



How Proactive Planning for Cultural Resources Can Help Manage the Risks of Project Delay (or Worse...)

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We all understand that many factors shape project-planning decisions. Some, like the available budget or schedule, are easy to measure and their effect on a project is very straightforward. Other factors can be more difficult to quantify, but they can have a profound impact on whether a project is a success or a failure.

Understanding the impacts a particular project might have on places in the environment, and in particular, the implications they may bring, are a prime example of the latter. Taking proactive steps to understand your project's impacts, however, can help to manage the risks of project delay, additional costs, or worse.

Environmental Impact Assessment often centers on wetlands, endangered species, or other natural resources. This paper, however, is going to focus on another type of protected resource - cultural resources. I will outline some proactive measures for including these resources along with all of the other factors on which decisions are made. I'll talk about some of the laws and regulations involved, the players and the roles they take, I'll highlight the positive outcome of proactive steps and outline recommendations that you can apply to your projects going forward.

But first, one of the biggest obstacles to effectively considering cultural resources as part of the environmental impact assessment process is to first establish that everyone agrees what we mean by "cultural resources".

Cultural Resources

This term, commonly associated with archaeology, may conjure up images of scientists dusting off artifacts with tiny brushes, but we're really talking about a much broader idea. While archaeological sites are certainly part of the picture, cultural resources may also include historical objects: structures like a bridge, or a collection of buildings in an historic part of town. Items like this tend to be historical - you may hear age discussed as a threshold (i.e. 50 years) but this can vary.

Cultural resources can also include things like landscapes, spiritual places - or really any place - natural or built - that has cultural or historic value to a community.

Thought Experiment

Now that we're all on the same page, imagine for a moment planning has begun for a project that looks great - the budget, schedule, and logistics are straightforward, you have community support, things really look good for this one (maybe you don't have to imagine). But early on you also learn that your project area has a diverse and lengthy Native American history, several small historic communities - including one established by immigrants in the 19th century seeking to establish a utopian community, and also a popular scenic byway or waterway. What do you do now?

Well, if you're looking to regulatory guidelines for the answer, it may not be immediately clear.

The Environmental Impact Assessment process can be uneven at both the state and federal levels. And when trying to determine the impacts specific to cultural resources, the guidelines can be especially murky.

Lack of Uniform Agency Review

Even if everyone understands what we're dealing with when we talk about cultural resources, the challenge in assessing the effects of a particular project stems from the fact there is no one federal agency responsible for reviewing cultural resources. Rather federal agencies generally enter the process if a project receives federal funding, permits, licenses, or takes place on federal land.

But if you step back from the regulatory context, assessing the cultural resource impacts of projects is simple - it can be summarized in a single sentence:

Determine if your project will affect cultural resources, and if so, work out reasonable solutions to: avoid, minimize or otherwise mitigate effects.

The Regulations

In the United States there are a suite of laws dealing with specific parts of the environment, including important cultural places. These laws, along with the executive orders, state laws, tribal laws, local ordinances and all the related regulations have their own specific requirements, factors that determine when/if/how they apply, and relationships to each other.

Along with federal regulations, there are also a variety of state and local laws that may apply depending on your location.

To keep things simple, I'm going to limit the discussion here to a single law - Section 106 of the National Historic Preservation Act. Section 106 of the NHPA, or sometimes

simply, “Section 106”, is one of the most common laws subjecting projects to environmental review. Now, it’s important to remember that those other environmental authorities are important as well, but there are too many variables, permutations, and the like to cover them all here. So for now I’ll focus on Section 106, but remember that other laws may come into play depending on your specific situation.

Section 106 of the National Historic Preservation Act

Section 106 is a law that requires federal agencies to consider how their actions might affect important historic or cultural places or objects. Specifically those eligible for or listed in the National Register of Historic Places (more on this later).

It’s also important to understand that the Section 106 regulations emphasize consultation to resolve conflict – they are process based rather than outcome based. This means that the Section 106 regulations do not require any particular outcome to be considered complete, but rather require that a specific process, based on consultation be followed.

The timeline for the Section 106 review process can vary depending on several factors – but projects with few concerns can be completed in 4 to 6 months; other, more complex projects will require more time.

The lead federal agency for the project is responsible for complying with Section 106, but often requires the project proponent to perform the work as a condition of receiving the funding, permit, or other permission. For example, as part of the Section 404 wetland permitting process the Army Corps of Engineers may require the applicant to complete the Section 106 review prior to review of a preconstruction notification.

Finally the federal agency has the final decision – The State Historic Preservation Office (SHPO) is required to respond to federal agency determinations, but *SHPO does not “sign off” on Section 106* – an important distinction.

Let’s move on to a hypothetical case study that highlights the positive outcome of taking proactive steps to include cultural resources in the siting process.

Linear Corridor Example

This project involved a new linear corridor project travelling through a rural Midwestern setting, consisting primarily of individual homes and farms separated by large, very open parcels containing agricultural fields, pastures, and wooded parcels.

The level of federal agency involvement for this project was unclear at the outset, but the project proponent had experience with cultural resources from previous

projects and wanted to be proactive. The state law also provides protection to archaeological resources on private or public land – but lacks the formal consultation process required under Section 106.

Due to the nature of the project, the potential impacts to any cultural resources would likely be limited to the area in and along the construction corridor along with any access or staging areas.

The cultural resource assessment included background research, archaeological fieldwork, landowner interviews, and agency consultation. The survey documented several types of cultural resources including:

- Archaeological sites
- Historic homes and farms
- Historic bridges
- Local cemeteries
- Former historic townsite

Some of these resources turned out to be more significant than others, but most required no further investigation. The most notable site, however, was a prehistoric archaeological site that had been documented in the 1950s and well known to local artifact collectors. The site had not been formally investigated, but was already listed in the National Register of Historic Places (NRHP) and appeared in the background research. The site was protected under the state law, and since it was listed in the NRHP, it meant the site must be considered under the Section 106 review, if applicable.

Coordination and Mitigation

Coordination between the project proponent, and various federal and state agencies began very early and the initial approach was to try and avoid the archaeological site by re-routing the project.

But after considering factors like the project layout and the proximity of other ecological resources including numerous wetlands and a wildlife preserve, the stakeholders decided to maintain the original project corridor across the archaeological site.

In consultation with the SHPO, the project proponent, and the landowner, we developed a mitigation strategy that would mitigate the project impacts to the archaeological site, while also minimizing the impact of our own excavation, as the project would not affect the portions of the site outside the project corridor. This

highlights the realities of working within the environmental impact assessment process compared to a more research oriented approach.

Throughout the process our consultation with the SHPO sought to include cultural resources as part of the overall environmental review. In addition, the approach:

- Focused on preservation vs. static prevention of development
- Sought an outcome providing the stakeholders preservation AND the linear project
- Utilized existing relationships with landowners and the local community to facilitate the preservation effort.

The archaeological excavation successfully mitigated the effects of the project, addressed the concerns of the landowners, and allowed the project to proceed on schedule.

Lessons Learned

Now go back to the thought experiment at the beginning of the paper where I asked you to imagine a scenario where one of your projects is in an area that contains important cultural places.

While this may seem daunting, recall that the best way to move forward can be distilled to the following:

Determine if your project will affect cultural resources, and if so, work out reasonable solutions to: avoid, minimize or otherwise mitigate effects.

A few other items can help the process move more smoothly. Before you begin, think about your project and how it might affect cultural resources. Learn about your project area and the people who value it. Start early, while plans remain flexible. Consult with stakeholders - build upon existing relationships.

Remember that no single federal agency is responsible for cultural resources, but any federal involvement in your project can trigger federal review. State and local laws can also come into play.

The National Register of Historic Places is important - but don't waste time debating eligibility. Section 106 review provides a mechanism to address impacts to cultural resources, and formal processes for project proponents, agencies, and other stakeholders. Work with Section 106 and similar laws, not against them. Consult with agencies - but don't expect them to do everything. They have multiple priorities beyond cultural resources and your project. Remember that the SHPO does not have

a permitting or “approval” role in the Section 106 process. Keep an open mind about preservation – consider multiple options. The Section 106 process allows essentially any outcome, providing the parties involved agree on the solution.

Finally, remember the Section 106 process is just that – a process, designed to help you identify and resolve problems.

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