

The following is an excerpt from [Chapter 2 - Identifying & Resolving Quality of Life Issues](#) from the Community & Environmental Defense Services (CEDS) book [How to Win Land Development Issues: A Citizens Guide to Preserving & Enhancing Quality of Life in Developing Areas](#). You will find this section more helpful if you read the Chapter 2 introductory text. Also, the following is just the text we could fit into the book without making it unduly large. We have a substantially greater amount of information available in our files on this topic. To learn how CEDS can assist you with concerns about this topic visit the CEDS website at: www.ceds.org or contact us at: 1-800-773-4571 or info@ceds.org

HISTORIC & ARCHAEOLOGICAL RESOURCES

The 1966 National Historic Preservation Act set in motion many of our current programs to protect buildings, sites and other resources of historic or archaeological importance. Section 106 of the Act requires consideration of these resources whenever federal action may be involved. “Action” may include projects funded solely or in part by Federal dollars, such as a road built with funds from the Federal Highway Administration. Or it may include projects requiring Federal permits, like those issued for wetland impacts by the U.S. Army Corps of Engineers.

For a resource to benefit from Section 106 protection it must either be on or eligible for the National Register of Historic Places, which is compiled by the National Park Service (NPS). The NPS publication *How to Apply the National Register Criteria for Evaluation*¹ presents the following considerations for including a resource on the National Register:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or

B. That are associated with the lives of significant persons; or

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. That have yielded or may be likely to yield, information important in history or prehistory.

Normally, a resource must have achieved significance more than 50 years ago to be considered for the Register. Other resources **NOT** normally considered for inclusion on the Register are:

¹ How to Apply the National Register Criteria for Evaluation is available online at: <http://www.cr.nps.gov/nr/publications/bulletins/nrb15/>

*cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature... However, such properties **will qualify** if they are integral parts of districts that do meet the criteria or if they fall within the following categories:*

a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

b. A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building associated with his or her productive life; or

d. A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

g. A property achieving significance within the past 50 years if it is of exceptional importance.

Once a project is placed on the Register, or deemed eligible, it may receive protection from a variety of possible *adverse effects*. An *adverse effect* is anything which would:

diminish the integrity of the property. Integrity is the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association.

Adverse effects can be direct or indirect. They include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or be cumulative. Typical examples of adverse effects are:

- 1. physical destruction or damage;*
- 2. alteration inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties;²*
- 3. relocation of the property;*

² The standards can be viewed at: <http://www2.cr.nps.gov/tps/secstan1.htm>

4. *change in the character of the property's use or setting;*
5. *introduction of incompatible visual, atmospheric, or audible elements*
6. *neglect and deterioration; and*
7. *transfer, lease, or sale out of Federal control without adequate preservation restrictions.*

Section 106 does not necessarily prohibit impacts to historic resources. Instead, it obligates federal agencies to consider all reasonable alternatives for reducing or eliminating adverse effects.

Many states and local governments have their own historic preservation program. To locate programs in your area go to the [NPS Heritage Preservation Services website](#).³ These programs may provide further protection for resources on the National Register along with those which are locally significant

If you feel a project may threaten a historic resource then see if it is on the National Register or local listings. Determine if any of these resources are on the development site, adjacent to the site, or sufficiently close that the project might affect the historic feature. These listings may be obtained from the agencies located through [NPS Heritage Preservation Services website](#), the local planning office or a local/state historical society.

Review local records for indications that historic structures or native American sites may occur in the area affected by the project. These records may be available through a state historic preservation office, a local historical society or in the main branch of the local library. Make a note of all archaeological and historic features found on the site and in the vicinity. Note the specific artifacts found at each site. Also make a note of the name, address, and phone number of the researcher(s) who inventoried each site. Call the researchers to get their thoughts on any significant features that may exist on the development site of concern to you. Ask for the name and number of other historic preservation experts the researcher knows who may be familiar with the site.

Most sites have never been examined by a qualified professional. If you can gain permission to enter the site then consider carrying out your own inventory for the features-artifacts found at other locations in the area. Of course if you come across artifacts you should leave them in-place, undisturbed, and take a few photos. Show the photos to the preservation experts identified above to get their opinion on significance. If they feel the objects could be significant then these experts will know the correct procedures for continuing the investigation.

Talk to those who live near the site, particularly folks who have been in the area for a long time. Ask if they know of any factor which might make the site significant. Have they or their children ever found arrow-heads, bones, or other artifacts on the site? Do they recall any gravestones, old buildings, or other features? Did anyone famous or important ever live on or visit the site?

³ http://grants.cr.nps.gov/CLGs/CLG_Search.cfm

Discuss the results of the preceding actions with the researchers identified above. You should also discuss anything significant with local and state historic organization staff or volunteers. If any of these people believe the findings are significant, then ask what authority exists for preserving features which are important from a historic or archaeological perspective. Ask how preservation measures are initiated.

Talk with the property owner about the features. See if the owner is willing to preserve the features voluntarily. If so, then ask them to enter into a binding agreement that extends to all future owners. Regardless of the outcome of this discussion proceed with the actions listed in the next paragraphs. These actions will put you in a better position if the owner has second thoughts. If a third party is involved, such as a development company, then have a similar discussion with the company CEO.

Try to locate activists who have led campaigns to preserve historic or archaeological features. The experience these folks have acquired could be crucial to winning your campaign. These activists can be found by contacting local or state historical societies, Native American organizations, or the National Trust for Historic Preservation⁴ (202) 588-6000. CEDS may also be able to put you in touch with veteran activists.

Review local, state, and federal laws which may provide protection for historic or archaeological features. See if these laws can be interpreted in a way that provides the level of protection required for the features of concern to you.

Locate several attorneys who have experience with preservation law. Ask if the law provides the protection you are seeking. If the attorney says yes, then meet with the government officials responsible for applying the law to the site in question. See if they will agree to apply the law as you wish. If they say yes, then go to *Legal Action*, in Chapter 4, to ensure that the law is properly applied.

If it appears that current law does not provide adequate protection for the features, then go to Chapter 4 of this book and read through the section *Land Preservation and Change the Law*.

⁴ Visit the National Trust for Historic Preservation online at: <http://www.nationaltrust.org/>