

Federal Legal Requirements Relating to Archaeology

Introduction

Like all other federal agencies, VA is legally and financially responsible for managing a wide range of cultural resources under its care, and for controlling the impacts of its projects and programs on such resources. Directive and Handbook 7545 outlines the laws with which VA must comply and articulates VA policy and direction.

Among the cultural resource types given special attention by federal law are archaeological resources. This paper outlines legal requirements that are particularly relevant to such resources. It is only a summary; see VA Directive/Handbook 7545 and the links given below for details. For additional information, contact VA's Federal Preservation Officer, Angela McArdle, at 254.922.4938.

Archaeological Resources Protection Act (ARPA) and implementing regulations:

Basic provisions: Prohibits excavation of archaeological resources on federal and tribal land without a permit granted by the land-managing agency consistent with the regulations (43 CFR 7).

Key definitions: Archaeological resource is defined as “any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest” (43 CFR 7.3(a)). “Of archaeological interest” is defined as “capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation” (43 CFR 73.(a)(1)).

VA responsibilities: (1) Do not allow anyone to dig for anything over 100 years old on VA property without a properly executed permit. (2) Retain and preserve anything excavated in accordance with the curation regulations (36 CFR 79); dispose of objects and records only in accordance with the regulations.

Archeological and Historic Preservation Act (AHPA):

Basic provisions: Requires that any federal agency, if its activities connected with a construction project or “federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archaeological data” (Section 3(a)), must fund such work as is necessary to recover such data, or pay the Department of the Interior to do so.

Key definitions: Terms are not fully defined. Presumably “scientific, prehistorical, historical or archaeological data” includes archaeological sites and their contents as well as paleontological remains, historic documents, and paleoenvironmental data.

VA responsibilities: Make sure that sources of such data that may be affected by a VA or VA-assisted project are identified early during planning, and that orderly plans are implemented for recovering and

preserving them,¹ unless the Secretary has determined that the project is connected to an emergency as described in Section 4(b). VA is responsible for identifying, managing, mitigating impacts on, and conserving the data protected by the AHPA.

National Historic Preservation Act (NHPA) and regulations implementing NHPA Section 106:

Basic provisions: Requires that federal agencies identify and manage historic properties under their jurisdiction, and that they consider the effects of their projects and other actions on historic properties, including those under the jurisdiction of others.

Key definitions: A historic property is any district, site, building, structure, or object included in or eligible for the National Register of Historic Places (16 USC 470w-Definitions). Significant archaeological sites – including sites that are not yet 100 years old – are eligible for the National Register.

VA responsibilities: Responsibly manage historic properties, including archaeological sites. When planning or funding activities that may disturb the ground, ensure that archaeological sites subject to possible effect are identified and considered in consultation with interested parties, per the NHPA Section 106 regulations.

Native American Graves Protection and Repatriation Act (NAGPRA) and implementing regulations:

Basic provisions: Federal agencies and federally assisted museums must repatriate Native American cultural items to tribes and Native Hawaiian organizations. Federal agencies and project sponsors must consult with tribes and organizations and must plan for protection of such items that may be affected by projects on federal or tribal land.

Key definitions: The cultural items that must be protected and repatriated under NAGPRA include ancestral human remains, funerary objects, sacred objects, and objects of cultural patrimony, all defined in the statute or regulations. These items are often archaeological resources under ARPA, and parts of historic properties as defined by NHPA.

VA responsibilities: Consult with federally recognized Indian tribes and Native Hawaiian organizations when planning any project that could unearth cultural items, and about management of such items in VA's possession.

Curation of Federally Owned and Administered Archaeological Collections (36 CFR 79):

These regulations, issued by the National Park Service, are applicable government wide and set mandatory standards for the management of federally owned collections of archaeological material. Note that such collections can be discarded or otherwise disposed of only in accordance with the terms of these regulations and in some cases others.

¹ Usually established during consultation under Section 106 of the National Historic Preservation Act