

# Cultural Resources

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Cultural resources are the evidence of past human activity that are important in the history, archaeology, architecture, or culture of a community or region. (A complete definition appears in the glossary.) They can be divided into three groups:

**Archaeological resources:** Physical remains or ruins of past generations, such as the remains of a rock shelter, an Indian village, or a pioneer settlement. Other examples include rock art, graves, and artifacts such as arrowheads and utensils.

**Historic buildings and structures:** Standing buildings and structures that are at least 50 years old, including log cabins, barns, highways, and wagon trails.

**Traditional cultural properties:** Objects and places associated with beliefs and practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Traditional cultural properties may include a location used by past and present generations of Native Americans for ceremonial purposes or an area where a community has traditionally conducted culturally important economic or artistic activities.

A rich and diverse array of cultural resources exists in the Scenic Area. The cultural resources range from 10,000-year-old stone tools to log cabins built by pioneers to vision quest sites still used today by Native Americans.

## SCENIC AREA ACT PROVISIONS

One purpose of the Scenic Area Act is to "protect and provide for the enhancement of the . . . cultural . . . resources of the Columbia River Gorge" [Section 3(1)].

The Scenic Area Act authorizes the Gorge Commission and the Forest Service to protect cultural resources by using guidelines and the Open Space designation (see Part II, Chapter 4). The guidelines must require new commercial and residential uses, mineral operations, and other types of development to occur without adversely affecting cultural resources [Section 6(d)]. The Scenic Area Act defines "adversely affect" to mean a "reasonable likelihood of more than moderate adverse consequences for . . . cultural . . . resources" [Section 2(a)].

The Scenic Area Act directs the Gorge Commission and Forest Service to

"protect and enhance open spaces" [Section 6(d)(3)].

Open spaces include cultural and historic areas, archaeological sites, Indian burial grounds, village sites, historic trails and roads, and other areas that are culturally and historically significant [Section 2(l)].

## KEY ISSUES

Cultural resources are important. They allow people to learn firsthand about prehistory and history, and contribute useful insight about our physical and cultural evolution. Some cultural resources are associated with traditional beliefs of social and cultural groups. They are vital to protecting the religious freedom and cultural identity of these groups.

Cultural resources can be destroyed by human activities, particularly new development that disturbs the ground. State laws in Oregon and Washington offer limited protection to cultural resources. The laws do not become effective until the presence of a cultural resource site is known. Yet, they do not require cultural resource surveys to be conducted before development begins.

Archaeologists and historians estimate that less than 10 percent of the Scenic Area has been inventoried for cultural resources. The existing inventories include only a few of the cultural resource sites thought to exist in the Scenic Area. As a result, archaeological resources and traditional cultural properties are often discovered after a project has been approved and construction has begun. This results in costly delays to developers and

irreparable damage to cultural resources.

## OVERVIEW OF CULTURAL RESOURCES PROVISIONS

The GMA provisions in this chapter apply to all development on public and private lands in the GMA, as well as to non-federal development in the SMA. The SMA provisions apply to developments on federal lands, federally assisted projects, and forest practices that occur in the SMA.

The GMA provisions employ a four-step process to protect cultural resources. This process entails:

- Requiring cultural resource surveys before some new developments are approved. Survey requirements are waived for developments that would have little or no effect on cultural resources, such as activities that do not disturb the ground or alter structures that are less than 50 years old.
- Evaluating the significance of any resources discovered during the surveys.
- Assessing and documenting the effects of the proposed development on cultural resources.
- Preparing mitigation plans to avoid impacts to resources.

These steps require consultation with Indian tribal governments, social and cultural groups, and interested persons.

The SMA provisions will have little effect on federal or federally assisted

developments. These developments must continue to comply with Section 106 of the Historic Preservation Act of 1966. The provisions for the SMA do contain specific guidelines for literature reviews, tribal consultation, and cultural resource surveys. Both the GMA and SMA parts of this chapter contain guidelines to halt a project if cultural

resources are discovered during construction. In such case, survey, evaluation, assessment, and mitigation plans would be required before construction could continue. To respect Native American culture, the guidelines also detail how human remains discovered during construction will be treated.

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## **GMA PROVISIONS**

### **GMA Goals**

1. Protect and enhance cultural resources.
2. Ensure that proposed uses do not have an adverse effect on significant cultural resources.

### **GMA Objectives**

1. Survey all lands in the GMA for cultural resources as soon as funds are available. The Gorge Commission shall facilitate a multiparty effort to seek funds for such a survey. The parties should include Indian tribal and local governments and state and federal agencies. The first phase of the inventory should consist of a Native American oral history program.
2. Update the cultural resources inventory as new cultural resources are discovered. The update shall be conducted by the Gorge Commission.
3. Establish a Cultural Advisory Committee (CAC) to monitor the cultural resource protection process and provide technical assistance to local governments and landowners.
4. Promote educational programs and incentives that encourage landowners and agency officials to voluntarily protect and enhance cultural resources.

### **GMA Policies**

1. Generally, well-defined geographic areas that possess large concentrations of cultural resources shall be designated Open Space.

2. Information regarding the nature and location of archaeological resources and cultural resources associated with Native Americans shall be kept confidential to avoid unlawful, malicious, or negligent disturbance.
3. A four-step process shall be used to protect cultural resources: performing cultural resource reconnaissance or historic surveys before proposed uses are authorized; evaluating the significance of cultural resources discovered during surveys; assessing the effects of proposed uses on significant cultural resources; and preparing mitigation plans to avoid or minimize impacts to significant cultural resources.
4. All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).
5. Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans.
6. The reconnaissance survey guidelines below shall apply until a cultural resource survey of the GMA is complete.
  - A. A reconnaissance survey shall be required for all proposed uses, except:
    - (1) The modification, expansion, replacement, or reconstruction of existing buildings and structures.
    - (2) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.
    - (3) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

- (4) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.
- (5) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

- (6) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:
  - (a) Residential development that involves two or more new dwellings for the same project applicant.
  - (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
  - (c) Public transportation facilities that are outside improved rights-of-way.
  - (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
  - (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map

showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

- B. A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed above in 6.A(1) through (6). The locations of known cultural resources are shown in the cultural resource inventory prepared by Heritage Research Associates and maintained by the USDA Forest Service for the Columbia River Gorge Commission.
- 7. A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.
- 8. The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the GMA. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for cultural resources that are discovered during construction of small-scale and large-scale uses in the GMA.

For the Management Plan, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

- 9. The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction.
- 10. If cultural resources may be affected by a proposed use, an evaluation shall be performed to determine if they are significant. Cultural resources are significant if one of the following criteria is satisfied:

- A. The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places.

The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:

- (1) Have an association with events that have made a significant contribution to the broad patterns of the history of this region.
- (2) Have an association with the lives of persons significant in the past.
- (3) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction.
- (4) Yield, or may be likely to yield, information important in prehistory or history.

- B. The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

11. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the local government as to whether affected cultural resources are significant.
12. If cultural resources are determined to be significant, there shall be a professional assessment of the effects of the proposed use. The assessment shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5).
13. A mitigation plan shall be prepared if a proposed use would have an adverse effect on significant cultural resources. The criteria published in "Resolution of Adverse Effects" (36 CFR 800.6) shall be used to determine if a proposed use would have an adverse effect.
14. Mitigation measures shall ensure that a proposed use would have no adverse effect on significant cultural resources. Uses that would adversely affect significant cultural resources shall be prohibited.

15. Avoidance is the preferred method of cultural resource protection. Other mitigation measures to reduce the effect of a proposed use on cultural resources shall be used only if avoidance is not practicable.
16. The state historic preservation officer (SHPO) shall have an opportunity to review all cultural resource surveys, evaluations, assessments, and mitigation plans. Based on comments submitted by the SHPO and interested persons, the local government shall make a final decision on whether the proposed use would be consistent with the cultural resource goals, policies, and guidelines.
17. The SHPO may delegate all or a portion of his/her responsibilities under these goals, objectives, policies, and guidelines to a local government that establishes a Certified Local Government, as provided in the National Historic Preservation Act of 1966.
18. If cultural resources are discovered during construction activities, all construction shall cease until the resources are inventoried and evaluated. If the resources are determined to be significant, a mitigation plan shall be prepared.
19. If human remains are discovered during a cultural resource survey or during construction activities, all activities shall cease and the proper officials and governments shall be notified. Human remains shall be treated in accordance with state laws. A mitigation plan shall be prepared if the remains are reinterred or preserved in their original position.
20. Provide incentives to protect and enhance historically significant buildings by allowing uses of such buildings that are compatible with their historic character and that provide public appreciation and enjoyment of them as cultural resources.

### **GMA Guidelines**

Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan. *(Added: CRGC adoption 7/13/10; U.S. Sec. Ag. concurrence 11/1/10)*

### **Cultural Resource Reconnaissance and Historic Surveys**

#### **Gorge Commission/Tribal Government Notice**

1. In addition to other public notice requirements that may exist, local governments shall notify the Indian tribal governments when (1) a reconnaissance survey is required or (2) cultural resources that are prehistoric or otherwise associated with Native Americans exist in the project area. Notices sent to Indian tribal governments shall include a site plan.

2. Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit written comments to the local government. Written comments should describe the nature and extent of any cultural resources that exist in the project area and identify individuals with specific knowledge about them. The local government shall send a copy of all comments to the Gorge Commission.

### **Consultation and Ethnographic Research**

1. When written comments are submitted to a local government in a timely manner, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons.

Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

2. A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

### **Surveys and Survey Reports**

#### ***Reconnaissance Surveys--Small-Scale Uses***

1. Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:
  - A. A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

- B. Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

***Reconnaissance Survey Reports--Small-Scale Uses***

1. The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:
  - A. A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
  - B. A description of any cultural resources that were discovered in the project area, including a written description and photographs.
  - C. A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

***Reconnaissance Surveys--Large-Scale Uses***

1. Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.
2. Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:
  - A. Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
  - B. Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
  - C. Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
  - D. Archaeological site inventory forms shall be submitted to the SHPO whenever cultural resources are discovered.

***Reconnaissance Survey Reports--Large-Scale Uses***

1. The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:
  - A. A description of the proposed use, including drawings and maps.
  - B. A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
  - C. A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
  - D. A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
  - E. An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
  - F. A summary of all written comments submitted by Indian tribal governments and other interested persons.
  - G. A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

***Historic Surveys and Reports***

1. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.
2. Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.
3. The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

### **Notice of Survey Results**

1. The local government shall submit a copy of all cultural resource survey reports to the SHPO and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.
2. The SHPO and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the local government. The local government shall record and address all written comments in its development review order.

### **Conclusion of the Cultural Resource Protection Process**

1. The local government shall make a final decision on whether the proposed use would be consistent with the cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, the local government shall justify how it reached an opposing conclusion.
2. The cultural resource protection process may conclude when one of the following conditions exists:
  - A. The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 20 calendar days of the date that a notice was mailed.
  - B. A reconnaissance survey demonstrates that cultural resources do not exist in the project area and no substantiated concerns were voiced by interested persons within 20 calendar days of the date that a notice was mailed.
  - C. The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the

reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

- D. A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:
- (1) The SHPO concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or
  - (2) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the SHPO or the local government question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

## **Evaluation of Significance**

### **Evaluation Criteria and Information Needs**

1. If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:
  - A. Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

- B. To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.
- C. The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.
- D. The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
- E. All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

### **Notice of Evaluation Results**

1. If the evaluation of significance demonstrates that the cultural resources are not significant, the local government shall submit a copy of the evaluation of significance to the SHPO and the Indian tribal governments.
2. The SHPO, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the local government. The local government shall record and address all written comments in its development review order.

### **Cultural Resources are Culturally Significant**

1. If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.
2. The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the local government, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is

mailed. The CAC must submit its recommendation to the local government within 30 calendar days from the date the evaluation of significance is mailed.

### **Conclusion of the Cultural Resource Protection Process**

1. The local government shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the SHPO or CAC, the local government shall justify how it reached an opposing conclusion.
2. The cultural resource protection process may conclude if the affected cultural resources are not significant.
3. If the project applicant or the local government determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

### **Assessment of Effect**

#### **Assessment Criteria and Information Needs**

1. If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:
  - A. The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.
    - (1) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.5].
    - (2) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.5].  
Adverse effects on cultural resources include, but are not limited to:
      - (a) Physical destruction, damage, or alteration of all or part of the cultural resource.
      - (b) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

- (c) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.
  - (d) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.
- B. The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- C. The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:
  - (1) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.
  - (2) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).
  - (3) The proposed use is limited to the transfer, lease, or sale of cultural resources, and adequate restrictions or conditions are included to ensure preservation of the significant features of the resources.

### **Notice of Assessment Results**

1. If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the local government shall submit a copy of the assessment to the SHPO and the Indian tribal governments.
2. The SHPO, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the local government. The local government shall record and address all written comments in its development review order.

### **Conclusion of the Cultural Resource Protection Process**

1. The local government shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the SHPO, the local government shall justify how it reached an opposing conclusion.
2. The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.
3. A mitigation plan shall be prepared if a project applicant or the local government determines that the proposed use would have an adverse effect on significant cultural resources.

### **Mitigation Plans**

#### **Mitigation Plan Criteria and Information Needs**

1. Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:
  - A. Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the SHPO.
  - B. Avoidance of cultural resources through project design and modification is preferred. Avoidance may be affected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

- C. Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:
  - (1) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

- (2) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.
- (3) Documentation of consultation with the SHPO regarding any alternatives or mitigation measures.
- (4) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and local governments.
- (5) Copies of any written recommendations submitted to the local government or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

### **Notice of Mitigation Plan Results**

1. If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the local government shall submit a copy of the mitigation plan to the SHPO and the Indian tribal governments.
2. The SHPO, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the local government. The local government shall record and address all written comments in its development review order.

### **Conclusion of the Cultural Resource Protection Process**

1. The local government shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the SHPO, the local government shall justify how it reached an opposing conclusion.
2. The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.
3. The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

### **Cultural Resources Discovered After Construction Begins**

1. The following procedures shall be affected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the local government and the SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- A. Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- B. Notification. The project applicant shall notify the local government and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
- C. Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the SHPO. (See Oregon Revised Statute ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in the "Reconnaissance Survey Reports--Large-Scale Uses" and "Evaluation of Significance: Evaluation Criteria and Information Needs" sections of this chapter.

Based on the survey and evaluation report and any written comments, the local government shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

- D. Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

### **Discovery of Human Remains**

- 1. The following procedures shall be affected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.
  - A. Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
  - B. Notification. Local law enforcement officials, the local government, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.

- C. Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- D. Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.
- E. Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter.

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" section of this chapter are met and the mitigation plan is executed.

### **Cultural Advisory Committee**

- 1. The Gorge Commission shall establish a Cultural Advisory Committee (CAC) within 200 days after the Secretary of Agriculture concurs with the Management Plan. The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes.

The CAC will perform six principal functions:

- A. Monitor cultural resource surveys, evaluations, impact assessments, and mitigation plans.
- B. Periodically formulate and submit recommendations to SHPOs, local governments, and the Gorge Commission regarding cultural resource surveys, evaluations, impact assessments, and mitigation plans.
- C. Monitor cultural resource decisions made by SHPOs and local governments.
- D. Recommend procedural and administrative changes to the Gorge Commission that would improve the cultural resource protection process.

- E. Advise the Gorge Commission on the design and implementation of future cultural resource inventories, including oral history programs and survey strategies.
- F. Review evaluations of significance when a disagreement arises between a project applicant and an Indian tribal government. In these instances, the CAC shall submit written recommendations to the local government. Recommendations shall be based on the evaluation prepared by the project applicant, reports submitted by Indian tribal governments, and comments submitted by interested persons, including the SHPO.

## SMA PROVISIONS

### **SMA Goal**

Protect and enhance cultural resources.

### **SMA Policies**

1. New developments or land uses shall not adversely affect significant cultural resources.
2. Federal agencies shall follow steps 1 through 5 under Guideline 4 below, for new developments or land uses on all federal lands, federally assisted projects, and forest practices.
3. Reviewing agencies shall use the procedures defined by the Gorge Commission for the GMA for proposed developments or land uses not listed in Policy 2, above.
4. Well-defined concentrations of significant cultural resources shall be designated as Open Space.
5. All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC (United States Code) 470 aa and 36 CFR 296.18.
6. Principal investigators shall meet the professional standards published in 36 CFR 61.
7. The Forest Service shall be responsible for performing steps 1 through 5 under Guideline 4 for forest practices and National Forest system lands.
8. The Forest Service shall consult with the Indian tribal governments and other consulting parties in performing steps 1 through 5 under Guideline 4.
9. The Forest Service shall consult with Indian tribal governments and other consulting parties for opportunities to enhance cultural resources.

### **SMA Guidelines**

1. All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

2. For federal or federally assisted undertakings, the reviewing agency shall complete its consultation responsibilities under Section 106 of the Historic Preservation Act of 1966 [36 CFR 800.2].
3. Discovery during construction: All authorizations for new developments or land uses shall require the immediate notification of the reviewing agency if cultural resources are discovered during construction or development. If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resource.

If the discovered material is suspected to be human bone or a burial, the following procedures shall be used:

- A. The applicant shall stop all work in the vicinity of the discovery.
  - B. The applicant shall immediately notify the Forest Service, the applicant's cultural resource professional, the county coroner, and appropriate law enforcement agencies.
  - C. The Forest Service shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.
4. Reviewing agencies shall use the following steps under 36 CFR 800.4 for assessing potential effects to cultural resources and 36 CFR 800.5 for assessing adverse effects to cultural resources.

**Step 1: Literature Review and Consultation**

- A. An assessment shall be undertaken to determine whether any cultural resources listed on the National Register of Historic Places at the national, state, or local level are present on or within the area of potential direct and indirect impacts.
- B. A search shall be made of state and county government, National Scenic Area/Forest Service, and any other pertinent inventories, such as archives and photographs, to identify cultural resources. The search shall include consultation with the State Historic Preservation Office (SHPO) and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.
- C. Cultural resource professionals knowledgeable about the area shall be consulted.

**Step 2: Field Inventory**

- A. As determined by step 1, the presence of a recorded or known cultural resource, including those reported by tribal governments to be on or within the immediate vicinity of a new development or land use, shall require a field inventory by a cultural resource professional.
- B. Tribal representatives shall be invited to participate in the field inventory.
- C. The field inventory shall conform to one of the following standards, as determined by the cultural resource professional:
  - (1) Complete survey: The systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly spaced transects. A complete survey may also require techniques such as clearing of vegetation or augering or shovel probing of subsurface soils for the presence of buried cultural resources.
  - (2) Sample survey: The sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for parcels that are large or difficult to survey, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is stratified either by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers, and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.
- D. A field inventory report shall be required and shall include the following:
  - (1) A narrative integrating the literature review (step 1) with the field inventory (step 2).
  - (2) A description of the field inventory methodology used. The description shall include the type and extent of field inventory and shall be supplemented by maps that graphically illustrate the areas surveyed and not surveyed and provide the rationale for each.
  - (3) A statement of the presence or absence of cultural resources within the area of the new development or land use.

- (4) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources. Recommendations and standards for monitoring, if appropriate, shall be included.
- E. The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.
- F. The field inventory report shall be presented to the Forest Service for review.

**Step 3: Evaluations of Significance**

- A. When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).
- B. Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.
- C. Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, "Guidelines for the Evaluation and Documentation of Traditional Cultural Properties," within local and regional contexts.
- D. Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service shall review evaluations for adequacy.
- E. Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

**Step 4: Assessment of Effect**

- A. For each significant (i.e., eligible for the National Register) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.5 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for B through D below. The Forest Service shall review each determination for adequacy.

- B. If the proposed development or change in use will have "No Adverse Effect" (36 CFR 800.4) to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Standards" of 36 CFR 800.11. If the proposed development or change in use will have an effect then the criteria of adverse effect must be applied (36 CFR 800.5).
- C. If the proposed development or change in use will have an "Adverse Effect" [36 CFR 800.5] to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented (36 CFR 800.6 "Resolution of Adverse Effects"). This documentation shall follow the process outlined under 36 CFR 800.11 ("Failure to Resolve Adverse Effects").
- D. If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), recommendations shall be documented concerning the beneficial effects upon the qualities of the cultural resource that make it eligible for the National Register. This documentation shall follow the process outlined under 36 CFR 800.11 ("Documentation Standards").

**Step 5: Mitigation**

- A. If there will be an effect on cultural resources, mitigation measures shall be provided (36 CFR 800.6 "Resolution of Adverse Effects"). Mitigation measures that shall be considered include avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, and other appropriate measures.
  - B. Evidence of consultation with tribal governments and individuals with knowledge of the affected resources, and documentation of their concerns, shall be included for all mitigation proposals.
  - C. The Forest Service shall review all mitigation proposals for adequacy.
5. Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan. *(Added: U.S. Sec. Ag. concurrence 7/1/11)*