

IM-NV-2011-008-A001

ATTACHMENT 1, BLM Nevada Cultural Resources Use Permits Authorization Process

A. BLM Nevada Authorization Process. BLM Nevada may authorize cultural resources and archaeological activities for non-BLM personnel by means of permit issuance and subsequent fieldwork authorization, or may authorize actions by persons involved in official agency duties. The BLM utilizes a two-stage permit authorization process.

1. Permitting. First, the Director or his/her delegated individual receives permit applications and may issue a permit to qualified persons appropriate to the kind of proposed investigation. In BLM Nevada, the Cultural Resources Program Lead (Program Lead) is delegated authority to review, issue, deny, and modify permits and to administer the permitting process generally. A permit must be issued before a fieldwork authorization can be requested or issued.

Second, an approved permittee must obtain a separate ensuing approval from the appropriate BLM District Manager or Field Office Manager (BLM Manager) of a Fieldwork Authorization Request (FAR) before the work requested in the permit can proceed (BLM Manual 8150.12.E.2). This approval authority has not been delegated to cultural resources specialists or other non-managers within BLM Nevada. This action cannot be delegated below the Field Manager level. As determined necessary, the BLM Manager responsible for approving a FAR is also responsible for timely notification to Indian tribes where excavation and/or removal of archaeological resources is being proposed.

2. Authorizing BLM Activities. BLM Managers are responsible for authorizing persons carrying out activities under the BLM Manager's direction associated with management of archaeological resources as official agency duties. No fieldwork authorization request or approval is required, but the BLM Manager should make written approval on a project-specific basis where excavation or removal is involved. As determined necessary, the BLM Manager responsible for authorizing official agency actions is also responsible for timely notification to Indian tribes where excavation and/or removal of archaeological resources is being proposed.

B. Three Types of BLM Permits. The Nevada State Office authorizes three kinds of permits, generally known as cultural resources use permits. Any associated activities of the approved permittee must have a subsequent district or field office approval before commencing, as demonstrated by the BLM Manager's written approval of a FAR. The Survey and Recordation permit no longer authorizes any form of excavation or removal, including so-called "probing." This also replaces existing guidance in BLM Manual 8150.11.D.1 (December 2004). Non-BLM personnel anticipating the need to excavate or remove archaeological remains subject to ARPA (including "probing" or collecting of any kind) must file a separate application with the Nevada State Office and receive either an approved Limited Testing and/or Collection permit or an Excavation and/or Removal permit, as appropriate.

1. The Survey and Recordation permit (BLM Manual 8150.11D.1) may be issued to qualified persons and/or firms for purposes of authorizing archaeological surface inventory using reconnaissance, Class II and Class III inventory methods, as the latter categories are defined in BLM Manual 8110.21.B-C and 8110.22.A. Survey and Recordation permits are required for persons and/or firms to conduct identification of archaeological resources in relation to land use applications (for purposes of Section 106), typically using Class III inventory standards, as well as for research projects (e.g., Section 110 purposes). Survey and Recordation permits issued by the Nevada State Office typically are multi-year in nature and may not be specific to a project or a site. Project- or site-specific authorizations are made by the BLM district or field office by means of an approved FAR.

Survey and Recordation permits are issued by the Nevada State Office under authority of the Federal Land Policy and Management Act of 1976, Section 302(b). No excavation or removal of archaeological resources is authorized by Survey and Recordation permits issued by the Nevada State Office; approval for excavation and/or removal of archaeological remains can only be authorized under the ARPA.

2. The Limited Testing and/or Collection permit entails small-scale testing and/or systematic collection and removal of archaeological remains. BLM Nevada issues Limited Testing and/or Collection permits under authority of ARPA. These are project-specific permits and are not issued on a general basis as the Survey and Recordation permits are issued. This level of investigation is typically conducted to determine eligibility of resources for the National Register of Historic Places (NRHP) or to assess research potential, or to aid in determination of mitigation strategies. This level of investigation should not substantially alter the significance or future research potential of the site. Prior to issuance, applications for Limited Testing and/or Collection permits must be reviewed by the BLM Manager for the potential for harm to, or destruction of, any Indian tribal religious or cultural site (BLM Manual 8150.12.B.7). After permit issuance by the Nevada State Office, the BLM Manager is responsible to review and to approve or to deny the FAR.

3. Excavation and/or Removal permits may be authorized for work at a greater scale than under a Limited Testing and/or Collection permit; such work usually results in substantial alteration of the significance or research potential of a site. BLM Nevada issues Excavation and/or Removal permits under authority of ARPA. These are project-specific permits and are not issued on a general basis as the Survey and Recordation permits are issued. This level of investigation—often referred to as data recovery—is frequently part of a mitigation strategy where destruction of an archaeological resource eligible for the NRHP is anticipated due to a related land use development. Such mitigation is conducted under terms of a BLM-approved research design. Prior to issuance, applications for excavation and/or removal permits must be reviewed by the BLM Manager for the potential for harm to, or destruction of, any Indian tribal religious or cultural site (BLM Manual 8150.12.B.7). After permit issuance by the Nevada State Office, the BLM Manager is responsible to review and to approve or to deny the FAR.

C. Definition of Site of Religious or Cultural Importance (43 CFR 7.32(a)). The BLM Handbook H-8120-1 emphasizes the location, nature, scale and timing of permitted or authorized activities and the related potential for effects on tribal use should be the focus of notification and consultation discussed here. Under ARPA, a site of religious or cultural importance is a location which has traditionally been considered important by an Indian tribe because of a religious event which happened there; it contains specific natural products which are of religious or cultural importance; it is believed to be the dwelling place of, the embodiment of, or a place conducive to communication with spiritual beings; it contains elements of life-cycle rituals, such as burials and associated materials; or it has other specific and continuing significance in Indian religion and culture.

As noted in the BLM Handbook H-8120-1, the phrase “site of religious or cultural importance” cannot necessarily be expected to correspond to the meaning of an “archaeological site.” A site of religious or cultural importance may occur in the absence of archaeological resources or in their presence. There is no ARPA requirement relating to concepts of “significance” or “eligibility” as those terms may appear in relation to the National Historic Preservation Act (NHPA) and Section 106 or related regulations.