

A SUMMARY OF MAJOR FEDERAL LEGISLATION RELATING TO HISTORIC PRESERVATION

The Federal Land Policy and Management Act of 1976 (FLPMA)

- The Bureau of Land Management is directed to manage public lands in a manner that will “protect the quality of...archaeological values.”

Archaeological values have scientific, public, and cultural dimensions. Archaeological sites hold information valuable for scientific and historical research. Public values may be expressed in recreational and educational pursuits, such as visiting historical sites and participating in scientific investigations. Cultural values may contribute to maintaining the traditional beliefs or cultural identity of Indian tribes or other groups. Stakeholders include professional and avocational archaeologists and historians; people pursuing educational and recreational opportunities focused on prehistoric and historic sites; Native Americans; and other groups that may have strong, long-term ties to specific places.

The 8100 series is the BLM’s manual series relating to the management of archaeological sites and other cultural heritage resources. Manual 8120 and Handbook H-8120-1 address tribal consultation.

The National Historic Preservation Act of 1966 (NHPA), as amended.

- Declared a national policy of historic preservation, including the protection of structures, buildings, districts, and sites significant in American history, archaeology, and architecture.
- Directed an expansion of the National Register of Historic Places, a listing of significant prehistoric and historic sites, to include properties and districts of local, state, and national significance.
- Section 106 directs federal agencies to consider the effects of their undertakings (actions and authorizations) on properties listed on or eligible for the National Register. To be eligible, a site must be at least 50 years old (with some exceptions, for example Elvis Presley’s Graceland mansion and significant Cold War sites); it must have integrity (be in good condition within a fairly intact setting); and it must be significant in terms of an association with an important historical event, person, or architectural style, or in terms of its potential to yield important information.
- The Advisory Council on Historic Preservation and the State Historic Preservation Officers were established to oversee the process of consultation conducted as part of Section 106 compliance procedures, detailed in the regulations at 36 CFR 800.

- Section 110 directs federal agencies to establish programs for the identification, evaluation, and protection of archaeological and historic sites, including nominations to the National Register.
- NHPA mandates consultations with Indian tribes, other government agencies, and the interested public.
- Section 304 states that site locations can be withheld from disclosure to the public, if such information could risk harm to the site.

Antiquities Act of 1906

- Established criminal sanctions for unauthorized destruction or appropriation of antiquities.
- Required permits to conduct scientific investigations of antiquities (including archaeological sites) on federal lands.
- Enabled the establishment of national monuments.

The Archaeological Resources Protection Act of 1979 (ARPA), as amended.

- Passed as a result of a legal case that declared the Antiquities Act “vague” and essentially unenforceable in terms of criminal sanctions.
- Established a policy of protection of the nation’s archaeological resources to prevent loss and destruction resulting from “uncontrolled excavations and pillage.” “Archaeological resources” were defined as at least 100 years old. Paleontological resources (fossils) are not included unless found in an archaeological context.
- Established procedures to issue permits to authorize scientific excavations and the removal of archaeological resources.
- Defined the unauthorized excavation, removal, damaging, or defacing of archaeological resources as “prohibited acts” and provided for criminal and civil penalties. The penalties may include fines up to \$250,000; prison sentences up to 5 years; and forfeiture of vehicles and equipment used in committing the violation.
- Prohibited the sale, transportation, or exchange, in interstate or foreign commerce, of any archaeological resource illegally removed in violation of ARPA or any regulations or permits in effect under state or local laws. Under this provision, ARPA violations could occur even if the materials were removed from state or private lands.

- Established rewards for informants, not to exceed \$500.
- ARPA and NHPA provide the basis for including site locations under Exemption 3 of the Freedom of Information Act (FOIA); this information is protected from disclosure.

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

- Established Native American rights of ownership of Native American human remains and associated funerary (burial) objects, and “sacred objects and objects of cultural patrimony.”
- Established criteria for determining the cultural (tribal) affiliation of such items and for resolving related disputes.
- Required inventories of all such items and objects held by museums, federal agencies, and other institutions holding collections taken from federal lands.
- Addressed procedures for determining the treatment of such items when they are discovered during scientific excavations, construction projects, or “unanticipated discovery” situations. The associated consultation process may cause temporary work stoppages that may affect project schedules.
- Addressed procedures for the repatriation (return) of these remains and objects to affiliated tribes.
- Established penalties for possession, sale and exchange of the protected objects.

The National Environmental Policy Act of 1969 (NEPA)

- The “declaration of national environmental policy” includes the intent to “preserve important historic, cultural, and natural aspects of our national heritage.” Cultural resources (archaeological sites, as well as sacred sites and “traditional cultural places”) are addressed in analyses of project impacts prepared for environmental assessments and environmental impact statements.