

STEP TWO: IDENTIFY HISTORIC PROPERTIES

E: 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). "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 a request for concurrence 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) 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. The request for SHPO review of report adequacy and/or eligibility assessments should be included in a Submission Letter (see the Appendix) 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) with rationale.

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 several 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 "concurs" 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 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 is Eligible for the 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 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 or appearance of a property as it is recorded in the field – it must be related to the criteria of significance identified by research for the property and its level of significance. Comparison with similar properties within the same context and similar patterns of association may also be useful in assessing integrity. 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.

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 Section 106 must be Agency findings; clearly stated in writing and submitted to SHPO for comment. 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." 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 an 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 regarding 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 (see the Appendix) 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 convey its National Register significance? National Register integrity and intact cultural stratigraphy should not be assumed to be the same thing. Discuss the probable functions of the property during its use life 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 based on 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. 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.

SHPO concurrence does not substitute for a good faith effort to consult with interested parties, local government authorities and American Indian tribes.

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*.