

State Laws and Regulations regarding the Stewardship of Historic Resources Owned by the Commonwealth

Several state laws and regulations direct state agencies to consider the potential impact to historic properties owned by the Commonwealth resulting from proposed state-sponsored undertakings and to consult with the Department of Historic Resources as a part of their planning and decision-making processes. It is important to remember, however, that the final decisions rest either with the state agency controlling the property, with the Governor or his appointed designee (usually the Secretary of Administration), or with the General Assembly. The Department of Historic Resources serves, in most instances, as a review agency providing technical assistance and guidance. The Department of Historic Resources is a non-regulatory entity and does not approve or deny projects. The sole exception is the Virginia Antiquities Act, which requires a permit from the Department of Historic Resources for any person or entity to conduct an archaeological survey on state land or for the removal of a human burial regardless of the ownership of the land.

Although the below laws and regulations do not prescribe an expected outcome, there is an expectation of a due diligent consideration of the comments received from the Department of Historic Resources. In many cases, agency officials are unfamiliar or misinformed about their legal requirements under the *Code of Virginia* and often relegate compliance with applicable historic preservation laws as a “paperwork exercise.” Such misunderstanding is often the cause of unnecessary project delays and can easily be avoided through a general working knowledge of applicable code.

Because consultation with DHR is a collaborative and detailed process necessitating back-and-forth exchanges of information, negotiation, and design refinement, it is not always possible to complete that review in a single correspondence. This is particularly true for larger, more complex undertakings or projects that have the likelihood to impact historic properties or archaeological sites. Therefore, early initiation with the Department of Historic Resources helps the initiating agency to avoid lost time and added costs that may arise from unanticipated, and usually preventable, problems associated with cultural resource issues. In addition, involving the Department of Historic Resources early, and in a meaningful way, will help avoid unnecessary damage or destruction to historic properties. Finally, when carried out, due diligence in complying with existing state historic preservation laws provides a “safe haven” that will help to inoculate the initiating agency from unwarranted criticism.

The most effective means to preclude any project delays, budgetary shortfalls or other difficulties resulting from cultural resource issues is for the initiating agency to effectively integrate historic properties into its best management practices. Doing so encourages consideration of cultural properties at the project scoping phase and brings into play DHR’s expertise at a time when it will be most valuable.

► **Virginia Environmental Impacts Report Act (§ 10.1-1188 Code of Virginia)**

Law applies to: Major construction initiated by a state agency
Coordinating agency: Department of Environmental Quality
Party responsible for compliance: The state agency initiating the construction project

The Department of Environmental Quality provides comments on the environmental impacts of all major state projects. "Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including public institutions of higher education, which costs \$500,000 or more (i.e. construction and expansion projects or acquisition of land for construction projects costing \$500,000 or more). These comments go to the Governor through department secretaries as well as to the project proponent agency and reviewing agencies. The comments represent the findings of all state agencies with applicable responsibilities or interests. Comments are provided to the sponsoring agency in time to permit modifications necessary because of environmental impact. The Department of Historic Resources is invited to submit comments to the Department of Environmental Quality when an environmental impact report describes a project that might affect historic properties or archaeological sites. The Secretary of Administration has approval authority as delegated by the Governor through Executive Order.

► **Section V.2 of Division of Engineering and Buildings Directive #1, Revised 1984 (§ 2.2-2402 Code of Virginia)**

Law applies to: Proposed demolitions of state-owned buildings
Reviewing agencies: Department of Historic Resources, Art and Architecture Review Board, Division of Engineering and Buildings
Party responsible for compliance: The state agency initiating the demolition

The regulation provides that no building or appurtenant structure shall be removed from state-owned property unless approved by the Governor upon the advice of the Art and Architecture Review Board. The Governor further conditions approval upon the recommendation of the Department of Historic Resources and the Department of General Services.

► **Sale or Lease of Surplus State Property (§ 2.2-1156 Code of Virginia)**

Law applies to: Sale or lease of surplus property by a state agency
Coordinating agency: Secretary of Natural Resources
Party responsible for compliance: Department of General Services

The Department of General Services shall request the written opinion of the Secretary of Natural Resources regarding whether the sale of a state-owned property is a significant component of the Commonwealth's natural or historic resources, and if so how to protect the resource in the event of its sale. The Department of Historic Resources, through the Secretary of Natural Resources, shall provide comments regarding the affect that the transfer of state-owned property will have on historic and archaeological resources

significant to the Commonwealth. The Department of General Services shall make the comments of the Secretary of Natural Resources known to the Governor who shall provide prior written approval before the Department may proceed to sell the property.

► **The Appropriations Act**

Law applies to: Projects or undertakings that will affect state-owned landmarks listed on the Virginia Landmarks Register

Reviewing agencies: Department of Historic Resources and Department of General Services

Party responsible for compliance: The state agency initiating the project

The specific provisions for review of rehabilitation and restoration projects on state-owned Registered Historic Landmarks are defined in the Budget Bill Section 4-4.01(q), 2018 Special Session I, Virginia Acts of Assembly, Chapter 2. Guarantees that the historical and/or architectural integrity of any state-owned properties listed on the Virginia Landmarks Register and the knowledge to be gained from archaeological sites will not be adversely affected because of inappropriate changes, the heads of those agencies in charge of such properties are directed to submit all plans for significant alterations, remodeling, redecoration, restoration or repairs that may basically alter the appearance of the structure, landscaping, or demolition to the Department of Historic Resources. Such plans shall be reviewed within thirty days and the comments of that department shall be submitted to the Governor through the Department of General Services for use in making a final determination.

► **Virginia Antiquities Act (§ 10.1-2300 Code of Virginia)**

Law applies to: Objects of antiquity located on archaeological sites on state-controlled land (§ 10.1-2302) and human burials located in the Commonwealth (§ 10.1-2305)

Permitting agency: Department of Historic Resources

Party responsible for compliance: The state agency or individual initiating the archaeological field investigation or removal of human remains from archaeological sites.

The Virginia Antiquities Act prohibits damage to or removal of objects of antiquity from archaeological sites on all state-controlled land. This act does not restrict a state agency from construction or other land disturbing activities on its own land, but does prohibit all "relic hunting" or any archaeological field investigations without a permit from the Department of Historic Resources. The Department of Historic Resources is charged with coordinating all archaeological field investigations and surveys conducted on state-controlled lands (§10.1-2301; 1, 2). The department is given exclusive right and privilege to conduct field investigations on state lands, but may grant those privileges to others through a permit process (§10.1-2302 and 2303). The department also has final authority to identify and evaluate the significance of sites and objects of antiquity found on state lands (§10.1-2301; 3). Permits are issued through the department's Office of Review and Compliance.

General cemetery protection laws make it a felony to remove human remains from a grave

without a court order or appropriate permit. Section 2305 of the Virginia Antiquities Act provides a permit process for archaeological field investigations involving the removal of human remains and artifacts from graves. These permits are issued through the Department of Historic Resources' Office of Review and Compliance.

► **Cave Protection Act (§ 10.1-1000 Code of Virginia)**

Law applies to: Caves located in the Commonwealth
Regulating agencies: Natural Heritage Division, Department of Conservation and Recreation
Party responsible for compliance: Any agency or individual involved in the research within caves in the Commonwealth

The Cave Protection Act protects from vandalism all geological, biological, and historic features in caves regardless of ownership. A permit is required from the Department of Conservation and Recreation, Natural Heritage Division, for research within caves and rock shelters. The concurrence of the Department of Historic Resources is required before the issuance of a permit.

► **Underwater Archaeology Permits (§ 10.1-2214 Code of Virginia)**

Law applies to: All underwater properties on bottomlands owned by the Commonwealth
Regulating agencies: Virginia Marine Resources Commission
Party responsible for compliance: Any agency or individual planning to explore or recover objects underwater

The permitting process protects underwater historical properties, including shipwrecks and submerged terrestrial sites. Permits for either exploration or recovery are required from Virginia Marine Resources Commission. The Department of Historic Resources is consulted prior to issuance of the permits. The Department of Historic Resources determines which properties are historic.