent Discoveries and Human Remains

5.1 INADVERTENT DISCOVERIES

If historic properties are discovered or unanticipated effects on historic properties are found after the agency has completed the Section 106 process and construction has already commenced, the agency must take steps to avoid, minimize, or mitigate adverse effects to those properties. Notify SHPO, any Indian Tribe that might attach religious and cultural significance to the property, and the Advisory Council on Historic Preservation **within 48 hours** of the discovery.

This notification should include

- The Agency’s initial assessment of National Register eligibility of the property. In the event of an unanticipated discover, the agency may choose to assume a property is eligible under specified criteria, without detailed analysis.
- Proposed actions to avoid effects or resolve adverse effects

The SHPO and other notified organizations should respond within 48 hours of the notification. The Agency must consider these comments and move forward with appropriate actions. Afterwards the agency must send a report of what occurred, summarizing actions taken.

A best practice for agencies is to proactively develop the administrative steps that will occur in the circumstance of an unanticipated or post-review discovery. Agencies are encouraged to create programmatic agreements or procedures to plan for this possibility.

5.2 HUMAN REMAINS

5.2.1 If human remains or a burial is discovered on State or Private Land

If human remains or a burial is suspected, immediately cease all activity at the location and call the County Coroner or Sheriff. Following examination, the coroner must notify the State Archaeologist or the nearest Burial Board member within 24 hours.

The State Burial Board determines if preservation in place is appropriate. Regardless of ethnic origin, burial context or age of the burial site, remains should not be disturbed before Burial Board review unless required by the coroner during evaluation of a possible crime scene.

5.2.2 If human remains or a burial is discovered on federal land...

If human remains are found on federally owned lands, then the provisions of the Native American Graves Protection and Repatriation Act apply. This will typically involve immediate cessation of all activity at the location of the find and notifying the agency’s law enforcement personnel and NAGPRA coordinator.

5.2.3 Laws regarding burials and human remains

The **Unmarked Burial Act** (Montana Codes Annotated 22-3-801 through 811) establishes the State Burial Board and protects from disturbance all human remains not within recorded graveyards or cemeteries on both state and private lands. This law states:

22-3-802(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial materials.

The law further specifies rules for discovery, reporting requirements and review procedures, requires a permit for scientific analysis, and provides penalties for certain acts including knowingly destroying or allowing the disturbance of any unmarked burial or associated materials.

Under state law any human remains and associated funerary objects not protected under the Unmarked Burial Act due to disturbance prior to 07/01/1991 are protected by the **Montana Repatriation Act** of 2001 (Montana Code Annotated 22-3-901 through 921). This act requires agencies and museums to complete inventory of human remains and funerary objects and provides for hearings regarding claims for culturally affiliated remains and objects covered by the act. The State Archaeologist is the primary contact regarding state Burial Laws.

Montana Code Annotated Title 46 Chapter 4 (Authority of Coroners) does not authorize removal of human remains solely for documentation of ethnicity, age or other study. However, the coroner may remove the remains to determine if a criminal inquiry or inquest is warranted.

Information about the location of human remains and burial sites is protected under the same law. All burial information is confidential unless the Board determines otherwise. This includes previously recorded sites which may show up in your file search without any information. In that case contact the State Archaeologist who will determine what information can be shared.

The ACHP's "*Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects*" guides federal agencies in making decisions about the identification and treatment of burial sites, human remains, and funerary objects encountered during the Section 106 process, including those instances where federal or state law does not prescribe a course of action. The policy is not exclusively directed toward Native American burials, human remains or funerary objects, but those would be included under the policy. In accordance with Section 106, the policy does not recommend a specific outcome from the consultation process, but rather focuses on issues and perspectives that federal agencies ought to consider when making their Section 106 decisions.

6 e-Consultation Documentation Standards

Documentation standards apply to various correspondence with Montana SHPO, from requesting file searches to concurrence on site eligibility and various effects findings, to resolving mitigation plans and project alternatives. Regardless of the requested action, correspondence and documentation submitted to SHPO should meet standards at 36 CFR 800.11—to establish a firm and clear basis for the agency and SHPO to make informed and legally defensible decisions regarding efforts to identify cultural resources, evaluating their eligibility for the National Register, and assessing the potential impacts of the undertaking.

During various steps in the consultation process, you are likely to exchange official correspondence with SHPO and other parties several times. Early in the process, you may request a file search, or concurrence on a finding of “no historic properties affected” from SHPO. Later in the process, you may request concurrence on site eligibility determinations, findings of “no adverse effect,” or resolution of effects through avoidance, project alternatives, and mitigation plans.

Regardless of the desired outcome of each correspondence, providing adequate information will expediate the review process and minimize delays. Agencies will need to supply additional information if the provided documentation is insufficient for SHPO to concur on findings, potentially delaying project review and implementation.

REMINDER: If SHPO disagrees with an agency or designee definition of the APE, SHPO may be unable to comment beyond disagreeing with the defined APE, and unable to concur in the findings proposed by the agency.

6.1 WHO SHOULD SUBMIT DOCUMENTATION

Like other aspects of consultation, agencies are ultimately responsible for all official correspondence and documentation during consultation. SHPO will discuss projects with proponents and contractors. However, all formal written consultation (which is distinct from conversation) must come from the responsible agency.

By statute and regulations, formal determinations of eligibility and effects to eligible properties are made by agencies in consultation with SHPO, and sometimes the Keeper or ACHP respectively. A proponent or their consultant may only make recommendations to the agency concerning eligibility or effect, but it is the sole responsibility of the agency to reach and state their own findings and request the comments or concurrence of SHPO.

6.1.1 When there is a delegation agreement in place...

If there is a delegation agreement in place, contractors and proponents may act on behalf of the agency. Any such agreements must be explicitly referenced in a cover letter that accompanies documentation, including a copy of or link to the delegation agreement. If a consultant submits a report, the cover letter must provide the names and addresses of involved federal agencies and the proponent for whom the report is prepared.

6.1.2 When a “Lead Agency” has been designated...

When there is more than one agency involved in an undertaking, agencies may designate a Lead Agency who shall act on the behalf of the other agencies, thus fulfilling their collective responsibilities under the laws. SHPO encourages the designation of lead agencies to avoid duplication of efforts. If an agency chooses not to designate a Lead, they remain individually responsible for compliance. If an agency has been designated the Lead Federal Agency, consultation with SHPO must include letters from the other agencies acknowledging and ceding this status.

6.1.3 When other parties are consulted...

Frequently there are multiple landowners or public land managing agencies, Native Nations, and other interested parties in a single undertaking or project. Agencies must provide SHPO with a list of interested parties and documentation of consultation with those parties. The lead federal agency is responsible for soliciting and considering concerns of other agencies and interested parties. SHPO may alert an agency to possible interested parties but does not coordinate consultation for the agency or a project proponent.

Other agencies and interested parties may also need to review the cultural resource inventory report. SHPO is not responsible for soliciting those other review comments. But if an inventory report is complete, includes consultation with appropriate others, and concludes that no cultural resources are in the project APE, SHPO will review those findings and provide comment to the agency or to the consultant for transmittal to the agency as requested.

6.1.4 When the ACHP is involved...

The agency will consult directly with the ACHP when SHPO and the agency cannot resolve disagreements about the adequacy of documentation or identification efforts. Interested parties may also request ACHP participation in consultation.

6.1.5 When a project is a State undertaking...

State agencies follow the same procedures as federal agencies to submit reports to SHPO. For projects that must comply with both NHPA Section 106 and the Montana Antiquity Act, SHPO expects both the federal and state agency to have come to an agreement about the eligibility of cultural resources and the effects of an undertaking before the report is submitted to SHPO. This will often mean a report is reviewed separately by the federal agencies and state agencies before it is sent to SHPO.

6.1.6 When a project is on State Trust Lands (DNRC)...

The Department of Natural Resources and Conservation’s general policy is that all reports concerning actions on State Trust Lands, pursuant to the State Antiquities Act, conducted by proponents or their consultants, be submitted directly to DNRC. DNRC will then consult with SHPO. Generally, if state lands and a federal agency are involved, DNRC anticipates that the federal agency will submit the report to SHPO (*DNRC Guidelines*, Rennie 1996:1-2).

6.2 WHAT TO SUBMIT FOR VARIOUS REQUESTS AND FINDINGS

Whether you are requesting a file search, comment, or concurrence, always ensure that you are providing adequate information to allow for a substantiated response from SHPO. For potentially sensitive information, ensure that you are complying with confidentiality standards. Although we've provided a suggested format for Cultural Resource Inventory reports below, SHPO will accept alternative formatting as long as the information is complete.

In cases where a full cultural resource inventory report may not be necessary (e.g., when a survey is not recommended by SHPO), the agency may opt to provide documentation in a "letter report" or "short form report".

Regardless of the documentation format, all consultations must include: **a cover letter, description of proposed action and the area of potential effect, photographs, maps, and justification/rationale for decisions made about the APE, identification methods, and effects determinations.**

If you are seeking comment or concurrence from SHPO regarding a site eligibility determination, or findings of No Properties Affected, No Adverse Effect, or Adverse Effect, explicitly state that request and your determinations in the cover letter. SHPO cannot assume that recommendations included in a report or site forms are equivalent to the agency's official determination.

6.2.1 Site Eligibility Determination (without an inventory report)

Many agencies combine site documentation and evaluation steps and include eligibility recommendations in a cultural resource inventory report. However, this is not always possible as additional fieldwork and/or research and documentation may be necessary to evaluate eligibility effectively.

When submitting documentation for site eligibility determinations without an inventory report, be sure to include a cover letter explicitly requesting concurrence on site eligibility recommendations with a list of sites and their proposed eligibilities. SHPO requires a complete site record (new record or current update), GIS shapefiles of the site boundary, and the site's Smithsonian number to review for eligibility. If it is a newly recorded site, you will need to request Smithsonian numbers first in a separate process. A complete site record includes a CS-R or AE-R form with photographs and maps attached. See the section on Documenting Sites for more information on site records, site boundary GIS shapefiles, and Smithsonian numbers.

Remember, each site within the project's area of potential effect will have a single eligibility status: Not Eligible, Unevaluated, or Eligible for inclusion in the National Register of Historic Places. Terms such as *potentially eligible* or *partially ineligible* can confuse the issue and consulting parties. The agency should use the terms *Not Eligible*, *Unevaluated*, or *Eligible* when seeking concurrence on site eligibility.

6.2.2 No Historic Properties Affected

If identification efforts **do not** reveal any historic properties in the undertaking's area of potential effect, or identified properties are **completely avoided**, a finding of "No Historic Properties Affected" may be

appropriate. For SHPO to concur or comment on this finding, agencies need to submit the following documentation, as per 36 CFR 800.11:

1. Description of the undertaking and federal and state involvement.
2. Definition of the APE with maps, photographs, drawings and schematics as necessary.
3. Steps taken to identify any cultural resources, including consultation with persons, tribes, agencies, or documents.
4. Basis for the finding that No Properties are present or that none will be affected.

A cultural resource inventory report may accompany this finding and should cover all the information listed above.

6.2.3 No Adverse Effect or Adverse Effect

If identification efforts **do** reveal historic properties in the undertaking's area of potential effect, and evaluation of the undertaking's effect on historic properties reveals that effects cannot be avoided, then a finding of either "No Adverse Effect" or "Adverse Effect" is determined.

For SHPO to concur or comment on this finding, agencies need to submit the following information as per 36 CFR 800.11:

1. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register
2. A description of the undertaking's effects on historic properties
3. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effect
4. Copies or summaries of any views provided by consulting parties and the public

A cultural resource inventory report will typically accompany this finding and should cover all the information listed above. Section 5.5 provides SHPO's recommendations for preparing an inventory report that meets criteria for effective review. A META-F form is required for inventory report submittals and collects key information for indexing reports in the Montana Cultural Resources database. A cover letter must accompany a request for SHPO concurrence.

Remember, each undertaking has a single project effect determination: No Historic Properties Affected, No Adverse Effect, or Adverse Effects. Effect determinations encompass the entire undertaking and are not made on a site-by-site basis or separated by sections of the APE. However, when dealing with potential adverse effects, include an explanation in the report about which sites are or are not going to be adversely affected.

6.3 HOW TO PREPARE DOCUMENTATION

A cultural resource inventory, or field survey, typically results in one of two outcomes: no sites are located within the APE (negative inventory), or sites are located (positive inventory). Evaluation of inventory outcomes and site documentation provides a basis for eligibility and effects findings, project alternatives, and potential effects mitigation.

Regardless of the survey outcome, results must be reported to SHPO and other consulting parties in a Cultural Resource Inventory Report. Inventory reports provide context for the inventory (background information about the undertaking, the APE, consulting parties, etc.), survey methodology, and findings. By following guidelines provided in the previous sections of this chapter, consulting parties can prepare reports that provide a firm and clear basis for reporting findings to SHPO and other consulting parties.

Insufficient justification for decisions made about subjective aspects of inventory work is the primary reason SHPO requests additional information, potentially delaying review.

To meet criteria for SHPO review, cultural resource inventory report submittals must include digital copies of the report with appendices, site records, maps and GIS shapefiles with inventory areas and the APE (if different from the inventory area), Report Submittal form, and a cover letter. The following describes how to organize and submit documentation successfully.

Remember: A single effect determination is made for an undertaking, and a single eligibility determination is made for each site. For the agency and SHPO to make informed and legally defensible decisions regarding efforts to identify and evaluate eligibility and effects on cultural resources, reports must include clear and detailed information regarding the location, significance, and integrity of cultural resources and anticipated effects caused by the undertaking.

Some aspects of inventory work can have a level of subjectivity, such as the site probability in each locale or the eligibility of a site. Therefore, it is important to justify and rationalize decisions and clearly state why certain categories do or do not apply. Insufficient explanations of these subjective aspects are a primary reason SHPO must request additional information from the agency, potentially delaying review.

You will need to prepare FIVE components for e-consultation submittal:

1	2	3	4	5
Submittal Cover Letter (_letter.PDF)	Cultural Resource Inventory Report with Appendices (_report.PDF)	Site Records with Smithsonian numbers (_sites.PDF or ZIP)	GIS Shapefiles for surveyed areas and APE (_GIS.PDF or ZIP)	META-F Form (_meta.PDF)

6.3.1 Submittal Cover Letter (ProjectName_letter.PDF)

A letter of submission should be included with every report detailing the request for SHPO comment or consultation on the project.

Cover letters must include:

1. a list and description of all involved agencies;
2. a brief project description;
3. description of any programmatic agreements, memorandums of agreement, or program alternatives relevant to the project;
4. actions the agency is committing regarding site avoidance or other site effect minimization efforts;

5. explicit agency recommendations, determinations, and findings for which SHPO comment and review are requested. Often this will include a request for SHPO concurrence on site eligibility status (Eligible or Not Eligible) and/or project effect (No Historic Properties Affected, No Adverse Effect, or Adverse Effect). If concurrence is requested on site eligibility status, a list of sites and their proposed eligibilities should be included in the letter.

Sample Letter

Agency Letter Head

Address and Phone Number

Date

Pete Brown, SHPO
State Historic Preservation Office
PO 201201
Helena, MT 59620 - 1201

Re: Project Name, Project Designation Number

Dear Mr. Brown,

Please find enclosed the cultural resource inventory report for (the project name) (agency project number). Three cultural resources were located within the APE. Pursuant to regulations found at 36 CFR 800 we request SHPO review of the enclosed inventory, and the eligibility determinations stated below. We request your concurrence that site 24ZZ0001 and 24ZZ0002 are not eligible, site 24ZZ0003 is Eligible under criteria A and D, and that the undertaking will have No Adverse Effect.

The proposed undertaking is located partially on lands administered by (your agency name) and partially owned by the applicant, (proponent's name) as indicated on attached (map name). Following consultation with SHPO (date), (your agency name) defined the APE as the area between the dividing ridgelines to the east and west of Blake Creek, and 100 m north and south of the dikes to be built across Blake Creek. This area is indicated by the hatched blue lines on the attached map. Both alternative implementations (A and B) for this undertaking are accurately described in detail on page 2 of the report. As the report indicates, all borrow and ancillary locations are contained within the APE as defined, except for the access route, which is an existing road, constructed in 1985. All actions proposed under both Alternative A and B are contained within this APE. (your agency name) believes that the APE as defined adequately considers all reasonable potential effects to Historic Properties from this proposed undertaking. We also believe that the report prepared by (consultant's name) for (proponent's name) and subsequently reviewed by (your agency name) is adequate and we agree with their methods.

We initiated consultation with the Northern Cheyenne and Crow Culture Commissions (date). Neither Tribe has expressed concerns or provided additional information regarding cultural resources of importance to them in the APE. Copies of consultation letters with those Nations are included.

Please contact (your name at #) if you have any questions.

Sincerely, (your manager's name/Agency Official)

6.3.2 Cultural Resource Inventory Report (ProjectName_report.PDF)

The following outline represents our *suggested* format for Cultural Resource Inventory Reports submitted for SHPO review. Agencies may organize report content differently, and SHPO will accept alternate formats that contain equivalent information. If the required information is not provided, SHPO cannot concur on requested findings and will return the report to the agency.

I. COVER AND TITLE PAGE

- a) Report title
- b) Report date
- c) Identify the party(ies) for whom this report was prepared
- d) Report Author and Principal Investigator(s): Name, signature, affiliation/agency, business address
- e) Project and/or permit numbers relevant to the undertaking

II. TABLE OF CONTENTS

- a) Include major section headings with page numbers
- b) Include a list of appendices and attachments

III. PROJECT SUMMARY

- a) Describe the proposed work and define the undertaking.
- b) List agencies involved in the project
- c) Describe the Area of Potential Affect and how it was determined. Include both direct and indirect APE descriptions and the expected vertical and horizontal extent of ground disturbances.
- d) Provide a legal description and agency/ownership of the APE, areas surveyed, and areas not surveyed
- e) Identify those who sponsored the survey and describe why the survey was conducted.
- f) Reference any relevant maps, photos, or other appendices and attachments as needed.

IV. BACKGROUND

- a) Describe the general topography, geology, and vegetation of the project area.
- b) Provide a brief historic or cultural context of the area as applicable to cultural resources under consideration.
- c) Summarize previous research and survey in the area, including locations, types, and eligibility status of known sites. Reference the date, SHPO project number, and results summary from the File Search conducted for this undertaking.
- d) Reference any relevant maps, photos, or other appendices and attachments as needed.

V. SURVEY METHODS

- a) Identify individuals who supervised and participated in field work
- b) Indicate the date(s) and field conditions when the survey was completed
- c) Describe the location, size, and coverage of surveyed and un-surveyed areas: report the total number of acres surveyed rounded to a whole acre, and the number of acres in each individual

survey area (if more than one). Justify decisions made to survey or not survey different areas if the entire APE was not surveyed.

- d) Describe distribution and width of survey transects, justify any deviations from standards as described in Chapter 2 of this guide.
- e) Describe in detail survey techniques employed and the rationale for selecting those techniques. In instances when different techniques are used in different areas of the project, document their use in the report narrative and on the map.
- f) Reference any relevant maps, photos, or other appendices and attachments as needed.

VI. RESULTS AND RECOMMENDATIONS

When a report deals with multiple sites, it should be organized to make it as convenient as possible for users to locate individual site information. Please place narrative, figures, tables, recommendations, photos etc. relating to a single site in a section devoted to that site. This will speed review by SHPO, benefit later researchers, and simplify agency cultural resource management in the future.

- a) Site-by-site discussion for cultural resources located in the APE that includes:
 - 1. Description of the site
 - 2. Justified recommendations of National Register eligibility, with reference to criteria of significance, context, and integrity.
 - 3. Recommendations for avoidance, additional work, and mitigation as appropriate; or reference any separate Effect/Mitigation reports submitted by the agency.
 - 4. Reference to any curation agreements
 - 5. Reference any relevant maps, photos, or other appendices and attachments as needed.
- b) Discussion of Isolate Finds or IF-R forms: Include a map, photo, and description of each IF

VII. REFERENCES

Bibliographic listing of consulted sources, oral history interviews, additional records searches (such as county land entry and mining claim records), General Land Office or Sandborn maps, etc.

VIII. APPENDICES

A. Consultation Summary

Summarize and provide documentation and results of consultation with others, including other agencies, the public, and Native Nations. This may also include documentation on Lead Federal Agency designation or delegation agreements.

B. Maps

Reports must include maps that show, and explicitly label, the APE, the inventoried areas, and cultural resources at a scale of 1:24,000 overlaid on the relevant USGS 7.5' topographic map. Additional reference maps may also be necessary, for example: depicting the location of proposed actions, treatment type areas, areas of ground disturbance, areas of modified survey strategy, decreased scale maps showing overviews, increased scale maps showing reroutes and/or site avoidance methods. Details about what to include and how to prepare acceptable maps are described in Chapter 2 of the guide.

C. Photographs

Photographs or laser quality color photocopies of the following:

- a) Each site in the APE
- b) Overview of field conditions in the APE
- c) Overview of areas of proposed disturbance or activity

Chapter 2 provides more information about how to ensure that photo documentation is sufficient for SHPO to evaluate eligibility and effects.

6.3.3 Site Records (One PDF per site, or one ZIP for multiple sites, **ProjectName_sites.ZIP**)

See the chapter on “Site Record & Smithsonian Number Standards” in this guide. Cultural Site Records (CS-R) and Architecture/Engineering Records (AE-R) (including site specific photos and maps) must be included for all sites located by the survey. This includes both newly identified sites and updates to previously documented sites located by the survey. This includes every site within the APE, as well as sites outside the APE that were relocated to confirm their boundaries. Use the SC-R or PALEO-R forms to record stone circles or paleontological sites, respectively.

6.3.4 GIS Shapefiles for APE, Inventoried Area & Site Boundaries (**ProjectName_GIS.ZIP**)

See the chapter on “GIS Standards” in this guide. Submit digital GIS shapefiles for APE and inventoried area boundary polygons, and individual site boundaries.

6.3.5 Report Metadata Submittal Form META-F (**ProjectName_meta.PDF**)

Cultural resource inventory reports are added to the Montana Cultural Resource Database. Maintained by Montana SHPO, this database contains cultural resource information on over 65,000 known historic and archaeological sites, 38,000 previously conducted cultural resource inventories, grey literature, National Register site status, and cultural resource management project information. To index and improve report searchability, metadata is collected with the Report Metadata Submittal Form (META-F). **Submittal packages without the required META Form will not be accepted.**

REMEMBER: Download the META-F form EACH TIME you submit documentation. The form may have changed since your last submittal. <https://mhs.mt.gov/shpo/forms>

Completing this form completely and accurately is important for maintaining quality control in the statewide database and is also required to begin SHPO’s review process. Use the following data entry and coding guidance to complete fields in the META-F form.

FILE CODE: Select ONE lead agency filing code number

- 1 = Forest Service (FS)
- 2 = Bureau of Land Management (BLM)
- 3 = Bureau of Indian Affairs (BIA)
- 4 = Montana Department of Transportation (MDOT)

5 = Department of Natural Resources and Conservation (DNRC) or Environmental Quality (DEQ)
 6 = All Other agencies/organization

COUNTY CODE: Use the list below to select up to three Two-Letter Montana County Codes. Use XX for documents that are non-county specific, and ZZ for reports that include four or more counties.

BE - Beaverhead	GA - Gallatin	MN - Mineral	SH - Sheridan
BH - Big Horn	GF - Garfield	MO - Missoula	SB - Silver Bow
BL - Blaine	GL - Glacier	ML - Musselshell	ST - Stillwater
BW - Broadwater	GV - Golden Valley	PA - Park	SW - Sweetgrass
CB - Carbon	GN - Granite	PT - Petroleum	TT - Teton
CT - Carter	HL - Hill	PH - Phillips	TL - Toole
CA - Cascade	JF - Jefferson	PN - Pondera	TE - Treasure
CH - Chouteau	JT - Judith Basin	PR - Powder River	VL - Valley
CR - Custer	LA - Lake	PW - Powell	WL - Wheatland
DN - Daniels	LC - Lewis & Clark	PE - Prairie	WX - Wibaux
DW - Dawson	LT - Liberty	RA - Ravalli	YL - Yellowstone
DL - Deer Lodge	LN - Lincoln	RL - Richland	YE - Yellowstone NP
FA - Fallon	MA - Madison	RV - Roosevelt	XX - Nonspecific
FR - Fergus	MC - McCone	RB - Rosebud	ZZ - 4 or more
FH - Flathead	ME - Meagher	SA - Sanders	

LEAD AGENCY(IES): Use the list below to select up to two Lead Agencies on project.

AGENCY UNKNOWN	DEQ/AIR WATER WASTE	FAA
BATF	DEQ/AMR	FCC
BIA/BLACKFEET	DEQ/COAL	FDIC
BIA/CROW	DEQ/Energy	FEDERAL/OTHER
BIA/FT. BELKNAP	DEQ/GENERAL	FEMA
BIA/FT. PECK	DEQ/HARD ROCK	FHWA
BIA/GENERAL	DEQ/OPEN CUT	FWP/FISH
BIA/INDIAN HEALTH SERVICE	DNRC/GENERAL	FWP/GENERAL
BIA/LITTLE SHELL	DNRC/OIL & GAS	FWP/PARKS
BIA/NORTHERN CHEYENNE	DNRC/TIMBER	FWP/WILDLIFE
BIA/ROCKY BOY'S	DNRC/TRUST LANDS	FWS
BIA/SALISH-KOOTENAI	DNRC/WATER	GSA
BLM/BILLINGS	DOD/ACOE	HUD/CDBG
BLM/BUTTE	DOD/AIR FORCE	HUD/CDBG/HOME
BLM/DILLON	DOD/ARMY	HUD/GENERAL
BLM/GENERAL	DOD/GENERAL	HUD/RESERVATIONS
BLM/GLASGOW	DOD/NAVY	LOCAL/CONSERVATION
BLM/GREAT FALLS	DOE/BPA	EASEMENTS
BLM/HAVRE	DOE/FERC	LOCAL/NOXIOUS WEEDS
BLM/LEWISTOWN	DOE/GENERAL	LOCAL/OTHER
BLM/MALTA	DOE/WAPA	LOCAL/PLANNING/CLG
BLM/MILES CITY	EDA	LOCAL/SUBDIVISIONS
BLM/MISSOULA	EPA/BROWNFIELDS	MDOT
BOR	EPA/GENERAL	MISC/CONSULTANTS
CTEP	EPA/SUPERFUND	MISC/FILE SEARCH

MONTANA STATE UNIVERSITY	NPS/GLACIER	USFS/BEAVERHEAD
MT/BURIAL BOARD	NPS/GRANT-KOHR	DEERLODGE
MT/COMMERCE	NPS/LITTLE BIGHORN	USFS/BITTERROOT
MT/CORRECTIONS	NPS/YELLOWSTONE	USFS/CUSTER
MT/DES	NRCS	USFS/CUSTER GALLATIN
MT/DOA	OSM/COAL	USFS/FLATHEAD
MT/DPHHS	PRIVATE/PUBLIC/OTHER	USFS/GALLATIN
MT/HERITAGE COMMISSION	SBA	USFS/GENERAL
MT/MILITARY AFFAIRS	SHPO	USFS/HELENA
MT/OTHER	STB	USFS/HELENA LEWIS & CLARK
NATIONAL INSTITUTE OF HEALTH	UNIVERSITY OF MONTANA	USFS/KOOTENAI
NPS/BIG HOLE	USDA	USFS/LEWIS & CLARK
NPS/BIGHORN CANYON	USDA/FSA	USFS/LOLO
NPS/FT. UNION	USDA/RD	USPS
NPS/GENERAL	USDA/RUS	VETERANS AFFAIRS

AGENCY DOCUMENT/ PROJECT NUMBER: Enter agency-issued reference number for the report and/or project. If there is no number available, leave blank.

REPORT DATE (MM/DD/YYYY): If known, enter date the report was completed: e.g., 01/12/2026.

REPORT AUTHOR(S): Last name, first name, middle name of primary author(s).

REPORT TITLE: Title of the report as shown on the document. Avoid abbreviations.

SURVEY ACRES: Total acres surveyed as represented in the report, rounded to a whole number. Do not include the project area acreage unless the entire area is surveyed. Secondary reports, overviews, or excavations may not have associated acreage. If no survey is carried out, enter 0.

For standard scaled maps of surveyed areas, use an acreage grid calculator. Estimate acreage surveyed if actual acreage is not available.

- 1 acre=43,560 square feet or 4,840 square yards
- 10,000 m² (i.e. 1 hectare=2.5 acres)
- 100m radius circle = 8 acres
- 1 mile transect (30m or 100ft wide) = 12 acres
- 1 section (i.e. 1 mile square) = 640 acres

DOCUMENT TYPE: Choose one of the appropriate document types:

- Inventory/Evaluation = surveys, minor testing projects, eligibility evaluations
- Mitigation/Excavation = archaeological excavations, major testing reports
- Overview = large area/regional overviews or syntheses
- Other = other unpublished documents, (e.g.: manuscripts, conference papers)
- Published = published articles (See Agency Documents/Project Number)

LOCATION LEGAL DESCRIPTION: List legal descriptions (Township number N/S, Range number E/W, Section number) for the entire area surveyed (for inventories, excavations, or limited area overviews).

Include locations for all sites listed below under SITE IDENTIFICATION, if known. Example: T06N; R10W; S 1, 3, 6, 8-12).

SITE IDENTIFICATION: List the trinomial Smithsonian number and/or Site Name for sites/properties that were examined, described, newly recorded, or otherwise documented in the document AND are located within the area described above with LOCATION LEGAL DESCRIPTION. Do not enter isolated finds, unrecorded localities, site leads, etc. Site numbers without a name are acceptable, and vice versa. Example: 24LC0123; Site name.

6.3.6 File Naming Convention for Project Upload

To accommodate file upload parameters, project names should be limited to 50 characters including spaces. The name for your e-consultation submittal will distinguish it from other submittals by your agency. Shorten county names to the two-letter code. Names for files within the submittal package should reflect this short name. For example:

The long report title: Werewolf Hills Fuels Treatment Project: A Class III Cultural Resource Inventory in Lewis and Clark and Teton Counties, Montana

...should be shorted to 39 characters: Werewolf Hills Fuels Treatment LC TT Co

...and files associated with this project submittal should be named:

- Werewolf Hills Fuels Treatment_letter.pdf
- Werewolf Hills Fuels Treatment_meta.pdf
- Werewolf Hills Fuels Treatment_report.pdf
- Werewolf Hills Fuels Treatment_sites.zip
- Werewolf Hills Fuels Treatment_GIS.zip
- Werewolf Hills Fuels Treatment_other.zip

The long report title: A Class III Cultural Resource Inventory for Butterfly Corp’s SHPO Mine Remediation and Site Monitoring Project in Lewis and Clark County, Montana

...should be shorted to 50 characters: Butterfly Corp SHPO Mine Remediation Project LC Co

...and files associated with this project submittal should be named:

- Butterfly Corp SHPO Mine Remediation_letter.pdf
- Butterfly Corp SHPO Mine Remediation_meta.pdf
- Butterfly Corp SHPO Mine Remediation_report.pdf
- Butterfly Corp SHPO Mine Remediation_sites.zip
- Butterfly Corp SHPO Mine Remediation_GIS.zip
- Butterfly Corp SHPO Mine Remediation_other.zip

7 Site Record & Smithsonian Number Standards

Sites documented or updated during a survey need a Smithsonian number before an eligibility determination can be made and thus be identified as a “historic property”. A site’s Smithsonian number is a standard identifier for tracking properties and is required to process all consultation, including resolving APE (area of potential effect), National Register eligibility, and potential effects on cultural resources.

Who is responsible for creating a site record? The Principal Investigator is responsible for ensuring that the site record information is complete and accurate as per the Montana SHPO’s data standards.

Should I use metric or imperial units of measure? Either system is acceptable as long use is consistent and clearly labeled clearly throughout the form.

Can I paste content into this form from MS Word? Yes. With the word document open, go to File>Options>Advanced. Scroll down to “Cut, copy, and paste” and change the following settings to “Keep Text Only” for all options.

7.1 SITE FORM VS SITE RECORD

A complete “site record” is required when requesting a Smithsonian number and includes a site form, plus photographs, maps, and GIS shapefiles that accurately delineate site boundaries.

Montana SHPO provides the following site forms for various types of site records.

- CS-R: Cultural Site Record
- AE-R: Architecture/Engineering Record
- CU-R: Site Update Record
- IF-R: Isolated Find Record
- SC-R: Stone Circle Record
- PALEO-R: Paleontological Record

Updates to forms and associated codes and lists are ongoing. Please download forms each time you create or update a site record at <https://mhs.mt.gov/shpo/>. If you are uncertain about which form to use, please contact Montana SHPO Cultural Records staff.

7.2 INSTRUCTIONS FOR CS-R, AE-R, AND CU-R SITE FORMS

Complete all fields according to the instructions below and save the final form as a PDF.

Example: SiteName.pdf, or 24LC0123.pdf.

7.2.1 Identification: Site, Project, and Investigator

- **Site Name/Field Designation:** Name or number used to identify the site (other than the Smithsonian number)
- **Smithsonian Number:** The Smithsonian system is a nationwide registry system consisting of three parts: state number + two-letter county code + four-digit number (e.g., 24DL0290). Previously

recorded sites may already have a Smithsonian number assigned. For newly recorded sites, SHPO will issue a new Smithsonian number upon receipt of a completed CS-R or AE-R form.

- **Record Type:** If this is the first time the site has been documented on a form, check NEW. If there are previously completed site forms for this location, check UPDATED.
- **Project Name:** Provide the project name if the site is located with a project or inventory area.
- **Project Number:** Provide the agency project number if the site is located within a project area.
- **Record Date(s) and Investigator(s):** For a newly recorded site, enter the date of this current record. If you are performing an update to a previously recorded site, you must also provide the date of the first record. Provide the name and contact information for the person currently recording the site, and information about the person who originally recorded the site (if performing a site update).

7.2.2 Site / Property Location and Access

- **County:** Name of the county where the site is located.
- **Lot/Block and Address:** Complete these fields for Architectural and Engineering Records (AE-R); optional for Cultural Site Records (CS-R).
- **City/Town:** Provide the name of the city/town nearest to the site location.
- **UTM or Latitude/Longitude:** Record the coordinates for the center of the site using either UTM or Lat/Long expressed to the 6th decimal point.
- **Township, Range, Section (TRS)** or “Legal Location” information is available from property records at the county tax assessor or planning office, the [Montana Cadastral application](#), or from a USGS 7.5-minute topographic quadrangle map. To comply with Montana SHPO’s data standards, please identify Township as either N or S, Range as either W or E, and the section quarter (QTR) as NW, SW, NE, or SE.
- **Narrative of Access:** Provide directions on how to access the site. Directions should begin from a major road intersection or town and include distances and land markers that are unlikely to change in the future (e.g., roads, rivers, structures). This section is not required if the site can be easily located with an address, legal location, or GPS coordinates.

7.2.3 Administrative, Surface Ownership and Use

- **Current Owner:** Identify Administrative/Surface Ownership and indicate whether the current owner is a public or private entity and include the current owner’s name, agency, region and/or district office, where applicable.
- **Current Use:** Briefly describe how the property/site is currently used (e.g., commercial, agricultural, tourism, recreational, etc.)
- **Original Owner:** Indicate whether the original owner is a public or private entity and include original owner’s name, agency, region and/or district office, where applicable.
- **Historic Use:** Briefly describe how the property/site was historically used (e.g., commercial, agricultural, tourism, recreational, etc.). For sites with multiple periods or significance or multiple historic uses, indicate the time period associated with each use.

7.2.4 Description of Site or Property

General Description

- **Site / Property Type*:** Refer to the site/property type lists below and select all that apply.
- **Time Period*:** Refer to the time period list below and select the general time period (precontact, historic, multicomponent) and specific time period (Paleoindian, early archaic, 1920s-1930s, etc.)
- **Narrative Description of Site:** Provide a general description of the site, features, artifacts, and condition. For a Cultural Site Record (CSR), Provide a general description of the site, features, artifacts, and condition. For an Architecture/Engineering resource (AER), provide a description of the property, including the setting, buildings, and other resources (ditches, fences, agricultural fields, etc.). Describe individual buildings according to their shape, number of stories, architectural style, roof shape, type of foundation, type of construction, building materials, exterior wall materials, and any other major stylistic elements or distinguishing features (chimneys, porches, window and door types, etc.). Indicate whether the interiors of the buildings contribute to their integrity.
- **History of Property:** Briefly discuss the history of the property as it relates to important events, historic trends, and persons. Provide as much information about the history of the building and people associated with the building as possible. Please cite your sources or note where information was acquired.

Cultural Site Record Detail (for CS-R form only)

- **Site Dimensions:** Provide general dimensions of the site (e.g., length and width) with consistent units of measure.
- **Surface Visibility (%):** Describe the ground surface visibility of the site as a percentage.
- **Elevation:** Provide the elevation in feet.
- **View/Aspect:** Provide the estimated direction and distance that the unaided human eye can see from the site. Note any landmarks, such as named mountain peaks or natural lakes, in view.
- **Feature Descriptions:** Provide more details about rock structures, lithic concentrations denoting activity areas, and other features at the site. Describe each feature in detail and cross-reference with photos and a sketch map using a clear and consistent numbering/naming system.
- **Artifacts:** Describe and include a numerical count for each type of artifact observed at the site (i.e., metal, ceramic, wood, glass, plastic, bone, etc.). Aggregate data presented in tables or lists (such as for primary, secondary, and tertiary flakes) are acceptable.
- **Diagnostic Artifacts*:** Describe in detail any artifacts that can be identified diagnostically. Select all that apply from the *Diagnostic Types* list below.
- **Subsurface Testing:** Describe the results of any testing, soil types, depth, the extent of cultural deposits, number and type of tests performed, and any other information on subsurface exposure.
- **Site Function/Interpretation:** If the function of the site can be determined, it should be discussed here and justified by the description. Best guesses or hypothesis on function may also be included, but please preface the information within this context. Do not force a site function/interpretation.
- **Nearest Available Water Source:** Describe and/or record the name of the nearest source of water (stream, river, lake, spring) to the site.

- **Sediments:** Describe the sediments at the site location.
- **Deposition:** Describe the site’s deposition (e.g., Surface, Buried, Surface and Buried, Redeposited, etc.)
- **Geographic Setting:** Describe the landscape / general geographic setting of the site location.
- **Local Vegetation:** Describe the vegetation located within the site boundary and list any culturally important plants (food, medicine, tools).

Architecture/Engineering Record Detail (for AE-R form only)

- **Construction Date:** Provide the construction date and indicate whether the date is “actual” or “estimated”. Estimated date ranges such as “after 1997 and before 1893” are acceptable if the exact construction date is unknown. Major alterations, additions, etc. should be noted below under STATUS.
- **Architectural Style:** Describe the structure’s architectural style(s).
- **Architect Information:** Provide the name(s), firm, city, and state of the structure’s architect. Enter “unknown” as needed.
- **Builder Information:** Provide the name(s), firm, city, and state of the builder or contractor, if known. Enter “unknown” as needed.
- **Status:** Indicate whether the structure is in its original location, and include dates and details about any major alterations, additions, relocation, etc. made to the structure.

7.2.5 National Register Eligibility Evaluation / Assessment

- **Formal Eligibility Determination Status:** Indicate the results of any previous formal determination of eligibility for this site/property. Formal determinations of Eligibility are documented by a letter from SHPO or the Keeper of the National Register.
- **Eligibility Assessment:** Indicate if the site/property currently meets or does not meet eligibility criteria for the National Register as an individual property or as a contributing or non-contributing element to a historic district.
- **Historic District:** If the site/property occurs within a historic district, provide the district’s name. For a resource/property not eligible for NR-listing either individually or as a contributing resource to a district, it remains important to indicate if the non-eligible element is located within a district.
- **Meets Criterion:** Mark Yes or No and provide an evidence-based, research-supported argument for/against each criterion (A, B, C, D) for **National Register Eligibility**. Refer to the National Park Service’s bulletin *How to Apply National Register Criterion for Evaluation* (1997) to learn more about determining the eligibility of a site for the National Register of Historic Places (NR).
- **Integrity:** Discuss the aspects of historic integrity for the resource, including location, setting, design, materials, workmanship, feeling, association, etc. For each aspect, describe the ability of the resource to convey its historic significance, as well as whether any loss of a specific aspect of integrity has occurred.
- **Possible Impacts to Site:** Discuss and distinguish between current, potential, direct, and indirect environmental and economic impacts to the site. Include impacts of proposed actions and their potential impact to the site’s NR eligibility or integrity.

7.2.6 Information Sources

- Cite sources of historical information used to prepare this form, including interviews, newspapers, journal articles, books, historic photograph, websites, etc. Follow a consistent bibliographic format that includes dates.

7.2.7 List of Photos, Maps, and Figure Attachments

- List photographs, maps, and figures for this site record. Include the figure label and number, a caption/brief description of the subject view and photo direction, the name of the photographer or map creator, and date.
- DO NOT insert photos, maps, and other figures directly into this document. Instead, combine a PDF of this form with a PDF of properly labeled photos, maps, and figures.
- Example: Photo 1. Overview of site (24XX#####), looking North. Photo by J Doe. 6/24/2022

7.2.8 CU-R Form: Update for CSR and AER Forms

The CU-R Update form should be used in situations where the original site form or prior site update was completed within the last 10 years. If the original site form or prior site update is older than 10 years, a new Cultural Site Record (CS-R) or Architecture and Engineering Record (AE-R) Form should be completed.

If the original site form or prior site update was completed within the last 10 years, then only the changes to the site need to be documented in the update. It is NOT necessary to complete the entire CS-R or AE-R for all site updates. However, if the original site form left sections of the CS-R form blank, they should be completed as part of the update process.

Update descriptions of the site/features, changes observed since the last site recording, new research or information, current photos, and current maps. Contextual information consistent with the original form does not need to be redocumented, such as the site’s elevation, available water sources, environmental setting, and historical context.

7.2.9 Site/Property Type Codes (CSR, AER, CUR)

HISTORIC SITE TYPES

Historic Agriculture	Historic CCC
Historic Apartment House	Historic Cemetery/Grave
Historic Architecture	Historic Church
Historic Aviation	Historic Coal Mine
Historic Bank	Historic Commercial Development
Historic Bar/Saloon	Historic Communication
Historic Barn	Historic Community Hall
Historic Battlefield	Historic Conservation
Historic Building Foundation	Historic Corral
Historic Cairn/Land Marker	Historic Courthouse
Historic Campsite	Historic Cribbed Log Occupation Structure
Historic Cattle Camp	Historic Dam
	Historic Depression(s)

Historic Designed Landscape
Historic District
Historic Dude Ranch
Historic Dug-Out
Historic Education
Historic Energy Development
Historic Exploration
Historic Fence
Historic Ferry/Landing
Historic Fire Lookout
Historic Flume
Historic Fort Site
Historic Fraternal Lodge
Historic Fur Trade
Historic Gas Station
Historic Gas/Oil Well
Historic Grain Elevator
Historic Hard Rock Mine
Historic Health Facility
Historic Homestead/Farmstead
Historic Hotel/Motel
Historic Indian Agency
Historic Industrial Development
Historic Inscription/Signage
Historic Irrigation System
Historic Jail/Prison
Historic Land/Survey Marker
Historic Library
Historic Log Structure
Historic Marine
Historic Material Concentration
Historic Mausoleum
Historic Military Site
Historic Mining
Historic Mission
Historic Municipal Infrastructure
Historic Outbuildings
Historic Pipeline
Historic Placer Mine
Historic Political/Government
Historic Post Office
Historic Quarry
Historic Railroad

Historic Railroad Bridge
Historic Railroad Building/Structure
Historic Ranch
Historic Ranger Station
Historic Reclamation
Historic Recreation/Tourism
Historic Religion
Historic Research Station
Historic Residence
Historic Residential Development
Historic Road
Historic Road/Trail
Historic Rock Structure(s)
Historic Sawmills
Historic School
Historic Science
Historic Settlement/Townsite
Historic Sheep Camp
Historic Site
Historic Smelter
Historic Stage Route
Historic Stamp Mill
Historic Stock Raising
Historic Structure
Historic Theater
Historic Timber Camp
Historic Timber Harvesting
Historic Trail
Historic Transmission Line
Historic Transportation
Historic Trash Dump
Historic University/College
Historic Vehicular/Foot Bridge

PRECONTACT SITE TYPES

Precontact Animal Processing Area
Precontact Bedrock Quarry
Precontact Bison Jump
Precontact Conical Timbered Lodge
Precontact Culturally Modified Tree(s)
Precontact District
Precontact Firehearths or Roasting Pits, FCR
Precontact Fishing Site

Precontact Fortification Site(s)
 Precontact Game Drives
 Precontact Game Pound
 Precontact Kill Site/Trap
 Precontact Lithic Material Concentration
 Precontact Lookout
 Precontact Medicine Wheel
 Precontact Paleopoint Isolate
 Precontact Petroglyph
 Precontact Pictograph
 Precontact Pits; Eagle Catching, Battle, etc.
 Precontact Rock Alignment(s)
 Precontact Rock Cairn(s)
 Precontact Rock Pile(s)
 Precontact Rock Shelter or Cave
 Precontact Rock Structure(s)
 Precontact Site
 Precontact Stone Circle
 Precontact Surface Stone Quarry

Precontact Sweat Lodge
 Precontact Trail
 Precontact Vision Quest Structure

PALEONTOLOGICAL SITE TYPES

Fossil Fish
 Fossil Flying Reptile
 Fossil Invertebrate
 Fossil Mammal
 Fossil Marine Reptile
 Fossil Organic
 Fossil Paleontological Locality
 Fossil Trace

ADDITIONAL SITE TYPES

Combo Prehistoric/Historic
 Other
 Traditional Cultural Property

7.2.10 Site/Property Time Period Codes (CSR, AER, CUR)

Cretaceous	1890-1899
Jurassic	1900-1909
Mississippian	1910-1919
Quaternary	1920-1930
Tertiary	1930-1939
Triassic	1940-1949
Prehistoric More Than One Period	1950-1959
Prehistoric Late Period	1960-1969
Prehistoric Middle Period	1970-1979
Prehistoric Paleo-Indian	1980-1989
1859 and earlier	Historic More Than One Decade
1860-1869	Historic Period
1870-1879	Combination
1880-1889	

7.2.11 Site Diagnostic Codes (CSR, AER, CUR)

Agate Basin	Cody knife	Hanna	Plains Side-notched
Angostura	Corner-notched	Hell Gap	Scottsbluff
Avonlea	Duncan	Mckean	
Besant	Eden Valley	Oxbow	
Clovis	Folsom	Pelican Lake	

7.3 SITE PHOTOS, MAPS, AND FIGURES

Format pages that include items referenced in the “List of Photos and Maps” section of the CSR/AER Form as shown in the examples below using your preferred software, then save as a PDF. E.g., Attachments.pdf. **Create one complete Site Record PDF by combining the site form and attachments PDFs.**

7.3.1 PHOTO GUIDELINES

At a minimum, CSR and AER forms should include photos of:

1. **Overview** of the site.
2. **Four Directional Views** of the site (e.g., N, W, S, E), or exterior elevations of historic structures.
3. **Features and Details** referenced in the narrative, such as a building foundation, architectural details, construction techniques, diagnostic artifacts, damage or vandalism, and natural exposures used to evaluate subsurface potential.

Photos captions should include: Unique photo name/number. Photo description. Photographer. Date

7.3.2 MAP GUIDELINES

Site records must include maps of:

1. **Site Overview / Location** Topographic map at 1:24,000 scale. Provide a PDF and accurate GIS shapefiles that clearly show the boundary of the site as a polygon. If the site is linear such as an irrigation ditch or road, add a buffer along the centerline of the feature to visualize its width.
2. **Feature Boundaries:** For sites with more than three features, provide a map showing the boundary locations for individual features within the larger site boundary, and including a legend that clearly identifies each feature.

Maps should include:

- Unique Map Name/Number identifying the map as an “overview” or “feature” map
- North Arrow indicating map orientation
- Map Scale in the 1:XXXX format
- Scale Bar to measure distances on the map in either imperial or metric units
- Site Name or field designation exactly as shown on the associated CSR or AER Form.
- Legal Location (TRS) of the site. Reference section 2 of the CSR/AER Form for multiple legal locations.
- Site and Feature Boundaries: Clearly show the boundary of the site and features as polygons. Add a buffer to the center line of linear features such as irrigation ditches or roads.
- DO NOT INCLUDE a project or survey area map.

SAMPLE PHOTO ATTACHMENTS

PHOTO 1. Overview of site (24XX#####), looking North. Photo by J Doe, 6/24/2022

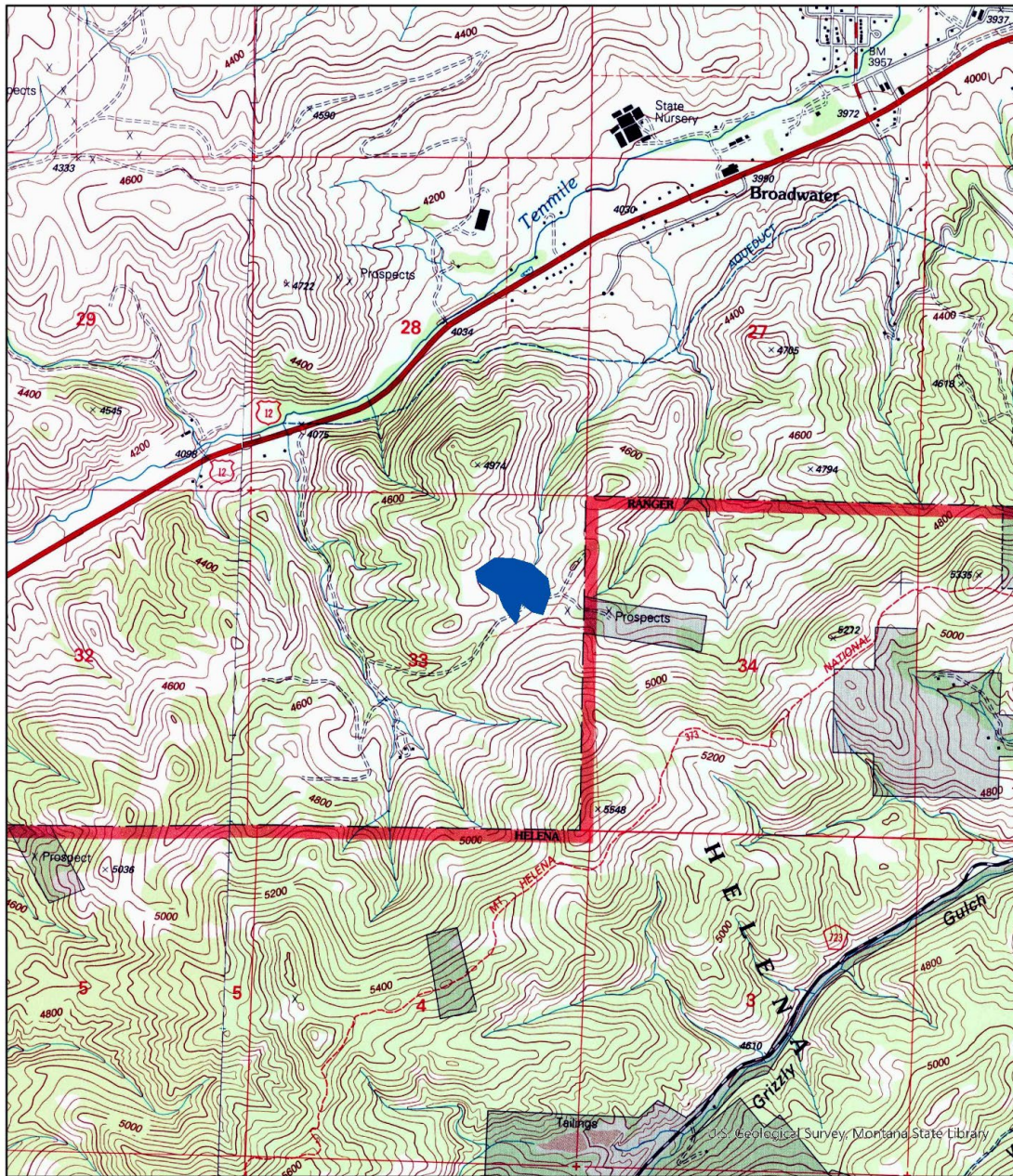



PHOTO 2. Looking NW at Feature 1, Site (24XX#####). Photo by J Doe, 6/24/2022



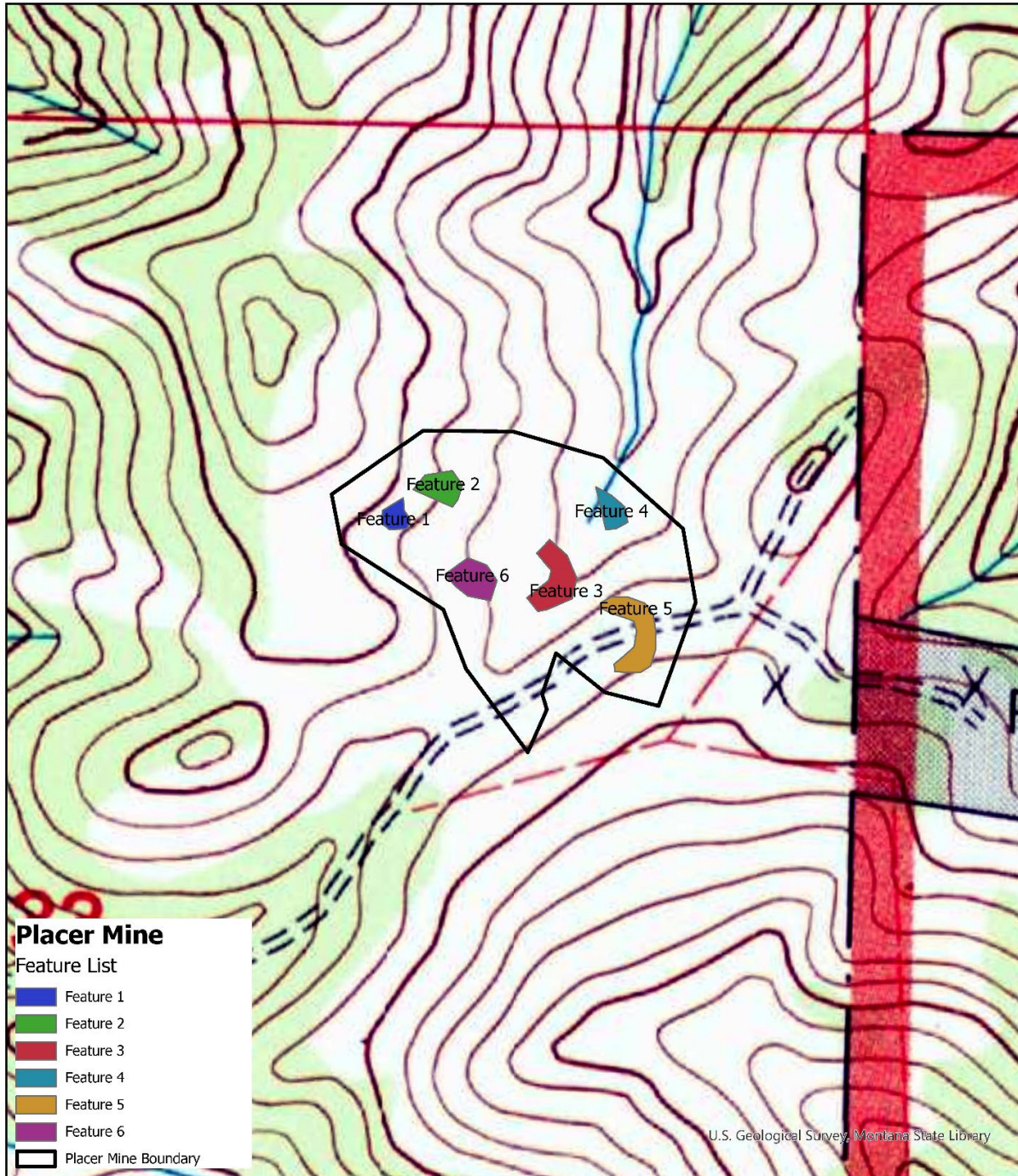
SAMPLE MAP ATTACHMENTS

MAP 1: Site overview / location map for site name 24XX#### at 1:24,000 scale. T1N R6W S3NW



<p>Map Type: Overview</p> <p>0 0.25 0.5 1 Kilometers</p> <p>Scale: 1:24,000</p>	 <p>Site Name: Example Name</p> <p>Legal Location: TXXN, RXW, Sec. XX</p>
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MAP 2: Boundaries and locations for six features at [site name and number] at 1:5,000 scale. T XN R XW S.X



Map Type: Feature Map

0 0.05 0.1 0.2 Kilometers



Scale: 1:5,000



Site Name: Example Name

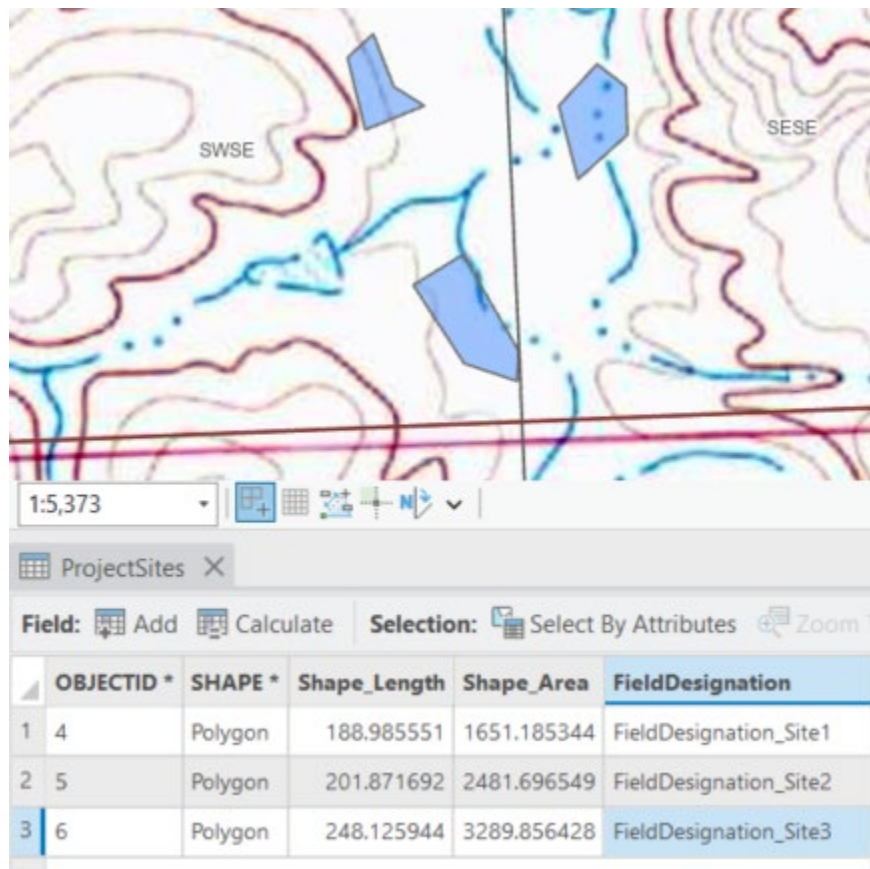
Legal Location: TXXN, RXW, Sec. XX

7.4 CREATING GIS SHAPEFILES

Submission of an accurate GIS shapefile of the site boundary is required to receive a Smithsonian Number. Google Earth .kml and .kmz files are also accepted.

1. Use GIS software to produce an accurate polygon site boundary. Polygon GIS data is preferred but Line GIS data is accepted for linear features. Point GIS data is not accepted. If GIS software is unavailable, use Google Earth to create a .kml or .kmz file.
2. If submitting multiple sites for Smithsonian Numbers, please submit one polygon GIS shapefile that contains all the site boundaries identified by their unique Field Designation and/or Site Name. There is no need to export each site boundary into an individual shapefile. One GIS shapefile containing all geographic site information is preferred. SHPO does not collect GIS attribute data so only the FieldDesignation/Site Name field is required.
3. When submitting GIS files for Smithsonian Number assignment, only a polygon shapefile containing site boundaries should be submitted – shapefiles for Project APE, Inventory Area, Site Features, etc. should not be submitted at this stage.
4. The GIS polygon site boundary must be identical to the site boundary depicted on the CSR/AER Form site map.

Example of one (1) GIS polygon shapefile containing three (3) site boundaries identified by their unique Field Designation Number



Creating a KMZ with Google Earth Pro

1. Download Google Earth Pro from the following link or search via Google.
<https://www.google.com/earth/about/versions/#download-pro>
2. Open the application and find the location of the property/site/inventoried area.
3. Select the “Add Polygon” tool from the toolbar.
4. Use the cursor that appears on the screen to draw a polygon.
5. A pop-up box appears when you select the “Add Polygon” tool. Give the polygon a name such as its Field Designation or Site Name or Project Name.
6. Repeat the process if necessary to create multiple polygons.
7. Right click the polygon in the My Places sidebar and click “Save Place As” to export the polygon as a .kmz file.
8. Submit .kmz files to the MTSHPD through the Montana Cultural Resource Database.

7.5 NAMING CONVENTIONS FOR SITE RECORD FILES

Please name the **site record** (site form+attachments) according to the site’s temporary field designation or site name. If you are submitting more than ten site forms at once for Smithsonian Number assignment, please label the sites in the order you would like numbers to be assigned.

For example:

- FieldDesignation_Site1.pdf
- FieldDesignation_Site2.pdf
- FieldDesignation_Site3.pdf, etc.

8 GIS Data Standards

The Montana State Historic Preservation Office (MTSHPO) maintains a Geographic Information System (GIS) to store and utilize geographic data associated with the Montana Cultural Resource Database. This GIS is a critical tool that allows Montana Cultural Resource Database users to visualize archaeological, historic, and paleontological resources and cultural resource inventoried areas across the state of Montana.

GIS Data Standards maintain the accuracy and cohesiveness of cultural resource GIS data across Montana as well as facilitate data sharing and compatibility between MTSHPO and external agencies. MTSHPO requires that all GIS data submitted to MTSHPO adhere to this set of GIS standards outlined in this section.

8.1 DATA CAPTURE

8.1.1 Spatial Reference

All GIS data should be submitted to SHPO in the North American Datum of 1983 (NAD 1983) (2011) State Plane Montana FIPS 2500 (Meters) Projected Coordinate System to be accurately integrated into the Montana Cultural Resource Database.

8.1.2 Geometry

MTSHPO maintains GIS datasets for all cultural resource sites, districts, and inventoried areas in the form of polygon feature classes. GIS data submitted to MTSHPO should consist of polygon or line features. If line features are submitted, accompanying documentation must specify the appropriate dimensions of the site or inventoried area so that the feature can be buffered and stored as a polygon. Point features are not accepted by MTSHPO. Point data must be buffered by the appropriate site dimensions and stored as polygon data prior to submission.

8.2 DATA CREATION

8.2.1 Accuracy Standards

Submitted GIS data must be accurate and complete. GIS data for cultural resource sites, districts, and inventoried areas must be identical to site and inventory maps on submitted site forms and inventory maps. If the submitted GIS site and inventory features are not identical to the submitted site form maps and inventory report maps, resubmission of data will be required.

8.2.2 Attribute Data

MTSHPO requires only minimal tabular attribute data for GIS submissions. When submitting more than one site feature in the same shapefile, *Field Designation/Temporary ID/Site Name* attribute data that

matches field designation, temporary ID, or site name on the site form is required. When submitting more than one inventory feature in the same shapefile, *Project Name/Project Number* data that matches the inventory report is required. No additional attribute data is required.

MTSHPO collects limited attribute data for cultural resource sites and inventories in the Montana Cultural Resource Database. For site data, only Smithsonian Number, Type (Archaeological, Historic, Paleontological, or Combination), and Restricted Status are collected. For inventory data, only Report Number and CRABS Number are collected.

8.2.3 Naming Conventions

File names for GIS data submissions should be concise. Submitters do not need to include project data in the file names unless GIS data for multiple projects is being submitted at the same time. For example, Sites.shp or InventoriedArea.shp are acceptable and preferred over longer file names such as AgencyName_ProjectName_Date_Sites.shp.

One project may have a different Project Area, Area of Potential Effect (APE), and Inventoried Area so GIS data should be named appropriately to convey an accurate description of the polygon.

8.3 DATA FORMATS

8.3.1 Shapefiles

The preferred spatial data format for submission to the Montana Cultural Resource Database is a shapefile (.shp). A shapefile is a vector data storage format that contains the geographic and tabular attribute data for a feature class. Shapefiles consist of eight file extensions: .shp, .shx, .dbf, .prj, .sbn, .cbg, .shp.xml, .xml.

To submit a shapefile to MTSHPO, all eight of the shapefile file extensions should be selected and zipped into a compressed zip folder (.zip). Shapefile lock files (.lock or .sr.lock) should be removed from the compressed zip folder.

To submit GIS for multiple sites associated with the same project, submit one shapefile that contains all site polygon features labeled by Field Designation/Site Name rather than exporting each polygon feature as an individual shapefile.

8.3.2 KML/KMZs

If shapefiles are not available, MTSHPO also accepts submission of .kml and .kmz files. KML/KMZs are XML-based files that contain point, line, and polygon geographic data and can be created and viewed within Google Earth Pro.

8.4 DATA SUBMISSION

GIS data should be submitted to MTSHPD through the Montana Cultural Resource Database submission portal. A State of Montana Okta account is required to upload GIS data to the database (login.mt.gov). Use the “Submit Data to SHPO” tab of the Montana Cultural Resource Database to submit GIS data associated with projects.

9 Using the MCRD Portal: Upload & Track Your Project

After you've carefully prepared your documentation for e-consultation, use the MCRD portal to upload and initiate project review. This section describes how to navigate the portal and what to expect during the review process.

9.1 CREATE AN ACCOUNT / SIGN IN TO login.mt.gov

A State of Montana **login.mt.gov** account (also known as File Transfer Service account) is required to upload documents and to review your project's review status.

1. Create a New State of Montana Account (login.mt.gov) at <https://okta.mt.gov/Help>. Or, log in to the portal with your existing login.mt.gov credentials.
2. Navigate to the Cultural Resource Database: <https://svc.mt.gov/adsams/>
3. Click the **Login** button in the top right banner or **Submit Data to SHPO** on the top Navigation Bar to Login.

SHPO cannot recover your login.mt.gov account credentials. Contact SITSD for help: sitsdsupport@mt.gov, or (406) 444-2000.

9.2 UPLOAD FILES

The **Submit Data to SHPO** link will open the DOCUMENT SUBMISSION form, where you can create a new project and upload files.

1. Select the Submission Type from the dropdown menu. A unique set of instructions will display next to the dropdown menu and appropriate "containers" for your files will populate below the DOCUMENT SUBMISSION form.
2. Complete the remaining fields
 - a. **Agency:** Select the lead agency on the project, or Agency Unknown if you don't know the agency.
 - b. **Project Name** (Submittal Name): Limited to 50 characters including spaces. Provide a short name to reference your e-consultation submittal that will distinguish it from other submittals by your agency. We recommend including a few descriptive key words and the two-letter county code. Names for files within the submittal package should reflect this short name. (See Table 2)
 - c. **Agency Document Number:** Your agency or firm may use a unique number to identify the undertaking that is the subject of e-consultation and review—enter that number here. This is NOT the SHPO project number.
 - d. **Project Access Emails:** Add email addresses separated by a semicolon (;) to grant additional individuals access to this project record. These individuals will also need to create a login.mt.gov account.
3. Add files to the appropriate container either by clicking the container to search for files on your computer or drag-and-drop files. NOTE: ONE file upload per container is preferred. E.g., Upload one ZIP file containing all site record PDFs. Upload one ZIP file containing all shapefiles. Again,

review guidelines for preparing your files for upload to ensure that you are meeting expectations for file size, file type, and naming conventions.

4. Select SUBMIT button to create a new project and begin the file transfer process.
DO NOT LEAVE THIS PAGE until you see the message “Processing Complete” for each document upload container.

Confirmation Email & Project Tracking Number

1. Check your email for confirmation that your upload was successful and the submittal tracking number.
2. If you do not receive a confirmation email, please try your upload again or contact mtshpo@mt.gov for help.
3. The email will confirm “Project successfully created” and provides a unique “Project number” for each upload session.
4. After you’ve confirmed that your upload was successful, you can use the “Back to Home” button or close your browser.

IMPORTANT! *If you need to add or replace files for an existing project, DO NOT create a new project. Instead, follow the directions below for Adding or Replacing Files for An Existing Project.*

9.3 TRACK OR EDIT YOUR CASE

Login with the email address used to submit documentation to track submission status.

***Each submittal type for a single project/undertaking will have a unique SHPO project number.** For example, a pre-consultation file search will have a different SHPO project number than the resultant e-Consultation submitted later for that same project.

The email used to submit documentation and any emails added to the “Project Access Emails” field can login to view the submission status or add additional documentation for the project using the SHPO Project Number.

Find Your Project:

1. Log in to your account and select the Project Search tab.
2. Enter the 9-digit SHPO project number that was sent to your email when you initiated e-consultation and click “search”

Check Your Project’s Status / Submission Stages:

3. The PROJECT EDITOR form will display, where you can view a project’s “submission stage”
 - **Received** = Project files successfully uploaded and SHPO Project Number issued. Notified with **automated email**.
 - **Review In Progress** = Project has been assigned and review period is started. Notified with **automated email**.
 - **Review Complete** = Final determination made by SHPO Reviewer. E-Consultation is complete. No further action is needed. Notified with **official letter** from SHPO Reviewer
 - **Resubmission Required** = A final determination cannot be made because of insufficient or missing information, missing submittal package components, or need for clarification.

When resubmitting a project, please use the same Submittal Package Name as previously submitted. Notified with **official email or letter** from SHPO Reviewer with instructions on how to proceed.

9.4 ADD OR REPLACE FILES FOR AN EXISTING PROJECT

4. From the PROJECT EDITOR form, select Edit in the right-hand column for the project you wish to add additional data to.
5. At the bottom of the screen, drag replacement files to the container. Select ‘Submit’ when finished.
6. Wait for the files to upload before you close or move from the browser window.
7. **If your project has already been assigned to a SHPO staff, please email them to let them know you have added the additional documentation.**

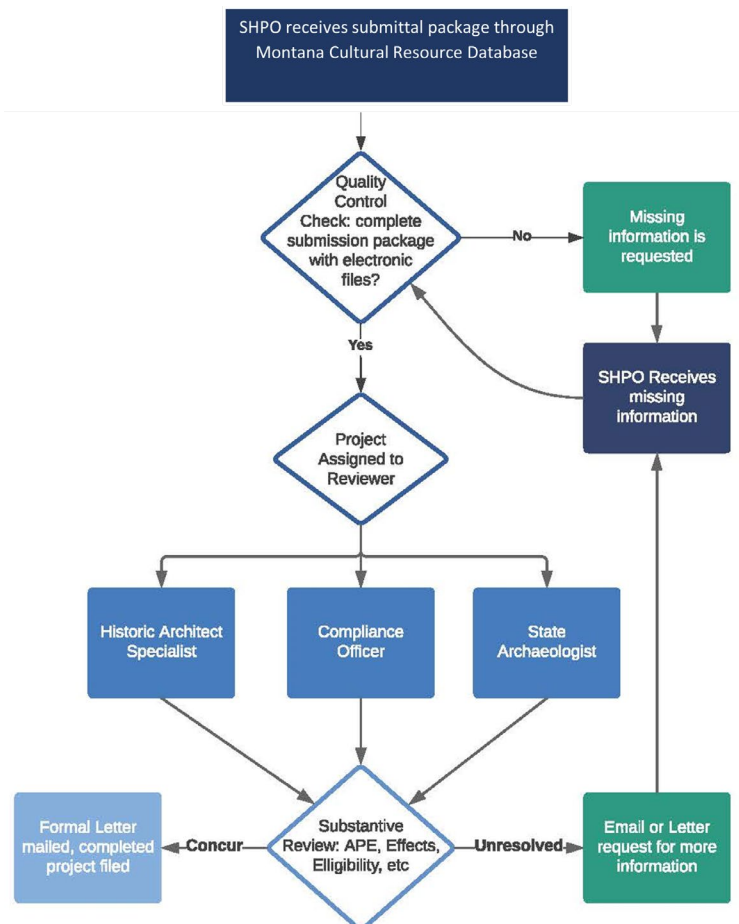
Watch the video: <https://youtu.be/lqjkU7Rp19U>

9.5 WHAT’S NEXT? WHAT TO EXPECT DURING THE REVIEW PROCESS

Once SHPO receives a complete submittal package (cover letter, report metadata submittal form, report, site forms, and GIS), reviewers have thirty days to respond. You will receive an email from Montana SHPO when your project has been officially assigned to a reviewer. This will start the 30-day review period. If information is missing, the 30-day review period restarts when SHPO receives a complete submittal.

Depending on the lead federal agency, nature of the undertaking, and type of resources that occur within the affected area, project review will be assigned to a compliance officer, historic architecture specialist, or the state archaeologist. After reviewing documentation, SHPO will either respond with a concurrence letter—at which point the project information is archived and consultation is complete—or request additional information.

The project review is considered “unresolved” until SHPO concurs with the agency’s findings. If parties cannot reach agreement, the ACHP may need to be involved.



9.6 DATABASE ATTRIBUTE DEFINITIONS

9.6.1 Eligibility Definitions

Demolished/Destroyed/Non-extant: Site, building, resource, property no longer remains at location where it was originally recorded.

DOE (Determination of Eligibility): The agency/individual has gone directly to the National Park Service for a determination of eligibility, and the property was determined eligible.

Eligible: SHPO and the agency agree that the site is eligible by consensus, or a determination has been made by the Keeper of the National Register.

Eligible BLM PA: (Non-Consensus Determination Bureau of Land Management Programmatic Agreement). A prior programmatic agreement with the BLM allowed the BLM to unilaterally declare a site eligible without consensus from MT SHPO. This programmatic agreement is no longer valid, and this determination can no longer be implemented by BLM.

Ineligible: The site has been determined not eligible for the National Register by consensus.

Ineligible BLM PA: (Ineligible Bureau of Land Management Programmatic Agreement) A prior programmatic agreement with the BLM allowed the BLM to unilaterally declare a site as Ineligible without consensus from MT SHPO. This programmatic agreement is no longer valid, and this determination can no longer be implemented by BLM.

NHL: Currently listed as a National Historic Landmark.

NR Listed: Currently listed in the National Register of Historic Places.

Undetermined: This is SHPO's null value. All sites that have never had an eligibility determination in connection with formal consultation will have this finding.

Unresolved: The site's eligibility status is unresolved between SHPO and an agency.

9.6.2 Effect Determinations

Adverse Effect: Indicates agreement that the undertaking would result in an adverse effect to cultural resource(s).

No Adverse Effect: Indicates agreement that the undertaking would not result in an adverse effect to cultural resource(s).

No Effect: Indicates that cultural resources would not be impacted by an undertaking.

No Impact: (*Obsolete category - no longer actively used.*) Indicates when an agency is not looking for a formal No Effect determination, but rather indicates there would be no impact to cultural resources.

Undetermined: (*Obsolete category - no longer actively used.*) Indicates that no effect determination has been done.

Unresolved: Indicates disagreement between SHPO and the agency regarding the effect that the undertaking will have on cultural resources.

9.6.3 Review Action Definitions

Adverse Effect: Concurrence that the undertaking will result in an Adverse Effect to properties within the project area.

Copies: Copies were requested for Site Forms or Inventory Reports.

EA/EIS Comment: EA/EIS where SHPO has commented.

EA/EIS No Comment: EA/EIS where SHPO did not comment.

Eligibility Review: Agency has asked SHPO specifically to comment or concur on eligibility of sites.

File Search/Consultant: File Search has been conducted by SHPO, documents sent, no project comment. File searches are almost exclusively requested by Cultural Resource Consultants.

File Search/No Survey Recommended: File Search has been conducted by SHPO and

documents sent. SHPO did not recommend inventory based on low likelihood that cultural properties would be impacted within the project area.

File Search/Survey Recommended: File Search conducted by SHPO and documents sent. SHPO recommended inventory based on cultural properties in area, or high likelihood that they may exist within project area.

MOA Product Review: Review of a stipulation within an on-going Memorandum of Agreement.

MOA/MOU Comment/Review: Indicates a review of or comment on a draft memorandum of agreement or mitigation of adverse effects.

MOA/MOU Signed: When a Final Memorandum of Agreement or Memorandum of Understanding is signed and goes into effect.

NEPA 106/COMMENT: Used exclusively for those projects that are combining the NEPA and Section 106 process as described in 36CFR 800.8. SHPO provided a formal comment on the document.

NEPA 106/FINAL: Used exclusively for those projects that are combining the NEPA and Section 106 process as described in 36CFR 800.8. Reflects the final document submitted for review.

NEPA 106/NO COMMENT: Used exclusively for those projects that are combining the NEPA and Section 106 process as described in 36CFR 800.8. SHPO did not provide a formal comment on the document.

No Adverse Effect: Concurrence that the undertaking will have No Adverse Effect to properties within project area.

Notice/No Comment: Documents received by SHPO that did not receive any review or comment. Examples typically include public notices about planned activities that do not describe Section 106 processes, or projects outside of SHPO jurisdiction (within reservation boundaries or out-of-state).

No Properties Affected: Concurrence that there are No Historic Properties Affected either because there are no historic properties present or because there are historic properties present but the undertaking will have no effect upon them.

Other: Situations not described in any of the other listed review actions. Common examples include consultation on the APE, discussions on possible avoidance measures, and consultation on appropriate identification methods. The MEMO section of the database must be completed describing the situation.

PA Comment/Review: Review of and comments on a draft programmatic agreement.

PA Product Review: Review of a stipulation within an on-going programmatic agreement.

PA Signed: When a Final Programmatic Agreement is signed and goes into effect.

Review Only: Projects that received SHPO staff review but did not receive or require a formal concurrence letter. These situations are often defined in programmatic agreements.

Tax Act/Part I Draft Review: When SHPO staff reviews and comments back to the applicant on the applicant's draft Part I.

Tax Act/Part I Submitted: When SHPO submits a Part I to the National Park Service.

Tax Act/Part II Draft Review: When SHPO staff reviews and comments back to the applicant on the applicant's draft Part II.

Tax Act/Part II Submitted: When SHPO submits a Part II to the National Park Service.

Tax Act/Part III Draft Review: When SHPO staff reviews and comments back to the applicant on the applicant's draft Part III.

Tax Act/Part III Submitted: When SHPO submits a Part III to the National Park Service.

Tax Act/Amendment-Advisory Determination Draft Review: When SHPO staff reviews and comments back to the applicant on the

applicant's draft Amendment-Advisory Determination sheet.

Tax Act/Amendment-Advisory Determination

Submitted: When SHPO submits an Amendment-Advisory Determination sheet to the National Park Service.

Unresolved: Indicates the submission to SHPO was incomplete, and the necessary documents were requested. This review action may also indicate that SHPO and the agency disagreed about a substantive issue, such as eligibility or effect.

10 Blurred Lines: Clarifying Linear Features

Linear resources are typically long structures used to move people, water, energy, or products across a landscape. This document provides guidance on how the Montana SHPO approaches identification, recordation, and eligibility of historic period (historical) linear resources and potential effects resulting from proposed undertakings. *These guidelines represent best general practices. Linear resources are complex, and all projects are reviewed on a case-by-case basis based on the specific project and specific resource.*

10.1 EXISTING AGREEMENT DOCUMENTS

PAs, MOAs, or Program Comments may exist that exempt certain resources from review. It is important to contact the applicable federal or state agency to see if an agreement document already exists for linear resources.

10.2 IDENTIFICATION

Not all linear resources fall within the purview of state and/or federal cultural resources law. For identification purposes, linear resources should only be documented during fieldwork if available data supports that the linear resource is historical or if the linear resource is recent but definitively meets one or more of the eligibility criteria considerations. Historical linear resources may be identified in various sources, including original records, historical maps and aerial imagery, and/or during fieldwork. Any linear resource initially identified outside the field should be located in the field prior to considering whether documentation of the linear resource should include a CSR or AER form.

In general, historical linear resources may be identified as one of three conditions: abandoned in place, in use in a condition similar to the original, or in use but improved and/or rerouted from the original context. Linear alignments that have been abandoned in place are identifiable in the field and may have corroborating records, maps, and/or aerial imagery that support historical use of the resource. Linear alignments that are in use in a condition similar to the original are identifiable in the field and have corroborating records, maps, and/or aerial imagery that support the current condition and use of the resource is consistent with its historical condition and use. Linear alignments that are in use but improved and/or rerouted from the historical context are identifiable in the field and have associated records, maps, and/or aerial imagery that confirm the current location, condition, and/or use of the resource is inconsistent with the historical location, condition, and/or use.

10.3 RECORDATION

Although all historical linear resources merit documentation during fieldwork, not all historical linear resources merit recordation on a CSR or AER form. If recordation of a linear resource may not merit a CSR or AER form, the linear resource should instead be discussed in the results section of the cultural resources report. This discussion should include a justification tied to this document or the following

appendices that clarifies why a CSR or AER form was not needed and should include, at minimum, a GPS coordinate and photograph.

In Montana, linear resources should be recorded for their full extent (entire length within a county). However, this recordation is not expected to involve field examination of the full extent of the resource. Segments of the linear resource beyond what was verified in the field may be based on historic documents, general knowledge, maps, and aerial photos in their recording. Recording linear resources in their entirety avoids future duplication of segment numbering and facilitates assessment of the complete property.

10.3.1 Features

Linear resources should be documented as one or more features. The alignment of the resource should be recorded as a single feature. Some linear resources have components that should be individually described as features in the CSR or AER form. These features typically display a change in construction material or a specific purpose that supports the overall function of the resource. Examples include, but are not limited to, railroad switches, distinctions between primary and subsidiary alignments, and headgates. Refer to appendices for additional examples specific to the type of linear resource.

Some linear resources have features that should be given their own Smithsonian Number. Examples include culverts, rock retaining walls, bridges, and tunnels. When applicable, sites that have been recorded individually, should be briefly referenced in other associated site recordation. If you are unsure if a feature warrants its own Smithsonian Number, please refer to resources available in the relevant appendix or reach out to the lead federal agency or our Cultural Records Staff.

10.3.2 Site Updates

Site updates that focus on the specific segment within the APE are required for linear resources. These site updates should continue to use the Smithsonian Number for the overall linear resource, each segment within the same county does NOT receive its own Smithsonian number.

10.3.3 Abandoned vs. Active Segments

There are many instances of abandoned and active alignments of linear resources that intertwine and are stacked upon one another. Please contact our office to talk through when to split or lump alignments and what information will be needed to justify the decision.

10.4 APPLYING NR CRITERIA FOR ELIGIBILITY

Although applying the eligibility criteria is a critical component of the recordation process, applying the eligibility criteria to linear resources is complex because linear resources often are not verified in their entirety during fieldwork. Linear resources known to be associated with specific significant events or people can typically be determined eligible regardless of resource integrity. In addition, linear resources that have or are known to have unique or rare construction methods can typically be determined eligible regardless of the integrity of the remainder of the resource. Concluding that linear resources do not meet the eligibility criteria is less straightforward. In some cases, research and analysis can be used to

adequately evaluate the eligibility of linear resources even when the entire linear resource has not been documented in the field. Past survey, LiDAR, aerial imagery, windshield survey, and construction documents can all be used to help clarify whether the integrity of the portions of linear resources not within the APE of a current project are consistent with the integrity of the portion within the APE. With sufficient data compilation and analysis, it may be possible to justify that the portion of the linear resource within the APE of a current project is representative of the linear resource in its entirety. If this is the case, then applying the eligibility criteria to the linear resource in its entirety may be appropriate. SHPO *cannot guarantee after reviewing the additional documentation that there will be enough information to concur with an eligibility determination*. We also cannot provide a percentage that would need to have been surveyed/documented before an eligibility determination can be made, but rather this is determined on a case-by-case basis.

10.4.1 Segments

A “segment” refers to the portion of a site that was recorded during fieldwork. Segments of linear resources do not receive their own eligibility determination; they reflect the eligibility determination of the entire county-wide resource. If a segment lacks integrity, was not present during the period of significance, or otherwise does not contain elements pertinent to the potential significance of the overall resource, then ground disturbance within the APE of a current project might not alter or damage the linear resource. This information can help to justify an effect determination of “No Effect” or “No Adverse Effect”, but it does not necessarily have implications for eligibility.

Per National Register Bulletins 15 and 36, linear resources are considered to be structures. As such, a segment of a linear resource should not be considered “non-contributing” or not eligible when the overall resource has been determined Eligible or left as Undetermined. Instead of describing a segment as “non-contributing” consider focusing on the lack of integrity or lack of elements associated with the potential significance.

10.4.2 Districts

Entire linear resources can be considered contributing or non-contributing to a larger district. Typically, when it comes to linear resources, districts are reserved for networks or systems of multiple linear resources and other features.

10.5 ASSESSING EFFECTS

As with other site types, identifying potential impacts to the linear resource is part of the recordation process. Because linear resources generally extend beyond the boundaries of a current project area, it is important that the possible impacts section of the CSR or AER form discuss both the portion of the linear resource within the APE and the entire resource. Possible effects within the physical work area should discuss the potential for project implementation efforts to create ground disturbance that could alter or damage components of the resource within the current project area. Possible effects on the linear resource overall should discuss the potential for project implementation efforts to have visible, audible, or

atmospheric impacts that could be discernable from portions of the site that are not within the current project area.

Research and analysis may identify other existing impacts to the linear resource, such as erosion or in-use/abandoned infrastructure. If other natural or human-caused impacts are identified, then these should be discussed in the impacts section. If multiple incidences of alteration or damage may have occurred, then cumulative effects should also be considered. One or more previous projects might not have caused substantial alterations or damages at the time; however, after multiple impacts, all the impacts considered together may be substantial. Although there is no percentage our office can provide when evaluating cumulative effects, percentages and other metrics may support assessments of cumulative impacts on a case-by-case basis. Examining all the site forms and reports associated with the linear resource in addition to looking at past project effects associated with the Smithsonian Number would be a good starting point in evaluating the overall level of impact from cumulative effects.

If the linear resource is not eligible, then no avoidance, minimization, or mitigation discussions are needed. If the linear resource is a historic property, then a discussion should be included that discusses recommendations that would avoid, minimize, or mitigate potential impacts to the linear resource. Generally, if a segment does not contain elements that are relevant to the eligibility of the entire resource, the effect on the entire resource will be not adverse. If a segment that contains elements that are relevant to the eligibility of the entire resource is being affected, then the effect to the entire resource may be adverse. These assessments are completed on a case-by-case basis and may vary depending on the nature of the current project, APE, and resource.

10.6 LINEAR RESOURCE TYPES AND SUPPLEMENTAL GUIDANCE

Specific guidance for different types of linear resources is provided below. These guidelines represent best general practices. Linear resources are complex, and all projects are reviewed on a case-by-case basis based on the specific project and specific resource.

10.6.1 Roads (roadbeds and grades, wagon, highways, secondary)

Recordation

- 1) Interstates
 - Per the ACHP, federal agencies are exempt from “taking into account the effects of their undertakings on the Interstate Highway System”. ([Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System | Advisory Council on Historic Preservation](#))
- 2) Features of Roads
 - Features of roads may include more than the road itself. If any of these features lie within a project’s APE, they should be recorded individually as discrete resources and receive separate Smithsonian Numbers. When applicable, resources recorded individually should be briefly referenced in the recordation for associated resources (e.g. an individually recorded bridge and its Smithsonian Number should be mentioned in the recordation for the individually recorded road that it is a part of). Please contact the lead federal agency or

our office if questions arise regarding if a feature should receive its own Smithsonian Number. Possible features to record may include but are not limited to:

- Bridges
- Culverts
- Retaining Walls
- Tunnels
- Overpass/Underpass
- Stock Passes
- Ghost Signs
- Signs

3) Roads as Features

- Roads used specifically within a mining, logging or energy generation site should be recorded and considered.
 - A small road or linear feature within the boundary of and related to a larger historic resource (e.g. a mining, logging or energy generation site) should be recorded as a feature of the larger resource rather than as its own discrete resource.
 - A linear feature that extends well beyond its related historic resource should be recorded individually and receive its own Smithsonian Number. When applicable, sites recorded individually, should be briefly referenced in other associated site recordation. Please contact our office if questions arise regarding if a feature should receive its own Smithsonian Number.

4) Exceptions

- The following road types and features do not need to receive Smithsonian Numbers, as their ubiquity renders their documentation of minimal benefit to the historic record.
 - Agency roads that support active land management on federal lands.
 - Two-track roads that are a dirt road through repeated vehicular use, where tires have worn two distinct tracks, and often has vegetation growing between the two tracks.
 - Roads and road features that do not meet any of the road eligibility categories nor any associated themes (see Eligibility). For example: a county road built in 1935 that did not involve any new deal associated funding or labor and was an alternate route connecting small agricultural communities.
- If an agency directs that one of these exempted roads receive a Smithsonian Number, follow agency direction.
- Associated features of an exempted road may exist that warrant individual recordation (see Features of Roads).
- If there are roads within a project APE that per these guidelines **are** exempt from being recorded, this must be explicitly stated and justified **in** the associated cultural resource report and cover letter.

Eligibility

Criteria to consider when assessing the eligibility of roads includes:

- Does the history of the road fall into one or more of these three categories: engineered, cultural, or aesthetic?
- Does it follow its general original alignment?
- Does it appear on historic maps? Is it described in Historic Newspapers or other written sources?
- Does it have a name in historical records or maps?
- Does it have a specific start and/or end location?
- Have original features been retained? Does it have unique construction or features? Consider if these unique features should be recorded individually.
- Is it the first road or the largest road in the area?
- Did it serve an important purpose in the development of the local area? Was it constructed in an important time period or during an important event (Homesteading Act, Great Depression, Carey Act, agency-specific directive, etc.)?
- Was it constructed by or for an important individual or group?
- Does it continue to function in its original capacity? Does its primary construction method remain?
- How has the setting or environment changed since the road's construction?

The following categories and associated themes provide a base to consider potential significance. A road may fit into multiple categories and be significant under multiple themes. These categories and associated themes should NOT be used in lieu of applying Eligibility Criterion, rather they serve as a beginning point in considering potential significance. (These eligibility categories were adopted from [The Preservation Office Guide to Historic Roads, 2010](#))

- Road Eligibility Categories:
 - Engineered – Roads designed for the efficient movement of people, goods, and services and that often represent deviations from the time period’s standard materials or design. These roads have been designed to open isolated areas to commerce, reduce traffic congestion, link the nation, or simply link farm to market areas. These roads usually are exemplified by modifying the environment and topography to accommodate the road.
 - Aesthetic – Roads designed for the traveler experience – scenic enjoyment, leisure, recreation or commemoration. Generally, these are not the fastest nor the most direct route. They may wind through river valleys, along ridge tops, or follow the shore of a lake. In urban areas, they typically are represented by monumental avenues or park boulevards.
 - Cultural – Roads that evolved out of necessity or tradition. Generally, these roads exhibit the greatest number of changes over time including, but not limited to, alignment or materials, as they may have started as a reliable route or a logical connection between places and have changed over time. (may want to rephrase the preceding sentence—I’m a bit confused) Roads through mountain passes or water gaps, paralleling the foot of mountains, or following a line of stable soils or river courses are typical of cultural routes.
 - Discussion
 - Roads like Going-to-the-Sun and Beartooth Highway might be described as both aesthetic and engineered. Originally, tourism and recreation were major drivers behind both of these projects due to their scenic potential, but both came to fruition

using unusual and monumental engineering methods to meet the environmental challenges.

- Fort Benton Road, Road Agent Trail, the Old Carroll Trail, and the Mullan Road could all be considered cultural.
- Associated Themes:
 - The Territorial Era and Early Statehood (trails, toll roads, and County Road Districts) > pre-1860-1909
 - The Early Years of the State Highway Commission > 1913-1920
 - Emergency Road Legislation and the New Deal > 1920-1941
 - The Seven Percent System and the Good Roads Law > 1921-1941
 - Defense Highway Act + Federal Aid Highway Act > 1944-1956
 - The Interstate Era > 1956-1988

Effect

Things to consider when evaluating effects to roads:

- How much of the road has been converted from its original construction? (e.g. unpaved to paved, increase in size to accommodate traffic) If paved, does the pavement overlay the original road bed?
- How much of the road has been realigned?
- Are there natural and/or human impacts that have impacted the site? (e.g. erosion, abandonment, intrusive infrastructure adjacent to or within the site)
- Would design features associated with the current project intersect intact historical components of the site?
- Would design features associated with the current project be similar in location or appearance to existing intrusive infrastructure adjacent to or within the site?
- Would project design features result in permanent visual or audible changes that would be noticeable from all or portions of the site?

Resources

- [Microsoft Word - Uniform National Taxonomy DOC.docx](#)
- <https://glorerecords.blm.gov/default.aspx>
- <https://www.historicaerials.com/>
- <https://mdt.mt.gov/photogallery/past-maps.aspx>
- <https://www.oldmapsonline.org/en#position=3/46.61/-112.02>
- [MT_variouscounties_RoadsideArchitectureAlongUSHwy2MPD.pdf](#)
- [Microsoft Word - MT_ReinforcedConcreteBridgesMPD.DOC](#)
- [Microsoft Word - MT_Montana'sHistoricTimberStringerBridgesMPD.DOC](#)
- [Microsoft Word - MT_Montana'sHistoricSteelTrussBridges_MPD.DOC](#)
- [Microsoft Word - MT_Montana'sHistoricSteelStringerAndGirderBridges, 1901-1961MPD.DOC](#)

10.6.2 Railroads (mainline railroads, spur lines, timber/mining)

Recordation

- A majority of the Great Northern, Chicago Milwaukee, and St. Paul and Pacific (main lines) railroads have been recorded throughout the state.
 - If there is a railroad branch associated with a main line, it should be recorded under the main line's Smithsonian Number.
- Alignments or branches not associated with the history of the main lines mentioned above, should be recorded individually and in full (entire length within a county).
- Features of railroads may include more than the railroad itself. Features that lie within a project's APE should be recorded individually as discrete resources and receive separate Smithsonian Numbers. When applicable, sites recorded individually, should be briefly referenced in other associated site recordation. Please contact the lead federal agency or our office if questions arise regarding if a feature should receive its own Smithsonian Number. Possible features include but are not limited to:
 - Bridges
 - Culverts
 - Tunnels
 - Retaining Walls
 - Sidings
 - Water Stations
- Railroads or rail cart lines used specifically within a mining, logging or energy generation site should be assessed to determine if they should receive an individual Smithsonian Number.
 - A small railroad or rail cart line within the boundary of and related to a larger historic resource (e.g. a mining, logging or energy generation site) should be recorded as a feature of the larger resource rather than as its own discrete resource.
 - A linear feature that extends well beyond its related historic resource should be recorded individually and receive its own Smithsonian Number. When applicable, sites recorded individually should be briefly referenced in other associated site recordation. Please contact the lead federal agency or our office if there are any questions on if a feature should receive its own Smithsonian Number.

Eligibility

The main lines mentioned above (Great Northern, Chicago Milwaukee, St. Paul and Pacific) have all been previously determined Eligible. Criteria to consider when assessing the eligibility of rail lines not associated with one of the main lines includes:

- Is it named?
- Have original features been retained? Does it display unique construction or features? Consider if unique features should be recorded individually.
- Is it the first railroad or the largest railroad in the area?

- Did it serve an important purpose in the development of the local area? Was it constructed during an important time or during an important event (Homesteading Act, Great Depression, Carey Act, agency-specific directive, etc.)?
- Was it constructed by or for an important individual or group?
- Does it continue to function in its original capacity? Does its primary construction method remain? (e.g. gauge size)
- How have the setting and surrounding environment changed?

Effect

Factors to consider when evaluating effect to railroads:

- How much of the railroad has been abandoned or modified? Differentiate materials that have been removed, and materials that remain but are unused.
- Is the grading still evident? Is the railroad already destroyed?
- Are there natural and/or human impacts that impacted the site? (e.g. erosion, abandonment, intrusive infrastructure adjacent to or within the site)
- Would design features associated with the current project intersect intact historical components of the site?
- Would design features associated with the current project be similar in location or appearance to existing intrusive infrastructure adjacent to or within the site?
- Would project design features result in permanent visual or audible changes that would be noticeable from all or portions of the site?

Definitions

- Standard Gauge: Rail tracks are spaced 4' 8 ½" to 4' 9" apart. This is the common rail track spacing used on the major railways in Montana today.
- Narrow Gauge: Rail tracks spaced less than 4' 8 ½" apart. These rails are most commonly seen on older railroad alignments, such as railroads associated with mines in mountain regions.
- Broad Gauge: Rail tracks are spaced greater than 4' 9" apart. These track gauges are especially rare and not typically found in Montana.

10.6.3 Transmission Lines (telegraph, power, telephone, data)

Recordation

- Features of transmission lines may include more than the line itself. If any of these features lie within a project's APE, they should be recorded individually as discrete resources and receive discrete Smithsonian Numbers. When applicable, sites recorded individually should be briefly referenced in other associated site recordation. Please contact the lead federal agency or our office if any questions arise regarding whether a feature should receive its own Smithsonian Number. These features include but are not limited to:
 - Substations
 - Microwave/Radio Stations
 - Converter Stations

- o Control Centers
- o Testing Stations
- Transmission lines constructed for mining, logging, or energy generation purposes, should be assessed to determine if they should receive an individual Smithsonian Number.
 - o Small transmission lines within the boundary of and related to a larger historic resource (e.g. a mining, logging, or energy generation site) should be recorded as a feature of the larger resource rather than as its own discrete resource.
 - o A linear feature that extends well beyond its related historic resource should be recorded individually and receive its own Smithsonian Number. When applicable, sites recorded individually, should be briefly referenced in other associated site recordation. Please contact the lead federal agency or our office if there are any questions whether a feature should receive its own Smithsonian Number.

Eligibility

BPA created a Multiple Property Document (MPD) ([United States Department of the Interior](#)) that provides a historic context as well as guidelines for evaluating BPA transmission lines. This document should be used to inform evaluations of BPA transmission lines. Criteria to consider when assessing the eligibility of non-BPA transmission lines includes:

- Does it retain the same end points as when originally constructed?
- Does it basically follow its original alignment? If not, when did the alignment change?
- Is it associated with an electric cooperative that formed immediately after the Electric Cooperative Corporation Act?
- Do records exist identifying an original name, alignment, or specific stimulus that warranted installation of that alignment?
- Have original features been retained? Do the features reflect the period of construction? Does it present unique construction or features? Consider if unique features should be recorded individually.
- Is it the first transmission line or the largest line in the area?
- Did it serve an important purpose in the development of the local area?
- Was it constructed by or for an important individual or group?
- How have the surrounding environments changed?

Effect

Things to consider when evaluating effects to transmission lines.

- How much of the transmission line has been converted from its original construction? (e.g. changes from wood to steel poles and vice versa) If such changes occurred, when did they?
- How much of the line has been realigned? Did realignment occur over 50 years ago?
- Are there natural and/or human impacts that have impacted the site? (e.g. erosion, abandonment, intrusive infrastructure adjacent to or within the site)
- Would design features associated with the current project intersect intact historical components of the site?

- Would design features associated with the current project be similar in location or appearance to existing intrusive infrastructure adjacent to or within the site?
- Would project design features result in permanent visual or audible changes that would be noticeable from all or portions of the site?

Resources

[25yr-history_2.pdf](#) WAPA Historic Context

10.6.4 Water Conveyance (canals, ditches, pipelines)

Recordation

- Primary ditches and secondary laterals should be recorded in full (entire length within a county).
 - Secondary laterals should be recorded under the same Smithsonian Number as the primary ditch from which it branches.
 - Anything beyond secondary laterals including field ditches, tertiary laterals, and drain ditches do not need to receive a Smithsonian Number nor be included as features of larger laterals from which they may branch.
- Historic water pipelines should be recorded in full (entire length within a county).
- City infrastructure related to water conveyance need not receive a Smithsonian Number.
- Features of water conveyance systems may include more than the ditch, canal, lateral, or pipeline itself. Features of water conveyance systems of exceptional characteristics, such as design, materials, age, or craftsmanship, may warrant recordation individually as discrete resources and receive discrete Smithsonian Numbers. Features of water conveyance systems that do not display exceptional characteristics should not receive a discrete Smithsonian Number. Please contact the lead federal agency or our office if questions arise whether a feature should receive its own Smithsonian Number. Water conveyance system features include but are not limited to:
 - Headgates
 - Flumes
 - Diversions
 - Siphons
 - Culverts
 - Retaining Walls
- Ditches/pipelines that convey water for mining, logging, or other purposes, should be assessed to determine if they should receive an individual Smithsonian Number.
 - Small ditches or pipelines within the boundary of and related to a larger historic resource (e.g. a mining or logging site) should be recorded as a feature of the larger resource rather than as its own discrete resource.
 - A linear feature that extends well beyond its related historic resource should be recorded as its own resource and receive its own Smithsonian Number. When applicable, sites recorded individually, should be briefly referenced in other associated site recordation.

Please contact the lead agency or our office if questions arise regarding if a feature should receive its own Smithsonian Number.

Eligibility

Criteria to consider when assessing the eligibility of water conveyance systems includes:

- Does it follow the original alignment? The County Water Resource Survey Books are a valuable resource when evaluating this question. (Note that the County Water Resource Survey Books were created between the mid-1940s and early 1970s, so may lack information for irrigation ditches of recent historic age.)
- Does it have a name? The County Water Resource Survey Books are a good resource when researching this question.
- Are original features retained? Does it present unique construction or features? Consider if unique features should be recorded individually.
- Is it the first ditch or the largest ditch in the area?
- Did it serve an important purpose in the development of the local area? Was it constructed during an important time period or during an important event (Homesteading Act, Great Depression, Carey Act, agency-specific directive, etc.)?
- Was it constructed by or for an important individual or group?
- How much water does it convey? How many different individuals/farmsteads does it serve?
- Does it continue to function in its original capacity? Does its primary construction method remain (e.g. open unlined ditch, buried pipe, etc.)?
- How have the surrounding environments changed?

Effect

Things to consider when evaluating effects to irrigation ditches/systems.

- How much of the ditch has been modified since construction? (e.g. has an open unlined ditch been turned into a buried pipe, have all associated features been replaced?)
- How much of the ditch has been realigned? If changes/modifications/realignments transpired, when did they occur? Over 50 years ago?
- Are there natural and/or human impacts that have impacted the site? (e.g. erosion, abandonment, intrusive infrastructure adjacent to or within the site)
- Would design features associated with the current project intersect intact historical components of the site?
- Would design features associated with the current project be similar in location, appearance, or scale to existing intrusive infrastructure adjacent to or within the site?
- Would project design features result in permanent visual or audible changes that would be noticeable from all or portions of the site?

Definitions

Canal vs. Ditch

- Canal – Canals are wide, deep, artificial *navigable* waterways designed for transporting goods or people using boats, barges, or other forms of water transportation.

- Ditch – Ditches are thin, shallow artificial channels designed for transporting water for multiple uses including irrigation, industry, and other uses.
- It is understood that historically water conveyance systems have used the terms canal and ditch interchangeably regarding naming conventions. The distinction in definition above is speaking to how one might describe the type of water conveyance system they encounter within their APE and is not speaking to the name of the system.

Flume – A flume is a human-made water channel in an inclined chute or trough for carrying water. Flumes are usually used to carry water over rough or irregular terrain as part of a canal or ditch. Flumes have been constructed of wood, iron or steel, and concrete.

Ditch Segments

- Primary Ditch – The main portion of the irrigation ditch, typically named and listed in the County Water Resource Survey Books. Primary ditches will typically be wider, longer, or convey more water than the laterals branching off them.
- Secondary Lateral – The first laterals that branch off from the primary ditch.
- Tertiary Lateral – Laterals which branch off from a secondary lateral.
- Field Ditch – Irrigation ditches which offshoot from the secondary laterals and directly irrigate cropland.
- Drain Ditch – Where a ditch would have the effect of more than minor drainage of wetlands (other than wetlands established due to the presence of irrigation water), the ditch would be considered a drainage ditch, not an irrigation ditch, even if used for irrigation. These are typically identified with a different line type in the County Water Resource Survey Books.

Resources

- [Water Resource Survey Books](#)
- [Montana Hydrography Map with Ditches](#)

10.6.5 Other (non-water pipelines, fences, trails) (Appendix E)

These guidelines represent best general practices. Linear resources are complex, and all projects are reviewed on a case-by-case basis based on the specific project and specific resource.

Recordation

- Per the ACHP, federal agencies are exempt “from the Section 106 requirement of taking into account the effects of their undertakings on historic natural gas pipelines”. ([Exemption Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines | Advisory Council on Historic Preservation](#))
 - Other non-water pipelines of historic age should be considered and recorded in full (entire length within the entire county).
- Stand alone fences are exempt from receiving individual Smithsonian Numbers but should still be briefly referenced in cultural reports when applicable.
 - Fences should be included as features of other associated sites when applicable.

- Trails should be considered and recorded in full (entire length within the entire county). If there are questions as to if a trail should be recorded, contact the lead federal agency or our office before submitting the project.
 - Trails that were used specifically within a mining or logging site should be recorded and considered.
 - A small trail or linear feature that is within the boundary of and related to a larger historic resource (e.g. a mining or logging site) should be recorded as a feature of the larger resource rather than as its own discrete resource.
 - A linear feature that extends well beyond its related historic resource should be recorded individually and receive its own Smithsonian Number. When applicable, sites that have been recorded individually, should be briefly referenced in other associated site recordation. Please contact our office if there are any questions on if a feature should receive its own Smithsonian Number.

11 Cellular Towers and Antenna Structures: Special Considerations

This section provides special guidance and tips for preparing FCC submittals and should be used in combination with the Montana SHPO Consultation Guide.

11.1 CELL TOWER PROJECTS: MONTANA FCC REPORTING REQUIREMENTS

Section 106 work MUST be completed by an individual who is Secretary of the Interior qualified. For additional information about SOI qualifications, or questions relating to the Qualifications please contact the National Park Service.

If the tower or collocation is located within the external boundaries of a reservation, the cultural report and all relevant documentation and information must be submitted to the appropriate THPO for their concurrence before proceeding with construction or collocation.

We DO NOT provide concurrence after-the-fact. If the tower was already built or the collocation went up before 106 was completed, including Twilight Towers, we cannot provide you with a letter of concurrence.

EDIT YOUR WORK! Most of the problems that we see are from rushed work. Before submitting for consultation please make sure that all required documents and files are included in the submission, a letter with clear determination requests is attached, and all work has been reviewed and approved by SOI Qualified individuals as necessary.

If SHPO requests additional information, the project should be resubmitted in its entirety alongside the requested new information, under a new project number in SHPOs database, unless otherwise specified by the SHPO Review and Compliance Officer reviewing the project.

11.1.1 FILE SEARCH

For all cell towers and collocations, file searches must be completed BEFORE completing fieldwork. See Chapter 1.

Cultural records staff have 15 days to respond to record search and site form requests, so plan accordingly. If possible, they will complete a rush order, but there are accompanying fees. Files Searches are typically completed by our staff within 1-3 business days, though larger project area may require additional time to complete.

The information that you receive in your record search, and the date you received it, need to be included in the cultural report.

11.1.2 FIELDWORK

Your fieldwork should include both the direct APE and visual APE.

The direct APE includes not just the tower location, but any staging areas, access roads, and ground disturbance.

Photos from eligible or listed cultural resources within the visual APE should be taken looking towards the tower. DO NOT TRESPASS. If a property cannot be accessed, please get as close as possible, photos go a long way in helping explain No Effect or No Adverse Effect determinations.

All field photos should have date stamps. Unfortunately, there have been instances where consultants are using photos provided by the cellular companies and not actually completing the fieldwork. If you are located some distance from Montana, and cannot make the journey to complete the fieldwork, there are local consultants that you can hire.

If it is determined that a Class III inventory is not needed, please explain the justification for this decision within the cultural report. If it is questionable whether a survey is necessary or not, contact our office and discuss the project with us.

Just because it was decided that a Class III inventory of the direct APE was not necessary, does not mean that fieldwork regarding the visual APE does not need to be completed.

Unless discussed with our office prior to submittal, using Google Earth images in lieu of actually visiting the site will not be accepted.

11.1.3 CULTURAL REPORT

A report that contains relevant project information and a discussion of potential effects on cultural resources MUST be submitted through our database in addition to the FCC 620/621 form.

- This is NOT an archaeological report that is submitted if a survey was completed or shovel probes were dug, this is required for all new tower and collocation submittals to our office.
- For cell tower reports, we strongly recommend having a section for both an assessment of the Direct APE and Visual APE.

Visual Assessment – If a No Adverse Effect determination is being proposed to eligible cultural resources within the visual APE, DO NOT just write a sentence saying that. An explanation must be provided justifying the proposed effect determination.

Maps

- Must show the direct APE, visual APE and ALL cultural resources within both APEs regardless of eligibility.
- The direct APE must be clearly delineated and not just a dot on the map or pointed to by an arrow.
- Try to keep the maps at a scale of 1:24,000. If they are zoomed out too far, we will ask for replacements before we will complete our review.

Photo Sims – We love photo sims, especially if the tower will be in an area with a lot of eligible cultural resources. While not initially required, photo sims may be requested by SHPO at any time for the purpose of evaluating the impact of proposed construction on cultural resources.

11.1.4 SUBMITTING MATERIALS

Review of your submittal will not be completed by our office until we have received the following items, so to avoid delays, we recommend submitting all required material the first time. Generally, if a submittal to TCNS is required, so is a submittal to our office for review.

- Cover letter
- MTSHPD META-F Form
- Proof of Public Notice
- Form 620/621
- Site Map
- Tower Designs or Blueprints/Collocation Designs
- Cultural Resources Report
- GIS shapefiles for Area of Direct Effect

All documents, maps, reports, and files must be submitted via our database and web portal under the E-Consultation Submission Tag: <https://svc.mt.gov/adsams/>

Hard copy and email submissions will not be accepted.

Once all materials have been received by our office, we have 30 DAYS to complete our review. If possible, we will work with you to help you meet your deadlines, but do not expect an expedited review. Please note that the 30-day review period begins once an email is received from MTSHPD stating that your project has been assigned to a reviewer and the 30-day review period has begun. Please keep in mind that MT SHPO typically reviews cases on a first in first out basis. Should the Montana SHPO need to request additional information that was not included in the submittal, the 30-day review window will reset once that information is received and your project will most likely be moved to the back of the reviewer's queue.

To avoid delays and ensure a smooth and expedient review of your project please make sure all necessary documents, GIS, and information required is included before submitting your project for review. If you are unsure about what information to include in your submission packet, please reach out to our staff.

11.1.5 FINAL TIP

READ the FCC Section 106 guidelines!

READ the Montana SHPO Consultation Guide!

If you have any questions about the information provided in this document, you can call or email our [compliance team](#).

11.2 NEW CELLULAR TOWER AND ANTENNA STRUCTURES

The Montana State Historic Preservation Office (Montana SHPO) developed this guidance to assist Federal Communications Commission (FCC) permit applicants and their consultants with the procedures outlined in the ***Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain***

Undertakings Approved by the Federal Communications Commission (FCC PA for new towers and antenna).

Additional general guidance can be found in the Montana SHPO Consultation Guide: **A Handbook for Cultural Resource Review and Compliance in Montana.**

11.2.1 RESPONSIBILITY

The FCC PA for new towers and antenna records the terms and conditions agreed upon to fulfill the FCC's responsibilities under Section 106 of the National Historic Preservation Act (NHPA) as codified by 36 C.F.R. § 800. Under 36 C.F.R. § 800, the Federal agency responsible for the funding, permitting, licensing or approval of a project, activity or program is obligated to fulfill the requirements of Section 106 of the NHPA prior to the execution of the project, activity or program. In the case of cellular tower construction and antenna permitting, the FCC is ultimately accountable for ensuring that the applicant fulfills their responsibilities under Section 106. In other words, the FCC may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations, but remains legally responsible for all required eligibility findings and effect determinations. Please immediately notify the Montana SHPO, if it is discovered that the proposed cellular communication tower was partially or wholly constructed prior to the fulfillment of Section 106 requirements.

11.2.2 AREA OF POTENTIAL EFFECT

Montana SHPO's review of all cellular tower and antenna projects includes an evaluation of the project's Area of Potential Effect (APE). Under 36 C.F.R. § 800, the APE is defined as:

The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effect is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

In addition to effects that result from direct physical alteration or destruction, the APE must also account for indirect effects caused by the introduction of visual, audible or atmospheric elements.

The FCC PA requires the following minimum APEs for new towers:

- (a) Within one-half (1 /2) of a mile from the tower site if the proposed tower is 200 feet or less in height;
- (b) Within three-fourths (3 /4) of a mile from the tower site if the proposed tower is more than 200 feet, but no more than 400 feet in overall height; or
- (c) Within one-and-one-half (1 1/2) miles from the proposed tower site if the proposed tower is more than 400 feet in overall height.

However, the Montana SHPO requests that for all proposed towers the applicant or consultant request at least a one (1) mile radius Class I File Search to determine the existence of significant historic properties adjacent to the required minimum APE.

11.2.3 STEP 1: INITIATE FILE SEARCH

After determining and defining the appropriate direct and indirect APE, the applicant or consultant should request a File Search from the Montana SHPO for information regarding previously identified and recorded cultural resources (historic and archaeological sites) located within the APE. **It is extremely important for all file search requests to indicate the Township, Range, and Section for the entire APE.**

The File Search request should be submitted using the Montana File Search Request Form. Information returned will include site numbers, locations (Township, Range, and Section), site types, periods, ownerships, and eligibility statuses.

There is a minimal fee associated with processing a File Search. Search results are generally provided in one to three (1-3) calendar days.

Following the File Search, electronic copies of site forms and cultural resource inventories are available for SOI Qualified Individuals for an additional fee.

For more information on File Search requests, please contact the Montana SHPO Cultural Records Manager.

11.2.4 STEP 2: LOCAL/TRIBAL CONSULTATION

The Montana SHPO places an emphasis on local and tribal consultation. Therefore, in addition to documentation of Tribal Involvement (through the Tower Construction Notification System (TCNS)), the applicant or consultant should include all relevant information necessary to convey fulfillment of local consultation requirements.

It is important for the applicant or consultant to make a concerted effort to seek out local individuals or organizations with a demonstrated interest in the history of the local area. If the area has a Certified Local Government (CLG) representative (i.e. Local Historic Preservation Officer), then they would be the preferred contact. Visit our website for additional information about whether your project area is covered by a CLG. If the area has no CLG, then the applicant or consultant should determine the closest local Historical Society or Museum using internet-based research or other means. In addition to an individual or organization with an interest in local history, the Montana SHPO recommends the applicant or consultant contact a local government official or planning department.

Once the applicant or consultant identifies the appropriate local contacts, they should solicit comment on the proposed cell tower in writing. If comment is not provided to the applicant or consultant, all contact information should be provided to the Montana SHPO. If the local representative has concerns about the tower, then these concerns should be addressed and resolved prior to the submittal of the packet to the Montana SHPO.

11.2.5 STEP 3: CULTURAL RESOURCE INVENTORY

The Montana SHPO requests the completion of a stand-alone cultural resource inventory meeting the professional standards outlined in the Consulting with the Montana SHPO: Guidelines and Procedures For

Cultural Resource Review and Consultation under the National Historic Preservation Act and the Montana State Antiquities Act. As required by the FCC PA for new towers and antenna, the applicant or consultant must complete a survey of the area of direct effects, as well as a visual impact analysis for any historic properties located within the boundaries of the designated APE.

(Map of project area with survey area, three-quarter mile visual area of potential effect and one mile File Search area.)

11.2.6 STEP 4: CONSULTING WITH THE MONTANA SHPO

The applicant or consultant should provide all documentation of local consultation efforts (including copies of letters) to Montana SHPO in the submission packet. If efforts to communicate with local interested parties are unsuccessful after a reasonable amount of time, the provided contact information fulfills the local consultation requirements.

If the local consulting parties' express valid concerns that cannot be resolved, then the applicant or consultant should contact the FCC. If the FCC agrees that the applicant has made a reasonable and good faith effort, the FCC should clearly state its position in a letter addressed to the Montana SHPO. This letter should be submitted with the completed packet to the Montana SHPO for review.

The submission packet must also include the completed FCC Form 620, as well as a stand-alone Cultural Resource Inventory Report completed by the consultant. Any designs of the proposed tower or collocation, maps of the tower site and proposed/existing tower infrastructure, proof of public notification, any communications with tribes or local entities, GIS of the proposed tower site, and a consultation letter request concurrence with your determination.

The submission packet must be submitted through our database (<https://svc.mt.gov/adsams/>) under the E-Consultation Submission Tag. New or first-time users of the database will be required to create a free account in order to perform file searches or submit for consultation.

Upon receipt of the completed packet, the Montana SHPO will review the contents to ensure the applicant or consultant has made a reasonable and good faith effort to determine any potential adverse effects to historic properties located within the APE. After reviewing the provided documentation, the Montana SHPO will respond with a formal response letter within thirty (30) calendar days.

Please note, MTSHPPO will provide one effects determination concurrence, which is applicable for both the direct and indirect effects. For example, a cell phone tower requesting “No Historic Properties Effectuated” for direct effects, and “No Adverse Effect to Historic Properties” for their indirect/visual effects, MTSHPPO may respond concurring only with “No Adverse Effect to Historic Properties.” This still enables the collocation/construction to proceed as there is no adverse effect resulting from the projects direct and indirect effects.

Please include documentation of local and tribal consultation in the submission packet. The more information readily available to the Montana SHPO, the more efficient and effective the Section 106 review process. If MTSHPPO has reason to believe consultation with tribes or local stakeholders took place but was

not included in the submission we may request copies of the correspondence as it relates to cultural resources to ensure a good faith effort is being made.

11.2.7 ADDITIONAL RESOURCES

The Consulting with the Montana SHPO: A Handbook for Cultural Resource Review and Compliance in Montana provides additional information related to consultation with MTSHP, performing file searches, creating site records and other useful information for all project types.

The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (September 2004) is available online and provides additional information regarding exclusions, guidelines, and standards for review.

It may also be beneficial to review the National Historic Preservation Act of 1966 as amended in 2006, as well as the Section 106 Federal Regulations (36 C.F.R. § 800 - Protection of Historic Properties) when preparing a project for Section 106 review.

11.3 COLLOCATION OF WIRELESS ANTENNAS

The Montana State Historic Preservation Office (Montana SHPO) developed the following guidance document to assist Federal Communications Commission (FCC) permit applicants and their consultants with the procedures outlined in the ***Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*** (FCC Collocation PA). Additional general guidance can be found in the Montana SHPO Consultation Guide: **A Handbook for Cultural Resource Review and Compliance in Montana**.

11.3.1 RESPONSIBILITY

The FCC Collocation PA records the terms and conditions agreed upon to fulfill the FCC's responsibilities under Section 106 of the National Historic Preservation Act (NHPA) as codified by 36 C.F.R. § 800. It is intended to streamline the Section 106 review of collocation proposals to encourage a reduction in the need for new towers and, thereby, reduce unnecessary potential adverse effects on historic properties.

Under 36 C.F.R. § 800, the federal agency responsible for the funding, permitting, licensing or approval of a project, activity or program is obligated to fulfill the requirements of Section 106 of the NHPA prior to the execution of the project, activity or program. In the case of the collocation of wireless antennas, the FCC is ultimately accountable for ensuring that the applicant fulfills their responsibilities under Section 106. In other words, the FCC may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations, but remains legally responsible for all required eligibility findings and effect determinations.

11.3.2 COLLOCATION

In the FCC Collocation PA, "collocation" is defined as, "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."

11.3.3 SUBSTANTIAL INCREASE IN SIZE OF CELLULAR TOWER

The FCC Collocation PA outlines the following instances as a substantial increase in the size of a pre-existing cellular tower:

1. The proposed antenna increases the existing height of the tower by more than ten percent (10%), or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater (the proposed antenna may exceed the abovementioned size restrictions if necessary to avoid interference with existing antenna);
2. The proposed antenna involves the installation of more than the standard number of new equipment cabinets for the technology involved (not to exceed four (4), or more than one (1) new equipment shelter);
3. The proposed antenna involves adding an appurtenance to the body of the tower that protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater (the proposed antenna may exceed the above-mentioned size restrictions if necessary to shelter the antenna from inclement weather or connect the antenna to the tower via cable);
4. The proposed antenna involves excavation outside the current tower site (defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site).

11.3.4 COLLOCATION: TOWERS CONSTRUCTED ON OR BEFORE MARCH 16, 2001

The proposed antenna may be mounted on an existing tower (constructed on or before March 16, 2001) without undergoing Section 106 review, unless:

1. The new antenna will result in a substantial increase in the size of the tower;
2. The FCC has determined the tower to have an unresolved adverse effect on one or more historic properties;
3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106;
4. The collocation licensee or tower owner has received written or electronic notification that the FCC received a complaint from a member of the public, the Advisory Council on Historic Preservation (ACHP), or the Montana SHPO stating that the collocation has an adverse effect on one or more historic properties (complaints must be submitted in writing with substantial supporting evidence).

11.3.5 COLLOCATION: TOWERS CONSTRUCTED AFTER MARCH 16, 2001

The proposed antenna may be mounted on an existing tower (constructed after March 16, 2001) without undergoing Section 106 review, unless:

1. The Section 106 review process for the tower and any associated environmental reviews required by the FCC have not been completed;
2. The new antenna will result in a substantial increase in the size of the tower;
3. The FCC has determined the tower to have an unresolved adverse effect on one or more historic properties;

4. The collocation licensee or tower owner has received written or electronic notification that the FCC received a complaint from a member of the public, the ACHP, or the Montana SHPO stating that the collocation has an adverse effect on one or more historic properties (complaints must be submitted in writing with substantial supporting evidence).

11.3.6 COLLOCATION: BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS

The proposed antenna may be mounted on a building or non-tower structure without undergoing Section 106 review, unless:

1. The building or non-tower structure is over forty-five (45) years old;
2. The building or non-tower structure is inside or within 250 feet of the boundary of a historic district;
3. The antenna is visible from the ground level of a historic district;
4. The building or non-tower is a designated National Historic Landmark, or is listed in or eligible for listing in the National Register of Historic Places based on the review of the licensee, tower company, or applicant for an antenna license;
5. The collocation licensee or tower owner has received written or electronic notification that the FCC received a complaint from a member of the public, the ACHP, or the Montana SHPO stating that the collocation has an adverse effect on one or more historic properties (complaints must be submitted in writing with substantial supporting evidence).

For all proposed wireless antenna collocations not excluded from Section 106 review, the applicant or consultant should refer to the Montana State Historic Preservation Office Guidelines for Preparation of Section 106 Documentation for New Cellular Tower and Antenna Structures.

11.3.7 2015 Antenna and Collocation Exclusions

Collocations on utility structures, including utility poles and electric transmission towers, may be mounted without undergoing Section 106 Review, unless:

1. Deployment exceeds size limitations when measured with other wireless deployments on the same structure.
2. There will be new ground disturbance.
3. The collocation will be placed on a structure:
 - a. within the boundary of, or within 250 feet of the boundary of, a historic district.
 - b. that is a designated National Historic Landmark or is listed/eligible for the National Register of Historic Places (NRHP).
 - c. the collocation is subject to a pending complaint of alleged adverse effect on historic properties.

Antenna may be mounted without undergoing Section 106 Review, unless:

- 1) They will be in place for more than 60 days.
- 2) They require notice of construction to the Federal Aviation Administration (FAA).
- 3) Marking or lighting under FAA regulations are required.

- 4) They will be more than 200 feet above the ground
- 5) More than minimal ground excavation is required.

Collocations on buildings and any other non-tower structure, may be mounted without undergoing Section 106 Review, unless:

1. There is not an existing antenna on the building or structure.
2. The collocation does not meet requirements related to visibility and proximity to an existing antenna.
3. There will be new ground disturbance.
4. The collocation will be placed on a structure:
 - a. within the boundary of, or within 250 feet of the boundary of, a historic district.
 - b. that is a designated National Historic Landmark or is listed/eligible for the NRHP.
 - c. the collocation is subject to a pending complaint of alleged adverse effect on historic properties