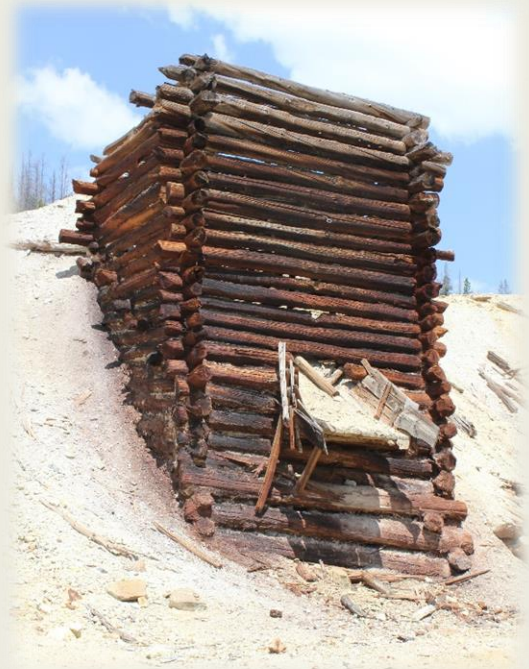


STEP ONE: INITIATE THE CONSULTATION PROCESS

B: Consultation Under State Laws

The Montana State Antiquities Act, the Montana Environmental Protection Act, and the Unmarked Burial Act and the Montana Repatriation Act

State agencies in Montana are required to consult with the SHPO by rules developed under the *Montana State Antiquities Act* (22-3-421 to 442) and the *Montana Environmental Protection Act* (MEPA - Environmental Impact Statements, Title 75, ch.1, part 2), concerning the identification and preservation of Heritage Properties. Under the Montana State Antiquities Act, state agencies are to consult with the SHPO regarding efforts "to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties...on lands owned by the state..." (Montana Codes Annotated 22-3-424). Some state agencies have their own implementing regulations or rules for the Montana State Antiquities Act - e.g. Department of Fish, Wildlife and Parks, and the Trust Lands Division of the Department of Natural Resources and Conservation. All other state agencies responsible for state property and which do not have agency rules, must follow rules developed by the SHPO in 1998 (22-3-423 through 424 MCA).



The State Antiquities Act applies to projects on state owned property only. It provides for the review of agency proposed projects and mitigation plans by the SHPO, the issuance of Antiquities Permits (required for the excavation, removal, or restoration of any Heritage Property on state lands), agency notification requirements to private landowners whose properties are being considered for Eligibility to the National Register by an agency, and an appeal process. Both state and federal agencies *may* request SHPO comments under certain sections of State law. But all state agencies under the State Antiquities Act are required to consult with the SHPO regarding potential impacts to possible Heritage Properties on state lands.

It is also possible under the Montana Environmental Protection Act (MEPA) or specific agency regulations, that some permits, licenses, or reclamation applications could require review on non-state land. Questions should be directed to the approving state agency. Some state agencies also must comply with Federal Section 106 regulations (for example Montana Dept. of Transportation work under the Federal Highways Administration) because they use federal funds, permitting, approvals or delegations. The DEQ Coal Program under certain circumstances must meet federal OSM standards. DEQ may also consult with the SHPO and others such as Tribes under the Major Facilities Siting Act and Open Cut Rules (gravel pits) (Admin. Rules of Montana 17.24.2012(5)).

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

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

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

any unmarked burial or associated materials. All discoveries of human remains must be left in place and first reported to the county coroner, and following his examination, reported to the SHPO. Preservation in place is not always required, but the State Burial Board, created under the Act, is to be given the opportunity to consider that option. Remains should not be disturbed before Burial Board review unless required by the coroner during evaluation of a possible crime scene. Under state law any Human Remains and associated funerary objects not protected under the Unmarked Burial Act due to disturbance prior to 07/01/1991 are protected by the Montana Repatriation Act of 2001 (22-3-901 through 921 MCA). This act requires agencies and museums to complete inventory of human remains and funerary objects, and provides for hearings regarding claims for culturally affiliated remains and objects covered by the act. The State Archaeologist at SHPO is a primary contact regarding state Burial Laws.