



## North Carolina Department of Natural and Cultural Resources Office of State Archaeology

John Mintz, State Archaeologist

Governor Roy Cooper  
Secretary Susi H. Hamilton

Office of Archives and History  
Deputy Secretary Kevin Cherry

### **Background on Federal and State Legal Protection and Official Consideration of Historic Places, Cemeteries, and Archaeological Sites**

#### **The Advisory Council on Historic Preservation**

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements.

For more information, visit: <http://www.achp.gov>.

#### **Section 106 of the National Historic Preservation Act**

In the National Historic Preservation Act of 1966 (NHPA), Congress established a program to preserve the historical and cultural foundations of the nation as a living part of community life. Section 106 of the NHPA is crucial to that program because it requires consideration of historic preservation in the multitude of projects with federal involvement that take place across the nation every day.

Section 106 requires federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties, including historic buildings and districts, cemeteries, and archaeological sites, that are either listed in or eligible for the National Register of Historic Places. Additionally, federal agencies must provide the ACHP an opportunity to comment on such projects prior to the agency's decision on them. Federal agencies **must** consult with the North Carolina State Historic Preservation Office and Office of State Archaeology. **Citizens and organizations may ask to be a "consulting party" under Section 106.**

For more information, visit: <https://archaeology.ncdcr.gov/programs/environmental-review>;  
<http://www.achp.gov/docs/CitizenGuide.pdf>; and <http://www.achp.gov/work106.html>.

#### **Involving Non-Federally Recognized Tribes in the Section 106 Process**

The NHPA provides Indian tribes the right to be consulted in the Section 106 process; however, the term "Indian tribe" as defined in the NHPA refers only to federally-recognized Indian tribes.

While non-federally recognized tribes do not have a statutory right to be consulting parties in the Section 106 process, an agency may invite them to consult if they have demonstrated interest in a project. The ultimate decision on whether to consult with non-federally recognized tribes rests with the federal agency.

For more information, visit: <http://www.achp.gov/docs/Working%20with%20Non-Fed%20Rec%20tribes%20Guidance%20-%2008-11-17.pdf>.

## **Cemeteries and Unmarked Burials in North Carolina**

North Carolina General Statutes 70-29 through 70-33 give the procedure for notifying the proper authorities upon the discovery of unmarked human remains: anyone who discovers unmarked burials, or suspects that they are being disturbed, must notify the county medical examiner or the state archaeologist immediately. There is then a period of forty-eight hours to make arrangements for the protection or removal of the graves. The North Carolina Department of Natural and Cultural Resources may obtain administrative inspection warrants for the purpose of gathering additional information as necessary.

North Carolina General Statutes 14-148 and 14-149 outline the penalties for defacing and desecrating gravesites and for plowing over or covering up graves: violation is a misdemeanor and a Class I felony, respectively.

For more information, visit: <https://archaeology.ncdcr.gov/programs/cemeteries>.

**For more information, contact the North Carolina Department of Natural and Cultural Resources:**

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