

Split Estate

**Cultural Resource
Requirements on
Private Surface –
Federal Minerals
for Oil and Gas
Development**

2008





The BLM manages approximately 58 million acres of federal mineral estate beneath privately owned surface. The BLM is responsible for the leasing and development of those minerals through various laws, regulations, and procedures. The BLM is also required by Section 106 of the National Historic Preservation Act to take into account the effects that leasing and development of oil and gas and other minerals have on cultural resources.

Legal Authority

The National Historic Preservation Act of 1966 (as amended through 2000) (16 U.S.C. 470h-2)

The National Register of Historic Places

The National Historic Preservation Act established the National Register of Historic Places. This program is managed by the National Park Service. It is the nation's official list of cultural resources worthy of preservation.

Definition of Cultural Resources

A cultural resource is a definite location of human activity, occupation, or use. Cultural resources are identifiable through field survey, historical documentation, or oral evidence. Cultural resources include archaeological, historical, or architectural sites, structures, and places of important public and scientific value. They may include definite locations of traditional cultural or religious importance to specific social or cultural groups, such as Indian tribes.

Federal Agency Responsibilities

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their actions on cultural resources that are eligible for or listed on the National Register.

Regulations which implement section 106 lay out a process that federal agencies must follow when they are considering an action that may affect cultural resources. Federal agencies must determine the area of potential effect and identify cultural resources within that area. They must determine

if the resources are eligible for the National Register and assess project effects. They must seek to avoid, minimize or mitigate any adverse effects on National Register listed or eligible resources. Section 106 requires a consultation process and agencies must complete the process before approving the action.

State Government's Role

The State Historic Preservation Office is a key consulting party in the section 106 process. It is responsible for maintaining a statewide database of cultural resource surveys and cultural resources and for assisting Federal agencies in carrying out their historic preservation responsibilities. Requirements may vary between States.

Cultural Resource Survey on Private Surface

The BLM must determine whether a proposed Federal action, such as approving oil and gas development, may have an effect on cultural resources located on private surface. Unless an area has already been surveyed, an on-the-ground survey is usually necessary to accurately identify cultural resources. The survey is typically limited to the general area that may be affected by the proposed development action and an adjacent buffer zone.

Cultural resource surveys are conducted by professionally trained archaeologists. Most surveys are surface surveys. Occasionally subsurface testing is needed to identify or evaluate cultural resources. Identified cultural resources are documented. They are then evaluated for their National Register of Historic Places eligibility.

Important sites that cannot be avoided and would be disturbed by oil and gas development may have to be fully excavated to recover scientific information that would be lost. The private surface owner can request a copy of the cultural resources information obtained by the excavation. All cultural resources and artifacts located on private surface are the property of the private surface owner. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

	The Bureau of Land Management	The Lessee/ Operator	The Private Surface Owner
Cultural Resource Survey	<p>Has a right to access private property for oil & gas development on leased federal minerals.</p> <p>Has a legal responsibility to identify and consider the effects to cultural resources on private land that result from a federal action.</p>	<p>Has the right to access the property in order to conduct a survey prior to developing minerals.</p> <p>Is responsible for making access arrangements with the surface owner prior to entry upon the lands for the purpose of survey.</p> <p>May provide for that access through a surface use agreement with the land owner.</p> <p>Is responsible for notifying the private surface owner when the survey is to be conducted.</p>	<p>Must allow for a survey and other cultural resource work, including excavation, when BLM determines that it is necessary.</p>
Identified Cultural Resource	<p>Prefers to avoid cultural resources by redesigning the project.</p> <p>May require excavations to preserve scientific information.</p>	<p>May have to redesign the project or provide resources necessary for other mitigation measures such as recovery of scientific information about the resource.</p>	<p>Owns the cultural resource and is consulted on the appropriate treatment for the federal action.</p> <p>Has the right to determine how the cultural resource is used after completion of the federal action.</p> <p>Is encouraged to protect cultural resources on his or her land.</p>
Artifact Collection	<p>May require the removal of artifacts for study.</p> <p>Will ensure that the artifacts are returned to the landowner or deposited in a qualified museum.</p>	<p>Is responsible for ensuring that their personnel do not collect artifacts.</p> <p>Is responsible for ensuring that their staff reports the discovery of artifacts to an authorized BLM official.</p>	<p>Has the right to request that artifacts be returned after study. May donate returned artifacts to a museum or the BLM.</p>
Cultural Resource Information	<p>Must report on the survey and any excavation, and provide cultural resource information following State and Federal standards.</p> <p>Must maintain the records at the local field office and the State Historic Preservation Office.</p> <p>Requires that cultural resource locations are confidential and not accessible by the public.</p>	<p>Must not release confidential cultural resource information.</p>	<p>Can request a copy of the report and cultural resource record pertaining to their property.</p> <p>Is encouraged to keep cultural resource locations confidential.</p>

