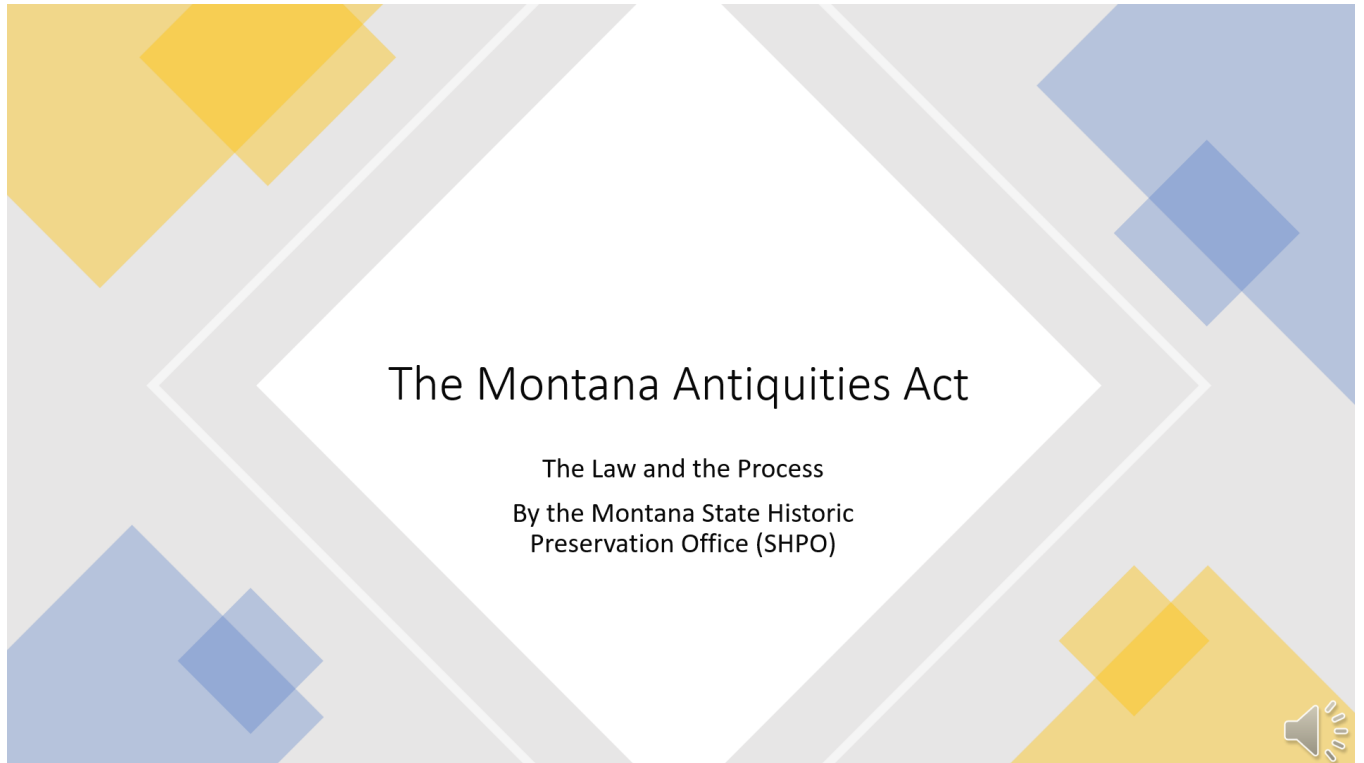


## Montana Training Act Training Video Transcript

Produced by the Montana SHPO, March 2021

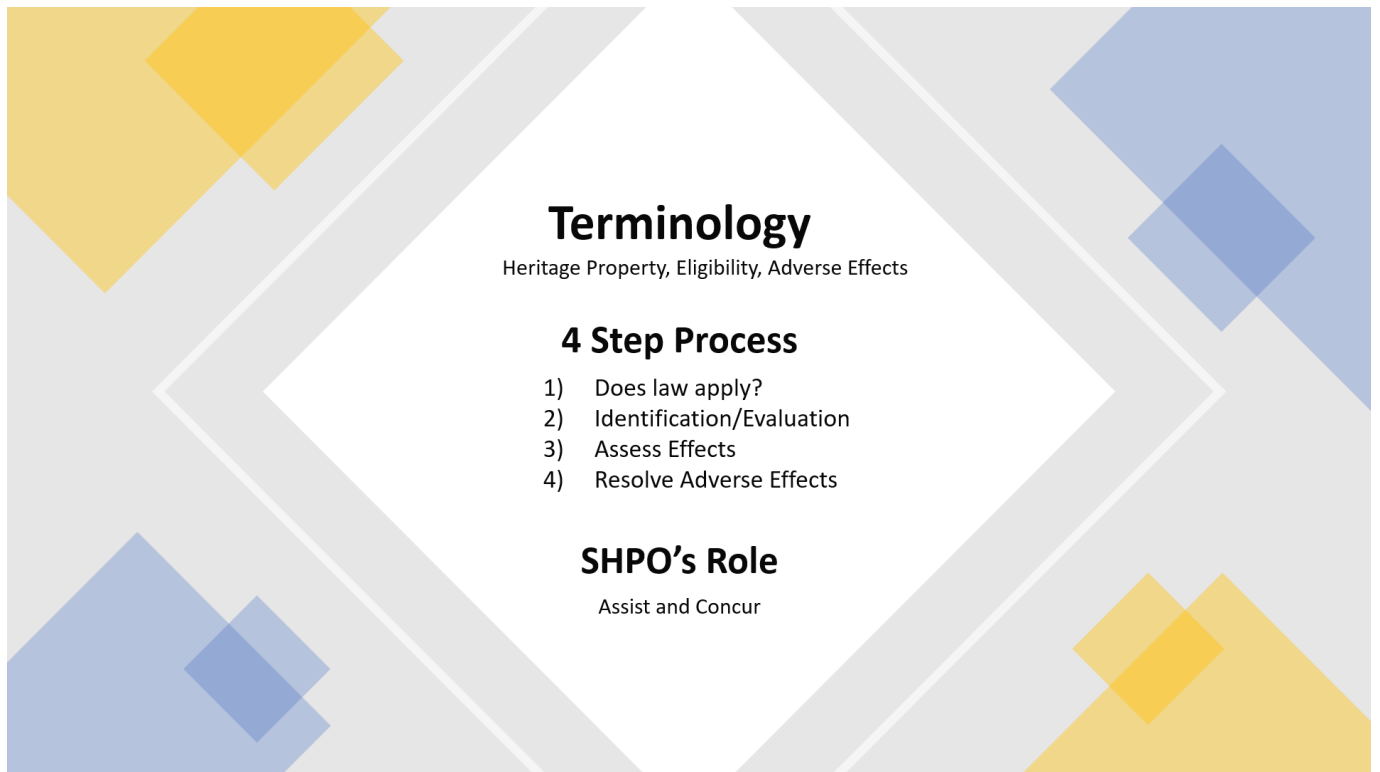
### Slide 1:



Welcome to the Montana Antiquities Act Training Video. This video is presented by the Montana State Historic Preservation Office – called SHPO (“Ship-o”) throughout this presentation. Today I will introduce this law and provide guidance on its application.

This presentation focuses on describing the consultation process that is required under this law. It details the steps state agencies must take when consulting with our office and offers a road map regarding different potential outcomes.

**Slide 2:**



**Terminology**  
Heritage Property, Eligibility, Adverse Effects

**4 Step Process**

- 1) Does law apply?
- 2) Identification/Evaluation
- 3) Assess Effects
- 4) Resolve Adverse Effects

**SHPO's Role**  
Assist and Concur

At the end of the presentation, you should understand the terminology used in this act, this includes terms such as Heritage Property, Eligibility, and Adverse Effects

You will have knowledge of the four basic steps of the process. The first step is determining if the law applies to a project, the second is identification and evaluation of resources, the third is assessing the effects on those resources, and the final step is resolving any adverse effects.

Finally, you will have gained understanding of the SHPO's role in the process. We are available to answer questions and assist whenever needed.

Slide 3:



## The Law

- Montana Antiquities Act
  - Requires State Agencies to consult with SHPO on their management of historic, prehistoric, and paleontological sites on state land
  - Requires state agencies and the Montana University System to submit a biennial report on their stewardship efforts.
- MCA 22-3-421 to 442
- ARM 10-121-902 to 916

Fred Robinson Bridge

The Montana Legislature passed the Montana Antiquities Act in 1973 to impose penalties for looting and damaging state-owned historic sites. A 1979 amendment re-affirmed the Legislature's intention to protect state-owned Heritage Properties by requiring state agencies to take responsibility for managing historic, prehistoric, and paleontological sites on their land. The law requires that state agencies consult with SHPO when making decisions that may impact Heritage Properties on their land. The 1979 amendment also created the nine-person, governor-appointed Historic Preservation Review Board. The Legislature further amended the law in 2011 by requiring state agencies to submit a biennial report to the Historic Preservation Review Board summarizing the agency's stewardship efforts and compliance with this law.

Legal language for the act is in Montana Code Annotated Title 22 Chapter 3 and in Administrative Rules of Montana Section 10-121.

This presentation will highlight some of the different types of heritage properties that state agencies manage. Pictured here is the state-owned Fred Robinson Bridge. This bridge is the result of a dedicated effort among businessmen in the Malta/Lewistown area to build a bridge across the Missouri River. It was constructed in 1959 and is an excellent example of a steel girder bridge design of this era. Historic roads and bridges can symbolize historically significant engineering achievements. Because they are associated with trade and connect our communities, roads and bridges are usually flanked by historic towns and sites. Bridges are one type of Heritage Property.

Slide 4:

## Montana Antiquities Act Process

- 1) When does it apply?
- 2) Are there Heritage Properties Present?
  - Identification and Evaluation Steps
- 3) How will Agency's action affect Heritage Properties?
  - Effects Determination Step
- 4) Can the Agency minimize, avoid, or mitigate Adverse Effects?



Mathews Hall

The Montana Antiquity Act lays out a **process** that must be followed, it does not mandate outcomes or protection. State Agencies must consult with SHPO early and often so that SHPO can inform agency decision-making where projects could affect Heritage Properties.

There are four main steps to the Montana Antiquity Act Process:

First – when does it apply and who is responsible for complying with this state law?

Second - how to identify and evaluate Heritage Properties. In general, this applies to all significant paleontology remains and all historic or archaeological sites older than 50 years.

Third - how to determine the effect an undertaking would have on properties; and

Fourth - how the agency can minimize, avoid, or mitigate any adverse effects?

Every agency is encouraged to adopt its own rules for the identification and preservation of Heritage Properties and paleontological remains. These rules must still follow the Montana Antiquities Act but can outline the internal agency procedures and the precise process used to fulfill their responsibilities under the Montana State Antiquities Act. Some agencies have entered into Programmatic Agreements with our office spelling out how these steps will be followed.

SHPO encourages agencies to hire or contract with professionals familiar with the consultation process.

Mathews Hall at UofM Western in Dillon possesses high architectural value and reflects Montana's historic investment in higher education. Historic buildings are one of the most visible Heritage Property types.

## Slide 5:



## Who, What, When?

- Who?
  - All State Agencies
- What?
  - Identify and protect Heritage Properties and Paleontological remains on lands owned by the state
- When?
  - Before action is taken
    - “The Agency shall initiate reviews and studies required by 22-3-424, MCA, prior to initiating any action which has the potential to adversely affect heritage properties. **The Agency shall complete its review early enough to be used in formulating agency decisions about the action**” (10.121.903 Administrative Rules of Montana)
- Why?
  - Heritage Values translate to cultural tourism, education values, and a continuation of shared identity
- How?
  - State Projects should be planned with deference to heritage properties so that heritage values remain evident

All state agencies, including the University System, must consider the impacts their actions will have on Heritage Properties. This law applies to all actions on state owned land.

The agency must identify and protect heritage properties and paleontological remains on lands owned by the state. They must consult with SHPO early in the planning process of a proposed project.

This does not mean that an agency cannot destroy a Heritage Property such as a Historic Building, it simply requires that the state agency consider the ramifications of damaging the heritage property and possible alternatives that would protect the location. The law lays out a process that must be followed. Agencies must discuss the project with SHPO in a specific consultation process. Ultimately it is the state agency’s obligation to document compliance with this law, make official determinations, and start the consultation process.

Agencies must initiate this process in the earliest phase of project planning and the process must be completed before action is taken on state owned lands. Legally, SHPO must be provided an opportunity to formally consult on projects before any action is taken.

Pictograph Cave is a State Park near Billings and a prime example of a pre-contact, Native American, archaeological Heritage Property. Other examples of precontact Native American sites include: Buffalo Jumps, Drive Lines, Tipi Rings, and Artifact Scatters indicating a location where people lived or worked. These sites can be difficult or impossible to identify without professional experience. Furthermore, these sites can have special significance to Native Peoples today and are sometimes sites of religious or spiritual significance.

Slide 6:

## What is a “Heritage Property”?

- 50 Year Threshold
- “Heritage Property means 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.” (36.2.802 Procedural Rules of Montana)
- Identify and Evaluate
- “...the agency shall assure that any historic, prehistoric, or architectural property identified in an area of effect has been evaluated to determine whether it is a heritage property and whether it is eligible for the register or if it contains paleontological remains.....” (10.121.906 Administrative Rules of Montana)



This law deals with how state agencies will manage Heritage Properties and paleontological remains, therefore it is important to understand the definition of a Heritage Property. A Heritage Property is “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.”

When looking at buildings or structures that need to be considered, there is a clear threshold. Any building 50 years or older must be evaluated for its heritage status. However, not every building over 50 years old is significant and meets the definition of a Heritage Property.

Due to potential cultural sensitivity of archaeological sites, and necessary expertise in identifying, documenting, and evaluating archaeological sites for their heritage status; agencies must enlist the services of a professional archaeologist. Not all ground disturbing activities require archaeological investigations, and not all artifacts equate to significant archaeological sites. However, some sites and artifacts will warrant the use of professionals. SHPO staff can help agencies determine how to meet the Antiquities Act mandate where archaeology is concerned. For agencies without a staff archaeologist, a preliminary conversation with SHPO early in the agency’s planning can help determine a path forward.

So how is an agency going to know what resources are on their land and if they possess sufficient heritage values to merit inclusion as a Heritage Property?

Identification is when agencies determine what resources are located on their land. This can involve searching historic maps, agency records, and having professionals walk over the land looking for potential Heritage Properties and paleontological resources. Evaluation is when districts, sites, buildings,

structures, and objects are examined, and the heritage value criteria is applied to determine if the site is significant.

The Administrative Rules of Montana outlines the state agency's need to evaluate the significance of a property that could be affected by a project. "...the agency shall assure that any historic, prehistoric, or architectural property identified in an area of effect has been evaluated to determine whether it is a heritage property and whether it is eligible for the register....."

The term register in the regulations refers to the National Register of Historic Places. If a site is eligible for the National Register it qualifies as a Heritage Property. Our office uses the term 'cultural resource' as a general term applying to potential heritage properties that may not have been evaluated yet.

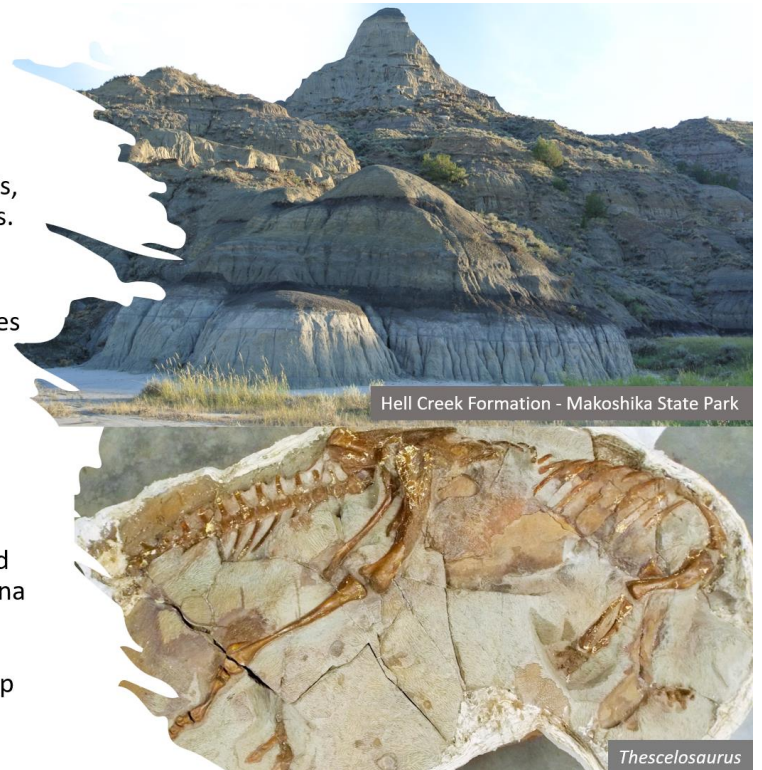
Projects that are on State Land but include federal funding or require federal permits may also require compliance with a federal law called the National Historic Preservation Act. This federal law follows a similar process and looks at impacts on Historic Properties. The Montana Antiquities Act is in some ways the younger sibling of the National Historic Preservation Act. The SHPO has streamlined procedures from the national act to apply to the State Antiquities Act.

This photo shows some Tipi Rings in Pondera County. Some state agencies own large sections of undeveloped land, without a professional surveying this land, there may have been way of knowing these tipi Rings were located here.

Slide 7:

## Paleontology

- Fossils are the preserved remains or traces of organisms. Some examples include bones, shells, remains encased in amber or ice, and footprints.
- Montana contains many fossil-bearing geologic formations and is an important region for studies of the history of life on Earth.
- Collecting fossils from state lands requires authorization from the appropriate land management agency.
- Potentially scientifically significant fossils should be assessed by a trained paleontologist. Montana State Parks and the Department of Natural Resources and Conservation have working agreements with Museum of the Rockies to help meet the goal of protecting scientifically significant fossils.



Significant paleontological resources are also considered Heritage Properties.

Fossils are the preserved remains or traces of organisms. Some examples of fossils include bones, shells, remains preserved in amber or ice, and footprints. Montana contains many fossil-bearing geologic units which have produced numerous important scientific discoveries and outcroppings of many of these formations are found on Montana state lands.

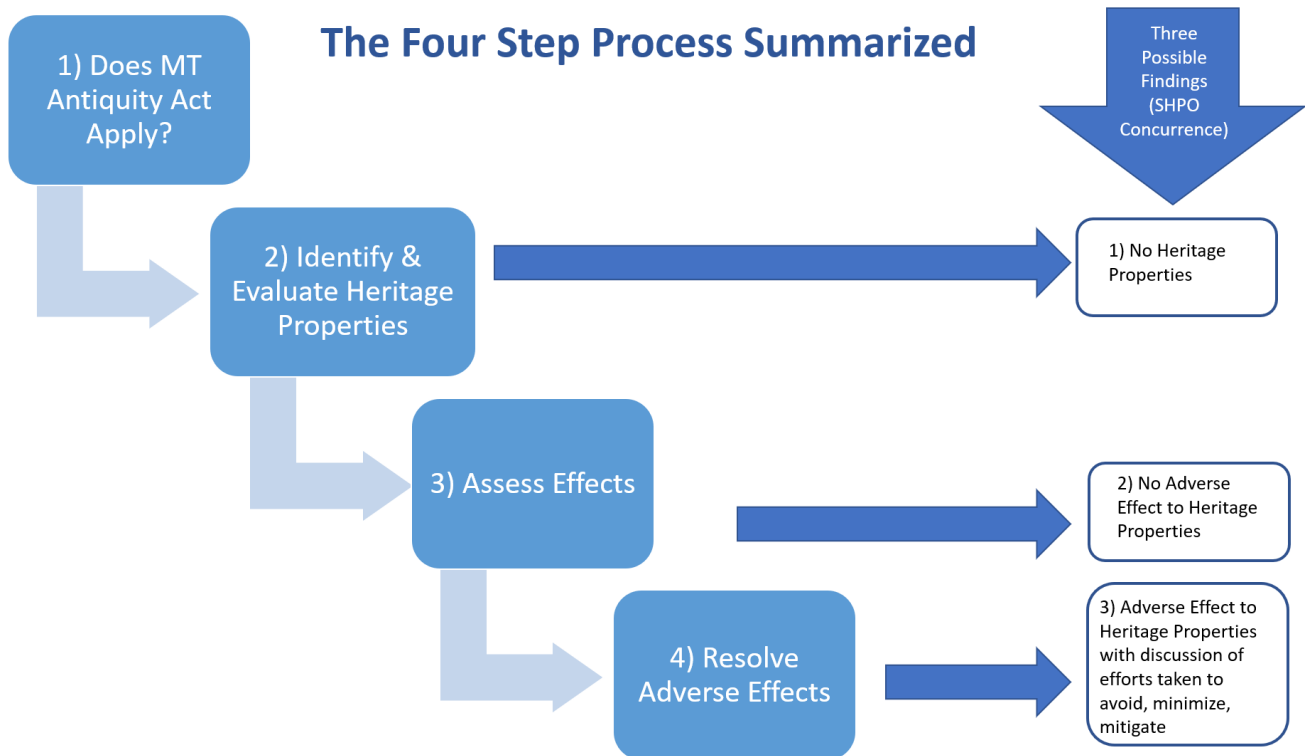
Scientifically significant fossils may range from complete dinosaur skeletons to individual bones (or pieces of bones) to invertebrates or plants from an interesting locality. The relative completeness and potential scientific significance of a fossil specimen are not always apparent upon discovery; often broken fragments are the first parts found and more well-preserved, complete material lies further in the hillside. Removal of fossil fragments at the surface may hinder relocation of a potentially significant locality if detailed locality information is not collected. Contextual information, including geographic and stratigraphic (position within the layers of rocks) data is critical to assessing the potential data provided by fossils. Sometimes the significance of specimens only becomes clear after careful preparation in the laboratory.

Collecting fossils from state lands requires authorization from the appropriate land management agency. Potentially scientifically significant fossils should be assessed by trained paleontologists. Some state agencies, including Montana State Parks and the Department of Natural Resources and Conservation, have working agreements with Museum of the Rockies in order to help meet the goal of protecting and preserving scientifically significant fossils so that they can provide insights into life on Earth.



There have been many significant paleontological finds within the Hell Creek Formation. The photo also show a Thescelosaurus fossil.

Slide 8-11:



To summarize:

The first step is to determine if the Montana Antiquity Act applies, Is it an action on state owned land? If not, then no consultation is necessary. This law only applies to projects located on state owned land.

The second step is to identify and evaluate potential heritage properties. If there are no heritage properties, a concurring letter from SHPO ends the antiquity act requirements. The agency and SHPO may have to consult on if any of the heritage values or eligibility criteria apply to potential heritage properties to come to this conclusion.

The third step only applies if there are heritage properties in the project's area. If the agency and SHPO concur there are heritage properties the agency then determines if there will be Adverse Effects to those heritage properties as a result of the proposed actions, a concurring letter from SHPO agreeing that there will be No Adverse Effects ends the antiquity act process. The agency and SHPO may have to discuss the project specifics and the effects the project will have on the property to come to this conclusion.

The fourth step will be triggered if there will be adverse effects to a heritage property. The agency must document their efforts to resolve adverse effects. This will involve a discussion with SHPO about efforts to avoid, minimize, and mitigate adverse effects.

Most projects are completed with a finding of 'No Heritage Properties Affected' or 'No Adverse Effects to Heritage properties'. When dealing with a potential Adverse Effect to a heritage property more

documentation and consultation work may be required. This is why the Antiquity Act rules stress early consultation, so that the consultation mandate does not delay the project.

This graph summaries the process and provides a helpful guide.

**Slide 12:**

## What to Submit to SHPO?

- **Asking for Concurrence?**

- Concurrence on Property's Heritage Status or Project Effects

- **Cover letter**

- Explicitly state which project effect determinations (No Adverse Effect, Adverse Effect, or No Heritage Properties Affected) or site eligibility determinations (Eligible or Not Eligible) you are seeking concurrence with

- For Architecture Projects

- Hard Copy and Digital Copy
  - Historic Property Record Forms
    - Current Photographs
  - Architectural Drawings/Plans

- For Paleontological, Historic, or Archaeological Resources

- Hard Copy and Digital Copy
  - Cultural Inventory Report with attached CRABS data entry form
  - Cultural Resource Information System or Historic Property Record Forms
    - Current Photographs and Maps
  - GIS files for area inventoried and site boundaries

When an agency submits a project to our office for our concurrence, we will need a cover letter. This cover letter should provide some background on the project, explain what actions are proposed, provide photos and plans, describe the cultural resources that are in the area, and discuss the potential effects the agency's actions will have on those resources.

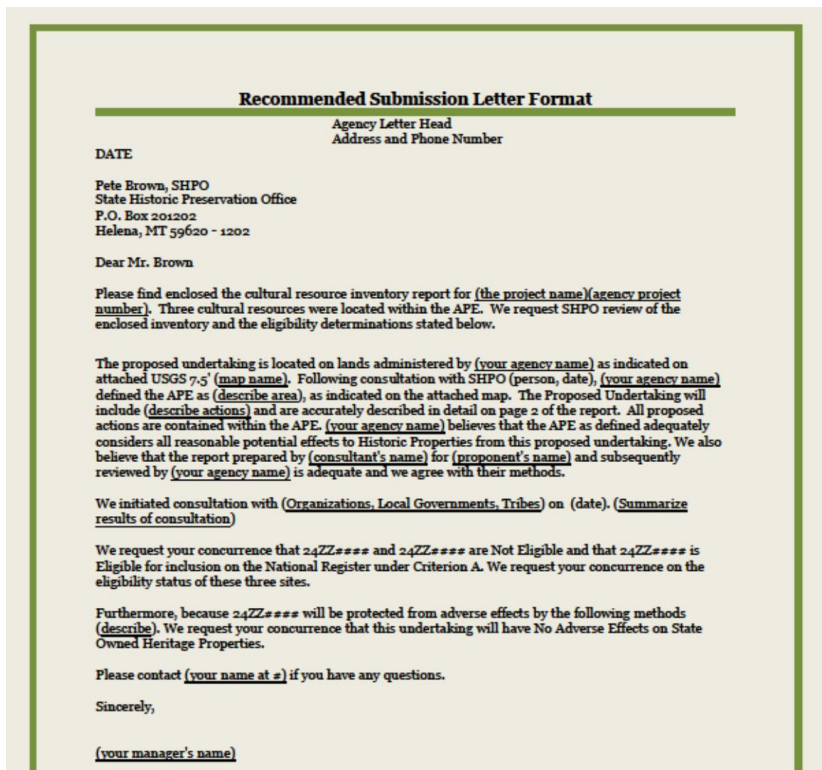
When seeking SHPO's concurrence the letter must state the agency's finding that they want our office to concur with. For example, a letter may request SHPO to concur on whether a property involved qualifies as a Heritage Property. Furthermore, a letter may request SHPO to concur on a project's effect on a heritage property.

There are three possible project effect determinations: Adverse Effect, No Adverse Effect, or No Heritage Properties Affected. Furthermore, for each site there are two possible eligibility determinations you can request our concurrence with: Eligible or Not Eligible. Eligible would indicate the site qualifies as a Heritage Property, Not Eligible indicates the site does not meet any of the heritage value criteria and does not qualify as a Heritage Property.

When submitting a project to our office, we will need both a paper hard copy and an electronic copy of all documents. This will include the cultural inventory report, forms documenting the heritage properties – which we call Cultural Resource Information System and Historic Property Record Forms. You can find a detailed list of what our office requires for consultation on our website along with many other helpful resources.

SHPO will respond within all legally mandated timeframes, if information is missing from the initial submission and must be requested the timeframes are reset once a complete submission packed is received.

Slide 13:



## Consultation Letter

- Project Name, Location, Description
- Items being submitted
- What you want our office to concur with
  - The determinations must come from the Agency
- Project Effects
  - No Properties Affected, No Adverse Effect, Adverse Effect
- Site Eligibility
  - Eligible, Not Eligible, Unevaluated

An example template of a cover letter is on our website. The most important thing in the cover letter is the agency's recommendation for project effects and site eligibility. These recommendations need to come from the state agency. Legally, it is SHPO's role to agree, disagree, and ask questions. It is the agency's job to propose the effects and eligibility status.

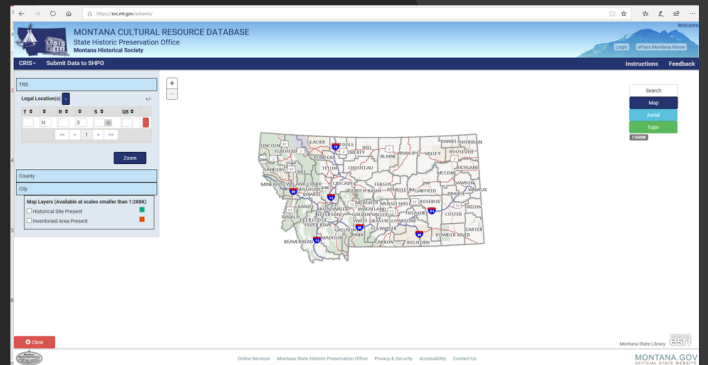
Project Effects are where agencies determine if your actions will damage or Adversely Effect, a heritage property.

Site Eligibility is where agencies determine if a location qualifies as a Heritage Property.

Slide 14:

## Step 2) Identification – File Search

- “File Search Request Form” on our Website, see Cultural Records Manager for Assistance
- SHPO will provide the agency with information on:
  - Known Heritage Properties or Paleontological Remains in the Area
  - The likelihood of unknown heritage property or paleontological remains in the area
  - Whether a previous cultural resource survey has occurred in the area of effect
  - If the SHPO has information about the potential of heritage resources or paleontological remains in the area
- SHPO will recommend any inventory, recordation, and data collection methods. (within 30 days to reply)
  - If the agency chooses not to follow SHPO’s recommendation it must document its decision and justification. The agency must send a copy of this documentation to SHPO



<https://svc.mt.gov/adsams/>

To start the Identification step we urge state agencies to complete a “File Search”. The Montana SHPO has records of previous cultural inventories and recorded cultural resources. This step can eliminate unnecessary efforts by identifying completed site recordation and inventory work already completed in the project area.

SHPO’s website has tools for searching a particular section of land to get an idea if there is a site already recorded in that general area or if the area has already been inventoried by a professional. Our website only provides general information you must request a File Search to receive the detailed information, such as the precise location and description of an archaeological site. This is because site location is confidential information. We have an obligation to protect these sites and public knowledge of their location can lead to theft of artifacts and other damage.

Slide 15:



<https://mhs.mt.gov/Shpo/Archaeology/ConsultingWith>

## • Step 2) Identification

- Looking for potential Heritage Properties
  - Secretary of the Interior Qualified Professionals
  - Inventory with 30m Pedestrian Transects
  - Document any potential Heritage Properties on CRIS or HPR Forms
- Area of Potential Effect (APE)
  - Direct and Indirect

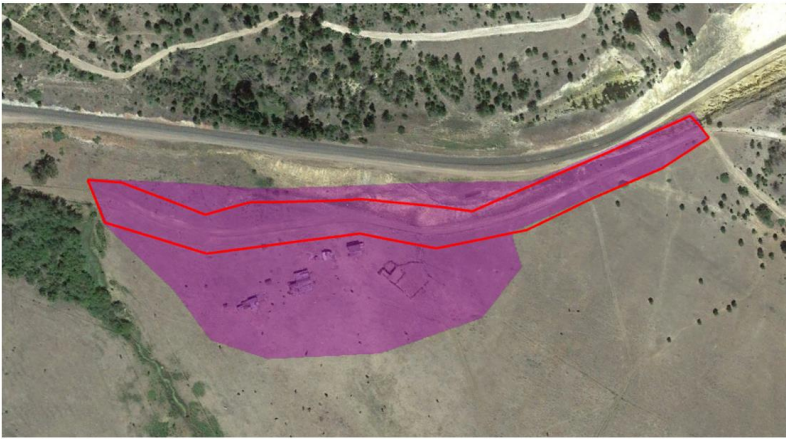
SHPO's website has information about the Montana Antiquity Act process. The link below the image is the SHPO's guidelines and procedures. Here you can find detailed information about what is expected during the identification and reporting process. This document provides guidance for the specialists doing the inventory and evaluation work.

Depending on the results of a file search, SHPO may recommend a cultural resource inventory of the area. Inventories are when specialists walk the project area searching for and documenting potential Heritage Properties. Some agencies have cultural resource professionals on staff who can complete this step, other agencies contract this work. It is required, for an inventory to be valid, that it is completed by a professional. Professional standards are determined by the Secretary of the Interior. SHPO's website lists consultants and other professional contacts.

Here is a map that shows a hypothetical area of potential effect in red. An Area of Potential Effect – often shortened to “A” “P” “E” defines areas that may be impacted by a proposed project. The Direct APE in the map is depicted in red. It shows the extent of a proposed paving and expansion of a two-track. The APE includes both areas of direct effect – such as where there will be ground disturbance, and areas of indirect effect, such as visual or auditory effects. This Indirect APE is often a much larger area. The white circle identifies a potential heritage property that includes building remains. During the inventory professionals should document this site on a Cultural Resource Information System form or a Historic Property Record Form so that the agency can evaluate it and determine if it qualifies as a heritage property and therefore warrants avoidance or mitigation.



Slide 16:



<https://mhs.mt.gov/Shpo/Archaeology/ConsultingWith>

## • Step 2) Identification

- Looking for potential Heritage Properties
  - Secretary of the Interior Qualified Professionals
  - Inventory with 30m Pedestrian Transects
  - Document any potential Heritage Properties on CRIS or HPR Forms
- Area of Potential Effect (APE)
  - Direct and Indirect

The purple area here shows the area which may be inventoried in order to identify sites and assess effects that the project would have. Agencies and consultants can always call SHPO and discuss how to define the area of potential effect, how to inventory, or where to focus inventory efforts.

Maps showing the area of potential effect, the inventoried area, and any documented sites are required in cultural inventory reports.

The APE and inventory of architectural projects may look different than those for potential archeological or paleontological sites. The APE for work on an existing building is typically the building's footprint. Exceptions to this can include project staging areas and new construction on or adjacent to a building.

**Slide 17:**



Chief Plenty Coups Homestead

## Step 2) Eligibility - Significance

- National Register of Historic Places
- Nationwide list of properties of significance. Buildings, sites, districts, structures, and objects.
  - 50 years old
- Heritage Values / Significance
  - A – Significant Events and patterns of history
  - B – Significant People
  - C – Significant Craftsmanship and construction
  - D – Significant Potential for information
  - E – Significant Paleontology (Montana Antiquity Act Only)

Once a potential heritage property is identified the agency must determine if it is a heritage property. One part of this process is evaluating it for the National Register of Historic Places. The National Register is a nationwide list of significant properties. These normally have to be at least 50 years old, although there are exceptions. Resources that are eligible for the National Register are Heritage Properties.

There are four main criteria for the National Register. However, there are many other special considerations and aspects of eligibility. We suggest a trained professional aid your agency in applying these criteria.

Criterion A applies to significant events and patterns of history. The site of a specific battle might be eligible under criteria A for its association with that historic event. Additionally, a historic homestead or a road built by the CCC might be examples of sites eligible under criteria A for their relation to important patterns of history.

Criterion B applies to sites associated with significant people. Now these are not sites only tangentially related to a historic person – if George Washington slept there once the site does not qualify under this criterion. To qualify, it would have to be George Washington's primary home or place of work. Significant people do not have to be Nationally significant; they can be significant to the state or the local community to qualify under this criterion.

Criterion C applies to sites with exceptional design or construction and engineering techniques. These sites are often excellent examples of a particular architectural style. This criterion most often applies to buildings and other architectural features.

Criterion D applies to sites that retain scientific information potential and most often applies to archaeological sites with intact subsurface deposits but can apply to other types of sites as well.

Criterion E is only relevant to the Montana Antiquity Act and not the National Register. These are sites that have been verified by a professional paleontologist and are significant paleontologically.

This photo shows Chief Plenty Coups' Homestead. It is listed in the National Register under criteria A, B, and C. Although this particular site is eligible for listing under three different criteria, a site only needs eligibility under a single criterion for eligibility consideration as a Heritage Property.

Slide 18:

## Step 2) Eligibility - Integrity

- If a Heritage Property is damaged, we describe that damage as a loss to "Integrity".
  - Location, Setting, Feeling, Association, Design, Workmanship, Materials
- Identification, Eligibility, and Integrity can be technical concepts and it is often appropriate to hire an expert. Some agencies employ staff experts and some contract it out to experienced consultants
  - <https://mhs.mt.gov/Shpo/PreservationHelp>
- National Park Service offers guidance on how to complete these steps  
<https://www.nps.gov/subjects/nationalregister/publications.htm>

Warm Springs Administration Building



Beyond significance, a property's integrity also factors in to determining its heritage status. A building relocated or extensively modified may have lost integrity. Though few properties retain perfect integrity, sometimes extensive integrity loss means the site is no longer able to convey their significance. There are seven different aspects of integrity: Location, Setting, Feeling, Association, Design, Workmanship, and Materials.

Concepts of integrity, eligibility, and identification can be technical. Some agencies choose to hire an expert in cultural resources to help them navigate the process. There are also private contractors available for hire to aid agencies. Montana SHPO maintains a list of preservation professionals on our website.

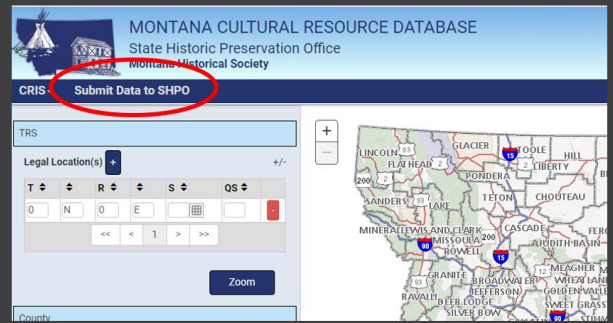
The National Park Service publishes documents to help answer questions about National Register Eligibility and Integrity. These documents are available online.

The top photo is of the Administrative Building at Warm Springs Hospital taken in 1951, the bottom photo is the same building in 2013. While there have been changes to the building, it retains its historical character. The site still conveys significance of association with state-administered mental healthcare; its architectural merit; and all aspects of integrity.

Slide 19:

## Step 2) Smithsonian Numbers

- Request a Smithsonian Number
  - Send completed CRIS or HPR form to SHPO electronically with GIS location of site boundary to Cultural Records Assistant at SHPO
- Online Data Submission Portal
  - <http://svc.mt.gov/adsams/>



Walt Sullivan Building

After the agency records a potential heritage property, it must be sent to our office to receive an official Smithsonian Number. Every site in the state has a Smithsonian number which enables SHPO to catalogue and track sites.

To request a new Smithsonian Number send the completed site form to our cultural records assistant. This will either be our Cultural Resource Information System form or, for architectural properties, a Historic Property Record form. The form will need to be accompanied by the GIS files showing the site's location. The Cultural Record Assistant will verify that the form is filled out completely and issue you a number within 10 days.

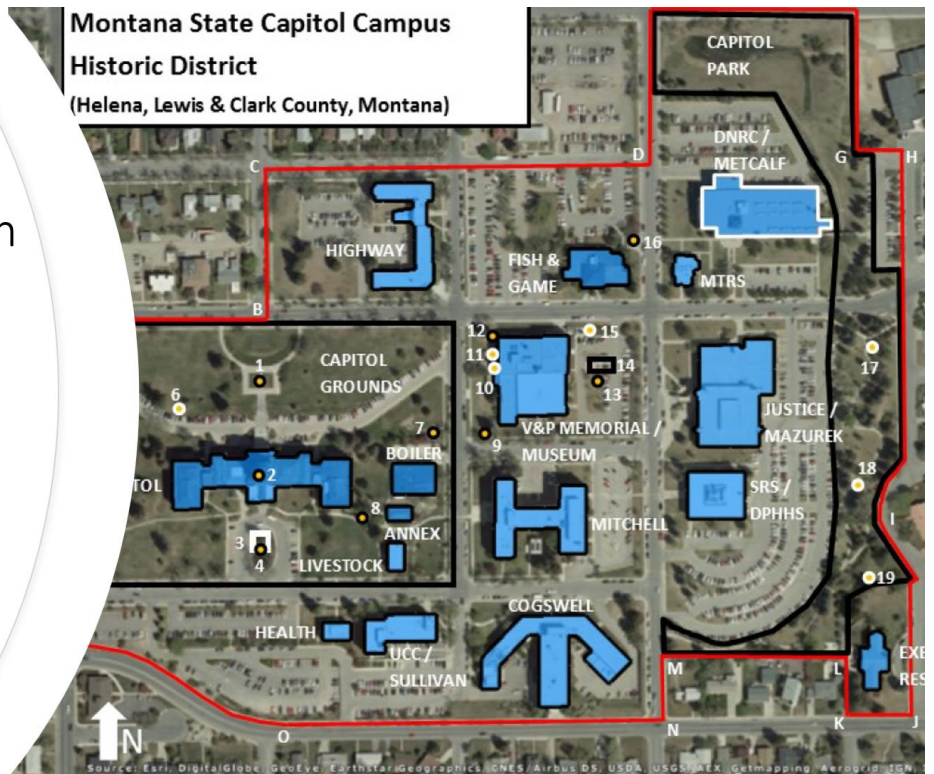
SHPO requires hard copy documents be accompanied with electronic copies of forms and reports. SHPO's website has instructions and a link to submit electronic data to our office.

This is the Walt Sullivan Building in Helena it was constructed in 1961. This building serves as a reminder that even those buildings we may not immediately think of as historic or architecturally significant still need to be addressed under the Montana Antiquity act. This building is listed in the National Register under both criterion A and criterion C.

Slide 20:

Step 2) Identification

- A SHPO letter concurring with a property's heritage status
- SHPO normally has 15 days to respond



After completing the identification and evaluation work the agency sends a letter to SHPO requesting concurrence with the findings. This includes what cultural resources were identified, if they are eligible for the National Register, and if they qualify as a Heritage Property. SHPO will respond to your letter within 15 days either agreeing with the determination, asking for additional information, or disagreeing with the agency's determination.

This photo shows the Capitol Complex in Helena. Each of the black outlined buildings is a Heritage Property. In instances where there is a collection of sites that all share a related theme or history, agencies may record them as a historic district. Districts must have a boundary and describe which properties within that boundary are "Contributing" to the district and which properties within that boundary are "Non-Contributing" to that district. For example, the DNRC/Metcalf Building is outlined in white to depict that this is a non-contributing building to this historic district. This building was built in the 1980s and is not yet 50 years old. Agencies planning projects within this boundary must consider the project's effect not only on the individual buildings, but also to the district as a whole.

**Slide 21:**

## Step 3) Assess Effects Is it Adverse?

- An Adverse Effect – when an undertaking may directly or indirectly alter characteristics of a Heritage 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.
- SHPO 30-day review period
  - No Heritage Properties Affected, No Adverse Effect, Adverse Effect
- Secretary of Interior Standards for the treatment of Historic Properties



Kohrs Memorial Library



Acme Building



Morony Dam Apartment Building

After identification and evaluation, agencies initiate Step 3: determining whether the proposed action will impact the property's heritage values.

Agencies send a consultation letter with supporting documents to SHPO requesting concurrence with the agency's finding of effect. There are three potential findings you will ask for our concurrence with. No Heritage Properties Affects – for example if there are none located in your project area. No Adverse Effect, for example if there are heritage properties in the area of potential effect but your actions will not impact the integrity of that site. Or Adverse Effect if there are heritage properties in the area and you will be impacting their integrity. SHPO has 30 days to agree, disagree, make recommendations, or request additional information.

Early consultation and preliminary discussions on a project allow SHPO staff and agency staff to understand the unique aspects of each project. Every project poses unique challenges and solutions.

Adverse Effects occur when an undertaking directly or indirectly alters characteristics of a Heritage Property that qualify it for inclusion in the National Register or diminishes its heritage value. There are certain actions that are always an adverse effect such as demolishing the heritage property. However, the majority of undertakings need to be considered on a case-by-case basis. Determining the effect of undertakings requires a close inspection of the eligibility criteria and integrity of the site in question. If you are unsure if something may constitute an adverse effect SHPO is a resource to help agencies through this process.

SHPO uses The Secretary of Interior's Standards for the Treatment of Historic Properties when reviewing architectural projects and making recommendations. The standards are intended to guide project

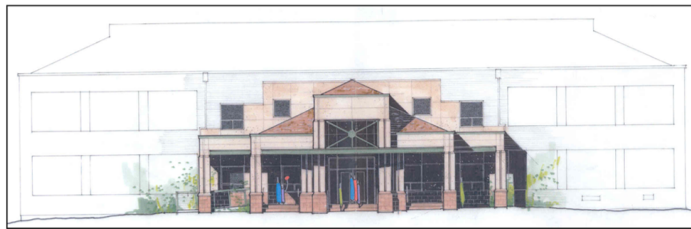
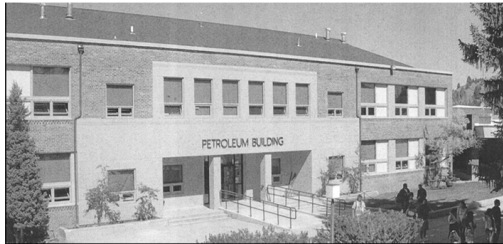
planners towards building modifications that support the property's historic integrity, character, and architectural style. The standards do not prohibit changes to building that achieve sustainability goals, accessibility, or changes in use. These standards apply equally to a building's interior and exterior.

Each of the examples seen here meet the standards and avoid adverse effects. In the Kohrs Memorial Library in Deerlodge an addition was made to the building. The Acme Building in Billings added a rooftop solar array, and the Morony Dam Apartment Building in Cascade County integrated an ADA ramp into the front porch. These alterations did not cause adverse effects



Slide 22:

## Step 4) Resolving Adverse Effects – Alternatives?



- If there are Heritage Properties or Significant Paleontological Remains, the Agency will prepare a written explanation of why one of four actions will be taken. Consider opinions of public and interested parties (ARM 10.121.907)
  - A) avoid heritage property
  - B) Abandon the proposed action
  - C) Modify/redesign the action to avoid or lessen adverse effects or mitigate harm
  - D) continue with project with no Avoidance or Mitigation

Petroleum Building

If the agency has determined that a project will have an adverse effect to a heritage property, the agency must consider project alternatives. The agency must describe in writing why the agency cannot avoid or minimize adversely affecting a heritage property. The Montana Antiquity Act provides a list of seven different modifications and mitigations for the agency to consider.

Because the Antiquities Act mandates a process, not a particular outcome, the agency can proceed with the project without avoidance or mitigation of adverse effects if minimum mitigation is not feasible to the agency. The agency must document and present to SHPO the opinions of the public and interested parties and show that the agency considered alternatives.

The top photo is the Petroleum Building at Montana Tech in Butte. The lower photo is a proposed entry that Montana Tech chose not to build after consultation with our office. The standards encourage project planners to meet the historic building in the building's terms. Because they stress retention or in-kind replacement of historic character-defining features, meeting the standards ensures that the timeless appeal of historic architecture is not replaced by less resilient materials that become aesthetically dated. Montana Tech opted to meet the standards and avoid adverse effects by not replacing the Petroleum Building's terra cotta façade with a contemporary design.

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State Tuberculosis Sanitarium Historic District



## Step 4) Adverse Effects

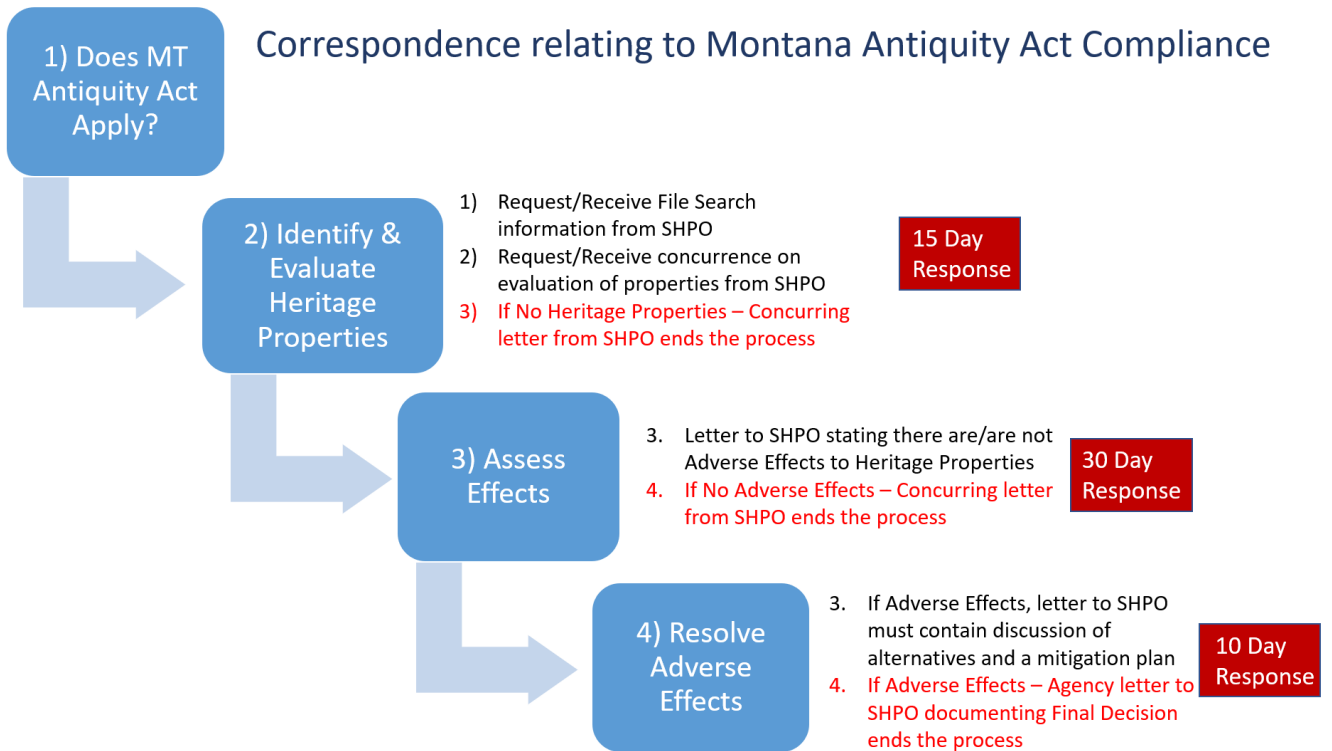
- SHPO will review and comment on the Agency's assessment and mitigation plan. SHPO has 10 days of receipt of a request to comment
- If SHPO disagrees with the Agency they should attempt to resolve the difference. However, it is the agency who decides how to proceed
- Agency shall provide the SHPO with a copy of its final decision

Adverse Effects to heritage properties are relatively uncommon. Consultation early in the agency's planning process improves SHPO's ability to work with the agency on alternatives that avoid adverse effects. If the agency decides to go forward with an adverse effect after documenting its consideration of alternatives the agency must write a single page mitigation plan and submit it to SHPO.

The State Agency provides this single page mitigation plan to SHPO, and SHPO has 10 days to comment. Ultimately the state agency makes the decision on whether or not to move forward with a project. However, the agency must document this decision.

These photos document a chicken house at the Montana State Tuberculosis Sanitarium Historic District in Galen Montana. When considering a property's heritage status and the effect a project would have on a property's heritage values, SHPO considers the building's interior, exterior, and the surrounding landscape.

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This graphic provides a summary of the entire process, with a focus on the formal consultation letters.

The state agency should contact SHPO and complete a File Search during the identification and evaluation step. The agency may send a formal letter asking our office to concur on a site’s status as a Heritage Property. If there are no Heritage Properties within a project’s area of potential effect, the agency’s letter will request concurrence that there will be “No Heritage Properties Affected.” If SHPO concurs with the agency’s finding, then consultation is concluded.

If there are heritage properties, the agency will assess the effects the project will have on those properties. The agency should send a letter to SHPO requesting concurrence on either a No Adverse Effect determination or an Adverse Effect determination. A letter from SHPO concurring on No Adverse Effects concludes consultation requirements.

If the agency cannot avoid adversely affecting a heritage property, it must document and submit a list of alternatives the agency considered and describe why the adverse action is unavoidable. The agency must also state whether mitigation is feasible for the agency, and what any mitigation would include. SHPO will respond to the agency to resolve consultation.

There are several mandated timelines and response times in the Montana Antiquity Act SHPO will respond within 15 days to consultation regarding identification and evaluation of heritage properties. Within 30 days for assessment of effects. And within 10 days for resolution of adverse effects. This clock does not start until SHPO receives all necessary documentation to form a basis for its comments. Any

request for additional information restarts the clock. Preliminary consultation prior to formal written consultation often results in more expedient SHPO reviews.

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A photograph of the Montana State Capitol building, a large neoclassical structure with a prominent dome, set against a clear blue sky. The building is surrounded by green lawns and trees. The image is used as a background for the slide content.

## Montana Antiquity Act – Other items

- Antiquities Permits
  - Excavation, removal, and restoration of ANY heritage property or paleontological remains on lands owned by the state require an Antiquities permit from the SHPO office.
- Criminal Penalties for Violation
- Restrictions on the sale of heritage properties and paleontological remains
- Duties of the Preservation Review Board and the Historic Preservation Officer
- Biennial Reporting - List of properties managed by the agency, status and condition of properties, stewardship efforts, compliance record of identification/protection steps

The Montana Antiquity Act touches on many other aspects of historic preservation. We focused on the consultation process in this presentation.

There is also a need for an antiquity permit that can be obtained through our office if you are proposing the excavation, removal, and restoration of any heritage property or paleontological remains on land owned by the state. The law also describes penalties for violation and restrictions on the sale of heritage properties and paleontological remains. It describes the duties of the Preservation Review Board and the Historic Preservation Officer.

State agencies must complete a biennial report documenting their compliance with this law and listing the Heritage Properties managed by the agency.

If you have questions about the Montana Antiquity Act Please contact our office!

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## Montana Antiquities Act

Big Sky. Big Land. Big History.  
**Montana**  
**Historical Society**

Montana State Historic  
Preservation Office

PO Box 201202

Helena, MT 59601

(406) 444-7715

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



Thank you for your interest in learning to consult under the Montana Antiquities Act. SHPO staff encourages early consultation and the involvement of heritage professionals on all projects.