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EMS TRANSMISSION

Instruction Memorandum No. NV-2011-  
Expires: 9/30/2013

To: District Managers, Nevada  
Field Office Managers, Nevada

From: State Director, Nevada

Subject: Reporting Results of Tribal Consultation to the State Historic Preservation Office

PURPOSE

This memorandum instructs district and field office managers on reporting the results of tribal consultation and the identification of related historic properties when communicating and consulting with the Nevada State Historic Preservation Office (SHPO) per terms of the State Protocol Agreement between the Bureau of Land Management, Nevada and the Nevada State Historic Preservation Office for Implementing the National Historic Preservation Act (SPA).

BACKGROUND

The National Historic Preservation Act (NHPA) requires federal agencies to identify historic properties (i.e., a prehistoric or historic district, site, building, structure, or object listed in or eligible for inclusion in the National Register of Historic Places, including properties of traditional religious and cultural importance to an Indian tribe). For BLM-administered, private and other lands situated off Indian lands, the BLM consults with the SHPO following the SPA where there may be adverse effects to historic properties, using inventory information obtained from tribes and others. The BLM also provides SHPO with results of inventory (but does not necessarily consult) where BLM determines there will be no adverse effects per terms of the SPA.

As part of the inventory process, the BLM consults with federally-recognized Indian tribes, as appropriate, to assist the BLM in identifying historic properties with traditional religious and cultural importance (including acknowledgement of a tribe's or tribes' special expertise in assessing eligibility of historic properties of significance to them), and applies the National Register criteria to determine if a property is eligible. The BLM also applies the criteria of adverse effect to these historic properties in consultation with Indian tribes. Any tribe identified by BLM as a consulting party should be notified and provided documentation of BLM's determinations of NRHP eligibility, findings of effect and any proposed measures to resolve adverse effects. The responsibility for tribal consultation is solely that of BLM and is separate and apart from the consultation relationship the BLM has with SHPO under the NHPA.

For historic properties situated on Indian lands, the BLM should refer to 36 CFR 800.2(2), according to whether a Tribal Historic Preservation Officer (THPO) has assumed SHPO responsibilities. The SPA does not pertain to those portions of an undertaking affecting Indian lands.

To fulfill its obligations to tribes found in various portions of the 36 CFR 800 regulations regarding the inventory process and any determinations of adverse effects, the BLM follows BLM Manual 8120 (Tribal

Consultation Under Cultural Resources Authorities) and BLM Handbook H-8120-1 (Guidelines for Conducting Tribal Consultation).

To fulfill its obligations under the SPA, the BLM is required to provide information to SHPO about its efforts to identify historic properties of all kinds, including properties of traditional religious and cultural importance to Indian tribes. This instruction pertains to information that is to be provided by BLM to SHPO per terms of the SPA.

#### INSTRUCTION

Whether or not the BLM is engaged in consultation with SHPO per the SPA, the BLM should provide only the minimally necessary information to SHPO regarding historic properties of traditional religious and cultural importance to an Indian tribe when a federally-recognized tribal government's designated representative for consultation with BLM has requested confidentiality. When a federally-recognized tribal government's designated representative has requested confidentiality, the BLM should not provide SHPO with details of location (including a map), name, purpose or use of the historic property without prior tribal consultation. Where no federally-recognized tribal government's designated representative has requested confidentiality, the BLM should request that SHPO keep the information confidential and separate from files accessible to the public.

When consulting as required under the SPA (Part II.A), the BLM should provide information in its consultation letter to SHPO concerning eligibility and effect determinations regarding (1) which tribes were consulted to identify historic properties of traditional religious and cultural importance to an Indian tribe; (2) whether historic properties with traditional religious and cultural importance were identified (including name, subject to expressed tribal requests or concerns for confidentiality) and pertinent NRHP significance criteria a-d and affected components of integrity (location, design, setting, materials, workmanship, feeling or association); (3) whether BLM has determined that adverse effects are likely to occur to historic properties of traditional religious and cultural importance; and (4) proposed measures to resolve any adverse effects.

When a BLM undertaking does not require SHPO consultation prior to authorization, per the SPA under Part II.C, the BLM should provide information in its inventory transmittal letter regarding (1) which tribes were consulted to identify historic properties of traditional religious and cultural importance to an Indian tribe; (2) whether historic properties with traditional religious and cultural importance were identified (by name, subject to expressed tribal requests or concerns for confidentiality) and pertinent NRHP significance criteria a-d and integrity criteria; and (3) that BLM has determined that adverse effects will not occur to historic properties of traditional religious and cultural importance.

**Time Frame:** This IM is effective immediately. These new procedures are intended to ensure that results of tribal consultation are reported to SHPO in a timely, coordinated, efficient, and consistent manner.

**Manual/Handbook Sections Affected:** None

Questions should be directed to Tom Burke, Cultural Resources Program Lead, Nevada State Office, at 775/861-6415.