State-Tribal Relations IC
April 4, 2012
Fort Peck Reservation
EXHIBIT 2

Cultural and Historic Preservation: Three Approaches

Prepared by Casey A. Barrs, Legislative Services Division

Features:	Current MT antiquities law	Alternate wording	LC-6666
Land affected	Applies to "Heritage property" on state-owned land. Heritage property = "any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture."	No change to current law.	Current law plus: • Shall not be limited to lands owned by the state or reservation lands but shall include potential *traditional cultural places* on all lands in the state within historic tribal ranges and ancestral homelands. • Tribal traditional cultural place (a place significant to Indian tribes because of association with cultural practices, traditional knowledge and beliefs or other religious and cultural significance such as sacred sites based on tribal history, cultural patrimony and continuing cultural identity, or traditional knowledge and cultural heritage). • Extends to pre-contact history.
Trigger (Prompts agency duty to consult)	"State actions or state assisted or licensed actions" (Undertakings that require a MEPA review, i.e., projects requiring a state permit, lease, license, certificate, etc., or projects funded by or	Same as current law.	Current law plus: • Undertakings that require an environmental impact statement under the Major Facility Siting Act.

	through a state agency via contract, grant, subsidy, or loan—such as land acquisition, highway/road construction, state park development, rulemaking, grazing lease, and permits for hard rock mining, power plants, oil & gas drilling, and water use.)		
Consultation	• Does not define consultation • Refers to consultation with the historical society and the historic preservation office, but does not refer to tribal leadership and/or tribal historic preservation officers.	Goes beyond current law and LC-6666: • Address/reinforce confidentiality • More concrete than "reasonable and good faith": (1) Contact between authorized nodes. (2) Define modes of communication and essentials to be communicated. (3) Determine *agency and tribal* protocols.	• "Reasonable and good faith effort to seek, discuss, and consider the views of others". • Consult as early as possible in the planning process.
Protocols / MoUs	No mention of Memoranda of Understanding to clarify/ secure protocols	Urges *agency and tribal* protocols to be secured in MoUs. Is more defined that LC-6666 new section on Memoranda of Understanding.	Urges Memoranda of Understanding, but with no detail.
Penalty	Fine $1,000 or imprisonment not more than 6 months, or both, if convicted for violation of: 22-3-432: Cannot excavate, remove, or restore any heritage property or remains without an Antiquities permit.	No change.	• No change to penalty for violation of 22-3-432, 22-3-435, 22-3-441. • Adds "accountability and appeal" for violation of 22-3-424 (Duties of state agencies); 22-3-429 (Requests for consultation -- public notice --

	22-3-435: Requires reporting of discovered heritage properties or paleontological remains, or of operations that may damage the same. 22-3-441: Cannot reproduce or falsely identify any heritage property or paleontological remains with the intent to sell them as an original nor sell such knowing that they have been obtained in violation of the law.		appeal of findings); 22-3-430 (Avoidance and mitigation of impacts); and 22-3-433 (Environmental review process) • Penalty = (1) Explain to tribe and to Governor's offices "circumstances of that violation and systemic efforts towards a solution"; and (2) Tribe may seek remedy "in either district court in Lewis and Clark County or in the county where the heritage property is located."