State Historic Preservation Legislation and the State Historic Preservation Act

Arizona State Historic Preservation Office

ARIZONA STATE PARKS

June 2016

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Archaeology
Arizona’s Historic Preservation Laws

7 primary laws or E.O.s, in order by date enacted:

• State Parks Statute (1957): A.R.S. §41-511.04, as amended (1977, 1982)

• Arizona Antiquities Act (1973, amended 1981): A.R.S. §41-841 – 846 (administered by ASM, so they will cover it later today)

• State Historic Preservation Act, 1982: A.R.S. §41-861 – 864

• Burial Protection Statutes (1990): A.R.S. §41-865 (private lands) and A.R.S. §41-844 (state, county, city lands) (ASM will cover today)
Arizona’s Primary Historic Preservation Laws -- continued

- Governor’s Executive Order on AZSITE & the AZSITE Consortium (2006)
- Governor’s E.O. on Tribal Consultation and Cooperation (2006)
State Parks Board Statute of 1957, as amended (A.R.S. §41-511)

- Governor designates the State Historic Preservation Officer (SHPO), as part of AZ State Parks (ASP), through the ASP Board (ASPB)

- The SHPO is authorized to plan, coordinate, and administer state historic preservation program

- Outlines duties of the SHPO and the various roles/programs of the office, e.g., administering the Arizona Register of Historic Places (ARHP)
1) ASPB shall adopt rules regarding:
   - Minimum maintenance standards for historic properties
   - Requirements for documentation of historic properties
2) Monitor the performance of state agencies in the management of historic properties (the annual compliance survey).
3) Advise the Governor on historic preservation matters.

SHPO, on behalf of the ASPB, handles these issues.
Governor’s Executive Order 2006-14 on Tribal Consultation

- Agencies develop and implement Tribal Consultation Policies
- Agencies designate staff person as Tribal liaison
- Agencies review Consultation Policy annually and submit electronic report to Governor and Legislature
Governor’s 2006 Executive Order on AZSITE & the AZSITE Consortium

Establishes AZSITE as Arizona’s official statewide inventory of recorded historical and archaeological properties

AZSITE is a sophisticated, on-line, GIS database for use by qualified researchers

ASM is the primary administrator of AZSITE
• Any agency officer may decline the release of information that relates to the location of archaeological discoveries, places or objects that are included on, or may qualify for inclusion on, the Arizona Register of Historic Places if the release of that information creates a reasonable risk of vandalism, theft or other damage to the property.

• In making a decision to disclose information, the officer may consult with the Director of the Arizona State Museum or the SHPO.
SHPO –
Who We Are & How We Are Involved
SHPO – Subdivision of Arizona State Parks

SHPO STAFF

Archaeologists
Historians
Architects
Administrative Support
Interns

2016, Historic Evans House, Phoenix
What does SHPO do?

- REVIEW AND COMPLIANCE 50%
- Public Education 12%
- State and National Registers 11%
- Administration 05%
- Grants 05%
- Certified Local Governments 05%
- Preservation Planning 05%
- Tax Incentives 04%
- Survey and Inventory 03%
SHPO’S
Review and Compliance Program

Today = focus on the State Historic Preservation Act

A.R.S. §41-861 - 864
Historical and Statutory Notes (Preamble) for the State Historic Preservation Act, 1982

“Section 1. Legislative findings; legislative intent

A. The legislature finds that:

4. The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Arizonans.

5. The increased knowledge of our historic resources, the establishment of better means of identifying and administering them and the encouragement of their preservation will improve the planning and execution of federal and state projects, will assist economic growth and development and will preserve and enhance the state’s attractions for tourists and visitors.”

IMPORTANCE OF THE LAW IN A BROADER CONTEXT
What is a Historic Property vs. a Historic-Period Property?

A.R.S. §41-861 through - 864: A **historic property** is an object, building, structure, site or district that is eligible for, or listed on, the Arizona Register of Historic Places = SIGNIFICANCE

versus

A **historic-period property** is an object, building, structure, site or district that is over 50 years old, but less than about 500 years = AGE
Chief Administrator of state agency is responsible for compliance:

- **41-861 Agency responsibilities**
  - Agency historic preservation responsibilities

- **41-862 Program**
  - Agency program to identify, document, and nominate properties to the ARHP

- **41-863 Records**
  - Agency measures for documentation/recordation of historic properties, and management of these records

- **41-864 Review of agency plans**
  - SHPO review of agency plans
2001 SHPO Guidelines
State Historic Preservation Act

Guidelines developed by SHPO in 2000 in consultation with the Arizona State Museum, state agencies, Tribes, and preservation professionals/consultants

Purpose = To promote clarity in how law is interpreted, and consistency in how it is applied

Approved and adopted by the Arizona State Parks Board on January 18, 2001
A.R.S. §41-861: Agency Responsibilities

Chief agency administrator responsible for preservation of properties owned or controlled by the agency.

- Consider use of available historic properties prior to acquiring, constructing, or leasing new buildings, or before demolishing and building new.

- Undertake preservation of historic properties in a manner consistent with:
  - duties of the agency
  - SHPO’s recommended professional standards

- May designate an employee to coordinate the agency’s preservation activities
SHPO’s Recommended Standards for Identification and Evaluation

- For buildings and structures:
  Secretary of Interior’s Standards and Guidelines for Identification and Evaluation
  (go to: www.nps.gov/history/local-law/arch_stnds_0.htm)

- For archaeological sites:
  1) State (ASM and SHPO) Standards for Conducting and Reporting Archaeological Surveys (more to come in 41-863)
  2) Arizona Board of Regents, Chapter VIII, Section 8-203 - ASM Permitting Qualifications
Secretary of Interior’s Standards Specify Background/Training for Preservation Professionals

- Historian
- Architectural Historian
- Architect/Historical Architect
- Archaeologist/Historical Archaeologist
Standards for Preservation Professionals Working in Arizona

Consultants hired (by an agency or used in agency projects, permits, etc.) to identify historic properties in Arizona must meet Professional Qualification Standards based upon:

- Secretary of Interior’s Professional Standards, and

- Arizona State Museum’s Permit Requirements for Archaeology (required if work is on state, city or county lands)
Secretary of Interior’s Treatments for Historic Properties

Identify the appropriate preservation treatment for buildings or structures, in consultation with the SHPO.

5 primary types of treatment:

- Preservation (Protection, Stabilization)
- Restoration
- Rehabilitation
- Reconstruction
- Interpretation
Secretary of Interior’s Standards for Rehabilitation
(really common sense!)

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<td>1.</td>
<td>Use shall require minimal change.</td>
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<td>2.</td>
<td>Historic character shall be retained.</td>
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<td>3.</td>
<td>Do not create a false sense of history.</td>
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<td>4.</td>
<td>Retain changes that have acquired historic significance.</td>
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<td>5.</td>
<td>Distinctive features shall be preserved.</td>
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<td>6.</td>
<td>Deteriorated historic features shall be repaired.</td>
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<td>7.</td>
<td>Cleaning shall use the gentlest means.</td>
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<td>8.</td>
<td>Significant archaeological resources shall be protected.</td>
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<td>9.</td>
<td>New additions shall be differentiated.</td>
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<td>10.</td>
<td>New additions shall be reversible.</td>
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Use of Historic Buildings, Structures

- Evaluate current use of each historic property.
- Ensure property remains in use.
- Identify properties not currently in use.
- Identify historic properties that can be used for new programs.
- Consider use or reuse of historic properties for agency programs.

ADAPTIVE REUSE!!!
How SHPO Can Help

• SHPO staff can advise agencies on which type of preservation treatment best fits your needs
• SHPO can offer trainings on the S of I treatments
• SHPO staff has many examples of successful adaptive re-use projects
• SHPO has lists of qualified preservation professionals that can assist with your work
Agency Historic Preservation Coordinator – §41-861

Agency may (and really should) designate an employee to:

- Coordinate identification, evaluation, & preservation planning
- May also coordinate Tribal consultation on historic preservation projects
- Employee should have background or training in historic preservation = A GOOD IDEA GIVEN THE COMPLEXITY OF YOUR AGENCY’S PLANS, PROJECTS, GRANTS, PERMITS, ETC. and THEIR POTENTIAL TO ADVERSELY AFFECT HISTORIC PROPERTIES.
Recent Attorney General Review

- **March 2016** – SHPO sought State AG review of interpretation of the State Act.
  -- Were the SHPO’s 2001 guidelines still current and valid after 15 years?
  -- In particular, specific questions regarding definitions of agency “control” and “plans.”

- **April 2016** – AG provides review supporting SHPO’s interpretation of the law.
Development of AG’s Review

In forming their interpretation, the AG studied the following:

1) State statutes,
2) the SHPO 2001 Guidelines, and
3) relevant legislative history and case law
Legal Definition of Agency’s Authority or Control

• Agency has a responsibility for historic properties that may be affected by the agency actions or plans, regardless of whether the property is owned or controlled by the agency.

• Agency’s authority extends to properties that are owned, leased, managed or controlled — includes lands, buildings, structures, or archaeological sites.
Legal Definition of Agency Plan(s)

§41-864: “… any plans of a state agency which involve property which is included or may qualify for inclusion on the Arizona Register of Historic Places, including any construction project, sale, lease or acquisition of historic properties…”

What plans should the agency bring to SHPO for review and comment?

– any plan for/by the state agency or for/by one of its agents (permittees, grantees, applicants, etc.)

Thus, the law has a broader applicability than just the properties that a state agency owns or controls.
Legal Definition of Agency Plan(s) -- continued

Any plan that involves taking action on a specific property that involves construction or other ground disturbances of such scope, intensity, or degree that they could reasonably impact historic properties on the property itself or in the immediate vicinity.

• For a permit or license to be considered a plan of an agency, the permit or license must authorize a specific construction project or other project that would disturb the soil.
SHPO staff will then review the project’s potential to impact historic properties, and let the agency know if further investigations are needed, such as:

- An archaeological survey,
- A historic building/structure inventory,
- Archaeological testing,
- Archaeological monitoring, or
- Archaeological data recovery

Agency should follow up and make sure that the work is done prior to project implementation.
Federal Involvement

Many state actions/plans actually have a Federal nexus or background.

EXAMPLES:

- Many state grants are federally funded:
  
  AGFD = USFWS; ASP RTP grants = FHWA

- Many state projects are federally funded:
  
  ADOT = FHWA; AZ State Forestry projects = USFS

- Many state permits and licenses are federally regulated:
  
  ADEQ = EPA

- Many projects on state lands are federally funded:
  
  ASLD range conservation projects = NRCS

FEDERAL AGENCIES MUST COMPLY WITH THE NATIONAL HISTORIC PRESERVATION ACT (NHPA), SPECIFICALLY SECTION 106
Know Your Project’s Background

- **BAD NEWS:** NOT KNOWING CAN CAUSE DELAYS IF FEDERAL AGENCY IS NOT INVOLVED IN CONSULTATIONS. (It can also make the federal agency be out of compliance with the NHPA, and can make the federal agency very unhappy!)

- **GOOD NEWS:** A STATE AGENCY’S COMPLIANCE WITH THE STATE HISTORIC PRESERVATION ACT CAN BE SATISFIED BY VIRTUE OF THE FEDERAL AGENCY’S COMPLIANCE WITH SECTION 106 OF THE NHPA (because Section 106 is more rigorous than the State Historic Preservation Act)
Annual State Agency Compliance Survey

Pursuant to A.R.S. § 41-511.04, SHPO conducts an annual survey regarding Agency compliance with the State Act.

Agencies are asked to answer questions aimed at assisting them to self-evaluate their performance under the law.

ASP and SHPO staff generate statistics – production of Annual Report to Governor and Legislature.

(Past reports available on SHPO’s webpages on the ASP website at http://azstateparks.com/SHPO/.)
State Agency & SHPO Agreements

SHPO encourages state agencies to enter into agreements (MOU, ISA, IGA) with SHPO that detail:

1) How the agency will comply with the State Act, and

2) If appropriate, streamlining of the consultation process:
   - Through agreement on the types of projects that don’t require consultation with SHPO
   - Through implementation of agreed-upon standard treatment measures (would not require consultation)

(NOTE: Agency must have a good track record of compliance and have a designated historic preservation staff person and/or a preservation professional on staff)
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Woodruff Butte

Titan Missile Silo

State Historic Preservation Office
ARIZONA STATE PARKS