

**MDT HISTORIC, ARCHAEOLOGICAL AND CULTURAL ANALYSIS
AND PRESERVATION PROCESS**

1. Purpose

This work instruction establishes a process to ensure that historic properties and sites, archaeological finds of significance, paleontological sites and human skeletal remains are identified and addressed according to State and Federal requirements.

2. Scope

The Historic, Archaeological and Cultural Analysis and Preservation process is administered by the Environmental Resources Section of the MDT Environmental Services Bureau (ESB). The process begins with evaluation of the Preliminary Field Review (PFR) Report for a project and is complete when compliance has been established with all applicable requirements for any significant historic, archaeological and cultural resources the project may affect.

3. Process

[Figure 1](#) presents a flowchart that graphically illustrates the Historic, Archaeological and Cultural Analysis and Preservation Process. Following the Figure is a description of each activity within the flowchart.

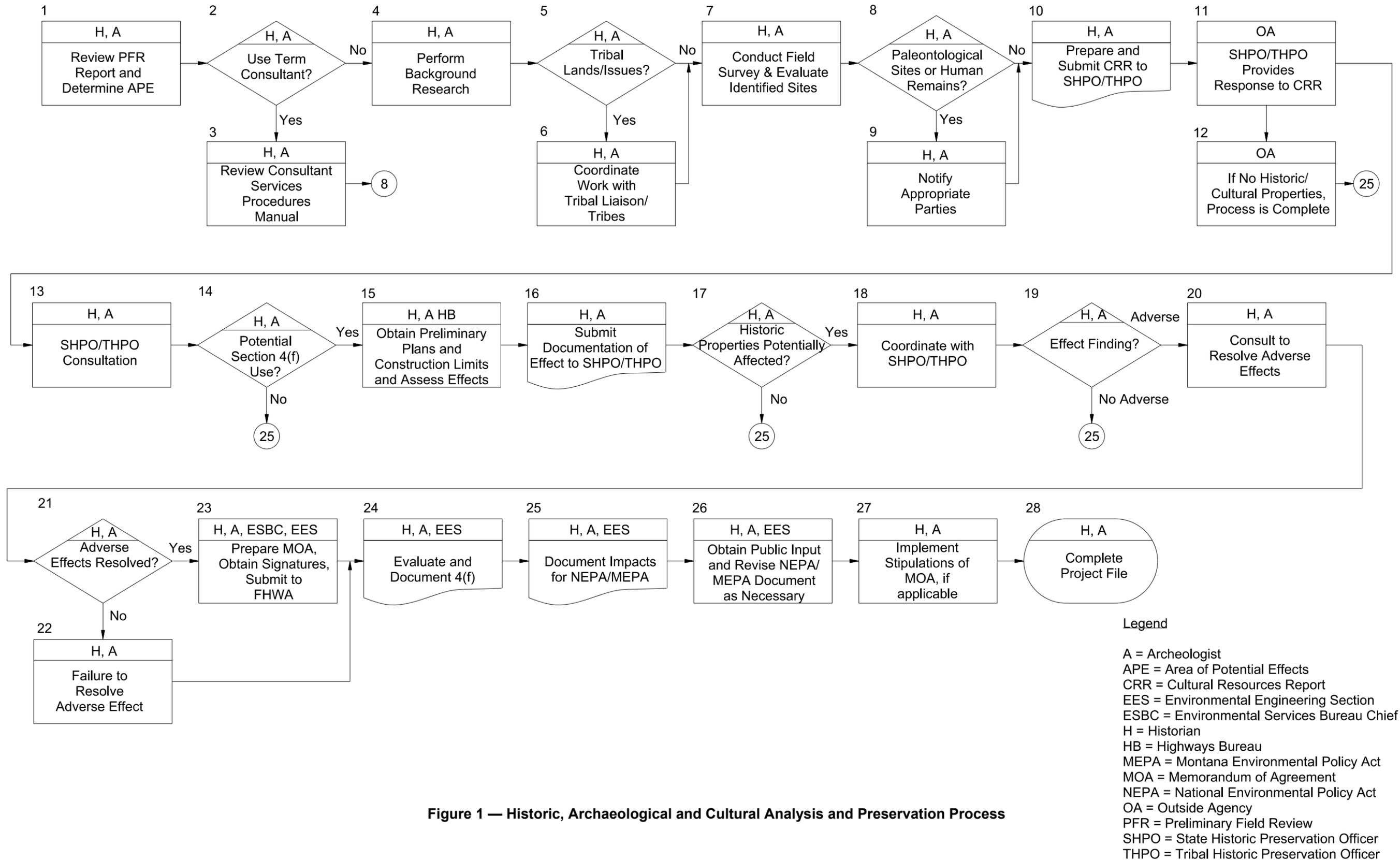


Figure 1 — Historic, Archaeological and Cultural Analysis and Preservation Process

Legend

- A = Archeologist
- APE = Area of Potential Effects
- CRR = Cultural Resources Report
- EES = Environmental Engineering Section
- ESBC = Environmental Services Bureau Chief
- H = Historian
- HB = Highways Bureau
- MEPA = Montana Environmental Policy Act
- MOA = Memorandum of Agreement
- NEPA = National Environmental Policy Act
- OA = Outside Agency
- PFR = Preliminary Field Review
- SHPO = State Historic Preservation Officer
- THPO = Tribal Historic Preservation Officer

PROCESS TASK

Task Title: Review PFR Report and Determine APE

Task No.: 1

Task Description:

The Historian (H) and Archeologist (A) review the PFR Report to determine the project's potential for impacts to historic properties, historic structures and archeological sites of significance. Examples of some of the triggers that may raise concern include:

- projects on new alignment or affecting previously undisturbed areas that may contain archaeological sites,
- projects that may require removal or relocation of structures that may be historic,
- projects that may require right-of-way from historic sites included on or eligible for inclusion on the National Register of Historic Places (NRHP), and
- projects that may introduce visual elements that would be out of character with historic properties.

For undertakings that are anticipated to involve Federal funding, approvals or permits that are determined to have the potential for affecting sites on or eligible for the NRHP, the H and A initiate the process for Section 106 compliance.

The H and A determine the Area of Potential Effects (APE) for the action (i.e., the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if such properties exist). This activity establishes the extent of the APE for archaeology, historic/architectural resources and Native American Lands. For projects involving more than one alternative, the APE is defined to address all reasonable alternatives under study. The H and A consult with Federal Highway Administration (FHWA), the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) and, as applicable, the Federal Land Management Agency (FLMA) to determine the APE. For complex projects, MDT may need to seek formal concurrence from the SHPO/THPO, through FHWA and/or the FLMA, on the extent of the APE.

If the APE changes as project development progresses, the H and A ensure appropriate identification and consideration of historic properties in the altered APE.

Regulations and Guidance

36 CFR 800.4 "Identification of Historic Properties"
43 CFR 10 *Native American Graves Protection and Repatriation Regulations*

PROCESS TASK

Task Title: Use Term Consultant?

Task No.: 2

Task Description:

At this stage of the evaluation for historic, archeological and cultural resource impacts, the H and/or A decide whether they will use a term consultant to perform any of the work for the project. This decision is based on the complexity of the project, location of the project and/or workload.

If the H and/or A decide to use a term consultant, they proceed to [Task 3](#). If the H and/or A decide not to use a term consultant, they proceed to [Task 4](#).

Regulations and Guidance

MDT Consultant Services Procedures Manual

PROCESS TASK

Task Title: *Review Consultant Services Procedures Manual*

Task No.: 3

Task Description:

If the H and/or A decide to use a term consultant, they work with the Consultant Design Bureau (CDB) in accordance with the *MDT Consultant Services Procedures Manual* in developing a cost estimate for the listed term consultants. The H and/or A select the term consultant and oversee the work performed for the duration of the contract.

Term consultants must meet the Secretary of the Interior's professional standards for their area or areas of expertise.

Regulations and Guidance

MDT Consultant Services Procedures Manual

PROCESS TASK

Task Title: Perform Background Research

Task No.: 4

Task Description:

At this point, the H and A conduct background research to determine the extent of existing information available on historic properties within the APE and the need for, and extent of, further identification efforts. The background research includes the following components:

- review of existing information on historic properties within the APE (e.g., previous/current surveys, previously recorded sites, existing clearance status of areas within the APE); and
- requests for information from individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area.

Some of the tools that are used to conduct this background research include:

- Cadastral Survey information,
- Sanborn Fire Insurance maps,
- MDT's Road Image Viewer,
- bridge Inspection Reports and photographs, and
- the Internet (e.g., Google aerial maps)

The H and A document the research findings in the file for the project or action.

Regulations and Guidance

36 CFR 800.4 "Identification of Historic Properties"
MDT Cultural Resources Reporting Manual

PROCESS TASK

Task Title: Tribal Lands/Issues?

Task No.: 5

Task Description:

The H and A gather information from any Native American group/tribe potentially involved within the APE to assist in identifying properties, including those tribal lands that may be of religious and cultural significance and may be eligible for the NRHP.

If the H and A determine tribal lands or issues are involved with the project, they proceed to [Task 6](#).

If the H and A determine no tribal lands or issues are involved with the project, they proceed to [Task 7](#).

Regulations and Guidance

36 CFR 800.2 "Participants in the Section 106 Process"
MDT Cultural Resources Reporting Manual

PROCESS TASK

Task Title: Coordinate Work with Tribal Liaison/Tribes

Task No.: 6

Task Description:

If tribal lands or issues are involved, for affected Native American tribal land, the H and A consult with the affected tribal officials (elders) to inform them of planned field work on tribal lands and to determine if there are any tribal standards or guidelines (e.g., confidentiality concerns) that would affect how the work is conducted. The H and A provide the tribal officials a map or description of the APE and other available information (e.g., survey reports, information on known sites). Staff should be sensitive to who the legal representative of the tribe is and should ensure that all appropriate parties are involved in the consultations/negotiations.

Contacts with Native American groups/tribes should be coordinated through MDT's Tribal Liaison.

After completing consultation with tribal officials, the H and A proceed to [Task 7](#).

Regulations and Guidance

36 CFR 800.2 "Participants in the Section 106 Process"
MDT Cultural Resources Reporting Manual

PROCESS TASK

Task Title: Conduct Field Survey and Evaluate Identified Sites

Task No.: 7

Task Description:

Based on the results of the background research conducted in [Task 4](#), the H and A determine the type and extent of further studies/surveys needed to identify historic resources within the APE for all reasonable alternatives under study. This may involve any or all of the following:

- further background research, consultation and/or oral history interviews;
- archeological field surveys and/or testing for evaluation of identified sites for NRHP eligibility; and
- historic buildings and structures surveys/evaluations of identified historic properties for NRHP eligibility.

After obtaining the necessary permissions or permits, the H and A (or term consultant) proceed with any necessary field surveys to identify potential historic properties within the APE. The H and A (or term consultant) document the field survey results in accordance with the *MDT Cultural Resources Reporting Manual*.

The H and A review the compiled information from background research and field surveys to identify properties requiring evaluation of historic significance (i.e., properties that have not been previously evaluated against the NRHP eligibility criteria) and any sites that warrant other special treatment (i.e., paleontological sites and human skeletal remains).

For sites requiring evaluation of historic significance, the H and A apply the NRHP eligibility criteria and document the basis for the eligible or not eligible determination for each site.

Regulations and Guidance

MDT Cultural Resources Reporting Manual

36 CFR 800 "Protection of Historic Properties"

36 CFR 60.4 "Criteria for Evaluation"

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

PROCESS TASK

Task Title: Paleontological Sites or Human Remains?

Task No.: 8

Task Description:

If paleontological sites or human skeletal remains are identified in the APE, the A and/or H proceed to [Task 9](#).

If no paleontological sites or human skeletal remains are identified, the H and A proceed to [Task 10](#).

Regulations and Guidance

Montana Antiquities Act, MCA 22-3.421 – 442

Montana Human Skeletal Remains and Burial Site Protection Act, MCA 801 – 811

MDT Cultural Resources Reporting Manual

PROCESS TASK

Task Title: Notify Appropriate Parties

Task No.: 9

Task Description:

If paleontological sites or human skeletal remains are identified in the APE, the A and/or H provide information regarding the sites to the Paleontological Department of the Museum of the Rockies in Bozeman, Montana or notify the SHPO/THPO, County Coroner or appropriate Federal authorities (if on Federal or Tribal lands).

Regulations and Guidance

Montana Antiquities Act, MCA 22-3.421 – 442

Montana Human Skeletal Remains and Burial Site Protection Act, MCA 801 – 811

MDT Cultural Resources Reporting Manual

Native American Graves Protection and Repatriation Act

PROCESS TASK

Task Title: Prepare and Submit CRR to SHPO/THPO

Task No.: 10

Task Description:

The H and/or A prepare a Cultural Resources Report (CRR) to present the recommended findings regarding NRHP eligibility of identified sites. This includes evaluation of currently applicable programmatic agreements and documentation of findings regarding resource eligibility in accordance with the agreements.

The H and/or A provide property owners copies of MDT "site forms" for any NRHP-eligible historic properties identified on their land.

The H and/or A submit the CRR to the SHPO/THPO with a request for concurrence in the findings presented.

Regulations and Guidance

MDT Cultural Resources Reporting Manual
Historic Roads and Bridges Programmatic Agreement
Abandoned Railroads Programmatic Agreement
Historic Irrigation Ditches Programmatic Agreement

PROCESS TASK

Task Title: SHPO/THPO Provides Response to CRR

Task No.: 11

Task Description:

The SHPO/THPO provides a written response to the CRR either concurring with, or disagreeing with, the findings in the report.

If the CRR indicates there are no historic/cultural properties in the APE and the SHPO/THPO concurs, proceed to [Task 12](#).

If the CRR indicates there are historic/cultural properties in the APE or the SHPO/THPO disagrees with findings in the report, proceed to [Task 13](#).

PROCESS TASK

Task Title: If No Historic/Cultural Properties, Process is Complete

Task No.: 12

Task Description:

The process is complete if there are no historic/cultural properties found and the SHPO/THPO does not disagree with the finding. The H and/or A provide documentation of the finding for NEPA/MEPA ([Task 25](#)).

PROCESS TASK

Task Title: SHPO/THPO Consultation

Task No.: 13

Task Description:

If historic/cultural properties are identified and the SHPO/THPO agrees with the findings in the CRR, the H and A proceed to [Task 14](#).

If the SHPO/THPO disagrees with the findings in the CRR, the H and/or A provide additional data to attempt to resolve the disagreement or the H and/or A may elevate the issue, through FHWA, to the Keeper of the NRHP for formal eligibility determination.

If agreement cannot be reached, MDT initiates end of consultation with SHPO/THPO and the H and A proceed to [Task 14](#).

Regulations and Guidance

36 CFR 63 “Determinations of Eligibility for Inclusion in the National Register of Historic Places”

PROCESS TASK

Task Title: Potential for Section 4(f) Use?

Task No.: 14

Task Description:

The H and/or A determine if the potential exists for Section 4(f) use for any of the historic properties the project would affect.

If the potential exists for Section 4(f) use, the H and/or A notify the Environmental Engineering Section (EES) and proceed to [Task 15](#). The EES and the H and/or A coordinate with FHWA in evaluating potential Section 4(f) use.

If no potential exists for a Section 4(f) use, the H and/or A notify EES and FHWA and proceed to [Task 25](#).

Regulations and Guidance

23 CFR 774 "Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites (Section4(f))"

FHWA Section 4(f) Policy Paper, March 1, 2005

MDT Environmental Manual, [Chapter 9 "Section 4\(f\)"](#)

FHWA Guidance for applying the 4(f) Exemption for the Interstate System, January 13, 2006

PROCESS TASK

Task Title: Obtain Preliminary Plans and Construction Limits and Assess Effects

Task No.: 15

Task Description:

The H and A obtain preliminary project design plans and construction limits from the MDT Highways Bureau to enable a more exact determination of the likely extent and nature of potential effects of the project on identified historic properties.

The H and/or A work with the appropriate project coordinator and/or engineer to determine the potential effects of the undertaking on historic properties in the APE (e.g., direct construction/maintenance impacts, impacts from temporary easements, utility easements, staging and storage areas, access roads, material sources, and waste areas).

If historic properties could be affected, the H and/or A coordinate with the design project manager and/or engineers for the undertaking to explore options for avoiding or minimizing any potential effects. Any avoidance or minimization options that are reasonable and feasible are documented in the project file and should be incorporated in the undertaking.

Regulations and Guidance

36 CFR 800.4 "Identification of Historic Properties"

PROCESS TASK

Task Title: Submit Documentation of Effect to SHPO/THPO

Task No.: 16

Task Description:

The H and/or A submit the determination of effect to SHPO/THPO.

Regulations and Guidance

- 36 CFR 800.4(d)(1) "No Historic Properties Affected"
- 36 CFR 800.11(d) "Finding of No Historic Properties Affected"
- 36 CFR 800.2(c) "Consulting Parties"

PROCESS TASK

Task Title: Historic Properties Potentially Affected?

Task No.: 17

Task Description:

No Historic Properties Affected:

If the SHPO/THPO agrees with the Finding of No Historic Properties Affected, the H and A proceed to [Task 25](#).

If the SHPO/THPO indicates disagreement with the Finding of No Historic Properties Affected, the H and/or A coordinate with the SHPO/THPO to attempt to negotiate a resolution of the disagreement.

If the H and/or A are successful in negotiating a resolution to the disagreement with the Finding of No Historic Properties Affected, they proceed to [Task 25](#).

Historic Properties Affected:

If it is determined that historic properties will be affected, the H and/or A proceed to [Task 18](#).

Regulations and Guidance

36 CFR 800.4(d)(2) "Historic Properties Affected"

PROCESS TASK

Task Title: Coordinate with SHPO/THPO

Task No.: 18

Task Description:

If historic properties will be affected, the H and/or A coordinate with SHPO/THPO to seek agreement on the project effects.

Regulations and Guidance

36 CFR 800.4(d)(2) "Historic Properties Affected"

PROCESS TASK

Task Title: Effect Finding?

Task No.: 19

Task Description:

In consultation with the SHPO/THPO, the H and/or A apply the Criteria of Adverse Effect to historic properties that the undertaking will affect and document their findings in the project file.

If the consultation results in a Finding of Adverse Effect, the H and A proceed to [Task 20](#).

If consultation for application of the Criteria of Adverse Effect results in a Finding of No Adverse Effect, the H and/or A proceed to [Task 24](#).

Regulations and Guidance

36 CFR 800.5 "Assessment of Adverse Effects"

36 CFR 800.5(b) "Finding of No Adverse Effect"

36 CFR 800.5(d)(2) "Adverse Effect"

36 CFR 800.11(e) "Finding of No Adverse Effect or Adverse Effect"

PROCESS TASK

Task Title: Consult to Resolve Adverse Effect

Task No.: 20

Task Description:

For a Finding of Adverse Effect, the H and/or A must confer with the SHPO/THPO, other consulting parties, interested persons and, as appropriate, the ACHP to seek ways to avoid, minimize or mitigate any adverse effects that an undertaking may have on a historic property. As a part of this effort, the H and/or A make information available to the EES, FHWA and the public and afford an opportunity for all parties to provide their views on resolving the adverse effects.

Regulations and Guidance

36 CFR 800.6(a) "Continue Consultation"

PROCESS TASK

Task Title: Adverse Effects Resolved?

Task No.: 21

Task Description:

If the continuation of consultation does not resolve the adverse effects, the H and/or A proceed to [Task 22](#).

If the continuation of consultation resolves the adverse effects, the H and/or A proceed to [Task 23](#).

Regulations and Guidance

36 CFR 800.6(b) "Resolve Adverse Effects"
36 CFR 800.7 "Failure to Resolve Adverse Effects"

PROCESS TASK

Task Title: Failure to Resolve Adverse Effect

Task No.: 22

Task Description:

If the adverse effects are not resolved, the H and/or A use the procedures in 36 CFR 800.7 "Failure to Resolve Adverse Effects." If agreement cannot be reached MDT initiates the end of consultation with SHPO/THPO, FHWA and ACHP and the H and/or A proceed to [Task 24](#).

Regulations and Guidance

36 CFR 800.6(b) "Resolve Adverse Effects"
36 CFR 800.7 "Failure to Resolve Adverse Effects"

PROCESS TASK

Task Title: Prepare MOA, Obtain Signatures, Submit to FHWA

Task No.: 23

Task Description:

If measures are agreed upon by all consulting parties to resolve the project's adverse effects, the H and/or A prepare a Memorandum of Agreement (MOA) to outline the measures to be implemented on the project to avoid, minimize or mitigate the adverse effects. The MOA will be prepared for signature by MDT, FHWA, the SHPO/THPO and, as appropriate, the ACHP and other consulting parties (e.g., affected property owners).

The H and/or A, in consultation with EES and FHWA, prepare a mitigation plan for inclusion in the MOA to document the actions necessary for implementing the measures to avoid, minimize and mitigate the undertaking's adverse effects on historic properties.

The H and/or A submit the MOA to the Environmental Services Bureau Chief to forward to the Director of MDT with a recommendation for signature. The Director signs the MOA for MDT.

After signature by the MDT Director, the H and/or A transmit the MOA to the SHPO/THPO and FHWA Division with a recommendation for signature. FHWA transmits the MOA to the ACHP for signature, if necessary.

Regulations and Guidance

36 CFR 800.6(c) "Memorandum of Agreement"
36 CFR 800.11(f) "Memorandum of Agreement"

PROCESS TASK

Task Title: Evaluate and Document 4(f)

Task No.: 24

Task Description:

For any resources determined to be subject to Section 4(f), the H and/or A coordinate with the EES to determine documentation requirements. The following applies to Section 4(f) resources:

1. De minimis Impact. If Title 23 USC 138 “*De minimis* Impact” is applicable, the EES documents the finding in accordance with applicable FHWA regulations and guidance.
2. Programmatic Section 4(f) Evaluation. If the *De minimis* Impact finding is not applicable, Section 4(f) involvement may be covered by a Programmatic Section 4(f) Evaluation (e.g., for Historic Bridges, for Minor Involvement with Historic Sites, for Net Benefit to a Section 4(f) Resource). The EES prepares documentation for the 4(f) involvement in accordance with the provisions of the applicable programmatic evaluation.
3. Full Section 4(f) Evaluation. If a programmatic evaluation or *De Minimis* Impact finding are not applicable, the EES documents the Section 4(f) involvement as a Full Section 4(f) Evaluation.

If there is no Section 4(f) use, the EES documents that Section 4(f) is not applicable.

Regulations and Guidance

23 CFR 774 “Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites (Section4(f))”

FHWA Environmental Guidebook, Section 4(f)

FHWA Technical Advisory T6640.8A

MDT Environmental Manual, [Chapter 9 “Section 4\(f\)”](#)

PROCESS TASK

Task Title: Document Impacts for NEPA/MEPA

Task No.: 25

Task Description:

For each alternative considered, the H and/or A coordinate with the EES to ensure that the environmental documentation for the project includes information on the methodologies used in identifying historic, archeological, and cultural resources, the identified historic and archeological resources included in or eligible for inclusion in the NRHP, including any archaeological resources that warrant preservation in place, and the impact of project alternatives on those resources. The H and A also ensure that the environmental documentation indicates that these resources have been evaluated and addressed in accordance with all applicable Federal and State regulations and guidance.

Regulations and Guidance

36 CFR 800 "Protection of Historic Properties"
FHWA Technical Advisory T 6640.8A
MDT Environmental Manual, Volume II "Preconstruction", Part 1 "NEPA/MEPA
Documentation and Process"

PROCESS TASK

Task Title: Obtain Public Input and Revise NEPA/MEPA Document,
as Necessary

Task No.: 26

Task Description:

The H and/or A ensure that information discussing effects on historic, archaeological and cultural resources is available at public involvement activities for proposed projects and participate in public involvement activities to ensure that public concerns or questions regarding historic, archaeological and cultural resource issues are appropriately considered and addressed.

If new issues are raised or information is provided at public involvement activities regarding historic, archaeological or cultural resources and/or the project's effects on those resources, the H and A follow up with the EES to ensure that the issues and/or information are appropriately reflected in the environmental documentation for the project.

PROCESS TASK

Task Title: Implement Stipulations of MOA, if applicable.

Task No.: 27

Task Description:

The H and/or A coordinate with the DT to ensure that all avoidance stipulations, as well as other compliance commitments (e.g., minimization and mitigation measures) are clearly reflected and explained in the project's Contract Documents (i.e., construction plans, Standard Specifications, Special Provisions).

During and after the project's construction, the H and A monitor the activities to ensure adequate fulfillment of avoidance stipulations and other compliance commitments, including timely completion of agreed-to mitigation reports, documents, etc.

PROCESS TASK

Task Title: Complete Project File

Task No.: 28

Task Description:

The H and A ensure the project file includes all appropriate supporting documentation for the Historic, Archaeological and Cultural Analysis and Preservation Process as applied to the project. This will include, at a minimum, the following:

- Preliminary Field Review Report;
- documentation of the APE;
- documentation on the use of term consultants;
- background research information;
- documentation on any tribal lands or issues involved and any associated coordination with tribal officials;
- results of field surveys;
- documentation of response to any paleontological sites or human skeletal remains identified in the APE;
- Cultural Resource Report (CRR);
- copies of correspondence submitting CRR to FHWA and SHPO;
- SHPO response to CRR;
- copies of Section 106 effect determinations and findings, any executed MOA, and related correspondence; and
- NEPA/MEPA documentation on historic, archaeological and cultural resource issues.