

FEDERAL REGULATIONS AND THE DEPARTMENT OF THE NAVY'S CULTURAL RESOURCE RESPONSIBILITIES

Since the 1960s, Congress has passed a series of laws that protect cultural resources and require all federal agencies to integrate historic preservation into the overall planning and development of programs that might have an impact on the historic integrity of a particular building, site, structure, or object. This legislation not only provides for the preservation of historic and archeological resources, but also protects sites and artifacts sacred to native peoples of the United States. While each law addresses a specific and important aspect of preservation, the NHPA of 1966 (including Section 106 and Section 110) most significantly affects historic resources like those at NWIRP Dallas, Texas because the act describes the process through which properties are listed in the NRHP and are maintained to preserve their integrity.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA) (42 U.S.C. 4321, ET SEQ.; P.L. 91-190; 40 CFR 1500-1508)

The National Environmental Policy Act (NEPA) states that “To the fullest extent possible ... all agencies of the federal government shall ... insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” It sets goals and provides means for carrying out environmental policy, requires public participation in the planning process, and requires consultation with agencies or technical experts who have participated in the project planning process and have provided significant information and recommendations. NEPA also requires the preparation of a detailed statement on the environmental impact of major federal actions that significantly affect the environment to ensure that environmental information is available to citizens before decisions are made and major federal actions are taken.

ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974 (AHPA)(16 U.S.C. 469-469C; P.L. 86-523)

The Archaeological and Historic Preservation Act (AHPA) of 1974 provides for the preservation of historical and archeological data that might otherwise be irreparably lost or destroyed as a result of flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and any alteration of the terrain caused by federal construction projects or federally funded licensed activities or programs. The Act also requires federal agencies to notify the Secretary of the Interior of any

dam construction. Furthermore, AHPA stipulates that if archeological resources are found, the agency must provide for their recovery or salvage. The law applies to any agency whenever it receives information that a direct or federally assisted activity could cause irreparable harm to prehistoric, historic, or archaeological resources.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979 (ARPA) (16 U.S.C. 470AA-470LL; P.L. 96-95; 43 CFR 7; 36 CFR 79)

The Archaeological Resources Protection Act of 1979 (ARPA) preserves and protects resources and sites on federal and Indian lands by prohibiting the removal, sale, receipt, or interstate transportation of archaeological resources obtained illegally (i.e., without permits) from public or Indian lands. Protected resources include historical and cultural properties and any material remains of past human life or activities that are of archaeological interest. The Act fosters cooperation between governmental authorities, professionals, and the public. It also authorizes federal agencies to issue permits for investigations of archaeological resources on public lands under the agency's control and provides the procedures for doing so. Permits are required to excavate and remove cultural remains covered by ARPA. The purpose of the ARPA permit process is to ensure that individuals and organizations wishing to work with federal resources have the necessary professional qualifications, and federal standards and guidelines for research and curation are followed. The process allows the SHPO to review and comment on ARPA permit applications. The ARPA permit replaces the permit required by the Antiquities Act of 1906.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 (42 U.S.C. 1996, ET SEQ.; P.L. 95-341; 43 CFR 7)

The American Indian Religious Freedom Act of 1978 states that it is the responsibility of the U.S. government to protect and preserve American Indian, Eskimo, Aleut, and Native Hawaiians' freedom of religion. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites. Furthermore, the NHPA ensures that tribal values are taken into account by requiring federal agencies to allow tribes to establish their own culturally specific criteria of significance.

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990 (NAGPRA) (25 U.S.C. 3001-13; P.L. 101-601)

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) provides for the protection of Native American and Native Hawaiian cultural items, and establishes a process for the removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony from sites located on lands owned or controlled by the federal government. NAGPRA also explains the transfer of ownership of cultural items to Native American or Native Hawaiian individuals (e.g., direct lineal or cultural descendants), organizations, or tribes. It addresses the recovery, treatment, and repatriation of Native American and Native Hawaiian cultural items by federal agencies and museums. In accordance with Section 3(c) (25 U.S.C. 3002), federal agencies should not claim ownership or permanent control of specified cultural items discovered on federal or tribal lands after 16 November, 1990 in the following instances:

- When lineal descendants who claim human remains and associated funerary objects are identified.
- When the Native American tribe or Native Hawaiian organization with the closest affiliation presents the strongest claim.
- When the tribe or organization that aboriginally occupied the territory presents the strongest claim. NAGPRA distinguishes between pre- and post-enactment (16 November, 1990).

The Act contains data gathering, reporting, consultation, and permitting guidelines. The emphasis of NAGPRA is on consultation with Native American tribes and Native Hawaiian organizations to ensure that these guidelines play a major role in the treatment of specific cultural objects.

NATIONAL HISTORIC PRESERVATION ACT OF 1966 AND THE NATIONAL REGISTER OF HISTORIC PLACES (16 U.S.C. § 470)

The Department of the Navy's primary obligations to cultural resources under its stewardship stem from the enactment of the NHPA of 1966, an official federal list of historical and cultural properties that are significant in the history, architecture, archeology, engineering, and culture of the United States. Impetus for the passage of the Act derived largely from the disregard that federal agencies often demonstrated toward the impact of their projects and policies on historic properties. Urban renewal, dam, and highway construction of the 1950s and 1960s destroyed innumerable historic properties that were important, if not on a national or state level, certainly on a local

one. The most important provision of the NHPA was the establishment of the NRHP, the nation's official list of properties that are worthy of preservation. Passage of the NHPA of 1966 not only established the NRHP, but also designated the NPS, part of the U.S. Department of the Interior, as administrator of the program at the federal level. The NHPA also authorized SHPOs in every state to direct and coordinate the NRHP program within their jurisdiction. In addition, federal agencies are directed to designate Federal Preservation Officers to coordinate and implement preservation-related activities within their respective agencies. As a result of the NHPA, federal agencies became active participants in national preservation efforts. The NHPA outlined policies and regulations to implement the program. Two sections of the Act, Sections 106 and 110, list the government's responsibilities to preserve historic resources.

SECTION 106 OF THE NHPA

Section 106 requires federal agencies to consider the impact of their actions on significant historic properties and to implement mitigative procedures to offset the Effects of such projects. As stated in Section 106, the head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the NRHP. A more detailed discussion of Section 106 appears later in this report.

SECTION 110 OF THE NHPA

Section 110 lists all federal agency responsibilities for the preservation of historic properties under its jurisdiction. To comply with Section 110, an agency must:

- Assume all responsibility for historic properties within its control.
- Undertake any necessary measure of preservation to comply with this section.
- Designate a qualified preservation officer to coordinate the agency's activities under the Act.
- Locate all agency-controlled historic properties and nominate them to the NRHP.

- Ensure that historic properties are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.
- Document any historic properties that must be damaged or destroyed.
- Use available historic properties for acceptable agency purposes when feasible.
- Include the costs of preservation activities as eligible project costs (which may include amounts paid to a state government when carrying out preservation responsibilities).
- Impose reasonable charges to federal licensees and permittees.

TYPES OF PROPERTIES ELIGIBLE FOR THE NRHP

The NRHP includes a diverse collection of properties that represents virtually all aspects of the built environment. The NHPA defines four kinds of properties that can be eligible for the NRHP, and each has a very specific denotation. As stated in the NHPA, the types of resources are:

Building—an edifice created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. The designation “building” may refer to a historically related complex such as a courthouse and jail, or a house and barn. A building can include grand, architect-designed residences, churches, schools, or stores, as well as modest, vernacular buildings.

Site—location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. A site can mark the location of a battlefield, a rock midden Native American village, or an early milling operation.

Structure—a work made of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project that is large in scale, such as a bridge or trestle.

Object—a material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. An

object can be public art, a mode of transportation, or infrastructural features.

Properties can be considered on an individual basis or grouped together as a historic district. If considered as a group within a historic district, the properties should share a common history and/or physical traits that collectively convey a sense of time and place. A district encompasses a well-defined area that is distinct from its surroundings and whose boundaries are logically established. Typically, the majority (at least 50 percent) of the extant resources within a district must retain sufficient integrity to enhance the district's historic character and are classified as Contributing Properties. Severely altered historic or nonhistoric resources within a district are classified as Noncontributing Elements and slightly improve, do not improve at all, or detract from the district's overall historic character.

NRHP CRITERIA

To be eligible for the NRHP, a property or historic district must typically be at least 50 years old, must retain integrity, and meet at least one of the four following criteria:

- A. Be associated with events that have made a significant contribution to the broad patterns of our history.
- B. Be associated with the lives of persons significant in our past.
- C. 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.
- D. Has yielded, or may be likely to yield, information important in prehistory or history.

Exceptions to the four criteria, known as Criteria Considerations, do exist. Cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; buildings or structures that have been moved from their original locations; reconstructed historic buildings; properties that are primarily commemorative in nature; and other properties that have achieved significance within the past 50 years are not considered eligible for the NRHP. However, such properties will qualify if they are integral parts of districts or conform to the following criteria:

- A. A religious property deriving primary significance from architectural or artistic importance.
- B. A building or structure removed from its original location but which is significant primarily for architectural value, or is the surviving structure most importantly associated with a historic person or event.
- C. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his or her productive life.
- D. A cemetery that derives its primary significance from graves of persons of transcendent importance, from distinctive design features, or from association with historic events.
- E. A reconstructed building when accurately executed in suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.
- F. A property primarily commemorative in intent of design, age, tradition, or symbolic value that has invested it with its own historical significance.
- G. A property achieving significance within the past 50 years if it is of exceptional importance.

Properties in the NRHP can be listed at the national, state, or local level of significance and can be honored individually or as part of a historic district. The vast majority of properties included in the NRHP are listed at the local level of significance. In addition, most are recognized for their architectural merits (NRHP Criterion C), although some are considered noteworthy for their historical associations (NRHP Criteria A and B) or for their potential to enhance our understanding of the past (NRHP Criterion D).

INTEGRITY: THE FOUNDATION FOR NRHP ELIGIBILITY

Because integrity is a requisite for NRHP eligibility, defining integrity and understanding how it applies to NRHP consideration are critical to effective cultural resource management. The Secretary of the Interior defines integrity as “the ability of a property to convey its significance,” and lists the following Seven Aspects of Integrity as effective guides for its assessment:

Location—the place where the historic property was constructed or the place where the historic event occurred.

Design—the combination of elements that create the form, plan, space, structure, and style of a property.

Setting—the physical environment of a historic property.

Materials—the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.

Workmanship—the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory.

Feeling—the property’s expression of the aesthetic or historic sense of a particular period of time.

Association—the direct link between an important historic event or person and a historic property.

The seven Aspects of Integrity are based primarily on the physical attributes of a historic resource; however, the NHPA also allows for historically significant properties to be eligible for the NRHP under Criterion A, B, or D. These properties need not retain their integrity to as high a degree as a property that is significant for its architectural or engineering merits (Criterion C), but they should retain sufficient physical integrity and appear much as they did when they achieved significance.