ABANDONED MINE LAND EMERGENCIES - COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

This appendix reaffirms that the procedures set out in the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR Part 800 to protect historic and archeological resources will be followed when conducting Abandoned Mine Land (AML) emergency abatement. These procedures implement the Section 106 process of the National Historic Preservation Act (NHPA) which requires a review to determine the effect on historic properties[1] of Federal or federally assisted undertakings such as emergency abatement projects.

This appendix sets out the steps to follow when emergency construction can be initiated within 30 days of the Office of Surface Mining Reclamation and Enforcement (OSM) declaring the emergency. If construction cannot be initiated within 30 days of OSM declaring the emergency, the regular (NHPA) procedures must be followed, <u>except in no event will an emergency action necessary to prevent substantial physical harm to the health, safety, or general welfare of people be delayed in order to meet NHPA requirements</u>.

Under the Federal emergency program, OSM is responsible for all the activities set out below. Under State managed emergency programs, the State is responsible for all activities except documenting findings in the "Finding of Fact and Funding Paper" and deciding if immediate action must be taken to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

The first step under the review process is determining whether any historic properties listed or eligible for listing on the National Register of Historic Places, including archeological resources, might be affected by the emergency abatement project. While few emergency projects potentially affect historic properties, this must be determined for each emergency abatement project.

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[1] "Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register [of Historic Places]. This term includes for the purpose of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria. (36 CFR Ch. VII, § 800.2 (e))

a. <u>If no historic properties are found that may be affected by the emergency abatement project</u> - This is documented in the briefing paper (Federal Reclamation Program) or "Finding of Fact and Funding Paper" (State/Tribe managed emergency program). A copy of this documentation is to be provided to the State Historical Preservation Officer (SHPO)/Tribal leaders (in the remainder of this document, SHPO also includes Tribal leaders if the problem is on Tribal lands). No further steps in the Section 106 process are required.

b. <u>If a historic property is found that may be affected by the emergency abatement project</u> - For the Federal Reclamation Program (FRP), the OSM official declaring the emergency (OSM) will contact the SHPO. For a State managed emergency program, the State AML organization (State) will contact the SHPO.

In consultation with the SHPO, OSM/State will apply the Criteria of Effect, pursuant to 36 CFR Part 800.9(a), [See Attachment A] to the historic property that may be affected. If no effect is found, OSM/State notifies the SHPO and documents the findings in the briefing paper (in the remainder of this document "briefing paper" refers to both the "FRP Briefing Paper" or "Finding of Fact and Funding Paper", whichever is appropriate). If the SHPO has no objections, this will be noted in the briefing paper. OSM/State will photograph the property (See Attachment B). No further steps in the Section 106 process are required.

If the SHPO does have concerns that the emergency abatement may adversely affect a historic property, OSM/State will make a reasonable attempt to resolve the concerns before initiating the emergency abatement. When the SHPO's concerns can be resolved the briefing paper will state (1) how the abatement will impact a historical property, including a description of the property, (2) the concerns expressed by the SHPO, and (3) how the SHPO's concerns were resolved, including the agreed upon information to be sent to the SHPO. After the abatement has been accomplished, any agreed upon information will be sent to the SHPO. A copy of the information provided the SHPO will be included with the emergency project's final report.

If the SHPO's concerns cannot be resolved and OSM judges that immediate action must be taken, OSM will first document in the briefing paper:

> Why emergency abatement must be initiated immediately to prevent immediate substantial physical harm to the health, safety, or general welfare of people.
>
> A description of the SHPO's concerns.

A description of the emergency abatement to be conducted without resolving the SHPO's concerns, its impact on the historic property(s), and the measures and procedures to be used to avoid or minimize harm to historic properties.

OSM/State will photograph the property (See Attachment B), and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people.

Later OSM/State will provide the SHPO with photographs (See Attachment B) and maps along with a description of the actual impact on the property. A copy of the information provided the SHPO will be included with the emergency project's final report. If additional work is required to complete the abatement, the regular NHPA procedures must be followed.

If it is not possible to contact the SHPO (for example, on a weekend) and OSM determines that immediate action must be taken, photograph (See Attachment B) the property, and then take only that emergency action required to prevent immediate substantial physical harm to the health, safety, or general welfare of people. Note in the briefing paper that an unsuccessful effort was made to contact the SHPO. At the first opportunity, notify the SHPO. Later OSM/State will provide the SHPO with photographs (See Attachment B) and maps along with a description of the actual impact on the property. A copy of the information provided the SHPO will be included with the emergency project's final report. If additional work is required to complete the emergency abatement, it will be done in accordance with the regular NHPA procedures.

36 CFR Ch. VII, § 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of the regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's [Secretary of the Interior] "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Appendix 10

Attachment B

Guideline for Photographs of Historic Properties

It is recommended that the SHPO be contacted beforehand to determine what is required of photographs of historic properties. In lieu of specific guidance from the SHPO, the following guidelines should be followed.

Photograph Type: Use color or black and white film. Polaroid type photographs are not acceptable.

Buildings or structures:

Environment or context: Photograph should show the environment or context in which the property is located.

Elevations: Photographic record must include elevations or sideviews which show the entire length and/or width of the building or structure. Elevations are used to identify the style of the building or structure and the type of construction.

Elements: Elements are large portions of the building or structure such as walls and roofs, that contain repeated features such as doors, windows and large decorative details. Parts composing the elements of the building or structure such as porches, entryways and large significant decorative aspects should be photographed. Machinery should be photographed.

Details of the Features: Close-up photographs of unusual windows, doors, and repeated designs and motifs. Also include views of typical work methods and materials.

Historic and archeological sites: Photographs should document the condition of the site and present features. If relevant to the evaluation of significance, photographs may also show artifacts that have been recovered from the site. Photographs must show the physical environment and land configuration of the site.

Identification: Identification of photographs should be detailed but concise and contain the following:

The name of property/site

The location: (State, county, city and address (if relevant), and emergency project name and number.)

The date of photograph

Appendix 10

Attachment B

The photograph number

The role and negative number

Location where the negative is stored

A description of what the photograph is showing