

Appendixes

Cultural Resources Management Laws and Regulations

Laws

The Antiquities Act of 1906 (Public Law 59-209; 34 Stat. 335; 16 U.S.C. 431 -433): provided for the protection of historic, prehistoric, and scientific remains, “or any object of antiquity, ” on Federal lands; established criminal sanctions for unauthorized destruction or appropriation of antiquities; authorized the President to declare by proclamation national monuments; and authorized the scientific investigation of antiquities on Federal lands, subject to permit and regulations. It required that the parcel of land set aside be “the smallest area compatible with the proper care and management of the objects to be protected. ”

The National Park Service Organic Act (Act of Aug. 26, 1916, 39 Stat. 535, 16 U.S.C. 1 -4): Established the National Park Service. “[It] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purposes of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

The Historic Sites Act of 1935 (Public Law 74-292; 49 Stat. 666; 16 U.S.C. 461 -467): authorized the programs that are known as the Historic American Buildings Survey, the Historic American Engineering Record, and the National Survey of Historic Sites and Buildings; authorized the establishment of National Historic Sites and otherwise authorized the preservation of properties “of national historic or archaeological significance”; and authorized the establishment of museums in connection therewith; authorized the designation of National Historic Landmarks; established criminal sanctions for violation of regulations pursuant to the act; authorized interagency, intergovernmental, and interdisciplinary efforts for the preservation of cultural resources; and other provisions. The first efforts to salvage archaeological data that would otherwise be lost were done under the authorities of this act beginning with the River Basin Survey in 1946.

The National Trust Act of 1949 (Public Law 81 -408; 63 Stat. 927): facilitated public participation in the preservation of sites, buildings, and objects of national significance or interest. It created the National Trust for Historic Preservation and empowered it to acquire and hold property for historic preservation purposes; enter into contracts and agreements to further the policies enunciated in the Historic Sites Act; sue and be sued; and perform other lawful acts to carry out the purposes of the National Trust.

The Management of Museum Properties Act of 1955 (Public Law 69 Stat. 242; 16 U.S.C. 18f): commonly known as the Museum Act of 1955, this act authorizes certain management actions to be taken with regard to objects in National Park Service museum collections, including accepting donations or bequests, making purchases from donated funds, making exchanges, and receiving and granting loans of properties.

The Reservoir Salvage Act of 1960 (Public Law 86-523; 74 Stat. 220; 16 U.S.C. 469-469 c): indicated further concern with cultural resources recovery and reemphasized the need to recover data. The act provided for the recovery and preservation of “historical and archeological data (including relics and specimens)” that might be lost or destroyed as a result of the construction of dams, reservoirs, and attendant facilities and activities (see also the 1974 amendment to this act).

The Department of Transportation Act of 1966 (Public Law 89-670; 80 Stat. 931): stated in Section 4(f) that the Secretary of Transportation “shall not approve any program or project which requires . . . the use of . . . any land from a historic site . . . unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such . . . historic sites resulting from such use. ”

The National Historic Preservation Act of 1966 (Public Law 89-665; 80 Stat. 915; 16 U.S.C. 470): declared a national policy of historic preservation, including the encouragement of preservation on the State and private levels; provided authority for the expansion of the National Register of Historic Places to include cultural resources of State and local as well as national significance; authorized matching Federal grants to the States and the National Trust for Historic Preservation for the acquisition and rehabilitation of National Register properties; established the Advisory Council on

¹National Park Service and OTA.

Historic Preservation; provided certain procedures to be followed by Federal agencies in the event of a proposal that might have an effect on National Register properties; defined the term *historic preservation* as “the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, or culture.”

The National Environmental Policy Act of 1969 (Public Law 89-665; 80 Stat. 915; 16 U.S.C. 470): declared in Section 101-B(4) that it is the policy of the Federal Government to “reserve important historic, cultural and natural aspects of our national heritage.” In order to carry out this policy, the act required an interdisciplinary study of the impacts associated with Federal programs.

Public Law 91-243, May 9, 1970: amended the National Historic Preservation Act of 1966 by extending the funding for the program through 1973, increasing the membership of the Advisory Council on Historic Preservation, and authorizing the participation of the United States as a member in the International Center for the Study of Preservation and Restoration of Cultural Property, and authorized funds for this purpose.

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 F.R. 8921): instructed all Federal agencies to provide national leadership in historic preservation, to ensure the preservation of cultural properties in Federal ownership, and to “institute procedures to assure that federal plans and programs contribute to the preservation and enhancement of nonfederally owned sites, structures, and objects of historical, architectural, or archeological significance.” The order specifically directed all Federal agencies to “locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.” The order further established procedures to be followed by all Federal agencies pending completion of the cultural resources inventories. **The 1980 amendments to the NHPA contained similar mandates for survey and inventory and these guidelines have cited the act rather than the Executive order, where appropriate.**

The Archeological and Historical Preservation Act of 1974 (Public Law 93-291; 88 Stat. 174): amended the 1960 Salvage Act, provided for the preservation of significant scientific, prehistoric, historic, or archaeological data (including relics and specimens) that might be lost or destroyed as a result of: 1) the construction of dams, reservoirs, and attendant facilities and activities; or 2) any alteration of the terrain caused as a result of any Federal construction project or fed-

erally licensed project, activity, or program. It also required that the Secretary of the Interior be notified of impending loss of such resources, and that the agency or the Secretary may survey and recover the data, then publish the results. It provided for agreement on time limits for initiation and completion of survey and recovery efforts. It required the Secretary to coordinate, report on, consult with experts about, and distribute funds appropriated for this survey and recovery efforts. It provided that up to 1 percent of the total amount authorized to be appropriated for the Federal activities be transferred to the Secretary for implementation of the act, as well as providing for prior compliance with Section 106 of the National Historic Preservation Act of 1966 with regard to properties listed in or eligible for listing in the National Register of Historic Places.

Public Law 94-458; 90 Stat. 1939, October 7, 1976 (90 Stat. 1939): amended Public Law 89-665 (80 Stat. 915; 16 U.S.C. 470(c) by adding a new paragraph as follows: “(4) to withhold from disclosure to the public, information relating to the location of sites or objects listed on the National Register whenever he determines that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.” Section 12 of this law required the preparation of general management plans for each unit of the National Park System, including the National Capital Region, and transmittal to the Committees on Interior and Insular Affairs.

American Folklife Preservation Act of 1976 (Public Law 94-201, 89 Stat. 1130, 20 U.S.C. 2101-2107): declared that because American folklife has made such a great contribution to this Nation’s cultural richness and sense of individuality and identity, it is therefore the policy of the United States to “preserve, support, revitalize, and disseminate American folklife traditions and arts” The act also defined American folklife; established the American Folklife Center and described its organization; and authorized the Librarian of Congress to: 1) promote various American Folklife programs; 2) establish, maintain, procure items for, and loan or exhibit items from a national archive and center for American folklife; 3) prescribe regulations; and 4) perform other lawful acts in furtherance of the policies of this act.

Public Law 94-422, September 28, 1976: amended Section 106 of the National Historic Preservation Act to apply to properties eligible for inclusion in the National Register. Additional funding was appropriated to carry out the provisions of the act; the organization of the Advisory Council was clarified, and the membership expanded to 29 members. The council was established as a fully independent agency within the executive branch and authorized to promulgate

rules and regulations it deems necessary to implement Section 106.

The American Indian Religious Freedom Act, August 11, 1978 (Public Law 95-341): provided that it is “the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites. ”

The Archaeological Resources Protection Act of 1979 (Public Law 96-95; 93 Stat. 712, 16 U.S.C. 470): provided for the protection of archaeological resources located on public lands and Indian lands; defined archaeological resources to be any material remains of past human life or activities that are of archaeological interest and are at least 100 years old; encouraged cooperation between groups and individuals in possession of archaeological resources from public or Indian lands with special permit and disposition rules for the protection of archaeological resources on Indian lands in light of the American Indian Religious Freedom Act; provided that information regarding the nature and location of archaeological resources may remain confidential; and established civil and criminal penalties, including forfeiture of vehicles, fines of up to \$100,000, and imprisonment of up to 5 years for second violations for the unauthorized appropriation, alteration, exchange, or other handling of archaeological resources, with rewards for furnishing information about such unauthorized acts.

Archaeological resources covered by the Antiquities Act of 1906 are covered by this act. A valid permit issued under the Antiquities Act before the date of this act remains in effect according to its terms and conditions; therefore, no new permit is required. A permit issued under this act takes the place of a permit under the Antiquities Act. Nothing in this act shall apply to any person who was in lawful possession of an archaeological resource prior to the date of this act.

National Historic Preservation Act (amended 1980) (Public Law 96-51 5; 94 Stat. 2997): expanded the roles of Federal, State, local, and private sectors, and provided important new mandates for Federal land managers in the area of historic preservation. The act directs the Secretary to implement regulations establishing uniform processes and standards for documenting historic properties included in the Library of Congress records; requires each Federal agency to establish a program to locate, inventory, and nominate to the National Register all properties under the agency’s control; directs each Federal agency to exercise cau-

tion so that properties that may be eligible are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly; and establishes a higher standard of care for National Historic Landmarks. After appropriate consultation with the Advisory Council on Historic Preservation, an agency may lease its historic property if such lease will adequately ensure the preservation of that property. The proceeds of the lease may be retained by the agency and used to defray administrative, maintenance, repair, and related expenses incurred by the agency in the use of the property or other properties listed on the National Register and under the ownership or control of such agency. The act also changes the number of members on the Advisory Council on Historic Preservation; directs the Secretary’s participation in the development of the World Heritage List and the Convention Concerning the Protection of the World Cultural and Natural Heritage; and allows agency heads to withhold information relating to location of historic resources after consultation with the Secretary.

Regulations

Regulations are promulgated, adopted, and then compiled in the Code of Federal Regulations (CFR), in order to implement provisions of general laws. The name of the act it implements follows each CFR citation below.

43 CFR 3 (Antiquities Act), “proposed Rule: Preservation of American Antiquities” defines “objects of antiquity” in relation to the Antiquities Act of 1906, in terms of objects of archaeological, anthropological, paleontological, or historical interest.

43 CFR 7 (Archaeological Resources Protections Act of 1979) “Final Rule: Protection of Archaeological Resources: Uniform Regulations, ” it establishes governmentwide policy for additional regulations by which agencies protect federally owned archaeological resources through permits for authorized excavation and through civil penalties for unauthorized excavation, removal, or damage. It also allows information about the location of archaeological resources to be kept confidential where disclosure of such information may threaten the resource.

36 CFR 60 (NHPA and EO 11 593), “Procedures for Approved State and Local Government Historic Preservation Program” establishes the standards for the Secretary’s approval of State historic preservation programs, and requires State Historic Preservation Officers to conduct a statewide survey of cultural properties, to prepare and implement a State preservation plan, and to cooperate with Federal agencies in their

compliance with the provisions of Section 106 of the National Historic Preservation Act (see 36 CFR 800). In addition, 36 CFR 61 provides for local government certification to participate in the Federal preservation program, and establishes standards for the qualifications of professionals in the preservation field.

36 *CFR* 63 (NHPA and EO 11 593) entitled "Determinations of Eligibility for inclusion in the National Register of Historic Places," codified the process through which Federal agencies request and obtain a determination of properties' eligibility for inclusion in the National Register of Historic Places.

36 *CFR* 65 (Historic Sites Act of 1935) "National Historic Landmarks Program" establishes procedures to identify cultural resources of exceptional national significance, to designate them, and to encourage their owners to preserve and protect them. It also provided for revising boundaries of National Historic Landmarks and removing a landmark designation.

36 *CFR* 66 (Archaeological and Historic Preservation Act of 1974) "Proposed Rule: Recovery of Scientific, Prehistoric, Historic, and Archaeological Data: Methods, Standards, and Reporting Requirements," it establishes guidelines and standards for data recovery from cultural resources important primarily for their research potential. It also covers qualification of professionals carrying out work, the content of the recovery program, the curation of data and materials retrieved, and directions for filing reports on data recovery with the Department of the Interior.

36 *CFR* 68 (NH PA) contains the Secretary of the interior's standards for historic preservation projects, including standards for acquisition, protection, stabilization, preservation, rehabilitation, restoration, and reconstruction.

36 *CFR* 800 (NHPA and EO 11 593), "Protection of Historic and Cultural Properties," includes the regu-

lations published by the Advisory Council on Historic Preservation to implement Section 106 of the National Historic Preservation Act, as amended, and two Presidential directives issued pursuant to Section 106 (EO 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environ merit," and the President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978). The regulations were amended March 1, 1979, to reflect changes and additions to the Advisory Council's authorities, as well as experience gained in working with the process since the last publication of regulations in 1974. These amendments are intended to expedite and clarify the commenting process required by Section 106 of the NHPA and Section 2(b) of Executive Order 11593 for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations.

40 *CFR* 1500, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," was published by the Council on Environmental Quality as directed by Executive Order 11991 to "make the environmental statement more useful to decision makers and the public; and to reduce paper work and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives." The regulations require all agencies to adopt procedures which ensure, among other things, that environmental information is available to public officials and citizens before actions are taken. Although separate from NEPA, the responsibilities of the National Historic Preservation Act and Executive Order 11593 are to be complied with using these same procedures.