

**The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT**

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

§ 1001. Findings

- A. This Act may be cited as the “Navajo Nation Cultural Resources Protection Act”.
- B. The Navajo Tribal Council finds and declares that:
 - 1. The spirit and direction of the Navajo Nation are founded upon and reflected in its cultural heritage;
 - 2. The cultural heritage of the Navajo Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the Navajo People;
 - 3. Cultural properties of the Navajo Nation are being lost or substantially altered, often inadvertently, with increasing frequency;
 - 4. The preservation of this irreplaceable cultural heritage is in the interest of the Navajo Nation and its people so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Navajos;
 - 5. In the face of ever increasing energy development, economic development, sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Navajo Nation’s cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Navajo Nation;
 - 6. Increased knowledge of our cultural resources, the establishment of better means of identifying and administering them, and fostering their preservation will improve the planning of federal, Tribal, state and other projects and will assist economic growth and development and expeditious project implementation; and
 - 7. Although the major role in cultural resource preservation has been borne by the federal and state governments, and both must continue to play a role, it is nevertheless essential that the Navajo Nation expand and accelerate its cultural resource preservation programs and activities.

§1002. Policy

It shall be the policy of the Navajo Nation, in cooperation with the states, federal government, other Indian Tribes, and private organizations and individuals to:

- A. Use appropriate measures to foster conditions under which our modern society and our cultural resources can coexist in productive harmony and fulfill the social, economic and other requirements of present and future generations;
- B. Provide leadership in the preservation of cultural resources of the Navajo Nation;
- C. Administer Navajo Nation-owned, administered or controlled cultural resources in a spirit of stewardship and for the inspiration of present and future generations;
- D. Contribute to the preservation of non-Navajo Nation-owned cultural resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- E. Encourage the public and private preservation and utilization of usable elements of the Navajo Nation’s stock of historic buildings and structures.

**The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT**

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

§ 1003. Definitions

As used throughout this Act, the term:

- A. “Archaeology Department” means the Navajo Nation Archaeology Department.
- B. “Building” means any structure made by man primarily to provide shelter.
- C. “Cultural property” means any cultural resource deemed to be important enough to warrant listing in the Navajo Register.
- D. “Cultural resource” means any product of human activity, or any object or place given significance by human action or belief.
- E. “Department” means the Navajo Nation Historic Preservation Department.
- F. “District” means any discrete area comprising buildings, objects, sites or structures that form a recognizable, unified whole.
- G. “Indian” or “Indian person” mean any enrolled member of an Indian Tribe recognized by the Secretary of the Interior.
- H. “Lands in which the Navajo People have a historical interest” means all lands historically or traditionally used by the Navajo People.
- I. “Navajo Lands” means those lands held in Trust for the benefit of the Navajo Nation and those lands which the Navajo Nation holds in fee simple or in which it has a legal interest.
- J. “Navajo Landmarks” means those cultural properties that are of significance to the entire Navajo Nation.
- K. “Navajo Register” means the Navajo Nation Register of Cultural Properties.
- L. “Object” means a product of human activity or an item given significance or meaning by human activity or belief.
- M. “Place” refers to an identifiable location at which an event occurred or a location given significance by human action or belief.
- N. “Preservation Officer” means the Navajo Nation Historic Preservation Officer, who is the Director of the Navajo Nation Historic Preservation Department.
- O. “Site” means the location of the physical remains of human activity.
- P. “Sponsor” means the agency official or the official in a private capacity that has decision making authority over a particular undertaking.
- Q. “Structure” means construction resulting from human activity, the primary purpose of which is other than to provide shelter.
- R. “Tribal Archaeologist” means the Navajo Tribal Archaeologist, who is the director of the Archaeology Department.

The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

- S. “Undertaking” means any project, activity, or program that can result in changes in the character or use of cultural properties, if any such cultural properties are located in the area of potential effects. The project, activity or program must be under the direct or indirect jurisdiction of a Sponsor. Undertakings include new and continuing projects, activities or programs not previously considered under the authority of this Act.

§ 1004. Historic Preservation Department

The Navajo Nation Historic Preservation Department (hereafter referred to as the “Department”) within the Division of Resources shall be the Navajo Nation’s agency responsible for the protection, preservation and management planning for the Navajo Nation’s cultural resources. The department shall be directed by the Navajo Nation Historic Preservation Officer (hereafter referred to as the “Preservation Officer”) who shall advise the President of the Navajo Nation, the Navajo Nation Tribal Council, the divisions, departments, programs, agencies, authorities, enterprises and any other instrumentalities of the Navajo Nation, the federal, state and local governments, private organizations and individuals on matters pertaining to cultural resource preservation to achieve the goals of this Act on Navajo lands, and on lands in which the Navajo people have a historical interest. The Department shall conduct such other activities authorized in accordance with the Department’s approved Plan of Operation.

§ 1005. Archaeology Department

The Navajo Nation Archaeology Department (hereafter referred to as the “Archaeology Department”) within the Division of Resources shall be the Navajo Nation’s agency for providing cultural resources services to project sponsors. The Archaeology Department shall be directed by the Navajo Tribal Archaeologist (hereafter referred to as the “Tribal Archaeologist”), who shall be responsible for organizing and providing cultural resource services to sponsors, including instrumentalities of the Navajo Nation, Navajo people, other agencies and industry in need of cultural resources services both on and off the Navajo Reservation. The Tribal Archaeologist shall also organize and implement, in consultation with the Preservation Officer, a program of archaeological and anthropological research designed to enhance and benefit the Navajo Nation’s cultural resources. The Archaeology Department shall conduct such other activities authorized in accordance with its approved Plan of Operation.

§ 1006. Navajo Nation Museum

The Navajo Tribal Museum shall be the repository for all cultural resources collected on Navajo Lands. The Navajo Tribal Museum shall conduct such other activities authorized in accordance with its approved Plan of Operation

§ 1011. Navajo Nation register of cultural properties and cultural landmarks

- A. The Preservation Officer shall create, expand, maintain and administer a Navajo Nation Register of Cultural Properties (hereafter referred to as the “Navajo Register”) comprising buildings, districts, objects, places, sites and structures significant in Navajo Nation history, architecture, archaeology, engineering, and culture.
- B. The Preservation Officer shall create, expand, maintain and administer a program for designation of Navajo Nation Cultural Landmarks (hereafter referred to as “Navajo Landmarks”), which shall include those cultural properties of significance to the entire Navajo Nation.
- C. Cultural properties on Navajo lands shall be deemed to be included in the Navajo Register if, as of the date of enactment of the Navajo Nation Cultural Resources Protection Act, they are

**The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT**

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

1. Historic properties listed in the National Register of Historic Places;
 2. Historic properties designated National Historic Landmarks;
 3. Natural areas designated National Natural Landmarks;
 4. Cultural properties included in the National Park System at Navajo National Monument, Canyon de Chelly National Monument, and Chaco Canyon National Historical Park; and
 5. Archaeological sites designated as Chaco Protection Sites pursuant to P.L. 96-550.
- D. The Preservation Officer shall establish a program to locate, inventory, and evaluate cultural resources on Navajo lands and to list all such resources as may be eligible in the Navajo Register and to designate such properties as may qualify as Navajo Landmarks.

§ 1021. Protection of Cultural Properties

In order to ensure the protection of the cultural properties of the Navajo Nation, the Sponsor of any undertaking must obtain the approval of the Preservation Officer prior to implementation or authorization of any undertaking by the Sponsor.

§ 1031: Prohibited Activities

No cultural property may be visited or investigated on Navajo Lands, except those cultural properties designated as open to the public within the boundaries of a Navajo Nation Park or a National Park or Monument; nor may any person alter, damage, excavate, deface, destroy or remove, any cultural properties on Navajo lands. No person may sell, purchase, exchange or transport cultural resources from Navajo lands. No person may engage in ethnographic research on Navajo lands: Except that such activities may be conducted under the authority of and in accordance with the stipulations of a valid Navajo Nation Cultural Resources Permit issued by the Preservation Officer under the authority of § 1032.

§ 1032. Permits

- A. There shall be three classes of Permits.
1. *Class A* permits shall be issued for activities involving casual visitation and inspection of cultural properties.
 2. *Class B* shall be issued for cultural resource inventory activities involving no collection or disturbance of cultural resources.
 3. *Class C* shall be issued for cultural resource investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources or for ethnographic research.
- B. Permits shall be issued only on a case-by-case basis, except that organization qualifying for a Class 1 or 3 under Navajo preference pursuant to Navajo Nation Code may be granted blanket Class B permits. The Preservation Officer may waive this requirement whenever he or she finds that issuance of a blanket Class B permit is in the best interests of the Navajo Nation and its people.
- C. Permits shall not be issued for periods to exceed 12 months, except when necessary to cover the duration of a single project.

The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

§ 1033. Exceptions

- A. The prohibition against visitation of cultural resources does not apply to enrolled members of the Navajo Nation or to Navajo Nation employees engaged in official activities.

- B. The prohibition against alteration, collection, disturbance, excavation or removal of cultural resources or collection of ethnographic data do not apply to:
 - 1. Navajo traditional practitioners engaging in activities directly relating to the practice of traditional Navajo religion; or

 - 2. To Navajo Nation employees engaged in official business, relating to cultural resources management activities approved in accordance with Departmental rules and procedures.

§ 1034. Permit requirements

Any person proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate or remove cultural resources or engage in ethnographic research, who is not exempted pursuant to § 1033 of this Act, shall apply to the Preservation Officer for a Navajo Cultural Resources Permit for the proposed activity. The Preservation Officer may issue a Permit to any qualified individual, subject to appropriate terms and conditions.

§ 1035. Suspension of permits

- A. The Preservation Officer may suspend a Permit without cause upon determining that continuation of activities under a permit would not be in the best interests of the Navajo Nation or its people. Such a suspension is made without liability to the Navajo Nation, its agents or employees. Such a suspension shall not prejudice the ability of the permit holder to hold or obtain other permits.

- B. The Preservation Officer may suspend a permit for cause upon determining that any term or condition of a permit is not being met by the permit holder.

§ 1036. Revocation of permits

- A. The Preservation Officer may revoke a permit without cause upon determining that continuation of a permit is not in the interests of the Navajo Nation or its People. Such a revocation is made without liability to the Navajo Nation, its agents and employees. Such revocations shall not prejudice the ability of the permit holder to hold or obtain other permits.

- B. The Preservation Officer may revoke a permit for cause upon finding that:
 - 1. Any of the terms or conditions of a permit has been willfully violated;
 - 2. A permit-holder has engaged in activities prohibited by this Act; and
 - 3. A permit-holder has engaged in activities that resulted in the prior suspension of a permit.

**The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT**

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

§ 1037. Criminal Penalties

Any Indian person violating the provisions of §1301 of this Act shall be subject to criminal penalties.

- A. Any Indian person who:
1. Engages in cultural resource inventory activities except under the authority of a Class B permit, or
 2. Who alters, collects, damages, destroys, excavates or removes cultural resources except under the authority of Class C permit or under the exception provided by § 1033 of this Act, shall upon conviction, be guilty of a misdemeanor and subject to punishment of up to one year in jail and a fine of up to one thousand dollars (\$1000).

§ 1038. Civil assessments

Individuals violating the prohibitions in § 1031 or § 1037 of this Act shall be subject to civil assessments. Civil assessments shall be imposed by the Resources Committee of the Navajo Nation Council (hereafter referred to as the Resources Committee”), in accordance with procedures adopted by the Resources Committee expressly for this purpose. The Resources Committee shall adopt such procedures within 90 days of the adoption of this Act.

- A. Violation of the provisions of § 1031 or § 1037 of this Act by any person, who does business on the Navajo Nation, shall be grounds for withdrawal of the privilege of doing business on the Navajo Nation. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated § 1031 or § 1037 shall lose the privilege of doing business on the Navajo Nation.
- B. Any non-Indian who visits or inspects cultural resources on Navajo lands without a valid Class A permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Resources Committee of the Navajo Nation Council, shall be assessed a civil forfeiture of not more than one hundred dollars (\$100.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. For the purposes of this part, each visit to or inspection of a cultural resource on Navajo Lands shall be considered a separate offense. The Resources Committee may, at its discretion, recommend to the Navajo Nation Council that any person found to be in trespass be excluded from the Navajo Nation.
- C. Any non-Indian who engages in cultural resources inventory activities on Navajo lands, except under the authority of a valid Class B permit shall be committing trespass. Any individual determined to be in trespass after a hearing before the Resources Committee, shall be assessed a civil forfeiture of not more than one thousand dollars (\$1000) for each offense. For the purposes of this part, each inventory on Navajo lands shall be considered a separate offense. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated this prohibition shall be excluded from the Navajo Nation.
- D. Any individual within Navajo lands who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural resources or who collects ethnographic data without a valid Class C permit, or as permitted under the exceptions detailed in § 1033, or who engages in activities in violation of the terms and conditions of a valid permit shall be liable, after a hearing before the Resources Committee, to the Navajo Nation for civil damages as determined by the Resources Committee as follows:
1. Assessment of Actual Damages. The Resources Committee shall impose the civil assessments based upon actual damages in accordance with “Standards for Assessing Damages to Cultural Properties” that the Resources Committee shall adopt expressly for this purpose. The “Standards for Assessing Damages to Cultural Resources” shall include, but need not necessarily limit consideration to:

The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

- a. Full costs of restoration of the cultural resource;
 - b. Enforcement and administrative costs associated with the civil action;
 - c. Costs of disposition of cultural resources, including as appropriate, costs of curation in perpetuity;
 - d. Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
 - e. Costs of any additional mitigation measures the Resources Committee deems appropriate to implement.
2. Assessment of Treble Damages. In addition to the actual damages, the Resources Committee may, at its discretion, assess damages of up to three (3) times the amount of the actual damages.
 3. Seizure of Equipment and Cultural Resources. The citing officer shall seize all cultural resources in the possession of any individual cited under § 1031 of this Act, together with any other property used for or related to the violation in the possession of the individual cited, as the officer may deem necessary to obtain payment of any civil assessment.
 4. Forfeiture of Cultural Resources and Property. After hearing before the Resources Committee:
 - a. Any cultural resources obtained in violation of this Act shall be forfeited to the Navajo Nation;
 - b. Any other property seized in accordance with § 1038(D) (3), shall be released to the owner upon timely payment of any related civil assessments;
 - c. Any seized property shall be forfeited to the Navajo Nation if the assessment has not been paid within 15 days of the hearing at which the civil assessment was levied or pursuant to this Act, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.
- E. Civil assessments imposed under this part shall be reserved solely for the purposes of restoring damaged cultural resources and for meeting the purposes of this Act and shall be deposited in the Historic Preservation Revolving Account for disbursement in accordance with Tribal budgetary procedures.
- F. Any individual assessed by the Resources Committee pursuant to § 1038 of this Act shall have the right to appeal the decision of the Resources Committee to the Navajo Nation District Court as follows:
1. Any appeal must be filed in writing with the Navajo Nation District Court within thirty days of notification of the action of the Resources Committee;
 2. The review by the Navajo Nation District Court shall be limited to:
 - a. Ensuring that the appellant received due process of law; and
 - b. Ensuring that any rights the individual may have under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. § 1301-1341) were observed; and
 3. Consideration by the Navajo Nation District Court shall be limited to review of the administrative record created before the Resources Committee during the hearing before it.

§ 1041. Appeals

- A. Any administrative action taken by the Preservation Officer pursuant to this Act which is a final action made on behalf of the Navajo Nation may be appealed by any party directly and adversely affected by such action. Notice of appeal must be filed within 30 days of notification of the Preservation Officer's action.
- B. Within 90 days of the adoption of this Act, the Preservation Officer shall establish regulations governing appeals of administrative decisions reached under the authority of this Act. The regulations shall specify

The NAVAJO NATION
CULTURAL RESOURCES PROTECTION ACT

CMY-19-88

Navajo Nation Code, Title 19

Chapter 11–Sections 1001-1061

the

procedures governing appeals, identify who may appeal, detail notification requirements, establish time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements necessary to carry out the purposes of this Section.

- C. Any appellant adversely affected by the outcome of an appeal under regulations promulgated pursuant to § 1041(B) of this Act shall be entitled to review of the action in Navajo Nation District Court as follows:
1. Notice of an appeal under the provisions of this part must be filed with the Navajo Nation District Court within 30 days of receipt of notice of a final action by the Division of Natural Resources;
 2. Judicial review by the Navajo Nation District Court shall be limited to:
 - a. Ensuring that the appellant received due process of law, and
 - b. Ensuring that all rights of the appellant under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. 1301-1341) were observed.
 3. Judicial review by the Navajo Nation District Court shall be limited to review of the administrative record created during the administrative appeals process.

§ 1051. Regulations, procedures, standards and guidelines

The Preservation Officer shall develop, promulgate, publish and implement such regulations, procedures, standards and guidelines necessary to implement the requirements of or to achieve the purpose of this Act.

§ 1061. Severability

If any provision of this Act or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application and to this end; the provisions of this Act are severable.