

HISTORIC RESOURCE LAWS AND REGULATIONS

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Major legislation that has shaped the Oregon Department of Transportation Historic Resources Program

NATIONAL HISTORIC PRESERVATION ACT (NHPA), 1966 as amended

In brief: The NHPA requires that historic resources be evaluated for eligibility to the National Register of Historic Places (NRHP) - a process referred to as a **Determination of Eligibility (DOE)**. If a resource is determined eligible for, or is formally listed in the NRHP, NHPA requires an assessment of the level of effect that a proposed project would have on the resource. This assessment is referred to as a "**Section 106 Finding of Effect**".

The [National Historic Preservation Act \(NHPA\)](#) formally established the Federal government's policy on the protection and preservation of significant cultural resources. The NHPA authorized the creation of the [National Register of Historic Places \(NRHP\)](#), an inventory of cultural resources that meet the [National Register Criteria](#). This list is maintained by the Keeper of the National Register and contains a broad range of property types. The Act also created an [Advisory Council on Historic Preservation \(ACHP\)](#), which functions to serve the public's interest by curtailing unnecessary government sponsored destruction of important cultural properties. This Council, on rare occasion, works closely with the germane State Historic Preservation Offices (SHPO) to mitigate the effects of Federal undertakings upon National Register listed, or eligible, properties. When a Federal or federally assisted undertaking alters the character or use of an NRHP-property, then it is considered to have an effect. When an undertaking has an effect on an NRHP resource, then the lead government agency must submit to the Section 106 process of resource identification/evaluation, assessment of effects, consultation (may result in a [Memorandum of Agreement \(MOA\)](#)), and Council comments before the agency may proceed with the undertaking. The [Section 106 process](#) was designed so that federal agencies and those agencies assisted by federal funding would take into account a variety of culturally relevant factors before attempting land use planning and resource management. The ACHP regulations for Section 106 compliance have been documented as 36 CFR Part 800: Protection of Historic Properties. While the ACHP does not have direct veto power over agency projects, the Council may sternly comment on agency actions or issue a Notice of Foreclosure if the agency has been uncooperative or disregards the Section 106 process. In this event the federal undertaking could be suspended, because the Council perceives the agency as negligent and may pursue further legal action.

DEPARTMENT OF TRANSPORTATION ACT (DOTA), 1966

In brief: In the event that a proposed project would potentially affect an historic resource which has been either determined eligible for, or is formally listed in the NRHP, **Section 4(f)** of the DOT Act requires the evaluation of alternatives which would avoid effects to the resource. If there is an available alternative that is both prudent and feasible, which solves the transportation problem and avoids effects to the resource, Section 4(f) requires the selection of that alternative. If no avoidance alternatives are available, the project must incorporate all possible means to minimize the effects to the resource.

[Section 4\(f\) of the Department of Transportation Act](#) states that agencies within the Department of Transportation should make special efforts to preserve publicly owned historic sites. The Secretary of the Interior can approve transportation projects that impact National Register eligible historic sites only if there is no prudent and feasible alternative to using that land and all efforts are made to minimize harm to the historic sites. Section 4(f) applies to archaeological sites only if preservation in place is warranted and sites are eligible for the National Register for reasons other than their potential to yield information on the prehistoric and historic pasts. For example, Section 4(f) would apply to prehistoric archaeological sites, such as a medicine wheel and mounds, and historic archaeological sites, such as historic battlefields. Guidance for 4(f) situations can be obtained from the [Federal Highway Administration Environmental Guidebook](#).

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA), 1969

According to the [National Environmental Policy Act \(NEPA\)](#), it is the federal government's responsibility to preserve important historic, cultural, and natural aspects of the nation's heritage through an interdisciplinary approach. If a federal undertaking has an effect on these resources then the federal agency is responsible for preparing Environmental Assessments (EA) and possibly Environmental Impact Statements (EIS). Both the EA and EIS process allow for public and tribal involvement in the decision making process. This act technically only

requires federal agencies to consider cultural resource issues, not to actively evaluate the cultural resources in question.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT (ARPA), 1979

The [Archaeological Resources Protection Act \(ARPA\)](#) bestowed both consultative and administrative rights to native groups. Native groups were given the right to review (but not deny) permit applications that may affect cultural resources on federal lands. Concerned tribal governments must be notified when federal activities could potentially disturb cultural resources. Tribal groups must respond within 30 days of a permit request in order to ensure that their views and opinions will be taken into consideration by federal agencies. If a permit is requested for work on tribal lands the tribal government that has the power to award or deny the permit. The Secretary of the Interior has to seek the approval of tribal groups before regulating the exchange and disposition of cultural resources from Indian lands. This act defined cultural resources in terms of archaeological resources.

Archaeological resources are defined as material remains of past human activities that are at least 100 years old. It should be noted that this law only applies to the Oregon Department of Transportation (ODOT) if actions occur on Federal easements and ODOT is responsible for routine maintenance.

THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT (STURAA), 1987

The [Surface Transportation and Uniform Relocation Assistance Act \(STURAA\)](#) of 1987 mandates a complete inventory of bridges both on and off the Federal-aid system by each State Highway Department, something ODOT undertook first in 1989, and then again in 2013. The purpose of this inventory is to encourage the rehabilitation, reuse, and preservation of historic bridges that are listed on or eligible for the National Register of Historic Places. If preservation is not possible than attempts must be made to mitigate project impacts to significant historic bridges. In addition, this act allows those funds set aside for bridge demolition to be used for preservation or mitigation efforts, if warranted. If demolition is unavoidable than the State must sell or donate the bridge to a State or local government agency capable of maintaining the bridge and assuming responsibility. In 1992 the Federal Highway Administration (FHWA) created non-regulatory supplemental guidelines to facilitate this process.

MORE LINKS TO HISTORIC RESOURCE FEDERAL LAWS AND SUMMARIES

[Environmental Legislation Affecting Transportation](#)

INDICES TO OREGON REVISED STATUES ON ARCHAEOLOGY AND HISTORIC RESOURCES

[Index to Oregon Revised Statues on Archaeology](#)

[Index to Oregon Revised Statues on Historic Resources](#)

- * Further information can be obtained by contacting Chris Bell, Historic Resources Program Coordinator, at (503) 986-3853.