

STEP TWO: IDENTIFY HISTORIC PROPERTIES

The primary method for identifying unknown cultural resources (sites) in a project impact area is a field survey or inventory.

Timing of Survey

Agencies should have their projects reviewed, and any new inventory completed for review by the SHPO, as early in the planning process as possible. Should their project potentially affect important cultural resources, the early identification of that possible impact may allow agencies to exercise options which may not be available after the project has proceeded so far as to make plan modifications unlikely.

Although the SHPO will make every reasonable effort to carry out its review responsibilities in a timely manner, various portions of the cultural resource evaluation procedure require time. This can be frustrating to agencies and their applicants if, for example, they are anxious to let bids or get construction underway. This frustration can almost always be avoided by **early consultation with the SHPO by the agency** - regardless of whether an agency, applicant or consultant initiates the consultation.

Qualifications of Survey Personnel

In the absence of other agreement, all cultural resources surveys must be carried out under the professional direction of a Principal Investigator. Generally speaking, the Principal Investigator must have an advanced college degree in archaeology, architectural history, historical architecture or history, as

appropriate to the particular requirements of the survey, as well as meet other academic and experience requirements for the discipline found in *Archaeology and Historic Preservation; Secretary of Interior's Standards and Guidelines, Federal Register* 1983, Vol. 48, No. 190, pages 44738-44739. Principal Investigators may document that they have met the above requirements in a vita on file with the SHPO. The Montana State Historic Preservation Office however does not have the authority or responsibility to certify professional consultants.



SHPO will furnish, upon request, a list of known cultural resource survey contractors, but this listing is **not** a guarantee that these contractors meet professional standards or conduct quality work. Individuals or organizations are placed on this list at their own request. This list is a service but is not an endorsement or recommendation. The Principal Investigator should sign each report, attesting to its completeness, accuracy, professional adequacy of content, and the competence of the survey personnel to identify and/or evaluate cultural resources.

Survey Coverage

National Register Bulletin 24:2 (Guidelines for Local Surveys: a Basis for Preservation Planning) defines an inventory as a compilation of Historic Properties; here, we follow common usage in the state and refer to survey or inventory reports as compilations including all cultural resources in an APE. An intensive survey seeks to identify all cultural resources in the APE. The NPS has classified those resources into five categories of cultural resources - buildings, sites, structures, objects and districts. Somewhat different efforts are required to identify, record and document different resources. The National Register Bulletin series (see Appendix 11) provides comprehensive guidance and should be consulted regularly.

Transects for an intensive field survey should in general be no more than 30m apart and should (in absence of other reasoned considerations) cover the entire APE. The report must indicate actual methods used. It must also explain methodology, for example: why or why not an archaeologist did or did not conduct subsurface testing; what archival or legal documents were accessed, why any areas (indicated on a 7.5' map) were not inventoried at the maximum 30 m transect interval standard (e.g. slopes greater than 30% grade, plow zone over upland glacial till, or area was historically built of fill). Surface visibility conditions (e.g. "percentage" of surface visibility) must be described in detail throughout the survey area and conditions such as poor visibility or dense artifact/features may call for narrower transect intervals. Reports not containing this information will cause delays in review.

The intensive survey should result in a

detailed report on each historic building, structure, district, object or archaeological or Traditional Cultural site in the APE and the efforts made to identify each.

Site Forms and State Numbers

Site/property forms and Smithsonian numbers are key to recording and documenting cultural resources. Montana SHPO Planning Bulletin #3 provides guidance for the application of Smithsonian site numbers to cultural resources. Montana SHPO Planning Bulletin #5 provides guidance for the completion of a recommended site form (See Appendix 2: CRIS Site Form and Appendix 7: Montana Historical Property Record form). The CRIS form is used for all property types, the Historic Property Record is best used as a supplement to the CRIS form, but can be used independently, for structures in urban settings or Historic Districts.

State Smithsonian system numbers can be obtained from Montana SHPO, following completion of a site form, and a 7.5' Quad map showing the site location. These forms can be submitted as PDF's through email or the State of Montana - File Transfer Service via ePass. Contact SHPO for instructions. Site forms may only be submitted electronically in PDF format. If you submit the draft site form electronically, then you **MUST** submit the final draft electronically along with a paper copy for archives. 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 24YLOO01 (Pictograph

Cave) and 24DLO290 (Anaconda Smoke Stack). As noted earlier there are about 53,000 sites or properties in Montana that have been assigned Smithsonian trinomials, ranging from single buildings/sites to neighborhood districts made up of many different houses.

Very briefly, SHPO guidance (see SHPO Planning Bulletin #3) provides that the following do not require a state Smithsonian number and site form:

1. Cultural resources less than 50 years old, unless they are of exceptional significance;
2. Cultural resources without definable locations; and
3. Individual artifacts or features that are part of a larger and numbered whole.

In addition to applying numbers to individual properties or sites, we recommend that Smithsonian numbers be applied to bounded historic districts, because these are collections of components, which may possess added significance as a whole. Linear sites and features crossing county lines present numbering problems because Smithsonian numbers are county specific. Our recommendation is that the segments of a larger inter-county whole receive distinct county numbers. Cross-reference the other known county Smithsonian numbers on each site form. Linear sites should be recorded in their entirety wherever possible to avoid future duplication of segment numbering and to facilitate assessment of the complete property. Significant features of identifiable distinction such as major laterals or dams on irrigation systems or CCC retaining walls along highways should be given unique numbers in addition to a number for the entire property.



As in the past, we continue to recommend that precontact archaeological surface artifact scatters of five or more non-diagnostic prehistoric objects located within 50 meters of each other be recorded as a site. Should two or more diagnostic artifacts be located within 50 meters of one another we recommend that they be recorded as a site. Even minimal artifact scatters located with some feature of other cultural activity (for example a hearth or tipi ring) should be recorded as a site. Single features such as rock art panels should be recorded a site, while single isolated features such as historic-era field rock piles that do not appear to be over 50 years old do not warrant a site number (though they should be described in the report narrative). Features such as precontact hearths or cairns should be recorded as a site and given site numbers unless they are included as part of a larger, bounded and numbered whole.

Historic debris scatters with ten or more objects located within 50 meters of one another should be recorded as a site, though if any items are diagnostic or appear to be associated with some feature, the number can be less. Isolated prospect pits or other historic features outside known districts warrant a state number. However, if a number of pits are located

within 100 m 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. The BLM, USFS and SHPO are working on a Montana Historic Hardrock Mining Plan, which will formalize recommendations for recording mining resources, including small secondary features.

A paleontological locality recording form compatible with the existing CRIS database system is now available (see Appendix 12). We recommend such localities be recorded and assigned Smithsonian numbers (also obtained from Site Records Office, UM).

Isolated Finds (IF) or Isolated Artifacts (IA) warrant state numbers only very rarely. They should however be recorded and described in the inventory report. Isolated Finds (IF) should be recorded on an IF Form and included with site forms in inventory reports (see Appendix 3: Recommended Isolated Find Form). Isolated Find locations should also be plotted on the project/survey map.

Confidentiality

Under the Archaeological Resource Protection Act (ARPA) of 1979 (U.S.C. 470) release of information concerning the nature and location of archaeological resources on federal lands is prohibited with very few exceptions (§9(a)). This restriction applies not only to release of information (for example, to consultants) but also to public disclosure (for example in NEPA documents or cultural resource reports produced by consultants). Site locations may not generally be disclosed on maps intended for public release, for example, EAs or EISs. As a result, if

applicants or their consultants request SHPO File Search information for federal or tribal lands from SHPO, 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 during 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). Heritage Properties are also protected from public disclosure when prudent in meeting the intent of the State Antiquities Act (M.C.A. 22-3-423(12)). See also National Register Bulletin 29, Guidelines for Restricting Information about Historic and Prehistoric Resources. SHPO will not release site location information if there is any question regarding its use or disclosure.

Subsurface Testing During Survey

It is generally understood that 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 is a violation of federal (16 U.S.C. 470ee) or state law (M.C.A. 22-3-432). If the agency (or proponent) intends that the initial identification efforts should result in adequate collection of field information for an Eligibility determination (to be discussed below), procedures for collecting that information should be agreed upon before the inventory begins. If it is felt that partial excavation by a professional archaeologist (often referred to as "testing") will be necessary, consultation regarding the scope and nature of that testing should involve the

land owner or land managing agency, tribes, the SHPO, the proponent and consultants. Based on this consultation minimally destructive and necessary testing during inventory may be agreed upon.

Shovel probing, augering, or some other preliminary subsurface testing method may be accepted as a step in intensive inventory. Such probing may 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 - cutbanks, rodent holes, tree tips, etc. to assess subsurface deposits may also be useful but will seldom be 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 and mapped (as well as photographed as conditions warrant). Similarly, any combination of systematic and intuitive shovel testing should be described in detail, with rationale. Where surface visibility is low, some systematic shovel testing approach such as tests at 30m intervals on survey transects may be recommended.

Extensive testing during survey within sites is not recommended, 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. Test spoil should be screened, and referenced to a site datum located on the site plan map and on the USGS site location map. In general SHPO recommends placing a stake with aluminum tag inscribed with a field number at the datum point. However, there are several reasons such a stake may not be desirable, for example, security or owner preference. Investigators should check with property owners and land managing agencies prior to inventory. There are also cases where formal 1x1 m or 50 x 50cm test units are more appropriate than shovel probes during inventory. However, formal test units will usually take place 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 is also 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. The ACHP can be consulted or requested to participate at any time by any participant if consultation is not productive (36 CFR 800.2(b)(2), .9(a)). 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 (for example at 36 CFR 800.9(c)).

Survey Maps

Mapping of site locations on the landscape, well-determined boundaries, and delineation of all features within sites is critical, particularly if avoidance may be proposed. A transit survey may not be warranted for site plan maps during the field inventory, but SHPO does recommend that boundaries and features be flagged and shot in with compass and tape, at a minimum, with reference to a site datum. GPS is also recommended and is becoming the standard for locating the site datum. More detailed maps are often required during evaluation.

There are times when a site is located near to or on the edge of the APE. We recommend that when access is permitted, the boundaries of such sites be inventoried and mapped both inside and outside the APE in order to properly record the nature and qualities of the cultural resource. Similarly, there may be times when it will be prudent to record sites lying adjacent to, but seemingly outside, the APE in order to confirm that the boundaries do not extend into the APE, or more importantly that the qualities and characteristics of the site will not be inadvertently affected. If so the definition of the APE will need to be adjusted accordingly.

Other Survey Guidance

Federal and State land managing agencies may have their own specific requirements for conducting inventory, survey testing and for recording sites. You

must learn of these before doing any cultural resource work on public lands. Basic information on standard field survey methods can also be found in the following standard references:

Secretary of the Interior *Guidelines and Standards* at Federal Register, Part IV 48(2): 44716-44740

ACHP/NPS
1988 *Identification of Historic Properties: A Decisionmaking Guide for Managers*.

ACHP
1990 *Consulting About Archaeology*.

Davis, Carl and Susan Marvin
1983 *Cultural Resource Inventory Plans: Documenting Inventory Strategies*, USFS SCR#4 Pacific Northwest Region.

Heizer, Robert and John Graham
1968 *A Guide to Field Methods in Archaeology*, National Press.

Hardesty, Donald
1988 *The Archaeology of Mining and Miners: A View From The Silver State*, edited By William Turnbaugh, Special Pub. Ser. #6, Soc. for Historical Archaeology, Ann Arbor MI.

Hardesty, Donald and Steven Mehls
1989 *Research Design and Study Plan for the Identification and Evaluation of The Cultural Resources of the 493 Acre Bodie Study Area*, Mono Co. CA, Western Cultural Resources Management, Inc. Sparks NV

Judge, W. James and Lynne Sebastian
1988 *Quantifying the Present and Predicting the Past: Theory, Method, and Application of Archaeological Predictive*

Modeling. BLM, Denver CO.

National Park Service
1993 *Federal Historic Preservation Laws*.
Washington, D. C.

National Park Service
1977 *Guidelines for Local Surveys: A
Basis for Preservation Planning*. Bulletin
24.

MT SHPO
1993 *Montana Historical and
Architectural Survey Manual*

Survey Results

Ideally, the survey will identify all cultural resources (historic, archaeological or traditional cultural) located in the area of direct and indirect effect (APE) of the proposed undertaking. The survey report should also document identification efforts with other interested parties and Tribes, and any resulting information. Adequate information gathering leads to one of two outcomes, based on the Principal Investigator's report and recommendations, the written agency concurrence with that recommendation, and agreement by SHPO. The first possibility is that no sites are located, usually referred to as "a negative" or "no properties" inventory and currently subsumed in the ACHP's No Properties Affected finding (36 CFR 800.4(d)). Documentation standards for No Properties Affected are defined at § 11(d). The second possibility is that sites are located. In that case the agency needs to evaluate the historic significance and integrity of those sites in an Eligibility determination.

Documentation standards to be submitted to SHPO for a finding of No Properties Affected by reason of no sites present is

found at 36 CFR 800.11(d): and include a description of the undertaking, federal involvement, APE (with maps as necessary), steps taken to identify any cultural resources, sources consulted, persons, tribes and agencies consulted, and the basis for the finding that No Properties are present.

If either the agency or the principal investigator is uncertain about the level of information required in a particular situation, consultation with the SHPO staff is recommended.



Report Format

The following annotated checklist should be referenced in preparing reports for SHPO review. We will accept reports containing equivalent information in different format, such as might be required by other agencies.

Each report should be prefaced with a Letter of Submission, identifying all relevant agencies, a brief project description, and explicit agency recommendations, determinations and findings for which SHPO comment and review are requested. See Appendix 6 for an example of a Submission Letter and Appendix 4 for a recommended Report Format.

In order to ensure that cultural resource reports meet the information needs of the SHPO, and thereby eliminate the possibility of undue project delays, the agency and Principal Investigator should be certain that Inventory Report contains the following information:

1. CRABS data entry sheet (one is provided in appendix 5).
2. title sheet with the following information:
 - a) title;
 - b) who the report was prepared for;
 - c) author and Principal Investigator with signature;
 - d) preparator's company/agency address;
 - e) date;
 - f) relevant agency project or permit numbers.
3. table of contents.
4. project and methodology narrative section presenting the following:
 - a) summary of project, describing the proposed work and defining the undertaking;
 - b) List of all agencies involved in the project;
 - c) definition of the ***Area of Potential Effect***, including the expected vertical and horizontal extent of ground disturbances;
 - d) for whom and the reason the survey was conducted;
 - e) when and by whom the fieldwork was conducted;
 - f) survey techniques employed and the rationale for the use of those techniques for the particular survey. In instances in which different techniques were used in different areas of the project, that must be documented in narrative and map.

- Include field condition descriptions; and
- g) the actual **number of acres surveyed** must be indicated, rounded up to the whole acre. In undertakings with more than one area to be surveyed, the acreage of the individual survey areas, and the total surveyed area should be reported.
5. section that lists the legal descriptions of each of the following: the APE, areas surveyed, areas not surveyed, and agency/ownership.
 6. section describing the general topography, geology and vegetation of the project area.
 7. summary of previous research and survey in the area, including locations, types and eligibility status of known sites.
 8. statement as to when, where and by whom the required file search was carried out and a compilation of the results of that file search. We recommend that the CRIS file search request for previously recorded sites in the APE be designed to include township sections or quarter sections adjacent to the project boundaries in order to identify sites which overlap or spill over the APE boundaries, and as a means of identifying likely site types to expect to the APE. The CRIS system searches to quarter section.
 9. section containing a brief historic overview or culture history of the area as applicable to the cultural resources under consideration.
 10. section detailing the results of the inventory, with site-by-site discussion

(if sites are located in the APE). Efforts and results of consultation with others including Tribes also needs to be documented.

11. section containing site by site justified recommendations of eligibility, with reference to criteria of significance, context, and integrity. (This is optional where no sites are identified or an agency will submit a separate Eligibility Evaluation Report.)
12. recommendations for avoidance, additional work necessary and mitigation for each site as appropriate. (This is optional where no sites are identified or the agency will submit a separate Effect/Mitigation Report.).
13. a map or maps must be included which show the location of the undertaking at the largest feasible scale. Regardless of other maps, a copy of the appropriate 7.5' U.S. Geological Survey topographic map(s) must be included. Maps must clearly delimit the undertaking area, areas surveyed, and the location and boundaries of any identified cultural resources within APE. We recommend that any known sites within 1/4 of a mile of the project area (located by survey or identified in the CRIS file search) be located on the map(s). At minimum, and in addition to any other maps, - sites, Isolated Finds and survey areas must be unambiguously located on clear copies of the relevant segments of the 1:24,000 (7.5') series of U.S. Geological Survey topographic maps. Ownership or administrative boundaries, quad name, township, range and section information must be indicated on maps. When the spatial relationships between sites is important, a map showing the distribution of the sites in the undertaking area should be included. Boundaries of previously disturbed areas, and areas of proposed project disturbance, as well as proposed design changes or reroutes for avoidance must be clearly mapped in relation to cultural resources.
14. Individual site maps should be included for each site and should contain:
 - a) true or magnetic north, scale and datum;
 - b) boundaries, delineated and numbered buildings, structures, features or activity areas, location of diagnostic artifacts, approximate topographic contours, landscape features;
 - c) boundaries of proposed and previous disturbance;
 - d) recommended reroutes or avoidance redesigns; and
 - e) boundaries of other sites located within 100 m.
15. large linear sites such as irrigation systems, trails or railroads should be depicted on a single map showing the entire known extent of the property.
16. photographs or laser quality photocopies of photographs must be included of buildings, structures and structural ruins that may be impacted by an undertaking. These photographs must allow SHPO to determine the structure's overall shape, size, the placement of windows and doors, materials (e.g., a photograph of the foundation) and techniques of construction (e.g., the corner notching on a log building). Captions must describe the photographs. If the photographs do not convey the necessary information,

additional photographs will be requested.

17. photographs or laser quality photocopies, and plan drawings of representative examples of diagnostic artifacts recovered from prehistoric and historic sites should be included. In reports submitted for eligibility evaluation, photographs of features such as stone rings, hearths, foundations, or fence lines should be low angle, two dimensional, clear and numerous. In all reports, test units or natural exposures used to evaluate subsurface potential should be photographed. Photos of the site itself and view shed should also be included. All photo images should be clear, mounted and captioned. If photographs are of insufficient quality to allow a judgment to be made, SHPO will have no option except to wait while the photographic deficiencies are corrected.

18. a statement indicating curation agreements should be explicit.

19. complete and typed Montana CRIS forms (see Appendix 4) or equivalent must be included for all sites located by the survey. Updated site forms should be included for previously recorded sites in the APE **as well as those relocated in order to determine that they were outside the APE.** For architectural properties the Montana Historical and Architectural Inventory form is recommended. Paleontological localities should be recorded on the appropriate paleontological form.

20. provide a bibliography listing sources consulted; oral interviews and

additional records searches performed such as county land entry and mining claim records, General Land Office or Sanborn maps.



The required information must be sufficiently clear and detailed to allow the Agency and SHPO to make informed decisions regarding efforts to identify cultural resources, the location, significance, and integrity of cultural resources; and the kind and amount of effect that will occur as a result of the undertaking. Reports that do not do this are not acceptable. It should be remembered that while consultants may make recommendations, the Agency in consultation with SHPO (or the Keeper alone) makes formal eligibility determinations in the 106 process. It should also be understood that the Agency is responsible for choosing appropriate options in consultation with SHPO and others, **although** the Principal Investigator's recommendations, as well as any other recommendations will be carefully.

In general, if a report deals with multiple sites, it should be organized so as to make it as convenient as possible for users to locate individual site information. Whenever practical, narration, figures,

tables, recommendations, etc. relating to a single site should be placed 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.

Submission of Reports to SHPO

For Federal Undertakings:

Consultation with SHPO and other interested parties is the responsibility of the federal agency. We at Montana SHPO assume that when we are contacted by a proponent or their consultants regarding possible impacts to cultural resources, that it is at the request of or because of federal agency requirements of that company to do so. The company may in that sense be acting on the behalf of the agency, but the agency nonetheless remains responsible for "compliance." Frequently there are multiple landowners or public land managing agencies, Tribes and other interested parties in a single undertaking or project. It is also the responsibility of the lead federal agency to solicit and consider the concerns of those parties. SHPO will attempt to alert an agency to possible interested parties but does not coordinate consultation for the agency or a proponent submitting compliance documents on behalf of an agency. Thus SHPO needs to be notified of interested parties and receive copies of consultation with those interested parties in order to consider that consultation.

SHPO will review and comment upon negative survey (or inventory) reports submitted directly from proponents in which no cultural resources were located (and no other cultural concerns were identified), if there is no objection from the federal agency. However, most land managing agencies such as the BLM, USFS, BIA, BOR and others, have general

policies against proponents submitting reports directly to SHPO without prior agency review and approval. Also, remember that other agencies and interested parties may need to review the report and that SHPO is not responsible for soliciting those other 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 company for transmittal to the agency as requested. If a contractor submits a report, the cover letter must state which federal agency and proponent the report was prepared for and provide the name and address of both the agency and proponent contact.

While SHPO is able to assist the proponent in this fashion it does not change the agency's ultimate responsibility for making a No Properties Affected finding. In the absence of other agreement such as a Programmatic Agreement, it is always preferable from our perspective that the federal agency first review the adequacy of identification efforts and provide their findings to SHPO along with the report, prior to action by the agency or the proponent.

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 (unless this is part of a PA accepted by the SHPO and the ACHP). By statute and regulation, evaluations of eligibility are made by agencies directly, in consultation with SHPO, and sometimes the Keeper. Similarly, agencies in consultation with SHPO, and sometimes the ACHP, are the only parties able to make formal

assessments of possible effects to eligible properties. A proponent or their consultant may 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.

The SHPO has **thirty days** to concur, object, or make other comment on survey reports for the adequacy of documentation and efforts to identify and consider possible effects to cultural resources.

Note that if SHPO does not agree with an agency or agency designee definition of the APE, we may not be able to comment other than we disagree with the defined APE, and thus are unable to concur in the findings proposed by the agency. Without agreement on the APE, no subsequent finding by the agency could adequately consider all reasonably foreseeable potential effects caused by the federal undertaking. Therefore, as emphasized above, it is best to resolve any questions about the APE during the agency's consultation regarding appropriate scope of identification effort and before any field survey proceeds.

The federal regulations provide that in cases where the SHPO and the agency disagree about the adequacy of documentation or identification efforts, and they cannot resolve the disagreement that the agency will consult directly with the ACHP. Interested parties may also request ACHP participation.

Submission of Reports to SHPO

For State Lands:

It is the general policy of the Department Natural Resources and Conservation

(State Trust Lands) that all reports concerning actions on State 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).

No Sites-No Properties Affected

If no cultural resources are identified during a survey, the "negative inventory" report should be sent to the SHPO, most often with a cover letter from the agency indicating their acceptance of the report as their own. Once the SHPO has concurred that no properties are located in the APE, the agency may conclude its Section 106 responsibilities and the undertaking may proceed as directed by the agency. For record keeping purposes, the report detailing the negative inventory report will be kept on file and maintained at SHPO as part of the CRABS database.

Sites Located

If the inventory results in the location of cultural resources, which may not be avoided, the agency must submit an Inventory Report and move to eligibility evaluation, which is discussed in the next section of these Guidelines. Many agencies mesh the identification step with the evaluation step, by including evaluations and recommendations of eligibility in the inventory report. However, this is not always possible as additional fieldwork and/or research and documentation is sometimes necessary in order to evaluate eligibility.



Sites Located - But Undertaking Redesigned to Avoid Effects

It is sometimes possible, if the survey is carried out early in the project's planning process, to redesign the undertaking to completely avoid effects to all cultural resources (whether or not they have been evaluated for eligibility) or to avoid effects to those determined to be eligible, i.e. those that are Historic Properties. This saves considerable time in that no further fieldwork is usually required. In such a case, SHPO will still need to review explicit written stipulations from the **Agency** of project redesign for complete avoidance before concurring that the undertaking has been sufficiently redesigned so as to avoid effects to all cultural resources or to all Historic Properties. Agency documentation requirements for such a finding of No Properties Affected are defined at §800.11(d). If there are no objections within 30 days the agency has fulfilled its Section 106 responsibilities, pursuant to 36 CFR 800.

Agency Evaluation of Significance in Consultation with SHPO

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 review of the agency's Determinations of Eligibility. Under both State and federal regulation determinations of eligibility are made by applying the criteria for listing on the National Register of Historic Places (National Register or NR) to the qualities of significance and integrity identified for each cultural resource. This is also often called "evaluating the significance" of the site (although Integrity must also be considered – see below page 36) "Determination" refers to the decision about whether a site qualifies (is eligible) or does not qualify (is not eligible) for listing in the NR. If concurrence is reached that a cultural resource site meets the criteria, the Section 106 process continues. If not, the process ends. For the purposes of 36 CFR 800, eligible properties are referred to as "Historic Properties," encompassing all types of properties including archaeological or Traditional Cultural sites.

Once an adequate survey has been completed and documented, and all sites in the APE have been identified and recorded, those sites must be evaluated for historic significance. This means using the criteria and other guidance to answer the question: are the sites important enough to warrant further consideration? Once significance is determined, the question then becomes: do the sites retain integrity, do they convey that significance? If the answer is yes in both cases the sites are eligible for listing on the NR (see below, National Register Criteria of Eligibility and Considerations). 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 eligibility within 30 days, the agency may assume SHPO concurrence and proceed accordingly.

In order for SHPO to review agency eligibility evaluations and provide concurrence or other comment, a complete Inventory Report must be submitted to the SHPO including site forms for new sites (CRIS forms or equivalent are recommended; see Appendices 2 and 7) and updated site forms for previously recorded sites in the project area. Moreover, state assigned Smithsonian site numbers are required for all sites, as discussed earlier, because this is the only way we can log and track the Eligibility of sites in the State Antiquities Database (including CRIS and CRABS). The request for SHPO review of report adequacy and/or eligibility assessments should be included in a Submission Letter (Appendix 6) accompanying the inventory report. Whether or not agency decision-makers agree with a consultant's recommendations in the report, the agency should make their own evaluations clear in the Submission Letter to the SHPO (or the Keeper).

If cultural resources are determined eligible, a Finding of Effect will then be necessary. However, if all such resources are found not eligible the process is complete. It is critical that the agency be clear about its findings at this point. Specific and explicit agency determinations and findings are required during both evaluation and effect assessments, as well as for all stipulations of avoidance should projects be

redesigned to avoid sites. The four following simplified scenarios encompass most situations where sites are located during inventory and cannot be avoided. Overlap among them is also common in large undertakings where a number of sites may be located over a wide area, and may be impacted in various ways.

Sites Located - But Not Eligible

If the SHPO agrees or "concur" with the federal or state Agency (not designee) that the resources are not eligible under National Register of Historic Places criteria, the SHPO will respond in writing to the agency, concurring with the "not eligible" determinations. In this case the agency provides No Properties Affected documentation as described at §800.11(d) and which is subsumed in SHPO report and eligibility determination submission requirements. If SHPO concurs or does not object within 30 working days the Section 106 process is concluded and the project proceeds as directed by the Agency.

Sites Located - Eligibility 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, archaeological sites may require additional subsurface testing or historic sites may require additional recordation or archival research in order to resolve eligibility. Please remember that much of the responsibility of the SHPO is focused upon sites and structures that are either listed in the National Register of Historic Places, or **may be** determined to be **eligible** to be listed in the National Register. Until a site is formally determined Not Eligible it must be treated as though it were Eligible. It is important for the agency or applicant

contracting for a cultural resource survey to see that its consultation provides sufficient information to allow a determination as to the eligibility of properties for the National Register, if such a request is being made. If the SHPO finds survey or inventory reports to be deficient or insufficient for the purposes of resolving eligibility, it will ask the agency for additional information. This may require additional fieldwork and time. 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.

Sites Located - Eligibility Unresolved:
SHPO/Agency Disagree

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" or "CD." If a federal agency determines a property is or is not eligible for the National Register of Historic Places, but cannot reach agreement with the SHPO in this finding 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 is eligible, then consultation proceeds to the consideration of effect findings as described below in Steps Three and Four, in conjunction again with the SHPO, interested parties and perhaps the ACHP. If the Keeper determines that the

property is ineligible, the SHPO will be 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 sites on state land to be or not to be 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 (22-3-429 (5)-(7)). A separate appeal process exists in the Montana State Antiquities Act for objections to properties proposed for listing on the National Register of Historic Places (22-3-431 (3)).

Sites Located - Eligible

If the SHPO concurs with the agency that cultural resources in the APE are significant and have integrity, that is to say they are Eligible under National Register of Historic Places criteria, then possibilities will be explored as to how to most realistically minimize the effect of the undertaking on these Historic Properties in an Effect assessment and Finding (see Steps Three and possibly Four below).

National Register Criteria of Eligibility and Considerations

Properties are Eligible when they are found to 1) meet the criteria of evaluation (significance) and 2) retain sufficient integrity to convey that significance. Evaluation of significance and assessment of integrity are two separate and sequential operations. Significance and integrity for sites involved in either state or federal undertakings is evaluated according to the National Register criteria and guidance. See especially National Register Bulletin #15 from which the following information is taken:

Criteria for Evaluation

The quality of significance in American history, architecture, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody 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; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria Considerations

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used

for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be 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; or

(b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(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; or

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) A property achieving significance within the past 50 years if it is of exceptional importance.

Integrity

Integrity is the ability of a property to convey its significance. There are seven aspects of integrity that combine to produce necessary integrity thresholds:

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

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

As described above, the evaluation of significance and integrity are related but not the same step. 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 is identified within a historical context, the recorder of the property also must determine if the significance is at the local, state, or national level. Only with that information in hand, may one then proceed to define the essential physical features which must be present in order for the property to represent or convey its significance and retain its identity, i.e. to assess integrity.



Integrity then is not simply the physical condition 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. 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 simply equating integrity with physical condition alone, or attempting to assess integrity without having first established significance.

Eligibility Documentation for Property Types

Report documentation regarding the possibility that a cultural resource *is or is not* eligible to be included in the National Register of Historic Places should be the same. Documentation should specifically address each criterion for inclusion in the Register. Moreover, while the recommendation of the Principal Investigator is very important, and agencies and SHPO will seriously consider those recommendations, formal

determinations for the purpose of Section 106 must be Agency findings; clearly stated in writing and submitted to SHPO for comment (See Recommended Letter of Submittal: Appendix 6). Historic Properties determined by consensus to be Eligible for National Register listing are not actually listed in the Register, but are to be treated for the purposes of Section 106 as though they were. Properties that are actually listed in the Register go through a separate State Review Board process. (Contact SHPO for more information about the State Review Board process.)

As discussed above, the National Historic Preservation Act defines and refers to all places Eligible for listing in the National Register whether of historic, prehistoric, or traditional cultural importance as "Historic Properties", even though many cultural resources are not historic in age or associated with written or oral historical information. These Guidelines also use the term "Historic Properties" in this general sense to refer to all eligible properties, but also refer more narrowly to different property types - archaeological sites, historical sites, and traditional cultural properties or sites - when specific property categories are useful to achieve clarity.

There is also a category of property type known as a historic district, whether it be historic or archaeological. It is possible that a building, structure, site or object may not meet the National Register criteria of significance and integrity alone, but be part of a greater whole, i.e. "a district", that does. Thus sites may contribute to Eligible historic districts, even if they are not eligible individually. It is important that those identifying cultural resources in an APE consider

whether individual cultural resources may in fact be part of a eligible larger resource, and if so, that those resources be evaluated as may contributing or non-contributing to a Historic District (NR Bulletin 15:5-6, 16:15, see also NR Bulletin 24). Such districts may extend beyond an APE, making assessment of Eligibility and Effect difficult if the nature and qualities of the Historic District itself are not well recorded and understood.

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. For further discussion of contexts see National Register Bulletin #15 and #16 and Montana SHPO Planning Bulletins 11 - 19.

The following discusses eligibility in reference to three major property categories: Historical Sites, Archaeological sites and Traditional Cultural Properties. *Historical Sites*: 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, buildings or structures (such as irrigation ditches, railroad grades or bridges) will be considered significant if they meet one or more of the first three National Register criteria listed above (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).

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. It is important to remember, however, that not only national monuments are eligible for the National Register. Within certain contexts, "nondescript" or "dilapidated" structures, those of modest or inconspicuous scale, 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.

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. The Montana Historical Property Record form (Appendix 7) is recommended for documenting and evaluating structures.

Archaeological Sites: An archaeological site for the purposes of these Guidelines means a location that contains material remains or other evidence of past 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, house foundations or historical trash dumps. An

archaeological site may relate to historic or precontact (prehistoric) times, or both.

Because archaeological sites are usually 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 (i.e. Criterion d above), the context for archaeological site evaluations is generally an archaeological research design. 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 kinds of data is the site **known** to contain? Discuss the major physical characteristics of the property. Describe and distinguish any contributing or non-contributing features (e.g., hearths, stone rings or alignments, foundations, depressions, trash dumps, etc.). Include all features in the site map and as part of photographic documentation of the site. 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? Does the artifact assemblage have the ability to 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 the site 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 the site's condition affect 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 during its use 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 sites eligible under Criterion d. Archaeological sites eligible under d must retain integrity, that is to say must be intact, to that degree only.

Some archaeological sites may be eligible under other criteria besides d. Trails have also been determined eligible under criterion a for their *association with important broad patterns of history*. Many precontact places, often recorded first as archaeological properties may also be found to be TCPs. Such is the case of the Fort Smith Medicine Wheel, which was successfully listed in the National Register under criteria a, b, and c. All cultural resources, including archaeological sites, should be carefully evaluated under each of the National Register criteria.

Traditional Cultural Properties: TCPs are defined as places that are 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 1990 Guidelines for Evaluating and Documenting Traditional Cultural Properties). 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 National Historic Preservation Act (16 U.S.C. 470) itself states that properties of traditional religious and cultural importance to Indian Tribes may be determined eligible for the National Register (§101(d)(6)(A)). Usually traditional cultural significance is evaluated on the basis of associations with events which have made important contributions to the broad patterns of history (Criterion a), although traditional sites may also have associations with significant individuals (Criterion b) and significant design or construction characteristics (Criterion c).

Traditional Cultural Properties (TCPs) are the location of events or activities where the location itself possesses historic or cultural value (NR Bulletin #15:5). Importantly, National Register Bulletin #15 states, however, 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 when National Register Bulletin #38 states that a Traditional Cultural Property must be a tangible site with a historical and physical

referent, it does not mean it must have buildings, structures, features, or objects. Such sites need not contain physical evidence of the significant historic event or activities; the often intangible beliefs or practices which 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 bounded. All TCP properties must be evaluated for integrity of location, design, setting, materials, workmanship, feeling and association. Traditional Cultural Properties must, in addition, possess integrity of relationship (does the property have an integral relationship to traditional beliefs or activities?), and integrity of condition (is the condition of the property such that the relationship survives? Documentation of these two aspects of integrity is absolutely dependent on careful and detailed consultation with the holders of the relevant traditional beliefs (See NR Bulletin #38:10). Outside investigators not holding those beliefs or knowledge will not be able to identify the properties, their context, significance or integrity without the help of those with the appropriate knowledge.

A relevant example of a Traditional Cultural Property in Montana is the Fort Smith Medicine Wheel which was listed in the National Register after being nominated by SHPO, at the request of the

Crow Tribe, which then provided critical supporting documentation. Other TCPs which have been either determined eligible for listing or which have been listed in Montana include the Sweet Grass Hills District, the Weatherman Draw District, site 24CH787 of the Lonesome Lake District, the Little Rockies District, the Sleeping Buffalo, Medicine Rocks, as well as others. These TCPs have been found eligible usually under criteria a or c, but occasionally under b as well.

To summarize, the eligibility documentation for all property categories must be sufficient to resolve whether or not the site is eligible for the National Register of Historic Places. Documentation includes a physical description, a historic context, an evaluation under each of the significance criteria and an assessment of integrity tied to the nature and level of significance found.

Please note that whether a property is recommended as eligible or not eligible to the National Register, every recommendation must be explicitly supported and justified.

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 National Park Service Bulletin series for more information (see Appendix 11). These NR Bulletins have been adopted as guidance by SHPO. Most are available from SHPO upon request.

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, Certified Local Governments, 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.

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). National Historic Landmarks were added in their entirety 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 National Historic Landmarks but must be done so through a separate Park Service process. Montana currently has approximately 28 NHLs including the Bannack Historic District (HD), Lemhi Pass, Bear Paws Battlefield, Great Falls Portage, Virginia City HD, Lolo Trail, Fort Benton, Pictograph and Ghost Caves, Fort Union, the Hagan Site, Three Forks of the Missouri, Grant-Kohrs Ranch, Two

Medicine General Store, Sperry Chalets,
Many Glacier Hotel HD, and Granite Park
Chalet HD.

A special consultation process is also
involved in the assessment of impacts to
National Historic Landmarks (see below,
Step 3: Assess Adverse Effects).

Suggested Reading:

Department of the Interior
*Standards and Guidelines
for Preservation Planning*. Washington,
D. C.
www.cr.nps.gov

Hardesty, Donald L.
1990 *Evaluating Site Significance in
Historical Mining Districts*. Historical
Archaeology, 24(2): 42-51

National Park Service
1995 *Archaeology and the National
Register*. CRM 18(6)
National Park Service\Fred Quivik
1982 *Historic Bridges of Montana*
MT Department of Transportation

National Park Service
1993 *Traditional Cultural Properties*.
CRM Volume 16, Special Issue.

National Park Service
1991 *Bulletin 15: How to apply the
National Register Criteria for
Evaluation*.