

LAWS THAT PROTECT ARCHEOLOGICAL SITES



Many people are under the mistaken impression that it is against the law to damage any archeological site. Others are surprised that there are any laws that protect these resources and that restrict collecting or digging. In reality, federal and state laws apply only to sites on public land or that will be affected by a project that involves federal funds, licenses, permits, or approval. The Texas Historical Commission (THC) is actively involved in the review of potential impacts to protected properties. Currently, THC staff archeologists, historians, and architects review approximately 10,000 construction projects each year.

FEDERAL LAW

The National Historic Preservation Act of 1966

In response to the rapid destruction of historic buildings by federally funded highway and urban renewal projects, the U.S. Congress passed legislation in 1966 requiring federal agencies to consult with state and local officials before proceeding with projects that might adversely affect important historic buildings or archeological sites.* The National Historic Preservation Act created: (1) the National Register of Historic Places, a list of the important national heritage resources; (2) the Advisory Council on Historic Preservation, an independent federal agency charged with overseeing the consultation process; and (3) the position of State Historic Preservation Officer (SHPO), who represents the interests of the state. In Texas, the executive director of the THC serves as the SHPO.

Under Section 106 of the act, federal agencies must consider the effects of their projects on archeological sites before proceeding. They are also required to make a good-faith effort to identify sites that are eligible for inclusion in the National Register of Historic Places and try not to harm them. Identification usually entails archeological surveys and test excavations. If there will be adverse effects on eligible properties, the agency must try to mitigate, or lessen, their impact. This usually requires large-scale excavations and analysis, culminating in a scholarly report.

* The information in this brochure applies only to archeological sites. Visit our website, www.thc.state.tx.us, for more information on designation and protection of historic buildings.

Other Federal Laws

The Archeological Resources Protection Act of 1979 makes it illegal to collect artifacts or dig on archeological sites on federal land without a permit. The Native American Graves Protection and Repatriation Act of 1990 requires federal land-managing agencies to consult with Indian tribes when burials are found on their land. Museums receiving federal funds must submit inventories of human remains and associated burial objects in their collections. The principal goal of consultation is to return human remains and the artifacts found with them to the appropriate Indian tribes.

STATE LAW

The Antiquities Code of Texas

The Antiquities Code of Texas, passed in 1969, was initially written to prevent treasure hunters from looting historic shipwrecks in state waters. From the beginning, however, it applied to all sites on land or under waters controlled by the state or political subdivisions of the state (cities, counties, river authorities, etc.). Under the Antiquities Code, a political subdivision is required to notify the THC if its project meets at least one of the following conditions: (1) is five or more acres in extent; (2) will involve the excavation of at least 5,000 cubic yards of material; (3) is in a known historic district; or (4) contains a recorded archeological site.

The THC issues antiquities permits for archeological studies to professional archeologists who meet the definition of principal investigator found in the Rules of Practice and Procedure (Title 14, Chapter 26, of the Texas Administrative Code). In general, the state review process parallels the federal process. The goal is to preserve as much of Texas' heritage as possible while allowing construction to proceed.

CONCLUSION

This brochure provides basic information about legislation that protects archeological sites in Texas. Under federal law, it is illegal to collect or excavate artifacts on federal lands, such as land surrounding U.S. Army Corps of Engineers lakes. Under state law, it is illegal to collect or excavate artifacts on state lands, such as those owned by river authorities or water districts. Most archeological sites in Texas remain on private property, however, and are unaffected by these laws. Of course, a site on private property belongs to the landowner, and only the landowner can give permission to visit or study it.

For more information:

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