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Means of Site Preservation in East Texas

Timothy K. Perttula

Although thousands of archeological sites are destroyed annually in Texas, *there are effective ways to preserve them* using existing State and Federal laws and regulations. These are not simply paperwork exercised, since the tangible results help to insure that prehistoric and historic sites are preserved as a special trust for the benefit of Texas' future generations. I encourage all persons interested in protecting and preserving the heritage of Texas to be an advocate to public and private landowners about site preservation.

Rather than review in detail applicable State and Federal laws about site preservation, a summary paper has been distributed here at the Conference (Perttula 1993). I will focus on the key points of site preservation as a means to initiate discussion on these issues.

Designating archeological sites as State Archeological Landmarks (SAL) or listing them on the National Register of Historic Places are two of the best known and effective means of preserving archeological sites in Texas.

State Archeological Landmarks

Archeological sites designated as SALs under the Antiquities Code of Texas are protected because they cannot be removed, altered, damaged, salvaged, or excavated without a permit from the Texas Historical Commission. The designation of a SAL on private land is recorded in the deed records of the county in which the land is located, and conveyed with the property when it is sold. Sites on public or private lands can be designated as SALs, but the landowner's permission must be obtained to designate such a site.

There are criminal penalties for violating the Antiquities Code of Texas. Furthermore, any citizen of the State of Texas may bring a civil action to restrain and enjoin violations or threatened violations to the Antiquities Code: such as intentionally damaging or destroying a SAL.

Nominating and designating SALs is a potentially powerful tool to protect important archeological sites in East Texas. Currently, however, there are only 41 SALs in East Texas (out of about 3900 recorded sites), and *most important archeological sites* lie unprotected on private land. We need to change this situation, and here are four simple steps that will help:

1. Nominate archeological sites in public ownership to the Texas Historical Commission, Department of Antiquities Protection (DAP), for SAL consideration. Nomination forms can be obtained from the DAP staff.
2. We need to work with private landowners on identifying important archeological sites on land they own, and encourage them to designate such sites as SALs.
3. If archeological sites are discovered on public lands (such as a State Park) that may qualify for designation as a SAL, notify the state agency or political subdivision owning or controlling the property as well as DAP. The DAP staff may then initiate designation proceedings if it determines that the site is significant, or in tuen it may require archeological investigations if the site is threatened by actions of the state agency or political subdivision; and
4. If archeological sites on public land are being damaged, or there is a threat to them, please contact the DAP staff about these possible violations to the Antiquities Code of Texas. Also contact state and local law enforcement agencies and officers about these violations, and request their cooperation and assistance in enforcing the provisions and carrying out the intent of the Antiquities Code.

National Register of Historic Places

The National Register of Historic Places (NRHP) was established in 1966 as part of the National Historic Preservation Act. The NRHP is the official list of the Nation's cultural resources worthy of preservation, and it provides Federal recognition to properties of State, local and national significance. The NRHP is part of the national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the NRHP include districts, sites, buildings, etc. that are significant in American history, architecture, archeology, engineering, and culture because they contribute to an understanding of the historical and cultural heritage of the Nation.

Archeological sites tend to be considered for the NRHP if they have yielded, or may be likely to yield, information important in prehistory or history. Information that archeological sites contain, or are thought to contain, is important if it bears on significant research questions about the past, or if it is likely to be useful in addressing research questions that may be developed by archeologists or others in the future.

Listing in the NRHP assists in the preservation of archeological sites by providing national recognition of their individual and collective values, by making property owners eligible for Federal tax incentives and other preservation assistance, and by identifying significant properties to be considered in Federal and State cultural resource planning and management.

One of the more important points about nominating and listing an archeological site on private property on the NRHP is that the listing does not prohibit under Federal law or regulations any action which may otherwise be taken by the property owner with respect to the property.

Archeological sites listed on the NRHP, or determined eligible for inclusion in the NRHP through consultation between a Federal agency and the State Historic Preservation Office (SHPO), can be protected and preserved through the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires that every Federal agency take into account how each of its actions (including such activities as construction, demolition, licenses, permits, loans, grants, or property transfers, among others) could affect NRHP-listed or eligible sites.

"Taking into account" as a preservation method means that the Federal agency assesses the effect its undertaking will have on important archeological sites, then consults with the SHPO, the Advisory Council on Historic Preservation (an independent Federal agency charged by the President to administer the NHPA), and *interested members of the public*, on measures that will be taken to reduce, avoid, or mitigate the effects of the action on the site.

How then can the Section 106 process, and the NRHP program, be used to work to protect important archeological sites in East Texas? A number of ways come to mind:

- a. Inform Federal agencies about important archeological sites on their property, and encourage them to determine whether these sites are eligible for inclusion in the NRHP, and if they are, encourage them to nominate them to the NRHP and take steps to protect them;
- b. Assist the Texas SHPO in identifying and nominating NRHP-eligible sites on public and private lands in Texas;
- c. Work with private landowners in identifying important archeological sites on land they own, and encourage them to nominate (with the SHPO's assistance) such sites to the NRHP; and
- d. Participate (as individuals, and/or members of local historical, historic preservation, and archeological organizations) as interested persons under the Section 106 regulations. Interested persons are considered under NHPA

to be persons concerned with important sites in areas to be affected by federal undertakings, and as such must be consulted with in determining how sites are to be protected, excavated, and treated.

References

- Perttula, Timothy K.
1993 State Archeological Landmarks and National Register of Historic Places Program: Means to Preserve Important Archeological Sites in East Texas. *Newsletter of the Northeast Texas Archeological Society*, Volume I (No. 3 and No. 4).