



ADMINISTRATIVE RULES OF MONTANA



10.121.907 AVOIDANCE OR MITIGATION OF ACTION IMPACTS

- (1) After an agency has followed ARM 10.121.903 through 10.121.906 and found that no heritage properties or paleontological remains exist within an action's area of effect, the agency may proceed with the action.
- (2) If sites within the area of effect are found to be heritage properties but are not eligible for the register, the agency shall follow its own procedures or policies, if any, regarding the protection of heritage values prior to proceeding with the action. In forming those procedures or policies, the agency may consult with entities appropriately concerned with heritage values including recreational, economic development, and travel interests.
- (3) If heritage properties eligible for the register or paleontological remains are found to exist within the action's area of effect, the agency shall determine, in writing, whether the action will have an adverse effect on that property and propose mitigation of the effect. If the agency determines that an action will have an adverse effect, it shall prepare a written explanation of why one or more of the actions in (3) (a) through (d) has been chosen and how it will be carried out. In determining mitigation the agency shall solicit the opinions of interested parties and may otherwise collect public comment on the protection of heritage property or paleontological remains in the area of effect as to:
 - (a) protecting the heritage values of the heritage property or paleontological remains by avoiding that property;
 - (b) abandonment of the proposed action;
 - (c) modification or redesign of the proposed action to avoid or lessen adverse effects or mitigate harm or alteration through any method including:
 - (i) relocating the action;
 - (ii) incorporating the heritage property or paleontological remains into the action in a useful way;
 - (iii) inviting private, commercial, non-profit, governmental or other interests to use the historic property in productive ways;
 - (iv) scientific excavation of archaeological or paleontological deposits;
 - (v) recordation of heritage properties prior to their removal or alteration;
 - (vi) production of a public education program about the property; or
 - (d) continuance of the project with no avoidance or mitigation measures.

- (4) If, upon completion of its assessment of action impact the agency finds the action to have adverse effects, the agency shall forward a statement of its decision in a single page mitigation plan to the SHPO for review and comment. Mitigation plans shall address whether or not the properties might be utilized for practical purposes in that they:
 - (a) possess the potential for promotional, commercial, recreational or other uses which may provide economic gain to citizens of the state or use by units of government;
 - (b) embody educational information which may be applied to instruct children or adults in aspects of Montana's history or prehistory;
 - (c) have social associations which illustrate the interaction and behavior of people in Montana's history or prehistory;
 - (d) possess attributes which support the appreciation of heritage values through sightseeing, photography, painting or other means of personal experience or artistic expression;
 - (e) have cultural associations which illustrate and contribute to the understanding of human cultures; or
 - (f) contribute to the understanding of paleontological resources.
- (5) The SHPO will review and comment on the agency's assessment of action impacts and mitigation plan in accordance with 22-3-430, MCA, within ten days of receipt of a request for comment.
- (6) If the SHPO does not concur with the agency's assessment of action impacts and mitigation plan, the agency and the SHPO may attempt to resolve the difference. If the agency and SHPO cannot agree, the agency shall decide how to proceed, notify the SHPO upon making that decision and document its decision in writing for the action file. The agency shall provide the SHPO with a copy of its final decision.

Authorizing statute(s): Sec. 22-3-107(2), 22-3-423(9) MCA

Implementing statute(s): Sec. 22-3-424, 22-3-435 MCA

History: NEW, 1998 MAR p. 2022, Eff. 7/31/98.