

CULTURAL RESOURCE MANAGEMENT

- 1. REASON FOR ISSUE.** This Department of Veterans Affairs (VA) Directive updates VA's historic preservation policies and procedures.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES.** This Directive establishes direction for VA medical centers, cemeteries, regional offices, and staff offices to comply with historic preservation laws, regulations, and guidelines. Major changes include direction for offices other than the Veterans Health Administration implementing National Historic Preservation Act regulation changes from 1999 and 2004.
- 3. RESPONSIBLE OFFICE.** The Office of Acquisition, Logistics, and Construction, Office of Construction and Facilities Management (CFM), is responsible for the contents of this Directive.
- 4. RELATED HANDBOOKS.** VA Handbook 7545, Cultural Resource Management Procedures.
- 5. RESCISSIONS.** VA Directive 7545, Cultural Resource Management, dated March 27, 1996.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS**

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CULTURAL RESOURCE MANAGEMENT

1. PURPOSE:

This Department of Veterans Affairs (VA) Directive hereby updates VA policy previously outlined in VA Directive 7545, Cultural Resource Management, to reflect changes in law, regulation, and government-wide policy.

2. POLICY:

a. It is VA policy to ensure that all cultural resource legal requirements are met in a timely and efficient manner that benefits both Veterans and the human environment. The major implications of this policy are that:

(1). Cultural resources must be considered in developing and implementing management and development plans for lands and buildings under VA control, including but not limited to, medical centers and clinics, national cemeteries, and administration and staff offices.

(2). Direct, indirect, and cumulative impacts on cultural resources of all kinds must be addressed when considering the environmental impacts of VA activities under the National Environmental Policy Act (NEPA), beginning at the earliest possible time when planning any VA cultural resources action. Impacts on cultural resources may constitute extraordinary circumstances requiring special review of actions that would otherwise be categorically excluded from extensive NEPA review. Impacts on cultural resources may be, but are not necessarily, significant enough impacts on the quality of the human environment to require preparation of environmental impact statements under NEPA.

(3). The impacts of proposed actions on cultural resources will be considered when planning and in decision making at all levels within VA, with reference to the legal authorities listed in Appendix A hereof and the national policies outlined in Appendix B hereof.

(4). VA officials responsible for compliance with NEPA, the National Historic Preservation Act (NHPA), and other cultural resource legal requirements will ensure that other government agencies, organizations, and members of the public who may be concerned about impacts on cultural resources are fully and fairly consulted when planning any VA action.

b. Consultation with federally recognized Indian tribal governments about cultural resource-related matters will be guided by this Directive and VA Directive 8603.

3. RESPONSIBILITIES

a. The Executive Director, Office of Acquisition, Logistics, and Construction (OALC), is VA's Senior Policy Official (SPO) responsible for policy interpretation, guidance, and the development of training with regard to cultural resources and cultural resource legal requirements. OALC's Office of Construction and Facilities Management (CFM) maintains the Historic Preservation Office (HPO), which oversees and coordinates VA's compliance with cultural resource management legal requirements, including, but not limited to, matters relating strictly to historic preservation. The HPO issues guidance regarding requirements, provides training, and consults with other VA offices to assist them in meeting VA's cultural resource management responsibilities.

b. The Assistant Secretary for Human Resources and Administration, in consultation with the HPO, will ensure that the national policies outlined in Appendix B hereof are appropriately reflected in the performance standards of personnel with responsibilities assigned by or pursuant to this Directive and VA Handbook 7545.

c. The Under Secretary for Health, Veterans Health Administration (VHA), carries out cultural resource management responsibilities primarily in connection with the acquisition, construction, management, maintenance, and disposal of medical centers and other facilities.

d. The Under Secretary for Memorial Affairs, National Cemetery Administration (NCA), carries out cultural resource management responsibilities in developing, managing, maintaining, and expanding cemeteries, soldiers' lots, and other facilities.

e. The Under Secretary for Benefits, Veterans Benefits Administration (VBA), carries out cultural resource management responsibilities when acquiring, planning, constructing, maintaining, and disposing of offices and overseeing the provision of benefits to veterans.

4. REFERENCES

a. 42 U.S.C. 1996 and 1996a, American Indian Religious Freedom Act (AIRFA).

b. 16 U.S.C. 469-469c-2, Archaeological and Historic Preservation Act (AHPA).

c. 16 U.S.C. 470aa-mm, Archaeological Resources Protection Act (ARPA).

d. 44 U.S.C. 31, Federal Records Act (FRA).

e. 42 U.S.C. 4321 and 4331-4335, National Environmental Policy Act (NEPA).

f. 16 U.S.C. 470 et seq., National Historic Preservation Act (NHPA).

g. 25 U.S.C. 3001 et seq., Native American Graves Protection and Repatriation Act (NAGPRA).

h. 42 U.S.C. 21b, Religious Freedom Restoration Act (RFRA).

i. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

j. Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities.

k. Executive Order 13007, Indian Sacred Sites.

l. Executive Order 13287, Preserve America.

m. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections.

n. 36 CFR 800, Protection of Historic Properties.

o. 36 CFR 1220 et. seq., Federal Records; General.

p. 40 CFR 1500-1508, Council on Environmental Quality.

q. 43 CFR 10, Native American Graves Protection and Repatriation Act Regulations.

5. DEFINITIONS

a. 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.

b. Historic property. A historic property is any district, site, building, structure, or object included in, or eligible for, the National Register of Historic Places, and hence entitled to consideration under NHPA.

CULTURAL RESOURCE LEGAL AUTHORITIES

1. FEDERAL LAWS

a. **American Indian Religious Freedom Act (AIRFA).** Establishes as U.S. Government policy to respect the inherent right of American Indians, Alaska Natives, and Native Hawaiians to practice their traditional 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 called the Archaeological Data Preservation Act (ADPA). This law requires Federal agencies to recover archaeological, historical, and scientific data that may be threatened by construction projects and other related actions they undertake, assist, or license.

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 extensive regulations require Federal agencies to manage documents and other records under their jurisdiction and control 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 articulates U.S. Government policy favoring protection and responsible use of the human environment (see Appendix B). Together with regulations (i.e., 40 CFR 1500-1508) issued by the Council on Environmental Quality (CEQ), NEPA requires Federal agencies to consider the environmental impacts of actions they propose to undertake, assist, or license. VA NEPA procedures can be found at 38 CFR 26.

f. **National Historic Preservation Act (NHPA).** Establishes government-wide policy favoring responsible use of historic properties (see Appendix B), places included in or eligible for the National Register of Historic Places, and creates a national historic preservation program. The following sections provide specific direction relevant to VA:

(1) **Section 106:** Requires agencies to consider the effects of actions they propose to undertake, assist, or license on historic properties. Implementing regulations (i.e., 36 CFR 800) by the Advisory Council on Historic Preservation (ACHP) 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:** Requires agencies to identify and manage historic properties under their jurisdiction and control, encourage the preservation of non-federally owned historic properties, discourage the anticipatory destruction of historic properties, document historic properties that must be destroyed or damaged, maintain historic preservation offices, respond to comments by the ACHP, and consult with preservation authorities, Indian tribes, and others in 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.

2. EXECUTIVE ORDERS

a. **12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.** Requires that agencies 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. **13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities.** Requires that in meeting their needs for space in which to conduct their missions agencies give priority to the use of historic buildings and structures in historic districts within central business areas.

c. **13007, Indian Sacred Sites.** Requires that agencies seek to avoid adverse effects on Indian tribal sacred sites located on Federal or tribal land and on tribal access to such sites.

d. **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.

3. 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.

U.S. GOVERNMENT CULTURAL RESOURCE 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 will ensure 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 undertaking preservation by private means (NHPA Sec. 2(4));

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)).