

Cultural Resource Laws and Practice: An Introductory Guide¹

By Thomas F. King²

Reviewed by Eric C. Petersen³

This review addresses the first and second editions of *Cultural Resource Laws and Practice: An Introductory Guide*. The author, Thomas F. King, is no newcomer to thinking about cultural resource management (CRM) issues (King 1983). He has been involved in various aspects of CRM and historic preservation since the mid-1960s. From 1977 through 1979 Dr. King worked in Micronesia developing historic preservation programs. He has been an archaeologist with the National Park Service and a staff member of the Advisory Council on Historic Preservation in Washington, D.C., and helped draft the 1986 version of the Advisory Council on Historic Preservation's Code of Federal Regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act of 1966. More recently, Dr. King entered the private sector, where he practices today as a CRM consultant. As an author he has numerous journal articles and books to his credit.

It must be said at the outset that the title of the book does not suggest sitting by a crackling fire with a snifter of fine brandy expecting to be kept up all night by a rousing good yarn. Nevertheless, it must also be said that for a book that could be expected to lead one to an early bed time, it is unexpectedly readable. As King points out, the content of the book is drawn largely from courses he presented in association with, among others, the National Preservation Institute, the Advisory Council on Historic Preservation, the National Park Service, and the University of Nevada at Reno. Clear, straightforward, and precise pedagogy is a goal that this book meets in the main.

The first edition was published in 1998 with the second edition now appearing in 2004. However, both editions follow a basic outline of three parts divided into nine chapters. The three parts are "Background and Overview," "Law and Practice," and "Bringing It All Together."

The first part provides a brief orientation to CRM followed by a slightly longer account of historic preservation in the United States. Its function is primarily as context and orientation to CRM as a

discipline. It closes with an introduction to the various players in CRM – for example, cultural resource specialists and managers within federal agencies, state historic preservation officers (SHPOs), American Indian tribes and other Native American groups and their tribal historic preservation officers (THPOs), and non-federal project applicants. It is assumed that the reader has at minimum a passing understanding of the basics of historic preservation and CRM, the difference between which is only tersely explained. For this book, historic preservation often revolves around the protection of historic properties, which is but one kind of cultural resource. Cultural resource management is a broader consideration of the needs of resource types such as archaeological sites, cultural landscapes, historic structures, and ethnographic issues balanced against competing resource needs and uses.

The book's second part is the most thoroughly thought out and discussed. It is an insightful and provoking analysis of the utility in CRM of both the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act of 1966 as amended (NHPA). The part that NEPA can play in CRM may come as a surprise to some who deal primarily with Section 106 issues, but King points out in some detail that NEPA, as a broad umbrella of environmental laws, can have weighty consequences in cultural resource matters. Indeed, NEPA has recently taken on added importance when one considers that the NHPA's 1999-2000 implementing regulations (36 CFR 800) now allow for the integration of Section 106 consultation into the NEPA process. In some ways this may be the most useful chapter for CRM practitioners who have had little experience working with NEPA. This chapter identifies the various aspects and levels of NEPA analysis (categorical exclusions, environmental assessments, and environmental impact statements) and advances impact analysis as an underutilized tool in assessing the effects of a proposed project on cultural resources.

It is the chapter on Section 106 of the National Historic Preservation Act of 1966 as amended, and more specifically on its implementing regulations (36

CFR 800), that both the neophyte and the experienced but occasionally bewildered cultural resource manager will likely find the most useful. Certainly, based on sheer volume, it is Section 106 that the majority of agency specialists, tribal and state historic preservation officers (T/SHPOs), and other cultural resource managers confront on a regular basis. This chapter's value, in addition to a clear step-by-step presentation and analysis of the regulatory process, is King's continuing reminder that several parties, often with competing interests, are trying to work through a process, and often toward different goals. Probably the most important aspect is his contention that disagreements do not move the process more quickly; rather than getting twisted in knots over process, the parties need to focus on the "purpose" of the consultation, which is to come to a mutually agreeable result. King's premise throughout the book is that conflicts are resolved through creative and constructive ideas, not on whether or not one's position is strictly in line with the letter of the regulations.

Interestingly enough, there are implicit reminders throughout the book that it is often easier to accept an SHPO or agency position and move forward rather than argue out each little decision because it seems to be contrary to the desired result. King contends that decisions regarding eligibility, process, and mitigation that conflict with another party's opinion need not be an impediment to the successful completion of the process. Such a contrary recommendation can still result in an acceptable resolution of the consultation process if the decision is accepted and creative responses are proposed to reach a mutually satisfactory resolution. Much of the advice here clearly has its genesis in King's experience as a private consultant trying to bring the project applicant, agency, SHPO and/or THPO, and certain interested parties together to make the consultation process less confrontational and time-consuming, yet ultimately benefit the resource.

Also included are discussions of some of the collateral components of the Section 106 process, such as the importance of the National Register of Historic Places, its eligibility criteria and considerations, and how they can impact the process. Basic ideas about how integrity, boundaries, and mitigation impact the process are discussed. Similar advice and explanations are provided in King's discussion of other resource

laws and authorities and even some less-discussed property types such as cultural landscapes and shipwrecks, although these are not nearly so thoroughly treated.

The book's third part is a bit of a catch-all that discusses cultural resource impact assessments and CRM plans. It also considers the possible future of the discipline with hope for increasing regulatory flexibility.

Overall, the second edition is well laid out, with numerous enjoyable anecdotes and examples. According to the author, and evident from reading, the first edition was written when the 1992 version of the 36 CFR 800 regulations were undergoing revision, which resulted in the volume's going to print before the new regulations were put in place in their final form. This had the regrettable result of limiting the usefulness of the first edition. In it, King's exposition does not always match the regulatory reality.

Compared with the first edition, the second edition is considerably more valuable in its detail and scale. It is a much expanded, clearer, and ultimately more useful volume. Being more than 100 pages longer than its precursor, the author takes advantage of the opportunity to expand the analysis and discussion of the changes to the 1999-2000 36-CFR-800 regulations. On the other hand, since no such changes occurred to NEPA, the changes to that chapter revolve around the expansion and clarification of concepts and application.

Although acknowledging the importance of "the process" (p. 152) and outlining suggestions to make the process work better, the author does not address the issue of why the process itself is important. In a nation that values equality before the law, equal treatment before the regulations needs to be held dear as well. One of the regular complaints directed at SHPOs by applicants and agencies is their perception that they are not receiving equal treatment under the review process when compared with other agencies and other undertakings. In fact, maintaining consistency is one of the most difficult balancing acts that can occur in an SHPO office. The need for consistency when dealing with various players under different circumstances of individual undertakings is particularly difficult for reviewers. While the outcome is important, even critical, the process used to get to the outcome is important as well. The competing needs of each of the parties must be understood and respected. It is, after all, the underlying

reason the process is one of consultation and not a requirement to preserve every lithic scatter found. The process is important if only to ensure that the proponents of the undertaking are treated fairly and give all historic properties fair consideration.

If there is a problem evident throughout both editions of the book, it is the seeming lack of perspective of the demands laid upon the T/SHPO by the rest of the players. Since it is the 36 CFR 800 regulations that most cultural resource managers deal with on a regular basis, and inevitably then with the SHPO, a contribution could have been made by investigating the relative goals and perspectives of the SHPOs. The step-by-step explanation presented in the book is useful, but an exploration of the rationale behind SHPO perspectives and the forces operating in those offices could have provided insights to the other players that would help them to understand the kinds of comments that are issued by SHPOs. Other than an occasional statement about going along with their recommendations rather than spending time fighting them, it would improve the book by examining the pressures of the SHPO (or for that matter the THPO). However, it is understandable that this was not done. It would be no easy task to distill the points of view of more than 50 SHPOs and a burgeoning number of THPOs down to their collective essence. Perhaps such a criticism is unfair, since the book is primarily a primer of how the regulations function.

“Generally this book is designed for use in college, university, and continuing education classes in historic preservation, environmental studies, social impact assessment, and cultural resource management” (p. 5). The volume should be of particular value to students who are expecting to work in CRM, but it can also serve as a ready reference for experienced practitioners. In short, despite some relatively minor flaws and omissions, the second edition of *Cultural Resource Laws and Practice* is an improvement over its first edition. It discusses in depth the two primary federal laws, and to a lesser degree, some of the other laws used at the federal level to protect historic properties. The author provides an insightful and clear presentation and interpretation of how those laws operate. It is fortunate that one of our country’s premier cultural resource practitioners has brought his

thinking together in a succinct tome. It should be read by all those practicing in, or hoping to practice in, the cultural resource and historic preservation arenas.

Notes

1. Walnut Creek, California: Alta Mira Press, A Division of Rowman and Littlefield Publishers, 1998. First edition. First in the Heritage Resources Management Series, sponsored by the University of Nevada at Reno. Series edited by Don Fowler. 318 pages, introduction to series by Don Fowler, acknowledgments, three parts, nine chapters, figures, bibliography, appendices, index. Cloth, \$62.00 U.S. Paperback, \$22.95 U.S. 2004. Second edition. 426 pages, foreword by Don Fowler, acknowledgments, three parts, nine chapters, figures, bibliography, appendices, index. Cloth, \$72.00 U.S. Paperback, \$26.95 U.S.

2. Thomas F. King received his Ph.D. in anthropology in 1976 from the University of California at Riverside. His past experience as a federal employee in cultural resource management now serves him in his private practice as a consultant, teacher, and writer. He may be contacted at tfking106@aol.com, at 301-588-8012, and at 410 Windsor Street, Silver Spring MD 20910-4242.

3. Eric C. Petersen received his M.A. in anthropology with a specialization in archaeology from the University of Nebraska in 1984. He has worked as a reviewer on federal undertakings in compliance with Section 106 of the National Historic Preservation Act of 1966, first for the Arkansas and then the New Mexico state historic preservation offices. Currently he is a cultural resource specialist, Planning Division, Denver Service Center, National Park Service, U.S. Department of the Interior, 12795 West Alameda Parkway, Denver CO 80225-0287. He can also be contacted at eric_petersen@nps.gov and at 303-969-2317.

References Cited

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