

Part 3 Chapter 1: Policies for Implementation of the Antiquities Law of Mississippi
(Adopted by the Board of Trustees on January 15, 2010; Amended January 20, 2017; Amended January 24, 2020)

Rule 1.1 Board of Trustees.

Section 39-7-5 of the Antiquities Law of Mississippi assigns sole responsibility for administration of the Antiquities Law of Mississippi to the Board of Trustees (Board) of the Mississippi Department of Archives and History (MDAH).

In administering the Antiquities Law, the Board has the authority to designate publicly owned properties as Mississippi Landmarks, with or without the request of the public owner, and privately owned properties at the request of the owner. The Board also has the authority to issue permits for construction, demolition, excavation or ground disturbing activity, public improvement of any nature, or the transfer of public property to private ownership that affects Mississippi Landmark property and property that is eligible for Mississippi Landmark designation, as determined by MDAH.

In exercising its authority under the Antiquities Law, the Board will consider the recommendations of MDAH staff and written comments from public property owners and members of the public

Source: Miss. Code Ann. §§ 39-7-1, 39-7-3, 39-7-5, 39-7-7, 39-7-22 (1972).

Rule 1.2 Notices of Intent.

State agencies, counties, cities, and all their political division are required to submit a Notice of Intent with supporting documentation for all projects involving publicly owned property, including taking, alteration, damage, destruction, salvage, restoration, renovation, excavation, property transfer, excavation or ground disturbing activities of any nature, demolition or significant alteration. The Notice of Intent serves as the formal application for MDAH review.

A Notice of Intent is required for projects involving publicly owned property that has not been designated as a Mississippi Landmark and for privately or publicly owned property that has been designated as a Mississippi Landmark.

The public property owner or owner's representative must submit a Notice of Intent to MDAH in the early planning stages and always prior to the letting of bids or beginning a project for construction, improvement of any nature, or transfer of public property to private ownership. Supporting documentation, including, but not limited to, plans and specifications, maps, photographs, legal description, property deed, structural report, etc. must be submitted with the Notice of Intent, as appropriate.

MDAH will review the Notice of Intent in accordance with the procedures outlined in this document.

Source: Miss. Code Ann. §§ 39-7-1, 39-7-11, 39-7-22 (1972).

Rule 1.3 Permit Process.

State agencies, counties, cities, and all their political subdivisions are required to submit a Notice of Intent to MDAH for all projects affecting publicly owned property in accordance with Rule 1.2 for review. Work affecting archaeological sites or potential archaeological sites on publicly owned property also must be submitted to MDAH for review and approval.

The permit process begins with the filing of a Notice of Intent. The review process which follows is determined by the classification of the property at issue and the nature of the activity for which a permit is sought as set forth herein.

A. Undesignated Public Properties.

If, upon review, MDAH staff determines that a property does not meet the criteria for designation as a Mississippi Landmark as defined in Rule 1.4(A), staff will notify the applicant that the project may proceed without further review.

If MDAH determines that the property is a potential Landmark, in accordance with the criteria in Rule 1.4(A) and that the proposed project meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, MDAH staff will notify the applicant that the project is acceptable or acceptable with conditions.

For public campuses, including schools, universities, public health facilities and other similar multi-building properties, the Board encourages the adoption of Memoranda of Agreement (MOA) between MDAH and the governing public institution to identify eligible resources for Mississippi Landmark designation and to establish priorities for preservation. In the absence of the adoption of an MOA, public entities shall act in accordance with the requirements of Rule 1.2, Rule 1.3 and Rule 1.4 for all buildings.

Transfer of Property. A Notice of Intent must be submitted in accordance with Rule 1.2 for the transfer of publicly owned property to private ownership prior to transfer. If, upon review, MDAH staff determines that the property is a potential Mississippi Landmark, the owner shall be informed and the proposed property transfer or sale shall not be commenced prior to Landmark designation and the authorization of a permit by the Board. The Board, in consultation with staff, may act to consider the property for Mississippi Landmark designation in accordance with the procedures in Rule 1.4. The Board may also authorize a permit for property transfer without designation.

Adverse Effect. If, upon review, MDAH staff determines that significant historic, archaeological or architectural sites, buildings, structures, locations or objects will be adversely affected by the public construction, alteration or demolition, MDAH will notify the applicant and owner that the proposed project must not be commenced without a permit issued by the Board. Additional information, including, but not limited to, a structural report by a qualified structural engineer with experience working with historic structures may be required prior to MDAH action.

Consideration. The Board, in consultation with staff, may act to place a project that would adversely affect a potential Mississippi Landmark under consideration for a permit. Once the

project is placed under consideration, MDAH will publish a legal notice soliciting written, public comment in accordance with Rule 1.5.

After the conclusion of the public comment period, the proposed project and written public comments may be placed on the Board agenda for action. Based on the comments and additional documentation received, the Board may act to approve or deny the permit.

If the Board denies the permit due to an adverse effect, it may also consider the property for Mississippi Landmark designation in accordance with the procedures in Rule 1.4.

Appeal. Should the owner of a potential Mississippi Landmark property wish to appeal the conditions of a permit or a decision involving a potential Mississippi Landmark property, the owner must provide the appeal in writing. Following review and recommendation by MDAH staff, the appeal will be considered by the Board.

Source: Miss. Code Ann. §§ 39-7-1, 39-7-22 (1972).

B. Designated Mississippi Landmark Properties.

Restoration, renovation, repairs, excavation, ground-disturbing activities, or other alterations of a designated Mississippi Landmark property may be conducted only pursuant to a permit approved by the Board of Trustees in accordance with this Rule 1.3(B) or Rule 1.3(C). Permit applications must be submitted using the Notice of Intent form in accordance with Rule 1.2.

Upon receipt of a Notice of Intent, the proposed project will be reviewed by MDAH staff to determine if the project is in conformance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*. Staff determinations for routine or minor activities under Rule 1.3(C) may include project approval or approval with conditions. If the project is not within the provisions of Rule 1.3(C), staff may deny a permit or make a recommendation to the board for action. Permit denials issued by MDAH staff may be provided to the Board for informational purposes.

Transfer of Property. MDAH requires a Notice of Intent to be submitted in accordance with Rule 1.2 for the transfer or sale of designated Mississippi Landmark property. The Notice of Intent must include contact information for the current and future owners.

Adverse Effect. When a Notice of Intent is received for the demolition or significant alteration that would adversely affect a designated Mississippi Landmark property, the owner may be asked to provide additional information, including, but not limited to, a structural report prepared by a qualified structural engineer with experience in evaluating historic structures.

Consideration. The Board, in consultation with staff, may place a property under consideration for demolition or significant alteration at the next regularly scheduled Board meeting. Once the property is placed under consideration, MDAH will publish a legal notice soliciting written, public comment in accordance with Rule 1.5.

After the conclusion of the public comment period, the proposed demolition or significant alteration may be placed on the Board agenda for action at the next regularly scheduled meeting.

Archaeological Sites. Work affecting archaeological sites also requires a Mississippi Landmark permit in accordance with Rule 1.2 and Rule 1.3. Work must be conducted according to current Mississippi Standards for Archaeological Practices.

Duration of Permit. All permits issued by the Board are valid for one (1) year from the issue date of the permit. It is the responsibility of the property owner to request permit renewal for projects that will not be completed before the permit expires. The permit must be posted at the project site for the duration of the project. At the completion of the permitted project, the owner must submit documentation, including photographs, of the permitted activity.

Appeal. Should the owner of a designated Mississippi Landmark property wish to appeal the conditions of a permit, denial of a permit, or a decision by the Board involving a designated Mississippi Landmark property, the owner must provide the appeal in writing. Following review and recommendation by MDAH staff, the appeal will be considered by the Board.

Source: Miss. Code Ann. §§ 39-7-1, 39-7-11, 39-7-19 (1972).

C. Permits for Routine or Minor Activities.

Permits for projects that consist of routine or minor activities that are in conformance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, as outlined below, may be approved by MDAH staff. At the next Board meeting, the Board will place upon its minutes the projects approved by the staff pursuant to Rule 1.3(C). The following are considered to be routine or minor activities (consistent with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*) that may be approved by MDAH staff:

1. Appropriate removal of insignificant or incompatible minor additions or alterations;
2. Selective demolition for investigative purposes;
3. Repair or selective in-kind replacement of exterior cladding materials;
4. Repair or in-kind replacement of roofing, coping, gutters or downspouts;
5. Selective in-kind or appropriate replacement of exterior or interior lighting fixtures;
6. Repair or selective in-kind replacement of original or appropriate flooring materials;
7. Repair or selective in-kind replacement of interior or exterior finishes, including but not limited to structural finish materials (i.e. stucco, plaster, clapboard, etc.), paint, or stain;
8. Repair of original or appropriate windows or doors;
9. Heating, ventilation, air conditioning, or duct equipment replacement, if suitably screened or unobtrusive to the structure's original building materials or its aesthetic surroundings;
10. Plumbing or exhaust vents replacement, if suitably screened or unobtrusive to the structure's original building materials or its aesthetic surroundings;
11. In-kind repair or replacement of woodwork, metalwork, or other trim;
12. Selective brick pointing or cleaning of building exteriors, except by sandblasting, inappropriate chemicals, or other abrasive methods;
13. Removal of trees not more than 12 inches in diameter, or dead trees of any size with qualified arborist report;
14. In-kind repair or replacement of sidewalks or parking surfaces;
15. In-kind repair or selective replacement of fencing;
16. Other routine, minor, and compatible work in conformance with the Secretary of the

Interior's Standards for the Treatment of Historic Properties.

Source: Miss. Code Ann. §§ 39-7-1, 39-7-11, 39-7-19 (1972).

D. Burial Excavation Permits.

In the event that American Indian or aboriginal burials are encountered during any project, work must stop immediately and must not recommence until the Board has authorized a permit. If on private property, removal or excavation also requires the written permission of the landowner(s). No prehistoric or historic American Indian or aboriginal burial excavation permits will be issued unless the excavation is performed by a professional archaeologist and a physical anthropologist who meet the Secretary of the Interior's Professional Qualification Standards for Archaeology. If the burial(s) in question are reasonably expected to be of a known, federally recognized Tribe, MDAH shall consult with tribal authorities prior to the issuance of a permit.

Permits to excavate burials will not be issued unless there is an immediate threat to the integrity of the burial(s) through vandalism, natural forces, or unavoidable development. A burial is understood to include those items that were interred with the remains.

Source: Miss. Code Ann. § 39-7-19, 39-7-31 (1972).

Rule 1.4 Designation of Mississippi Landmarks.

The Board may designate publicly owned sites of historical or architectural significance as Mississippi Landmarks with or without the consent of the owner. The Board may designate privately owned sites of historical or architectural significance as Mississippi Landmarks at the written request of the owner.

Archaeological sites that are located in, on or under the surface of any lands belonging to the State of Mississippi or to any county, city, or political subdivision of the state are designated as Mississippi Landmarks. Such sites may not be taken, altered, destroyed salvaged or excavated without a permit from the Board in accordance with Rule 1.3.

Source: Miss. Code Ann. §§ 39-7-9, 39-7-11, 39-7-13 (1972).

A. Criteria for Designation.

Mississippi Landmarks are recognized as the state's historic, architectural, or cultural resources. They are sites, objects, buildings, artifacts, implements, or locations that contribute to illustrating or interpreting the history or culture of the State of Mississippi. In order to be eligible for Mississippi Landmark designation, the resource(s) must be listed in or eligible for listing in the National Register of Historic Places (NRHP) in accordance with NRHP *Criteria for Evaluation*. Determinations of eligibility will be made by MDAH staff.

Of those eligible resources, the Board will give priority to properties that are individually listed in or eligible for listing in the NRHP; associated with courthouses or schools; located within Certified Local Government communities; or whose designation is supported by the property owner or local preservation commission. While the Board will give these properties priority, it has the authority to designate any eligible publicly owned property, with or without the consent of the owner.

Source: Miss. Code Ann. §§ 39-7-3, 39-7-4, 39-7-7, 39-7-11, 39-1-22 (1972).

B. Designation Process.

When a Mississippi Landmark designation request is made by the property owner or MDAH staff determines that a property is eligible for designation, MDAH staff may prepare a significance report, which includes a statement of significance, resource description, and a list all sites, objects, buildings, artifacts, implements, or locations to be included in the proposed Mississippi Landmark designation.

Consideration. The Board, in consultation with staff, may place a property under consideration for designation at the next regularly scheduled Board meeting. Once placed under consideration, MDAH will publish a legal notice soliciting written, public comment in accordance with Rule 1.5.

After the conclusion of the public comment period, the proposed designation may be placed on the Board agenda for action at the next regularly scheduled meeting.

For private properties in which designation must be made by owner request, the Board may elect to proceed with designation without public comment.

Designation. Upon Board action to designate a property as a Mississippi Landmark, MDAH will inform the property owners in writing and shall prepare and execute a Certification of Mississippi Landmark Designation to be recorded in the deed records of the chancery court of the county in which the property is located.

Source: Miss. Code Ann. §§ 39-7-1, 39-7-11 (1972).

C. Removal of Designation Process.

When the removal of designation of a Mississippi Landmark property is proposed, the property owner may be asked to provide additional information, including, but not limited to, a structural report prepared by a qualified structural engineer with experience in evaluating historic structures.

Consideration. The Board, in consultation with staff, may place a property under consideration for removal of designation at the next regularly scheduled Board meeting. Upon Board action to place a designated Mississippi Landmark under consideration for removal of designation, MDAH will publish a legal notice soliciting written, public comment in accordance with Rule 1.5.

After the conclusion of the public comment period, the proposed removal of designation will be placed on the Board agenda for action at the next regularly scheduled meeting.

Removal of Designation. Upon Board action to remove the Mississippi Landmark designation from a property, MDAH will inform the property owner in writing and will prepare and execute a Certification of the Removal of Mississippi Landmark Designation to be recorded by the clerk in the deed records of the chancery court of the county in which the property is located.

Source: Miss. Code Ann. §§ 39-7-3, 39-7-15 (1972).

Rule 1.5 Legal Notice and Public Comment.

The publication of a legal notice is required when the Board acts to place a project or property under consideration for:

- a. Designation as a Mississippi Landmark
- b. Removal of Mississippi Landmark designation
- c. A permit for a project that would adversely affect a designated Mississippi Landmark
- d. A permit for a project that would adversely affect a potential Mississippi Landmark
- e. Any other circumstance that the Board may deem appropriate

MDAH shall publish the legal notice soliciting written, public comment in the newspaper of record in the county in which the property is located and on the MDAH website at least thirty (30) days prior to further Board action. The notice must identify the property and the matter that is under consideration. Proof of publication shall be provided to the Board.

After the conclusion of the public comment period, the proposed project and written public comments will be placed on the Board agenda.

Rule 1.6 Section 106 of the National Historic Preservation Act and Preservation Tax Incentive Review Procedures.

For projects involving designated Mississippi Landmark properties also under review in accordance with Section 106 of the National Historic Preservation Act, the federal review process will take precedence over the Mississippi Landmark review. However, MDAH may elect to require that a Mississippi Landmark permit be obtained in addition to the Section 106 review. A burial permit is always required for prehistoric or historic American Indian or aboriginal burials.

For projects involving designated Mississippi Landmark properties also under review in accordance with the federal or state preservation tax incentives programs, the tax incentives review process will take precedence over the Mississippi Landmark review. However, MDAH, may elect to require that a Mississippi Landmark permit be obtained in addition to the tax review process. If the applicant elects to forego tax incentives, the project will be reviewed under the Antiquities Law, as described in Rule 1.3.

Source: Miss. Code Ann. §§ 39-7-1 (1972).

Rule 1.7 Temporary Restraining Orders

When MDAH has confirmed that work has been initiated on a designated Mississippi Landmark property, or a potential Mississippi Landmark on publicly owned property prior to the issuance of a permit, MDAH will immediately contact the owner to request that all work is halted until a Notice of Intent form is submitted for MDAH review and approval in accordance with the aforementioned policies. If the owner refuses to cease operations or follow the permit process, MDAH may seek a temporary restraining order through the Attorney General's Office.

Source: Miss. Code Ann. §§ 39-7-22, 39-7-33, 39-7-35 (1972).