

CULTURAL RESOURCES MANAGEMENT AT VA NATIONAL CEMETERIES

- 1. REASON FOR ISSUE:** This Department of Veterans Affairs National Cemetery Administration (NCA) directive establishes cultural resources policies and procedures.
- 2. SUMMARY OF CONTENTS:** This directive establishes standards for NCA cultural resources management and clarifies NCA policy when performing cultural resource management activities and responsibilities.
- 3. RESPONSIBLE OFFICE:** National Cemetery Administration, Office of Design and Construction Service (43B), 425 I Street, NW, Washington, DC 20420, is responsible for the contents of this directive. Questions may be referred to the NCA Historic Architect.
- 4. RELATED PUBLICATIONS:**
 - a. VA Directive 7545 – Cultural Resource Management (December 5, 2011).
 - b. VA Handbook 7545 – Cultural Resources Management Procedures (December 5, 2011).
- 5. RESCISSIONS:** None
- 6. RECERTIFICATION:** This document is scheduled for recertification on or before January 31, 2024.

/s/

Randy Reeves
Under Secretary for Memorial Affairs

Distribution: Electronic

CULTURAL RESOURCES MANAGEMENT AT VA NATIONAL CEMETERIES

1. PURPOSE/AUTHORITY: The purpose of this National Cemetery Administration (NCA) Directive is to:

a. Identify cultural resources management and associated responsibilities at NCA and integrate them into NCA's mission and activities. This includes planning, developing, and constructing new cemeteries and expanding existing properties, Non-Recurring Maintenance (NRM), Mini-Minor projects, National Shrine and all maintenance and repair projects using federal or non-federal funds, and funds granted to tribal and state veterans cemeteries for construction, expansion, and for raise-and-realign projects.

b. Raise the level of awareness among NCA personnel, contractors, volunteers and others concerning the significance of NCA's cultural resources and accountability based on mandatory regulations, laws and public-trust responsibilities when they are impacted by projects ("undertakings") and avoid adverse effects to historic and cultural resources.

d. Establish NCA mandatory policy to ensure compliance with Section 106 of the National Historic Preservation Act (NHPA) (<http://www.achp.gov/nhpa.html>) and 36 CFR 800, Protection of Historic Properties (<http://www.achp.gov/regs-rev04.pdf>).

2. BACKGROUND:

NCA performs historic preservation and cultural resources management responsibilities when managing, maintaining and expanding national cemeteries and other facilities. Since 1966, federal agencies have been required to follow federal historic preservation mandates. Section 106 of the NHPA requires federal agencies to consider the effects of federally funded projects on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on projects prior to the expenditure of any federal funds. If historic properties are adversely affected, federal agencies attempt to mitigate adverse effects by consulting with states or tribes and jointly entering into a Memorandum of Agreement (MOA) or Programmatic Agreement (PA). Prior to entering into MOAs or PAs, federal agencies use Section 106 checklists to ensure the proper stipulations and other relevant information is included in any MOA or PA.

In addition, section 110 of the NHPA sets out the broad historic preservation responsibilities of federal agencies and is intended to ensure that historic preservation is fully integrated into ongoing federal programs. Section 110 charges each federal agency with the affirmative responsibility for considering projects and programs that further the purposes of the NHPA, and it declares that the costs of historic preservation activities are eligible project costs in all undertakings conducted or assisted by a federal agency.

In September 2011, the Acting Keeper of the National Register of Historic Places (NRHP) issued a clarification of policy, stating that, “all national cemeteries are exceptionally significant as a result of their congressional designation as nationally significant places of burial and commemoration for veterans.” Unlike most historic resources which are defined as at least 50 years old, NCA cemeteries regardless of their age, must meet special requirements set forth in the criterion considerations for cemeteries, memorials, graves and commemorative properties and are eligible for NRHP listing. According to the Keeper’s clarification, any portion of national cemeteries developed for burial use is eligible for NRHP listing as contributing resources.

More than 100 NCA properties are listed in the National Register of Historic Places. Fourteen of these properties are also designated as the more significant National Historic Landmarks (NHLs). Preservation and protection of America’s cultural and archaeological resources are important functions and responsibilities of the Federal government for properties under its control or jurisdiction. NCA, as a federal agency has clear responsibilities to serve as a steward of its historic properties under its’ control.

3. POLICY:

It is NCA’s policy to protect and preserve cultural resources under NCA control by considering and mitigating, when possible, adverse effects and by timely and efficient compliance with cultural resources legal requirements. By adhering to these requirements, NCA preserves, protects, and perpetuates cultural resources for future generations in a spirit of stewardship to the highest extent feasible given the agency’s mission and mandates.

4. RESPONSIBILITIES:

a. Deputy Under Secretary for Field Programs and Cemetery Operations is responsible for:

- (1) Approving training programs for cemetery-wide cultural resources awareness;
- and

(2) Promoting cultural resources protection and compliance with historic preservation requirements as a priority for cemetery staff.

b. Deputy Under Secretary for Management is responsible for:

(1) Setting program goals for the NCA Cultural Resources Management Program;

(2) Appointing personnel necessary to administer the NCA Cultural Resource Management Program;

(3) Establishing overall policy and guidelines to implement the NCA Cultural Resources Management Program;

(4) Establishing a process to plan and request financial resources for implementing and administering the NCA Cultural Resources Management Program and cultural resource awareness activities; and

(5) Reviewing cultural resources management reports to assess the adequacy and effectiveness of the NCA Cultural Resources Management Program and implementing measures to improve cultural resource management at NCA facilities.

c. Director, Design and Construction Service is responsible for:

(1) Managing and overseeing the NCA Cultural Resources Management Program;

(2) Reviewing operational standards and measures for the NCA Cultural Resources Management Program;

(3) Analyzing data collected to provide Cultural Resources Management reports to responsible offices; and

(4) Administration of cultural resource management records, maintaining official copies of all incoming, outgoing and decisional records for the purpose of tracking all NCA Section 106 undertakings in a backed-up electronic drive, by year or property.

d. Design and Construction Service Project Managers are responsible for:

(1) Coordinating all minor projects in advance of design development and implementation of projects with the historic architect to ensure that coordination with the State Historic Preservation Office and/or the Tribal Historic Preservation Office as well as potential stakeholders follow the Section 106 consultation process; and

(2) Completing and maintaining Section 106 checklists and Programmatic Agreements and associated documents on assigned projects.

e. **Director, Veterans Cemetery Grants Service is responsible for** ensuring that entities receiving federal funding certify they complied with cultural resources and historic preservation authorities prior to VA issuing to a state or tribal organization a Notification of Grant Award.

f. **District Executive Directors are responsible for:**

(1) Verifying that Cemetery Directors, District Engineers, and Cultural Resources Management Officer (CRMO) complete Cultural Resources Awareness Training;

(2) Verifying that Regional CRMO reports all Section 106 and Section 110 activities to the NCA Historic Architect;

(3) Verifying that District Engineer provides accurate and complete Section 106 Checklists with Project Submissions;

(4) Coordinating with the NCA Historic Architect on cultural resources compliance issues, including compliance inspections, compliance monitoring, and reporting; and

(5) Assigning Cultural Resources Management Program performance goals for District cemeteries.

g. **District Engineers are responsible for** submitting accurate and complete Section 106 Agreement Checklists with Project Submissions to the “NCA Section 106 Mailbox” if a federal undertaking is planned on a historic property in their district.

h. **District Cultural Resources Management Officers (CRMO) are responsible for:**

(1) Maintaining a set of cultural resource consultation records at the District Office; and

(2) Reporting on an annual basis any Section 106 Undertakings and Section 110 Activities to the Historic Architect.

i. **Cemetery Directors are responsible for:**

(1) Submitting to their District Engineer accurate and complete Section 106 Checklist with Project Submissions;

(2) Verifying that Cemetery Staff completes Introductory Cultural Resources Awareness Training; and

(3) Planning, allocating, and managing resources (human, financial, technological, and specialized skills) essential to implementing and maintaining the Cultural Resources Management program.

j. NCA Historic Architect is responsible for:

(1) Administering, coordinating and planning operations for the NCA Cultural Resources Management Program at the field level;

(2) Representing NCA to VA's Historic Preservation Office and professional and historic preservation organizations;

(3) Developing cultural resources management guidance and training for NCA employees;

(4) Meeting with District Executive Directors/Engineers for compliance inspections, compliance monitoring, and reporting;

(5) Responding to NCA staff and public requests for information on the NCA Cultural Resources Management Program;

(6) Carrying out State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) consultation;

(7) Reporting to NCA Leadership, and ACHP program office cultural resources activities;

(8) Reviewing, analyzing and assessing the appropriate level of Section 106 responses for NCA undertakings per the District submissions;

(9) Facilitating the MOA or PA Process in the case of adverse effects to historic resources;

(10) Maintaining a repository to retain copies of all incoming, outgoing and decisional records and tracking all NCA Section 106 undertakings electronically and organized by year or property; and

(11) Coordinating with the NCA History Program in a timely manner to document historic resources for Section 106 undertakings.

5. REFERENCES:

a. Abandoned Shipwreck Act of 1987 (43 U.S.C. 2101).

b. American Folklife Preservation Act of 1976 (20 U.S.C. 2101).

- c.** American Indian Religious Freedom Act of 1978 (42 U.S.C. 1966).
- d.** Antiquities Act of 1906 (16 U.S.C. 431).
- e.** Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469).
- f.** Archaeological Resources Protection Act of 1979 (16 U.S.C. 470).
- g.** Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716).
- h.** Consultation and Coordination with Indian Tribal Governments (Executive Order 13175, dated 11-6-00).
- i.** Curation of Federally Owned and Administered Archeological Collections (36 CFR Part 79).
- j.** Determinations of Eligibility for Inclusion in the National Register of Historic Places (36 CFR Part 63).
- k.** Executive Order 13287, Section 3, Triennial Report to ACHP Report to the ACHP.
- l.** Government-to-Government Relations with Native Americans Tribal Governments (Executive Memorandum, dated 4-29-94).
- m.** Historic Sites Act of 1935 (16 U.S.C. 461).
- n.** Indian Sacred Sites (Executive Order 13007, dated 5-24-96).
- o.** National Environmental Policy Act of 1969 (42 U.S.C. 4321).
- p.** National Historic Preservation Act of 1966 (16 U.S.C. 470).
- q.** National Register of Historic Places (36 CFR 60).
- r.** Native American Graves Protection and Repatriation Act of 1990 (25 .S.C. 3001).
- s.** Protection of Archaeological Resources (43 CFR Part 7).
- t.** Protection and Enhancement of the Cultural Environment (Executive Order 11593, dated 5-13-71).
- u.** Protection of Historic Properties (36 CFR Part 800).

v. Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb).

w. Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act (63 FR 20495).

x. VA Directive/Handbook 7545

6. DEFINITIONS:

a. Adverse Effect. Adverse effects occur when an undertaking may directly or indirectly alter characteristics of a historic property that qualify it for inclusion in the Register. Reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative also need to be considered. Examples of adverse effects include physical destruction or damage; alteration not consistent with the Secretary of the Interior's Standards; relocation of a property; change of use or physical features of a property's setting; visual, atmospheric, or audible intrusions; neglect resulting in deterioration; or transfer, lease, or sale of a property out of Federal ownership or control without adequate protections.

b. Archaeological resource. Any material remains of past human life or activities which are of archaeological interest. Such regulations containing such determination includes, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, are not considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context.

c. Cultural resource. The term "cultural resource" is used here to include all aspects of the human environment that have historical, architectural, archaeological, or cultural significance, including, but not limited to, historic properties, archaeological resources and data, Native American ancestral remains and cultural items, religious places and practices, historical objects and artifacts, historical documents, and community identity. Cultural resources also include archaeological materials (artifacts) and sites that date to the prehistoric, historic, and ethno-historic periods and that are currently located on the ground surface or buried beneath it. The term also includes standing structures and/or their component parts that are over 50 years of age and are important because they represent a major historical theme or era, and structures that have an important cultural, architectural, or local significance. In the context of NCA's real estate, this includes but is not limited to: buildings (lodges, garages, admin buildings), structures (rostrum, wall/fence, gates, vault, columbaria,

roads, bridges.), objects (headstone, monument, flagpole, site features) and landscape (burial sections, plantings, vistas, walkways).

d. Historic properties. Any district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places and entitled to consideration under NHPA.

e. National Register of Historic Places. The **National Register of Historic Places (NRHP)** is the Federal government's official list of districts, sites, buildings, structures, and objects deemed worthy of preservation

f. National Historic Landmark. National Historic Landmarks (NHLs) are nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States.

g. Undertaking. A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

Appendix A

LIST OF AUTHORITIES:

Federal Laws

a. American Indian Religious Freedom Act (AIRFA). This law requires Government agencies to protect and preserve inherent right to freedom to believe, express and exercise the traditional religious rights and cultural practices of American Indians, Eskimos, Alaska Natives, Aleuts and Native Hawaiians. The Act requires all governmental agencies to eliminate interference with the free exercise of Native American religions. AIRFA has been interpreted by the courts to require Federal agencies to consult with Indian tribes and other Native Americans about agency actions that may affect religious practices, places, and sacred objects used in religious practices.

b. Archaeological and Historic Preservation Act (AHPA). Also known as the Archaeological Data Preservation Act (ADPA). This law requires Federal agencies report any perceived impacts that projects and programs may have on archeological, historical and scientific data and to recover archaeological, historical, and scientific data that may be threatened by construction projects and other related actions they undertake, assist in, license or fund.

c. Archaeological Resources Protection Act (ARPA). This law prohibits the excavation or removal of archaeological resources from Federal and Indian tribal land without a permit issued by the responsible land management agency in accordance with regulations issued jointly by the Departments of Agriculture, Defense, and Interior, and the Tennessee Valley Authority.

d. Federal Records Act (FRA). This law and its accompanying regulations require Federal agencies to manage documents and other records under their jurisdiction and control including record creation, maintenance, and disposition in accordance with procedures approved by the National Archives and Records Administration (NARA) that are designed to preserve the historical value of such records.

e. National Environmental Policy Act (NEPA). This law together with Council on Environmental Quality (CEQ) associated regulations found at 40 CFR 1500-1508 requires Federal agencies establish procedures for evaluating the environmental impacts of actions they propose to undertake, assist, or license on the human environment. Federal agencies are required to involve stakeholders in the in the NEPA process. VA NEPA procedures can be found at 38 CFR 26.

f. National Historic Preservation Act (NHPA). Establishes government-wide policy regarding responsible use of historic properties, places included in or eligible

for the National Register of Historic Places, and creates a national historic preservation program. The following sections provide specific details regarding the requirements for compliance with the NHPA.

(1) **Section 106:** Requires agencies to consider the effects of actions they propose to undertake, assist, or license on historic properties. The Advisory Council on Historic Preservation (ACHP) implementing regulations at 36 CFR 800 outline how agencies are to consult with State and Tribal Historic Preservation Officers and other interested parties, identify historic properties, and resolve adverse effects.

(2) **Section 110:** Sets out the broad historic preservation responsibilities of Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies. This section requires agencies to identify and manage historic properties under their jurisdiction and control by implementing a program to protect and preserve. Section 110 and its associated guidelines does this by encouraging the preservation of non-federally owned historic properties, discouraging the anticipatory destruction of historic properties, documenting historic properties that must be destroyed or damaged, maintaining historic preservation offices, responding to comments by the ACHP, and requiring consultation with preservation authorities, Indian tribes, and others when carrying out their historic preservation activities. Authorizes inclusion of historic preservation costs as eligible project costs of Federal and federally assisted projects.

(3) **Section 111:** Requires agencies to seek adaptive uses of historic properties under their jurisdiction or control that can no longer be used for agency purposes, authorizes leases as a means of effecting adaptive use, and authorizes agencies to retain proceeds from such transactions to support preservation activities.

(4) **Section 112:** Requires agencies to use qualified personnel to carry out historic preservation work and maintain records of such work in perpetuity.

g. Native American Graves Protection and Repatriation Act (NAGPRA). Requires Federal agencies and museums receiving Federal assistance to identify Native American cultural items (i.e., Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony) under their control, and repatriate such items to culturally affiliated tribes having the right to receive them. Also requires work stoppage and various forms of coordination and documentation when such items are unearthed on Federal or Indian tribal lands. Regulations issued by the National Park Service (NPS) (i.e., 43 CFR 10) require that anyone, including Federal agencies, whose actions may disturb such items on Federal or Indian tribal lands must consult with culturally affiliated tribes and develop and implement plans of action.

h. Religious Freedom Restoration Act (RFRA). Prohibits Federal agencies from substantially burdening any person's practice of religion, unless doing so is required to meet a compelling government interest, and the means of doing so is the least restrictive means of meeting that interest.

Executive Orders

a. Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Requires that agencies identify and address programs to avoid having disproportionate adverse environmental impacts on low-income populations and minority communities; impacts may include effects on the cultural environments of such populations and communities.

b. Executive Order No. 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities. Requires agencies give priority to the use of historic buildings and structures in historic districts within central business areas when meeting their need for space when conducting their respective missions.

c. Executive Order No. 13007, Indian Sacred Sites. Requires agencies to avoid adverse effects on Indian tribal sacred sites located on Federal or tribal land and on tribal access to such sites.

d. Executive Order No. 13287 Preserve America. Underscores many of the requirements of NHPA Sections 110 and 111 regarding identification, management, use, and re-use of historic properties, and requires that agencies report periodically on progress in meeting NHPA compliance.

Government-wide Regulations

a. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections. Regulations issued by NPS pursuant to ARPA, NHPA, and other authorities, governing how archaeological collections are to be maintained.

b. 36 CFR 800, Protection of Historic Properties. Regulations issued by ACHP governing implementation of Section 106 of NHPA.

c. 36 CFR 1220 et. seq., Federal Records; General. Regulations issued by NARA governing implementation of FRA.

d. 40 CFR 1500-1508, Council on Environmental Quality. Regulations issued by CEQ governing implementation of NEPA.

e. 43 CFR 10, Native American Graves Protection and Repatriation Act Regulations. Regulations issued by NPS governing implementation of NAGPRA.

Appendix B

U.S. Government Cultural Resources Management Policies

Congress has established that it is the policy of the U.S. Government to:

- a.** Create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans (NEPA Sec. 101(a));
- b.** Serve as the trustee of the environment for succeeding generations (NEPA Sec. 101(b)(1));
- c.** Assure for all Americans aesthetically and culturally pleasing surroundings (NEPA Sec. 101(b)(2));
- d.** Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment that supports diversity, and variety of individual choice (NEPA Sec. 101(b)(4));
- e.** Utilize a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on man's environment (NEPA Sec. 102(a)(1)(A));
- f.** Ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations (NEPA Sec. 102(a)(1)(B));
- g.** Use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations (NHPA Sec. 2(1));
- h.** Provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with states, Indian tribes, Native Hawaiians, and local governments (NHPA Sec. 2(2));
- i.** Administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations (NHPA Sec. 2(3));

- j.** Contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals;
- k.** Encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment (NHPA Sec. 2(5));
- l.** Assist state and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities (NHPA Sec. 2(6));
- m.** Do all the above in cooperation with other nations and in partnership with states, local governments, Indian tribes, and private organizations and individuals (NHPA Sec. 2);
- n.** Protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites (AIRFA);
- o.** Not substantially burden religious exercise without compelling justification (RFRA Sec. 1(a)(3)); and
- p.** Secure for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Indian lands (ARPA Sec. 2(4)(b)).