

CULTURAL RESOURCE MANAGEMENT PROCEDURES

- 1. REASON FOR ISSUE.** This Department of Veterans Affairs (VA) Handbook provides for compliance with historic preservation and other cultural resource management legal requirements in the conduct of VA projects and programs. It provides guidance in implementing the policies contained in VA Directive 7545.
- 2. SUMMARY OF CONTENTS.** This Handbook discusses requirements of cultural resource legal authorities outlined in VA Directive 7545, and elaborates on assignment of responsibilities.
- 3. RELATED ISSUES.** Refer to VA Directive 0057, VA Environmental Management Program, and VA Directive 8603, Consultation and Visitation with American Indian and Alaskan Natives.
- 4. RESPONSIBLE OFFICE.** The Office of Acquisition, Logistics, and Construction, Office of Construction and Facilities Management (CFM), is responsible for the contents of this Handbook.
- 5. RESCISSIONS.** VA Handbook 7545, Cultural Resource Management Procedures, dated March 27, 1996.

CERTIFIED BY:

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

/s/
Roger W. Baker
Assistant Secretary for
Information and Technology

/s/
Glenn D. Haggstrom
Executive Director, Office of
Acquisition, Logistics, and
Construction

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CULTURAL RESOURCE MANAGEMENT PROCEDURES

1. Purpose. This Department of Veterans Affairs (VA) Handbook provides direction and guidance for compliance with historic preservation and other cultural resource management legal requirements in the conduct of VA projects and programs. It provides guidance in implementing the policies contained in VA Directive 7545.

2. Scope/Overview

a. Introduction. Over the years, and particularly since the 1960s, Congress has enacted laws requiring Federal agencies to consider the impact of proposed actions on the human environment, including its cultural aspects. Based on these laws, regulations have been issued, executive orders have been promulgated, and guidelines, standards, and procedures have been published. Some laws impose specific responsibilities on agencies, such as the VA, while other laws are more general and less directive, but all of these laws have the same overall purpose: to ensure that Federal agencies do not unnecessarily damage the human environment, or encourage others to do damage.

b. Legal Requirements. Following are the major legal provisions that structure VA's (and every other Federal agency's) management of project impact on the cultural aspects of the human environment, as of 2010:

(1) National Environmental Policy Act (NEPA) sets forth broad government policy to preserve and manage the human environment, including the natural and built environments and the relationships of people to these environments. VA's general procedures for NEPA compliance are at 38 CFR 26. Among the aspects of the human environment that must be considered when complying with NEPA are "historic and cultural resources" (40 CFR 1508.27(b)(3), (b)(8)).

(2) National Historic Preservation Act (NHPA) has several sections directly relevant to VA:

(a) Section 106 requires that Federal agencies "take into account" the effects of their proposed actions on any "district, site, building, structure, or object" that is included in or eligible for the National Register of Historic Places – a list maintained by the National Park Service. Compliance with Section 106 and its implementing regulations (36 CFR 800) is a responsibility borne by all VA decision makers, with guidance by and assistance from the Historic Preservation Office (HPO) in the Office of Construction and Facilities Management (CFM).

(b) Section 110 contains many subsections that collectively require a Federal agency to identify historic places under its control or jurisdiction, manage such places in responsible ways, try to use such places to fulfill agency needs, and consult with interested parties about how to maintain such places. It requires that agencies give

preference to using historic buildings and structures to meet their facility needs, with special attention focused on resolving adverse effects on National Historic Landmarks – a special class of properties found by the Secretary of the Interior to be significant in the interpretation and commemoration of the Nation’s history. VA manages a number of National Historic Landmarks.

(c) Section 111 requires agencies to seek alternative adaptive uses for historic places they control but do not need for agency purposes, such as old buildings on a VA facility that are no longer needed for VA purposes. When VA authorizes leases and management agreements with other parties to facilitate alternative uses, the law permits retention of proceeds from any such leases or agreements to defray the costs of preservation.

(d) Archaeological Resources Protection Act (ARPA) requires that agencies responsibly manage archaeological resources, ancient and historic sites, and artifacts under their jurisdiction, and permit excavation only under controlled conditions by qualified people.

(e) Archaeological and Historic Preservation Act (AHPA) ¹ requires agencies to recover and protect archaeological, historical, and scientific data that may be disturbed by their activities.

(f) Native American Graves Protection and Repatriation Act (NAGPRA) requires agencies to be careful about ancestral Native American graves, cultural items, and sacred objects, and to repatriate ancestral remains and objects to culturally affiliated tribes.

(g) American Indian Religious Freedom Act (AIRFRA) requires that agencies not infringe on the rights of Indian tribes to exercise their religions, which often involve the use of special places, plants, animals, and minerals on Federal land.

(h) Religious Freedom Restoration Act (RFRA) prohibits agencies from substantially impacting the practice of religion – such as using federally controlled land for a ceremony – unless there is a compelling reason to do so.

(i) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that agencies avoid imposing disproportionate adverse environmental impacts on low-income populations and minority communities, including impacts on cultural environments.

(j) Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities, requires agencies to give priority to the use of historic buildings and structures in historic districts in central business areas to meet space needs and conduct agency missions.

¹Also called the Archaeological Data Preservation Act (ADPA)

(k) Executive Order 13007, Indian Sacred Sites, requires agencies to try to avoid adversely affecting Indian tribal “sacred sites” located on Federal land and tribal access to such sites.

(l) Executive Order 13287, Preserve America, underscores many of the requirements of NHPA Sections 110 and 111 regarding identification, management, use, and reuse of historic properties. It also requires that all agencies periodically report on progress in meeting responsibilities under NHPA.

3. Definitions

a. Ancestral remains. Ancestral remains are the physical remains, including, but not limited to, bones of deceased human beings, including, but not limited to, those that must be given special consideration under NAGPRA.

b. Community identity. A human community’s sense of itself typically expressed in and reinforced by social institutions, beliefs, forms of expression, arts, crafts, means of subsistence, and patterns of interaction. Community identity is an aspect of the human environment that must be addressed in analyses under NEPA, and at times under other cultural resource legal authorities.

c. Cultural item. Cultural items, as defined at Section 2(3) of NAGPRA with regard to Native Americans, include ancestral human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony. Communities that are not of Native American ancestry may also have cultural items, and concerns about such items should be respected, though such communities do not have special rights under NAGPRA.

d. Cultural resource. Cultural resource, as used here, includes 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.

e. Historical document. Historical documents are documents preserved in any medium (e.g., paper, film, and electronic media) that may be of historical, archaeological, or cultural value, or that must be maintained by VA in accordance with the requirements of the Federal Records Act (FRA). This will be determined by the records management office.

f. Historical object or artifact. Historical objects or artifacts are portable and semi-portable objects that may have historical, archaeological, or cultural value, including, but not limited to, portable archaeological artifacts that must be cared for in accordance with ARPA.

g. 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.

h. Native American. Native Americans are individuals, tribes, and organizations that have special rights under NAGPRA, as Indian tribes and/or Native Hawaiian organizations under NHPA, under AIRFA, or under any other provision of Federal law relating to Indian tribes and/or Native Hawaiian organizations.

i. Religious place. A religious place is a location where a group of people practice their beliefs. It may be a building or structure (e.g., a church, synagogue, mosque, or temple), a rural area, an urban location, or a natural place. Impacts on religious places must be considered under RFRA and sometimes under AIRFA.

j. Religious practice. A religious practice is any activity carried out by a group of people expressing its religious beliefs; impacts on such practices must be considered under RFRA and sometimes AIRFA.

4. Responsibilities

a. General. VA is responsible for complying with Federal cultural resource legal requirements. VA must ensure that its employees are equipped to do so through their training, and guidance. The appropriate Deputy Under Secretary, Veterans Integrated Service Networks (VISN), Memorial Service Networks (MSN), Regional Offices, and Staff Offices should have systems in place to ensure that personnel carry out cultural resource responsibilities successfully. Medical centers and national cemeteries should have staff adequate to coordinate and fulfill these responsibilities, with training provided as needed.

b. Executive Director, Office of Acquisition, Logistics, and Construction (OALC). The Executive Director, OALC, maintains the Historic Preservation Office (HPO) within the Office of Construction and Facilities Management (CFM), Strategic Management Office (SMO). HPO oversees and coordinates VA's compliance with cultural resource management legal requirements, including, but not limited to, those relating strictly to historic preservation. HPO issues guidance regarding such requirements, provides training, and consults with other VA offices to assist in meeting VA's cultural resource management responsibilities.

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

(1) VISN Directors. VISN directors ensure that actions planned and carried out by facilities and programs under each VISN's oversight are in compliance with cultural resource management legal requirements. Each VISN Director designates a cultural resource management officer (CRMO), either through collateral duty or contractors, with

appropriate training and authority to oversee and advise on cultural resource activities on a day-to-day basis. Appropriate resources should be made available to ensure that the CRMO is able to function in this capacity.

(2) Medical Center Directors. Medical center directors are responsible for ensuring that facility personnel whose activities may affect cultural resources, such as architects, engineers, maintenance personnel, and groundskeepers, are aware of cultural resource legal requirements and are prepared to implement them. Directors of large facilities, facilities with older buildings or structures, and facilities with known or suspected historical or cultural associations are well advised to appoint a staff cultural resource manager and ensure that he or she obtains appropriate training in CRMO. Appropriate resources should be made available to ensure that the manager is able to function in this capacity.

(3) Capital Asset Managers. Capital asset managers are responsible for ensuring that agreements reached and commitments made regarding cultural resources during project planning are properly implemented; for addressing cultural resource legal requirements in their own planning activities; and for managing impact on cultural resources that are discovered during project implementation and routine management. Ensure that the Capital Asset Inventory (CAI) is updated at least annually with regards to historic preservation issues. Consult HPO for detailed guidance.

(4) Project Managers. Project managers are responsible for ensuring that potential project impacts on cultural resources are identified and addressed as early as possible in planning and in accordance with applicable regulations. Consult HPO for detailed guidance.

d. Under Secretary for Memorial Affairs, National Cemetery Administration (NCA). NCA manages cemeteries that are themselves important cultural resources for Veterans and their families and in many cases for the whole Nation. NCA carries out cultural resource management responsibilities in managing, maintaining, and expanding cemeteries and other facilities.

(1) Office of Finance and Planning. The Office of Finance and Planning ensures that the CAI is updated with regards to historic preservation issues identified and submitted to them by the History Program, MSNs, or through Facility Condition Assessments.

(2) Memorial Programs Service (MPS) Managers. MPS managers are responsible for ensuring that potential project impacts on cultural resources are identified and addressed as early as possible in planning any memorial project, in accordance with applicable regulations. Consult HPO for detailed guidance

(3) History Program. The History Program undertakes work supporting NRHP Section 110 identification such as assisting the Office of Finance and Planning with CAI data about historic resources. It also maintains in its collection the records, studies and historic documentation necessary to develop appropriate historic preservation projects and accurate NHPA Section 106 consultation. When NCA/VA initiates a project potentially impacting historic resources, managers shall include NCA history staff early in the planning process. NCA historians meet the professional qualifications established by the Secretary of the Interior for architectural history or related fields.

(4) MSN. MSN directors ensure that actions planned and carried out under each MSN's oversight are in compliance with cultural resource management legal requirements. In consultation with HPO, each MSN director designates a CRMO with appropriate training and authority to oversee and advise about cultural resource activities on a day-to-day basis. Ensure that the CAI updates are submitted to the Office of Finance and Planning at least annually with regards to historic preservation issues.

(5) National Cemetery Directors. National cemetery directors are responsible for ensuring that contractors and personnel whose activities may affect cultural resources, such as architects, engineers, maintenance personnel, and groundskeepers, are aware of cultural resource legal requirements and are prepared to implement them. Directors of large cemeteries, facilities with older buildings, structures or designed landscapes, and facilities with known or suspected historical or cultural associations are encouraged to appoint a staff CRMO and ensure that that person obtains appropriate training in cultural resource management. Appropriate resources should be made available to ensure that the manager is able to function in this capacity.

(6) Office of Construction Management. Director of the Office of Construction Management is responsible for ensuring that specifications for the restoration or repair of an identified cultural resource and all related projects carried out under the Director's guidance are in compliance with cultural resource management legal requirements.

e. Under Secretary for Benefits, Veterans Benefits Administration (VBA). VBA carries out cultural resource management responsibilities when planning, constructing, and maintaining its facilities, which may represent cultural resources or affect such resources.

(1) Director, Office of Facilities, Access, and Administration (OFAA). The Director, OFAA, ensures that construction and other activities carried out under OFAA's oversight are in compliance with cultural resource management legal requirements. Ensure that the CAI is updated at least annually with regards to historic preservation issues. Consult HPO for detailed guidance.

(2) Director, Vocational Rehabilitation and Employment Service (VRES). In consultation with HPO, the Director, VRES will seek opportunities to assist Veterans,

including disabled Veterans, in finding employment in the management of cultural resources.

(3) Director, Loan Guarantee Service (LGS). In consultation with HPO, the Director, LGS, considers the programmatic impacts of loan guarantees on cultural resources in compliance with applicable laws and regulations.

(4) Regional Office Directors. Regional office directors will consult and coordinate with HPO regarding any historic preservation related issues at the regional level.

f. Assistant Secretary for Human Resources and Administration (HRA). In consultation with HPO, the Assistant Secretary, HRA, ensures that the national policies outlined in Appendix B-1 hereof are appropriately reflected in the performance standards of personnel with responsibilities assigned by or pursuant to VA Directive 7545 and this Handbook.

5. PROCEDURES. This section provides general information and direction about how VA Directive 7545 is to be implemented.

a. Timely, Efficient, Beneficial Compliance with Laws.

(1) Ensure that all cultural resource legal requirements are met in a timely and efficient manner that benefits both Veterans and the human environment.

(2) HPO issues guidance on how to meet cultural resource responsibilities in timely and efficient ways, and assists VA personnel in meeting these responsibilities.

(3) VISNs, MSNs, regional offices, medical centers, national cemeteries, and other VA facilities and offices must ensure that:

(a) Staff responsible for project planning and facilities management receive training and appropriate support in implementing cultural resource requirements;

(b) Contracts or other arrangements are in place to ensure the availability of consultants qualified to assist VA in meeting such requirements;

(c) Compliance with cultural resource legal requirements begins early in planning any action involving land acquisition, land disposal, construction, or other changes to VA facilities or to facilities receiving VA financial assistance, and is completed prior to finalizing decisions regarding such actions; and

(d) Compliance with cultural resource requirements is carried out in consultation with interested parties both within and outside VA and is transparent to the interested public, with special consideration for Indian tribes, low-income groups, minority populations, and the disabled.

b. Management and Development Plans

(1) Cultural resources must be considered by the CRMO and project manager or other responsible entity in developing and implementing any master plans or specific project plans for lands under VA control, including, but not limited to, medical centers, national cemeteries, regional offices, and staff offices.

(2) Any new management or development plan should address the following questions with respect to each alternative considered:

(a) Is this alternative likely to affect historic properties as defined by the NHPA;

(b) Is this alternative likely to affect archaeological resources as defined by the Archaeological Resources Protection Act, or archaeological/historical/scientific data that must be considered under the Archaeological and Historic Preservation Act, or Native American cultural items as defined by NAGPRA;

(c) Is this alternative likely to affect religious or other cultural uses of land, buildings, or other resources by Native Americans or other communities, and hence possibly require special consideration under AIRFA and/or RFRA;

(d) Is this alternative likely to affect historical artifacts or documents, including, but not limited to, documents managed in accordance with FRA;

(e) Is this alternative likely to affect the interests of neighbors, Veterans' groups, Indian tribes, or other parties in the character, cohesion, or integrity of their communities, ways of life, or surroundings; and

(f) Does this alternative offer any opportunities to preserve or otherwise manage cultural resources that are important to Veterans, or to involve Veterans in the management of such resources in meaningful and productive ways.

(3) The analysis underlying the management or development plan should document the basis for each response, and should discuss whether projected effects are likely to be positive, negative, or neutral.

(4) Where there is the potential for effects on any of the above cultural resource types, the plan should strive to maximize positive effects to the extent that doing so does not greatly impede the delivery of services to Veterans. Plans should seek ways to harmonize the management of cultural resources with the delivery of services, to benefit both Veterans and the overall human environment.

(5) Compliance with specific cultural resource laws, including, but not limited to, Sections 106, 110, and 111 of NHPA and Section 3 of NAGPRA as applicable, must be undertaken during the preparation of management and development plans.

c. Compliance with the National Environmental Policy Act (NEPA)

(1) Direct, indirect, and cumulative impacts on cultural resources of all kinds must be addressed when considering the environmental impacts of VA activities under NEPA, beginning at the earliest possible point in planning any VA 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.

(2) When an initial environmental review is done on a proposed VA project, impacts on cultural resources must be among the circumstances considered in judging whether a categorical exclusion (CATEX), environmental assessment (EA), or environmental impact statement (EIS) must be prepared. Adverse effects on cultural resources are not necessarily sufficient to require preparation of an EA or EIS, but may be sufficient depending on the severity of the effects, the character and number of resources involved, the level and kind of public concern about the resources or effects, and similar factors. In preparing an initial environmental review, potential impacts must be considered on both previously known and unknown cultural resources. Compliance with Section 106 of NHPA and Section 3 of NAGPRA must be undertaken in coordination with the review.

(3) When an EA is prepared on a VA project under NEPA, impacts on cultural resources must be among the factors analyzed in determining whether the project will significantly affect the quality of the human environment, and hence require preparation of an EIS. Compliance with Section 106 of NHPA and Section 3 of NAGPRA must be coordinated with preparation of the EA. Impacts on cultural resources are not necessarily sufficient to require preparation of an EIS, but any finding of no significant impact (FONSI) prepared under NEPA must reflect the results of review under Section 106 of NHPA, Section 3 of NAGPRA, and other cultural resource legal requirements to the extent that they apply, and should explain why any effects identified on cultural resources are not sufficiently significant to require preparation of an EIS.

(4) When an EIS is prepared, impacts on cultural resources must be considered, and compliance with all pertinent cultural resource legal requirements must be documented in the final EIS and/or record of decision (ROD) prepared in accordance with NEPA requirements.

(5) Conformance with National Policies. The impacts of proposed actions on cultural resources will be considered in planning and decision making at all levels within VA, with reference to the national policies outlined in Section 101 of NEPA, Sections 1 and 2 of NHPA, and other cultural resource-related laws and executive orders listed in Appendix A-1 hereof.

(6) All VA personnel with responsibilities assigned by or pursuant to VA Directive 7545 must be familiar with the policies established by the cultural laws and executive orders listed in Appendix A-1 of the Directive (reproduced as Appendix A-1 to this Handbook, with their policy sections recited in Appendix B-1 to this Handbook), and must ensure that subordinate personnel and contractors assisting in carrying out such responsibilities are aware of the policies and their implications and receive training in the conduct of such responsibilities.

(7) The Assistant Secretary for HRA will ensure that the national policies outlined in Appendix B-1 hereof are appropriately reflected in the performance standards of personnel with responsibilities assigned by or pursuant to VA Directive 7545.

d. Consultation and Transparency. VA officials responsible for compliance with NEPA, 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 during compliance with such requirements, beginning early in planning for any VA action.

(1) Each Medical Center Director, National Cemetery Director, Regional Office Director, or other VA official responsible for managing a specific VA facility should develop and regularly update lists of individuals, organizations, Indian tribes or Native Hawaiian groups, institutions and agencies with stated, known, or likely interests in the cultural resources of the facility and its surroundings. Those on the list should be routinely advised of VA plans, programs, and activities that have the potential to affect cultural resources, and given opportunities to advise VA of their concerns and interests, if any.

(2) VA personnel and contractors responsible for facilities management, planning, and environmental impact assessment should contact parties with possible concerns about how cultural resources may be affected by VA projects and activities early in planning any activity, and give them every reasonable opportunity to make their views known.

(3) If people have concerns about the implications of a proposed VA action for cultural resources, they should be consulted early and often as VA carries out its responsibilities under the cultural resource legal authorities. Consultation should be an honest exchange of views aimed at reaching agreed-upon resolutions, although it must be understood that agreement will not always be reached, and in the end VA may have to make decisions that do not satisfy all consulting parties.

(4) Special efforts must be made, where applicable, to consult on a government-to-government basis with Indian tribal governments and to accommodate the needs of, and constraints imposed upon, low-income and minority communities.

(5) Responsible VA personnel and contractors should obtain training in consultation, negotiation, and other forms of dispute resolution to assist them in carrying out VA's responsibilities.

6. External Consultation and Coordination. The CRMO or project manager is responsible for external consultants early in the planning process.

a. State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPO) must be consulted about possible project impacts on historic properties. Note, however, that SHPOs and THPOs are not responsible for enforcing the cultural resource laws, or for making decisions that such laws assign to Federal agencies.

b. Indian tribes and Native Hawaiian groups play special roles in project review under Section 106 of NHPA, and have special rights under NAGPRA and other laws. Tribes may also have specific and general treaty rights that can affect a VA project or facility. See VA Directive 8603 for detailed direction on government-to-government consultation.

c. Local governments must be consulted under Section 106 of NHPA about VA projects that may have effects within their jurisdiction.

d. Veterans' groups, neighborhood organizations, environmental and historical groups, and other citizens have specific rights under some of the cultural resource laws, and often have concerns with VA projects and their effects on the cultural environment.

e. The public may be deeply interested in how cultural resources are managed and how agencies like VA deal with them in planning and managing agency programs. The various regulations provide different ways for public involvement in decision making. The public needs to be informed of VA plans and programs, and given all reasonable opportunities to participate in VA decision making regarding actions that may affect cultural resources.

f. ACHP must be invited to participate in the review of actions under Section 106 of NHPA adversely affecting historic properties under VA jurisdiction or control, or when VA proposes to prepare a Programmatic Agreement under the regulations implementing Section 106 of NHPA. VA and other parties (e.g., an SHPO or THPO) may invite the ACHP to participate under other circumstances.

g. The National Park Service (NPS) must be invited to consult during the review of VA actions adversely affecting National Historic Landmarks.

CULTURAL RESOURCE LEGAL AUTHORITIES**1. FEDERAL LAWS**

a. American Indian Religious Freedom Act (AIRFA). Established as U.S. 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 and 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-1). 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-1) – places included in or eligible for the National Register of Historic Places – and creating 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 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 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 (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) (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 effect 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)).