

Permits for Archaeological Investigations
Bureau of Land Management
Montana State Office

Guidance for Applicants and Permittees

Introduction

In October 1984, the Bureau of Land Management was delegated authority by the Secretary of the Interior to issue permits for archaeological work on public lands. This document is intended as a guide for those who apply for and work under the authority of a permit on Bureau of Land Management lands in Montana, North Dakota, and South Dakota. The Bureau's permits are called a *Permit for Archaeological Investigations* and are issued under multiple legislative authorities, rather than being restricted to the authorities granted by the Archaeological Resources Protection Act (ARPA).

Our overall program will work in the following way. The permit application will be processed in the Montana State Office and a decision on granting a permit will be made by the State Director. This permit will be an overall qualifying authority. Based on the application materials relating to personnel credentials, organizational qualifications, and other requirements, a decision will be made on whether the applicant is qualified to do specified cultural resource work on Bureau lands. Actual permission to enter the field, however, will be done at the field office level. Each use of the permit, i.e., each field project, must be authorized by the appropriate Field Office where the work will be accomplished. One of the legislative authorities under which we grant a permit, ARPA, requires an exact description of the lands where archaeological work will be conducted, and potential notification of Indian tribes whose religious values could be affected by the work. Because of these requirements the permit granted by the Montana State Office does not directly authorize entry onto specific lands to conduct archaeological work.

The user will note that three levels of cultural resource work are permitted—survey and recordation, survey and limited testing, and excavation. The Bureau only issues a survey and limited testing permit or an excavation permit when it is specific to a project and/or an identified site that requires that work. Survey and recordation permits can be issued for extended periods of time to facilitate Section 106 compliance inventories and surveys and do not have to be specific to a named project.

Most of the remainder of the guidance in the following pages is self-explanatory. However, prospective permittees should note that artifacts collected under a permit will be curated at the Billings Curation Center, a Bureau of Land Management facility in Billings, Montana. This policy extends to all materials collected from BLM administered public lands in the three state area of Montana, North Dakota, and South Dakota.

Guidance also specifies that terms and conditions must be met or the Permit to Conduct Archaeological Investigations can be suspended or revoked. Applicants should be thoroughly familiar with these sections, as they are responsible for being in compliance with the conditions under which the permit was granted. These sections also describe a permittee's avenues of appeal to suspension or revocation actions.

If questions arise that are not answered by the guidance, please contact our Deputy Preservation Officer, Gary Smith, at (406) 896-5214. Questions relating to the Billings Curation Center should be directed to Mr. David Wade, the Curator. The Curator can be reached at 406-896-5213.

Management of Permits for Archaeological Investigations
for
BLM Lands in Montana, North and South Dakota

- I. Objective. The objective of this document is to communicate the management policy of the Bureau of Land Management in Montana, North and South Dakota with respect to Permits for Archaeological Investigations. Prospective consultants and researchers will use the following information in preparing an application for a permit to conduct cultural work on lands administered by BLM.
- II. Authority. Permit to Conduct Archaeological Investigations are granted under the following authorities:
- A. Archaeological Resources Protection Act of 1979 (ARPA; P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa et seq.);
 - B. Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 170 et seq.);
 - C. American Antiquities Act of 1906 (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 431-433);
 - D. Title 43, Code of Federal Regulations, Parts 3, 4, 7, and 2920.
- III. Activities Subject to Permitting
- A. Use Authorized. The following activities are subject to permitting:
 - 1. Survey and recordation may be authorized for applicants who propose to identify, evaluate, record or conduct similarly non-impacting studies of cultural properties, which will not involve removal and/or excavation of material remains or other disturbance of cultural properties. Under appropriate circumstances, such permits may authorize collection of isolated archaeological materials, and minor probing to locate limits of cultural properties or unconfirmed archaeological deposits for mapping purposes.
 - 2. Limited Testing and/or Collection may be authorized on a project or site specific basis

for applicants who propose to identify, evaluate and record cultural properties, or conduct similar studies of specific cultural properties and/or specific areas during which minor collection and removal and/or limited test excavation and removal of material remains are likely to occur, so that the significance or research potential of a cultural property may be better understood but not substantially diminished.

3. Excavation and/or removal may be authorized on a project or site specific basis for applicants who propose to excavate and/or remove material remains at greater scale than described in B. above, with the result that the significance and/or future research potential of a cultural property or properties may be substantially altered.
4. Combined permits may be issued provided the application indicates that the applicants are qualified to carry out all levels of work being applied for as described in A. above. Combined permits are only issued on a project by project basis.

B. Scope of Permit. Applicants, when filling out the application form (DI Form 1926 (Rev Sept 2004, copy enclosed), may choose to represent themselves as qualified to conduct work anywhere in Montana, North and South Dakota, and a permit may be issued to the applicant reflecting this fact. However, the permit is not considered fully authorized until the permittee receives a fieldwork authorization from the involved field office each time the permittee conducts fieldwork under the permit.

IV. Application Review and Evaluation.

Any person may apply for a Permit to Conduct Archaeological Investigations in Montana, North Dakota, and/or South Dakota by submitting an application form and required supporting documentation, in person or by mail, to Gary Smith, Branch of Land Resources, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669.

V. Application Review and Evaluation.

- A. Completeness. The Bureau of Land Management will examine each application upon receipt to determine if the filing is regular and completely fills all information requirements.
- B. Supplemental Information. In addition to the information required on the application form, the following supplemental information is required for each application:

1. Organization Qualifications. Applications must show the applicant's organizational capability to accomplish work of the type and scope proposed. An organizational resume or summary of organizational experience must be submitted to provide the following minimum information:
 - a. Statement of the applicant's organizational ability to accomplish work, including:
 - (1) location(s) of facilities and equipment;
 - (2) description of facilities and equipment;
 - (3) organizational structure and staffing;
 - (4) specification of which, and to what extent facilities, equipment and staff listed would be involved in the proposed work.
 - b. Statement of applicant's organizational history in completing work proposed, including:
 - (1) similar past projects, particularly those focused toward the Northern Plains geographic area:
 - (2) past government contracts;
 - (3) selected bibliography of project or contract reports and/or publications resulting from (1) and (2) above;
 - (4) previous federal permits held, effective dates, and jurisdictions of all permits currently in force, and applications pending or planned with other BLM state organizations and/or other federal agencies.
 - c. Other pertinent organizational experience, such as research and special studies.
 - d. If the applicant is a newly formed entity, any information which might appropriately take the place of information requested for paragraphs V.B.1 and 2, should be provided. In such cases, individual capabilities of personnel will

carry greater weight in evaluation of organizational qualifications.

2. Individual Qualifications

- a. Applications must show the name of the individual proposed to be responsible for carrying out the terms and conditions of the permit and otherwise complying with legal requirements applicable to the permitted activity. This individual must be legally empowered to obligate the applicant organization, and must sign the application.
- b. Applications must include the name of any individual(s) proposed to be responsible for planning, supervising, and carrying out field projects, including responsibility for evaluations and recommendations for cultural properties. For each such individual, information must be included with the application to demonstrate that the individual has achieved the following:
 - (1) Adequate professional instruction obtained through:
 - (a) formal education resulting in a graduate or professional degree in the appropriate discipline (anthropology/archaeology, history, architecture); or
 - (b) equivalent training and experience, including at least 24 months of pertinent professional supervised experience with increasing responsibility leading to duties similar to those proposed in the application.
 - (2) competence in theory and methods, and in collecting, handling, analyzing, evaluating, and reporting cultural property data, relative to the type and scope of work proposed.
 - (3) the ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed.
 - (4) the ability to carry research to completion, as evidenced by timely completion of theses, research reports, and similar documents.

- (5) completion of at least 16 months of professional experience and/or specialized training in field, laboratory, or library research administration or management, including at least 4 months experience and/or specialized training in the type of activity proposed in the application.
- (6) at least 12 months experience in research concerning cultural properties of the period, prehistoric or historic, including at least 4 months experience in the geographic and/or culture area involved.

- c. Individuals who do not meet the equivalency or experience criteria in Paragraph b(1) above may be exempted if they have satisfactorily conducted work similar to that proposed under a Department of the Interior permit issued prior to the adoption of these procedures.
- d. The same individual may be named under Paragraphs V.B.2.a. and b. above.

C. Curation of Federal Collections

- 1. The Billings Curation Center, located at the Montana State Office, Billings, MT, is the designated curation facility for all work conducted under BLM Permit to Conduct Archaeological Investigations in the three-state area of Montana, North Dakota, and South Dakota. The facility is located at 5001 Southgate Drive, Billings, Montana 59101. The telephone number is (406) 896-5213. Collections will be received during working hours, Monday through Friday, 8:00 a.m. to 4:30 p.m.
- 2. Permittees working in the three-state and must deposit all artifacts, samples, collections, copies of field notes, photographs and negatives, and other documents resulting from work under BLM permits, with the Billings Curation Center no later than 90 days after submission of a final report, unless specific permit or contract stipulations dictate otherwise. Submission of all artifacts and related materials must be in accordance with the BLM's "Packaging Requirements for Collections Submitted to the Billings Curation Center." Copies of this document will be transmitted with a fully executed permit.

- D. Evaluation and Decision. Upon completion of review, the Montana State Director will issue the Permit to Conduct Archaeological Investigations, deny the application or, in the case of incomplete applications, notify the applicant and ask for additional information to complete the application. The term of the permit will be from 1 to 3 years; the length of the permit term will be decided at the State Director's discretion. If the permit application is complete, BLM will issue the permit or notify applicants in writing that the permit has been denied within 30 days of receipt of the application.

VI. Fieldwork Authorization

Field Managers are responsible for authorizing and monitoring specific fieldwork proposed and conducted under any Permit to Conduct Archaeological Investigations.

- A. Pework Contact. Prior to conducting any fieldwork under a Permit to Conduct Archaeological Investigations, each permittee must contact the Field Manager, by submitting a completed Fieldwork Authorization Request, BLM Form 8151-3, or the substitute form provided in the document entitled *Cultural Resource Requirements for Oil and Gas Operations in Montana and the Dakotas*, in person or by mail to the office of the Field Manager responsible for the administration of lands involved in the proposed fieldwork. A map showing Filed Office boundaries and a list of Field Managers with addresses is attached as Appendix I.

1. The Fieldwork Authorization Request must be appropriate to the type of cultural resource work proposed. Item 4 of the form addresses this requirement. If survey and recordation is proposed, standards and nature of work are specified by the special conditions attached to the Cultural Resource Permit and no further supporting documentation is necessary. For survey and limited testing or excavation/removal, documentation appropriate to the level of work must be attached to the Fieldwork Authorization Request.
 - a. At a minimum for survey and limited testing, an explanation of testing methodology and the basis used to evaluate sites must be included with the Authorization Request.

- b. At a minimum for excavation/removal, a full and comprehensive research design must be included with the Authorization Request.

- B. Review. Proposed fieldwork shall be reviewed by the Field Office archaeologist in consultation with the Field Manager(s) with management responsibility for the locations specified. Ordinarily, a Fieldwork Authorization, BLM Form 8151-4 (copy enclosed) will be forwarded to permittees within 48 hours of receipt of a complete Fieldwork Authorization Request. If Native Americans must be notified, however, fieldwork authorization may be delayed a minimum of 30 days (see next section). A Permit to Conduct Archaeological Investigations will be considered complete and fully authorized only after the permittee receives the Fieldwork Authorization. Permittees may not undertake fieldwork until the Fieldwork Authorization has been received.

- C. ARPA Considerations. The Archaeological Resources Protection Act of 1979 (ARPA) and 43 CFR 7.7 require that BLM determine whether work conducted under a Permit to Conduct Archaeological Investigations may result in harm to, or destruction of, any Indian tribal religious or cultural sites on public lands. Where the BLM determines that potential harm or destruction may occur, BLM must notify the affected Indian tribe. The minimum notification period is 30 days, and depending on the complexity of issues and need for consultation this requirement could take more than 30 days to satisfy. The permittee will be notified by the Field Office or Archaeologist if a delay will be necessary to comply with ARPA requirements.

- D. Denial. If the Field Manager denies a Fieldwork Authorization Request, a letter of denial will be sent to the permittee within 48 hours of receipt of the request for authorization, setting out in detail the reasons for denial, except where the conditions of Section C (above) apply.

VII. Performance Monitoring

- A. Monitoring and Review. Performance under Permit to Conduct Archaeological Investigations will be monitored by Field Managers, including adherence to terms and conditions, at various intervals throughout the life of a permit. Performance will be monitored frequently enough that developing problems can be recognized and brought to permittee's attention at a time when they may be easily corrected. For any permit issued for a period greater than 1 year, performance under the permit will be reviewed

annually, in addition to regular monitoring.

VIII. Modification and Extension of Permits

A. Modification

1. Initiated by the Permittee. A permittee may request, in writing to the State Director, permit modifications at any time. A permittee must request a permit modification whenever a change in an essential condition of the permit is anticipated. Any change in an essential condition which is not accommodated by a modification will make the permit invalid and will be cause for suspension. Essential conditions include, but are not limited to: individuals named in the permit; type, scope or location of work; location and facilities of the permittee; curatorial facility; and any other condition made part of the permit.
2. Initiated by State Director. The Montana State Director may modify a permit at any time, when essential management considerations have changed, but do not require a permit to be suspended or revoked. The State Director will serve written notice of permit modification to the permittee, in person or by mail (return receipt requested), setting out in full the reasons for modification.

- B. Extension. Permit extension may be requested, in writing to the State Director, by the permittee at any time prior to expiration of the term of the permit. Extensions may be granted when a limited, defined amount of time is required to complete the permitted work or, upon review demonstrating fully satisfactory work under the terms of the current permit, may be extended for from 1 to 3 years, without requiring submission of a new application for permit.

IX. Suspension and Revocation of Permits.

- A. Suspension for Cause. The Montana State Director may suspend a permit where the permittee has failed to meet any of the terms and conditions of the permit, or has been found to be in violation of any prohibition in ARPA or 43 CFR 7.4.
- B. Suspension for Management Purposes. The State Director may suspend a permit where management conditions, not in effect at the time the permit was issued, make

necessary temporary cessation of permitted work. Protection of other resource values, safety, or similar considerations might be cause for suspension for management purposes.

- C. Revocation for Cause. The State Director may revoke a permit upon the permittee's conviction under ARPA, or the assessment of a civil penalty under ARPA and 43 CFR 7, upon the permittee's failure after a reasonable time to correct the situation which led to suspension, or upon determining that information provided in an application, a fieldwork authorization request, or a report was knowingly falsified.

- D. Revocation for Management Purposes. The State Director may revoke a permit if reasons leading to suspension for management purposes are expected to continue indefinitely.

- E. Warning. The State Director may notify a permittee in writing when performance under a permit is approaching a level which might call for suspension. The notification will describe the problem in sufficient detail that the permittee may clearly understand the cause for the warning, should clearly set forth what action on the part of the permittee is needed to correct the problem, and will set a time limit within which the permittee will be expected to remedy the problem.

- F. Notice of Suspension. The State Director will serve written notice of suspension to the permittee, in person or by mail (return receipt requested), setting out in full the reasons for the suspension. Suspension notices will inform the permittee clearly why the suspension has been imposed, what action the permittee must take and the time within which the permittee must act, as applicable, and the consequences to the permittee if work under the suspended permit is continued.

- G. Notice of Revocation. The State Director will serve written notice of revocation to the permittee, in person or by mail (return receipt requested), setting out in full the reasons for the revocation and informing the revokee that any continuation of work without a permit may be a violation of criminal law.

X. Disputes and Appeals

A. Disputes. Any applicant, permittee, or revokee ("the disputant") may question the decision of the authorized officer (i.e., State Director or Field Manager, as applicable) with respect to denial of an application or Fieldwork Authorization Request, the inclusion of specific terms and conditions in a permit or Fieldwork Authorization, or the modification, suspension, or revocation of a permit.

1. Request for Review. The disputant may file a written request to the authorized officer for review of the authorized officer's decision, setting out reasons for believing that the decision should be reconsidered. The authorized officer may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with written explanation.

2. Request for Conference. Either the disputant or the authorized officer may request a conference to discuss the original decision and its basis. The authorized officer may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with written explanation.

3. Request for Higher Level Review. The disputant, if unsatisfied with the outcome of a review or conference addressing the authorized officer's decision, may request that the decision be reviewed at the next higher organizational level. Decisions of a Field Manager may be reviewed by the State Director, and those of a State Director may be reviewed by the Director. The Director may further request that the Departmental Consulting Archaeologist participate in the Director's review. The authorized officer's decision shall stand during the course of any higher level review.

B. Appeals.

1. Initiated by Disputant. If a disputant remains unsatisfied after exhausting the dispute opportunities listed in Paragraph A. of this section, a formal appeal may be filed with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. The authorized officer's decision shall stand during the appeal period.

2. Initiated by Other Affected Person. Any other person having legal standing wishing to appeal a decision connected with a permit may file a formal appeal with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. The authorized officer's decision shall stand during the appeal period.