The Status of the Commonwealth’s Attempt to Preserve Its Cultural Resources

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May 30, 1988
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The Commonwealth of Virginia retains a wealth of both extant and yet unidentified cultural resources. These resources are the key to our knowledge of Virginia's heritage, and their protection should be of the utmost concern to all organizations, departments, and citizens at both the state and the federal level. Although laws do exist to protect these resources, there is a growing concern that loopholes exist at certain levels of environmental review and that appropriate action is not being taken to protect this valuable information. More specifically, at the state level the laws enabling environmental review are considered by many to be inadequate. Below I will address the agencies primarily responsible for the conservation process and will examine the maneuver in which Virginia attempts to identify, study, protect, and preserve its cultural resources.

Whenever a project will use federal funds, require a federal permit or license, or depend on a federally guaranteed loan, the federal agency contemplating the work must submit plans, maps and photographs to the state Historic Preservation Office. In Virginia that office is the Division of Historic Landmarks. Division staff will first determine whether there are any buildings or sites in the area that are either listed on or eligible for listing on the national register of Historic Places. If a property to be impacted is listed unlisted, and the DHL feels that there may be significant sites on the property, then a phase one investigation is required. This would involve contract archaeologists examining the property using the criteria by which sites are included in the National Register. It is in this role that the National register serves as a planning
tool. The register is the measure of what resources have sufficient cultural significance to be accommodated in planning for Federal projects. If there are no registered or register-eligible properties that will be affected by the project, the Division staff will "sign off." If there are buildings or sites that might be offended adversely, then the federal agency seeking the review must make a good faith effort to mitigate those adverse effects.¹

Negative effects can be mitigated in several ways. In the case of highways, the Department of Highways and Transportation might decide to use an alternate route rather than disturb important resources. If demolition of a significant building is necessary and unavoidable, mitigation might involve preparing documents of the building with drawings and photographs. Mitigation might also involve conducting an archeological excavation prior to destruction of the site. It is important to understand that the division is not in a position to stop a federal project. Environmental review is designed to ensure that a project with federal involvement does not proceed without the DHL having a chance to comment and provide assistance to mitigate or reduce adverse effects. By far the largest number of projects seeking review are highway projects. Mitigation agreements have resulted in a number of archaeological sites being excavated and evaluated, thus providing valuable information about cultural resources located below ground.²

"At the state level, environmental review or review of projects or plans is performed in a somewhat different and what appears to be a much less effective manner. With respect to
extant resources. Directive number one of the Department of Engineering and Building requires that any state agency contemplating demolition of a state owned building, whether the property is a registered landmark or not, must submit plans to the DCHR for review. This process assures that nationally significant buildings owned by the state will not unwittingly be demolished or improperly altered."  

With respect to sites not already listed on the state or national registers, the effectiveness of the DHL is reduced significantly. It appears that the DHL is simply content with review and compliance in reference to Federal law. It's clear that even though they do a fair job at the federal level, the DHL needs to take a more active role in projects involving state money. The major problem with state level review is two-fold. The law calls for an environmental review only of projects costing at least $100,000. Therefore all projects costing less than $100,000, under law, are exempt from environmental review. In addition, any project that is launched by a state agency is exempt from the procedure simply because their a state agency.

It is shocking that an organization such as the VDHL allows for such a large area to be neglected from the necessary cultural resource reviewing procedures. If the state owns the land which various projects are impeding upon, than the state should have the responsibility to inventory its cultural resources. With such a large area of neglect present, it's very possible that the commonwealth could loose its most important site and thus a great deal of the
understanding of Virginia's past.

On September 2, 1986 the Federal Register published 36 CFR 800 "Protection of Historic Properties." These regulations govern the section 106 review process established by the National Historic Preservation Act of 1966. The Advisory Council on Historic Preservation seeks through the Section 106 process to accommodate historic preservation concerns with the needs of federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties.4

Two additional participants involved in the section 106 process are the Agency Official and the State Historic Preservation Officer (SHPO). The Agency Official with jurisdiction over an undertaking, has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking effect upon them, and afford the Council its comment opportunity. The SHPO coordinates state participation in the Implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the SHPO is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The SHPO reflects the interests of the state and its citizens in the preservation of their cultural heritage and helps the Agency official identify those persons interested in
an undertaking and its effects upon historic properties.\textsuperscript{5}

However, on a local level and as we have seen in many cases at the state level, 36 CFR 800 does not mandate a comparable review. Local governments are simply encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction.\textsuperscript{6} In essence the extent of local government participation is at the discretion of local government officials. Similarly at the state level, laws provide a review and compliance process, but because of the manner in which they are written, the states role is passive and as a result many sites and projects are neglected.

The first step to the 106 process involves the locating of historic properties. In consultation with the SHPO, the Agent Official is responsible for making a good faith effort to identify historic properties that may be affected by the undertaking and for gathering sufficient information to evaluate the eligibility of these properties to the national register. Efforts to identify historic properties are expected to follow the Secretary's "Standards and Guidelines for Archeological and Historic Preservation."\textsuperscript{7}

Following the historic properties locating process, the property must be evaluated for its historical significance. In conjunction with the SHPO, the Agent Official applies the national register criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. If the Agency Official and the SHPO agree that a property is eligible under the criteria, the property is to be
considered eligible for the National register for Section 106 purposes. If the Agency Official and the SHPO agree that the criteria are not met then the property is considered not eligible.⁸

If the Agency Official determines that there are no historic properties that may be affected by the undertaking, it is the Agency Official’s responsibility to provide documentation of this finding to the SHPO. However, if there are historic properties that the undertaking may affect, the Agency Official is responsible for assessing the effects. When the effect is not considered adverse the Agency Official submits the finding with the necessary documentation to the council for a thirty day review period. If the council objects but proposes changes that the Agency Official accepts, than the Agency Official is not required to take any further steps in the 106 process. If the Council objects and the Agency Official doesn’t agree with changes proposed by the council, than the affect is considered adverse. When and adverse effect on historic properties is found, the Agency Official will notify the Council and will notify the Agency Official to seek ways to avoid or reduce the affects on historic properties.⁹

"An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the properties location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but
are not limited to: 1) physical destruction, damage, or alteration of all or part of the property, 2) isolation of the property from or alteration of the character of the properties setting when that character contributes to the properties qualification for the National Register, 3) introduction of visual, audible, or atmospheric element that are out of character with the property or alter its setting, 4) neglect of property resulting in its deterioration or destruction and, 5) transfer, lease, or sale of the property. 10

The efforts of a Federal level, as seen above are substantial and effectively deal with the concerns for preservation. Conversely the VDHL's role of performing only those functions mandated upon them by the federal government remain terribly inadequate. It is for this reason that some positive action is beginning to surface.

On April 10, 1987 Virginia Governor Gerald L. Baliles created the Governors Commission to Study Historic Preservation. The Commission was required to consider the status of Virginia's preservation efforts and to suggest a program which would return Virginia to the forefront of the preservation movement. 11

Experts in preservation have gathered and have identified numerous topics for study and consideration by the Commission. Among them are several which seem most pertinent to the immediate needs of preserving Virginias cultural resources; they include: "1) a need to determine where Virginia preservation program can function most effectively in an administrative sense and in terms of program and service delivery, 2) consideration of the preservation responsibilities of all agencies of the
Commonwealth, 3) the need for an efficient yet effective system of environmental review that includes all projects funded by the commonwealth that affect historic resources, 4) the need for a strong program to assist local governments in protecting their natural and historic resources, and 5) the need to complete a comprehensive statewide survey of historic resources.\textsuperscript{12}

In testimony presented to the commission, some groups have questioned whether this administrative change has weakened the power and profile of Virginia's preservation program. The preservation program, as administered through VDHL, has come under criticism from groups speaking to the Commission as being too narrow in focus and excessively affected by the goals and policies of the federal program.\textsuperscript{13} In addition, as this paper has considered in detail, a number of groups and government officials have indicated that Virginia's current system for environmental review does not adequately consider or protect the resources of the commonwealth. Finally, most of the decisions affecting the future of Virginia's landmarks are made at the local level. "Initial study indicates that many local governments and non profit preservation agencies feel that the enabling legislation pertaining to preservation is in adequate to cope with mounting development pressures."\textsuperscript{14}

These are a few of the major issues being investigated and analyzed by the Governors Commission. While the final report will not be published until December, 1988, this Commission represents the most significant action taken in the attempt to preserve the Commonwealth's cultural resources.
The current system of environmental review in Virginia is inadequate by several standards. This inadequacy has led to state funded projects that have become exempt from any type of environmental review whatsoever. An example lies in the construction of the Virginia Horse Center. Because this project was funded by the state, it simply became exempt from environmental review. An even larger concern lies in the near future. The Explore Project is an economic development and tourism project to be located on the Roanoke River. This five thousand acre conservation area and educational-history project will include an eighteenth century pioneer village, and Indian park, and what will the world's largest zoo of North American Animals. In addition there will be a variety of visitor services, lodging facilities and restaurants. The question is, will this project also become exempt from proper environmental review? Anthropologists are confident that significant cultural resources lay beneath the surface of this project area. It should be the responsibility of the commonwealth to take a stand and investigate the potential knowledge of these resources before authorizing the ground breaking for the Explore Project.

Virginia's cultural resources are among the most important assets of the commonwealth and the nation, but the current system for protecting these resources is inadequate at best. The Commonwealth must realize its obligation to identify, protect and preserve its own property and heritage. This obligation must be met by strengthening the laws and going beyond the federal...
review and compliance procedure. The Commonwealth should set an example for local governments by adequately identifying and studying the resources on its own land.
Endnotes

1 Landmarks Commission.
2 ibid
3 ibid
4 36 CFR 800
5 ibid
6 ibid
7 ibid
8 ibid
9 ibid
10 ibid
12 ibid
13 ibid
14 ibid
Bibliography

36 CFR 800:  
Protection of Historic Properties  
Federal Register

Governors Commission to Study Historic Preservation Initial Report,  
November 1, 1987.

Virginia Antiquities Act  
Chapter 12.1, 10-150.2-10-150.10

Virginia Division of Historic Landmarks  
State and Federal Requirements for Review of Activities  
Affecting Cultural Resources in Virginia.