

## **Class III Cultural Resources Inventory Guideline**

ARM 17.24.212 and § 82-4-434(2)(h), MCA require that archaeological and historical values on affected lands be given appropriate protection. Section 82-4-432(1)(g), MCA requires the Operator to submit documentation of consultation with the state historic preservation office (SHPO) regarding possible archaeological or historical values on the affected land. As such, if SHPO recommends that a cultural resource inventory be conducted, the Opencut Section would be unable to review the application until “concurrence” for the site is obtained from SHPO.

To determine if a Class III Cultural Resources Inventory is recommended by SHPO, complete Opencut’s SHPO *File Search Request Form for Opencut Site* located here: <http://deq.mt.gov/Mining/opencut> (click on “Forms” tab and refer to B8).

If a Class III Cultural Resources Inventory is recommended by SHPO, follow all instructions on this form.

### **Class III Cultural Resources Inventory Recommended:**

Note: SHPO’s recommendations are Opencut’s requirements as outlined in the Opencut Act. Therefore, the Operator would be required to conduct a Class III Cultural Resources Inventory if SHPO recommends one be conducted. The Operator must submit the report to the DEQ archaeologist for review. Provided the result of the inventory is that of “no effect” or “no adverse effect” to historic properties and the DEQ archeologist agrees with the findings, the DEQ archeologist would obtain concurrence from SHPO. The DEQ archeologist would then provide the concurrence letter to the Operator. The Operator would subsequently submit the SHPO concurrence letter to the Opencut Section in order for the Opencut Mining application to be deemed complete. The Opencut Mining application would not be deemed complete until the concurrence letter was received by Opencut.

### **To obtain concurrence from SHPO, do not conduct any testing, digging, or surface disturbances at the site, and complete the following steps:**

- a. Do NOT contact SHPO to obtain a concurrence letter. Concurrence is obtained by DEQ consulting with SHPO on a Class III or similar investigation that is submitted to DEQ (explained above). A concurrence Letter is not clearance for the project. It is rather an agreement from SHPO approving the proposed action.  
Concurrence may include one of the following:
  - Approval that the project may move forward via the recommendations outlined within the concurrence letter; and/or
  - Requirements if further testing is needed, prior to any Opencut disturbance.
- b. Retain the services of an archaeological professional to conduct a Class III Cultural Resources Inventory of the site. Standard operating procedures for this step requires the contracted archeologist to conduct a SHPO file search (identified as a SHPO Report above) prior to entering the field. The file search should include any Sections (TRS) that are included in the proposed project, along with any Sections that are within ¼ mile of the project. This inventory typically entails the professional reviewing archaeological and historical information for the vicinity and conducting a thorough visual inspection of the site. A Class III survey is produced and submitted to DEQ for review. Provided no changes are required after review, the DEQ archaeologist would submit the report to SHPO for concurrence with the findings of the report.

- i. The Operator must submit one hard copy and one digital copy of the report and all GIS files (CD/DVD/Thumb Drive or File Transfer Service) associated with the Class III report to the DEQ archeologist at the following address:
  - DEQ Archeologist, Directors Office, P.O. Box 200901, Helena, MT 59620
- c. If no sites are identified, or all identified sites are determined not eligible for the National Register of Historic Places (NRHP), allowing for a finding of “no effect” or “no adverse effect” to historic properties, and concurrence is received from SHPO, then work may proceed with no effects to historic properties. The DEQ archeologist would provide the concurrence letter from SHPO to the Operator.
  - i. Note: All sites that are NRHP eligible, listed, unknown, or unevaluated, are considered “Historic Properties”;
- d. If the Class III Inventory identifies sites that are either recommended eligible, potentially eligible, or undetermined/unevaluated, the Operator’s archaeologist must prepare and submit to the DEQ archaeologist either: **a)** a Testing Plan that describes the additional methods and means (e.g. digging or surface disturbance) proposed to further investigate the site; or **b)** an Avoidance/Treatment Plan that describes the measures proposed to ensure that archaeological and historical values at the site would be given appropriate protection.
  - i. The DEQ archeologist would:
    1. Review the proposed plan to determine if the proposed Testing Plan or Avoidance Plan provides that the archaeological and historical values would be given appropriate protection, or if further treatment or mitigation must be developed. It should be noted that testing of archeological sites can become expensive quickly, and testing itself is a destructive process with no guarantee of findings. DEQ recommends completely avoiding such sites through adjustment of the proposed project boundaries.
    2. If no changes to the plan are necessary, the DEQ archaeologist would submit the plan to SHPO for concurrence.
    3. If changes to the Plan are needed, the DEQ archaeologist would confer with SHPO and notify the Operator’s archaeologist of the needed changes.
- e. When the Operator obtains written concurrence from SHPO on “c” above, the Operator may proceed with the proposed project.
  - i. Note: The concurrence letter must be submitted to the Opencut program and the Operator’s Opencut application updated.
- f. If the Operator receives SHPO concurrence on an avoidance plan, the Operator must include within their Opencut application any requirements of the Avoidance Plan, along with the SHPO concurrence to the Opencut Section.
- g. If the Operator is required to develop a Testing Plan, the Operator’s archaeological professional must prepare a plan providing a detailed description of the proposed testing to take place, and submit the Plan to the DEQ archaeologist. The DEQ archeologist would consult with SHPO to receive concurrence with the Plan. Revisions to the Plan may be required, based on consultation with SHPO. This Testing Plan will evaluate the eligibility of the site for the NRHP. Once the testing is complete, a report would be submitted to the DEQ archeologist, who would subsequently consult with SHPO on the results of the testing. Investigations at this point, through either testing or from the next step, Data Recovery, can be an extremely expensive endeavor; therefore, it is strongly advised to change the project boundaries at this point to avoid any testing.
- h. If the testing plan finds that the site or sites are eligible to the NRHP, then a Mitigation Plan must be created, reviewed and submitted to SHPO for concurrence. Mitigation at this stage generally calls for full-fledged excavations aimed at “Data Recovery.” However, once mitigation is complete, the project is determined to no longer have any “adverse effects,” and may continue upon written notification from DEQ.

- i. If the testing finds that no sites are NRHP eligible, then there are no “adverse effects” (adverse effects can only happen to NRHP eligible or listed sites). The DEQ archaeologist would submit the Testing Report to SHPO for concurrence. SHPO would either concur with the findings of the report, or it will not concur. If SHPO does not concur, SHPO would likely request additional work or information. When DEQ obtains written concurrence from SHPO, that concurrence is delivered to the Operator, who then must update the Opencut application (if applicable) to include any requirements of the report and/or concurrence, and submit the revised application and SHPO concurrence to the Opencut Section.

*The Montana Antiquities Act prohibits the disclosure of archaeological site information to the public. Therefore, do **not** include any archaeological locational information in the Opencut application (i.e. Plan of Operation, application forms, maps, or attachments).*