

# **CHAPTER 1**

## **History in the Balance:**

### **Section 106 Compliance and the Impact of the Office of Surface Mining and Federal Energy Regulatory Commission Requirements**

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## **§ 1.01. Introduction.**

Among the many environmental issues which must be considered by those involved in the production, sale, and transportation of minerals are the preservation of cultural and historical resources and the impact of a producer's actions on these resources. Although the recovery and preservation of cultural and historical resources can be important to society, cultural resource reservation has become a strenuous requirement imposed upon the mineral industry. The primary piece of legislation intended to protect the historic environment is the National Historic Preservation Act of 1966 (NHPA).<sup>(1)</sup> Passage of the NHPA reflected a growing perception that, as important and necessary as development might be, the nation was losing the character of its communities and its cultural roots as expressed in historical properties.

## **§ 1.02. Context and Purpose of the Historic Preservation System.**

The NHPA is the strongest statement of government policy favoring preservation of cultural resources, but it was not the first and is not the only statement. Early efforts to preserve cultural resources produced a multitude of protective legislation. In addition, legislators continued to express concern with this issue in legislation passed after enactment of the NHPA.

### **[1]--Antiquities Act of 1906.**

The first legislation to designate historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest was the Antiquities Act of 1906.<sup>(2)</sup> The Antiquities Act set aside national or historic monuments for preservation and authorized the Secretary of the Interior to accept donations of privately owned sites for national monument designation. Additionally, certain cultural resources located on federal land were protected by the Antiquities Act, regardless of whether they had been designated as a national monument. Any disturbance of these cultural resources was subject to criminal sanctions.<sup>(3)</sup> Although the Antiquities Act is not directly applicable to the mineral industry, it is cited by preservationists as the beginning of the statutory scheme of historic preservation.

### **[2]--Historic Sites Act of 1935.**

Authority for development of an administrative program to identify and evaluate cultural resources was established by the Historic Sites Act of 1935.<sup>(4)</sup> The provisions of this Act declare that "it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States."<sup>(5)</sup> The history of granting the Secretary of the Interior (the Secretary) the responsibility for evaluating cultural resources began in the Historic Sites Act. The Act requires the Secretary to survey historical and archeological sites, buildings, and objects for the purpose of determining those which possess exceptional value as commemorating or illustrating United States history.