

REGIONAL PLANNING INSTRUCTION
CULTURAL RESOURCES



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1.0 OVERVIEW

Most Navy commands have cultural resources under their jurisdiction, with legally mandated stewardship responsibilities attached to them. Navy policy is established in SECNAVINST 4000.35A, "Department of the Navy Cultural Resources Program"; and responsibilities are assigned in OPNAVINST 5090.1B, Chapter 23, "Historic and Archaeological Resources Protection". Cultural resources protection is part of every installation's routine planning and resource management, and is coordinated with State Historic Preservation Officers, the Advisory Council on Historic Preservation, federally recognized Native American tribes, the Department of the Interior, and other interested parties. Installation planners must be familiar with these resources and their location on the installation, so that they can plan stewardship.

2.0 CULTURAL RESOURCES DEFINED

"Cultural resources" is the generic term for buildings, structures, sites, districts, and objects of significance in American history, architecture, archaeology, engineering, or culture. From a legal perspective, cultural resources are defined in various federal statutes, including the National Historic Preservation Act, Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act. The term is deliberately broad, and related navy responsibilities are similarly broad.

Examples of cultural resources include historic and prehistoric real property (e.g., structures, ruins, archaeological sites, and traditional cultural places) and historic personal property (e.g., historic records and archaeological artifacts). The significance to planners of cultural resources located on military bases is usually determined by applying criteria of eligibility for the National Register of Historic Places; published at 36 CFR 60. The National Register is the nation's official list of cultural resources that are worthy of special consideration in planning. Properties on, or eligible for, the National Register receive this consideration.

3.0 NAVY INVOLVEMENT

Cultural resources legislation insists that federal agencies act as stewards of the nation's cultural resources. Among federal agencies, the Navy is one of the largest owners of historic structures and districts, and controls thousands of historic archaeological sites. In SECNAVINST 4000.35A, Navy policy states that protecting these parts of the nation's heritage is an essential part of the defense mission, and that the Department of the Navy is committed to responsible cultural resources stewardship.

4.0 RESPONSIBILITIES

Installation planners inform the commanding officer of the installation's cultural resources and what needs to be done to protect them in compliance with the legislation. It is the commanding officer's responsibility to program and budget resources to ensure compliance. The first step towards compliance is a professional survey to locate, identify, evaluate, and inventory historic and archaeological resources. This means contracting with qualified personnel to do the survey, except in the rare instance where an installation already employs qualified cultural resources personnel. Professional qualification standards for various cultural resource disciplines are published in the Federal Register at 48 FR 22716.

The next step is incorporating the survey information into an Integrated Cultural Resource Management Plan (ICRMP). For detailed information on preparing ICRMPs, contact your NAVFACENCOM EFD/EFA representative.

5.0 CULTURAL RESOURCES PROGRAM SUMMARY

The Cultural Resources Program covers:

- historic buildings, structures, districts
- historic and prehistoric archaeological resources
- historic ships, shipwrecks, aircraft and other military vehicles
- historic and prehistoric objects
- consultations with federally recognized Indian tribes
- traditional cultural properties
- records, documents, drawings and photographs associated with these resources

Some resources of these types are not significant enough to justify federal expenditures on them. Case-by-case significance must be evaluated by cultural resource professionals, within a context of American history, architecture, archaeology, engineering and/or culture. The Department of the Navy (DON) Cultural Resource Program's prime (but not exclusive) focus is on resources which meet the National Register of Historic Places' published criteria of significance whether they are listed or determined eligible.

The Navy's responsibility with respect to these resources includes:

- Professionally survey all DON installations to locate cultural resources
- Inventory and evaluate all cultural resources that are located in the survey
- Participate in DoN programs to nominate eligible resources to the National Register
- Prepare Integrated Cultural Resource Management Plans (ICRMPs) for each installation
- Protect resources from adverse effects of transfer, demolition, deterioration, or substantial alteration
- Use preservation-specific materials and techniques for routine maintenance and repairs
- Consult with preservation agencies, Native Americans, and other interested parties in early planning stages of any DON action that may affect cultural resources
- Protect archaeological sites from excavation or removal of artifacts except by permit
- Ensure that artifacts and archival materials receive professional curatorial attention
- Ensure that all DON employees and contract personnel who deal with cultural resources are appropriately trained

The responsible entities for compliance with these legal requirements are as follows:

- The Assistant Secretary of the Navy for Installations and Environment directs the Program
- The DON Federal Preservation Officer provides leadership and guidance to all levels of command
- Claimants budget resources for qualified staffing, surveys, plans and other required actions

- Commanding officers are responsible for initiating all aspects of the cultural resources program under their control
- The Marine Corps History and Museums Division is the DON principal technical advisor for all Marine Corps historic personal property, e.g. aircraft and other artifacts
- The Naval Facilities Engineering Command is the DON principal advisor for historic buildings, structures, terrestrial archaeology, districts and associated records and artifacts
- The Naval Historical Center is the DON principal advisor for historic ships, shipwrecks, underwater archaeology, and aircraft

For additional information, contact Dr. Jay Thomas, Navy Cultural Resources Office at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

6.0 LEGACY RESOURCE MANAGEMENT PROGRAM

The FY91 Defense Appropriations Act fenced \$10 million to establish a Legacy Program. The purpose of the program is to enhance stewardship of natural and cultural resources under DoD control. Since 1991, the DoD has continued the funding the Legacy Program in varying amounts. The Legacy Program is expected to continue under the DoD "Conservation" initiative, although the future funding level cannot, at this time, be ascertained.

This is a centrally managed program out of the Office of the Deputy Under Secretary of Defense for Environmental Security. All military departments cooperate in the execution of the program. The program favors "integrated" (combining natural and cultural resource) and "purple" (involving more than one military service) project proposals. Legacy encourages innovation, including partnerships with other governmental and non-governmental agencies. Legacy funds may be obligated by contract, cooperative agreement and grant.

Successful Legacy-funded cultural resource projects to date include:

- DoD-wide "purple" initiatives for cultural resources management planning, Native American resources under DoD control, evaluating the historical significance of Cold War military buildings, historic context and physical resource studies, assessing existing inventories, curation of archeological artifacts, cultural resources awareness and training
- Individual Legacy projects to enhance specific stewardship efforts at over 200 military installations located in 50 states and 5 territories
- Cultural resource inventories and management plans at the regional and installation level, and a worldwide overview and management study for historic submerged Navy ships and aircraft (however, the Legacy Program no longer funds traditional inventory projects)
- Informational pamphlets, brochures, notebooks and videos
- Planning and design for restoration/preservation of National Register buildings
- Significant underwater archeological projects

DOD is currently considering Legacy funding proposals for FY 2002 and is considering pre-proposals for FY02 projects in the near future. Proposal writers should visit the Legacy website at “dodlegacy.org” to examine specific fiscal year areas of emphasis and to note the submission due dates. Navy projects are submitted to DoD after Navy chain of command review, beginning with the installation and proceeding from there to the EFD/A then to the major claimant, and then to CNO, and finally to SECNAV.

Legacy priorities for FY01 included innovative management tools/techniques/pilot projects, development of a model integrated cultural resources management plan, historic context studies for individual states, improved management of historic military housing and cold war cultural resources, developing methods to better use existing cultural resource inventories rather than commissioning new inventories, which should be funded by the individual services. Priorities for future years are expected to be similar.

For additional information, contact Dr. Jay Thomas, Navy Cultural Resources Office at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

7.0 NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA)(P.L. 101-601; 25USC3001-3015; 43CFR10)

NAGPRA deals with two groups of issues that affect the Navy. One set of issues is prospective, the other retrospective.

7.1 NAGPRA RETROSPECTIVE ISSUES

The retrospective part is designed to return to Native Americans certain classes of cultural property and human remains that are already in the possession or control of federal agencies and museums. The law requires that the Navy review its archaeological and historical collections and identify five types of items:

- a) Native American human remains
- b) associated funerary objects
- c) unassociated funerary objects (that is, funerary objects not associated with human remains in Navy’s possession)
- d) sacred objects
- e) objects of cultural patrimony.

These five categories of cultural items are defined in the law (§ 2(3)). NAGPRA mandates that Navy provide a summary of (b), (c), and (d) to federally-recognized tribes and Native Hawaiian groups that it determines to be lineal descendants or culturally-affiliated with the materials. Summaries of this type were due November 16, 1993. The law also requires that a detailed inventory of human remains and associated funerary objects be compiled and distributed to lineal descendants and affiliated groups. Inventories should have been completed by November 16, 1995. Because of delays in locating and reviewing collections, an installation may find that it is not in compliance with the repatriation requirements of NAGPRA. If so, the installation should move forward promptly to come into compliance by completing the appropriate summary or inventory and consulting with the appropriate native groups.

7.2 NAGPRA PROSPECTIVE ISSUES

The prospective portion of NAGPRA requires federal agencies to consult with federally-recognized native entities prior to undertaking any intentional excavations of the five types of cultural property listed above. In general, this requirement means that Navy commands must consult with Native Americans before any activity that might affect archaeological sites, remains, or unmarked burials. The same requirement extends to activities licensed or permitted by the Navy, whether or not they take place on Navy lands. Any human remains or other cultural property excavated after consultation would be subject to repatriation, as appropriate, under the terms of the law and any agreements entered into during consultation. If Native American remains are inadvertently discovered during excavation, construction, or other activities, work must stop immediately, and the remains should be protected. Appropriate native groups should then be contacted and consulted about the project. The regulations mandate that work stop for 30 days while the native groups are contacted and consulted. It may be possible to shorten the 30-day period under certain circumstances if programmatic procedures have been developed in advance in consultation with the appropriate native entities and state authorities.

7.3 NAGPRA CONSULTATION REQUIREMENTS

NAGPRA and its regulations specify in detail how “consultation” with native groups should take place. The consultation requirements of NAGPRA are not satisfied by simple notification. Consultation should take place in accordance with the specific terms of the regulations (see section 10.5) and also with Executive Order 13084, “Consultation and Coordination with Indian Tribal Governments”. DOD Instruction 4715.3, Enclosure 8, “Principles for Consultations with Native Americans” and SECNAVINST 11010.14, “Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes,” provide additional helpful guidance. Note that only federally-recognized American Indian and Alaskan Native groups and Native Hawaiians participate directly in the NAGPRA consultation and repatriation processes. Commands should therefore be circumspect in their dealings with non-federally-recognized native groups. The list of federally-recognized American Indian tribes and Alaskan Native villages is maintained by the Bureau of Indian Affairs, Department of the Interior.

NAGPRA also provides new criminal penalties for trafficking in human remains and the other cultural items listed above.

For additional information, contact Dr. Jay Thomas, Navy Cultural Resources Office, at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

8.0 CULTURAL RESOURCES PROTECTION AND BASE ACTIONS

Prior to undertaking a federal action, all commands must comply with the National Historic Preservation Act (NHPA) and implementing regulations. NHPA requires identification, evaluation, documentation and protection of historic, archaeological and other cultural resources, and interagency consultation in carrying out these responsibilities. NHPA also authorizes expenditure of public funds for compliance purposes. NHPA Section 106 requires that each federal action be examined, in consultation with the State Historic Preservation Officer (SHPO), for any effect (adverse or beneficial, direct or indirect) which it may have on historic, archaeological, or other cultural resources and records, documents, drawings and photographs associated with them and to initiate consultation with preservation agencies regarding possible

effects and mitigation actions, prior to expenditure of any Federal funds on the undertaking. Detailed procedures are published at 36 CFR 800. NHPA may impose obligations where none are required under the National Environmental Policy Act (NEPA). Where appropriate, both NEPA and NHPA compliance may proceed together. However, please note that compliance with NEPA does not guarantee compliance with NHPA.

Section 106 of the National Historic Preservation Act directs DoD to take into account the effects its undertakings may have on any district, site, building, structure, or object that is eligible for the National Register of Historic Places

NHPA requirements vary case-by-case; but in every case the command must determine by professional survey whether historic, archaeological or other cultural resources are present. The SHPO must be consulted to help evaluate any such resources for National Register eligibility and to determine effect.

If historic facilities are vacated for a period of time, NHPA Section 106 consultation must develop case-by-case guidelines for interim protection. Demolition is ordinarily discouraged, if functionally and economically acceptable uses are anticipated, and neglect is considered to be a form of demolition. Provisions will have to be made for initial "mothballing", periodic inspection, and minimal maintenance and repair while vacant. Prevention of water penetration and provision for adequate passive ventilation are of particular concern. Security provisions are necessary to prevent loss of historic decorative elements.

In addition to NHPA, the Archaeological Resources Protection Act (ARPA) may require compliance actions such as regular site monitoring and protection against vandalism and looting. Both civil and criminal penalties apply to excavation or removal of artifacts without a permit. ARPA permits are issued by the Naval Facilities Engineering Command.

8.1 COMMANDING OFFICER RESPONSIBILITIES

Prior to undertaking a federal action, make sure NHPA Section 106 compliance is complete. This is an activity funding responsibility. Ensure that base wide organization and procedures set up to oversee the action include all NHPA and ARPA requirements. Since research and interagency consultation and negotiation may be prolonged, initiate Section 106 compliance actions immediately. These legal responsibilities cannot be delegated outside your command.

For further information, call Dr. Jay Thomas, Navy Cultural Resources Office at (202) 685-9196, or thomasj@navfac.navy.mil.

9.0 EXPEDITING NATIONAL HISTORIC PRESERVATION ACT (NHPA) SECTION 106 COMPLIANCE ACTIONS

Depending on the complexity of the federal action, it may take up to a year or more to complete the NHPA Section 106 procedural requirements, negotiate substantive issues, and fine tune the language for a signed Memorandum of Agreement (MOA) that enables the Navy to proceed with a project. In order to reach the end point more expeditiously, DON planners have learned how to move through the early stages of Section 106 more smoothly. Here are some suggestions:

9.1 WHEN TO INITIATE NHPA SECTION 106 CONSULTATION

The law tells us when to initiate 106: "prior to the approval of the expenditure of any federal funds on the undertaking". This is interpreted as the earliest planning stages of a project. The reasons some people offer for delaying 106 consultation always turn out to be illusory. It will cost more in dollars and delays later on in the process. The sooner you start, the sooner you'll be able to complete Section 106 compliance work and proceed with the project. So do not debate it; just do it.

9.2 SECTION 106 CONSULTATION REQUIRED

The definition of "undertaking" is deliberately broad and inclusive, and the 106 threshold of effect is very low. Even minor DON actions that may affect historic properties trigger 106 requirements. When you initiate a Section 106 consultation, you'll quickly be advised by the SHPO as to the perceived impacts on historic properties and what the SHPO expects you to do about it.

9.3 DETERMINING WHEN A PROPERTY IS HISTORIC

The first step in the process is to consult with the SHPO to ascertain whether there are historic properties present that may be affected. The law gives only one office in the whole country final authority to evaluate whether a property is historic: the Keeper of the National Register of Historic Places. Rather than argue with other agencies over whether a property is historic, in close cases it is often more efficient to concede the point and move ahead—especially since eligibility is based on a property's history and not on management implications. Move as quickly as possible to consensus with other agencies about what's historic and then move on to the next, more crucial issue: Initiate discussion as to what preservation or mitigation actions, if any, are necessary and appropriate.

For further information, contact Dr. Jay Thomas, Navy Cultural Resources Office, at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

10.0 NAVY HISTORIC FAMILY HOUSING PROGRAMMATIC AGREEMENT

Section 106 is a procedural requirement that directs federal agencies to consider the effects their actions might have on historic properties. The Navy completes its Section 106 requirement on a case-by-case basis.

Currently, there are at least 663 historic family housing units under the Navy's control. This number will likely increase as more Navy housing units reach the 50 year age mark and are evaluated for historic significance. Due to the high cost associated with the age and size of historic family housing units, Congress directed Navy to consult with the Advisory Council on Historic Preservation (ACHP) to "pursue strategies for the services to maintain and use historic housing consistent with their mission and budgetary resources."

The Navy developed a programmatic agreement (PA) with the ACHP and the National Council of State Historic Preservation Officers (NCSHPO) that exempts historic housing units from all maintenance and repair project from case-by-case Section 106 review. This PA covers twenty four interior, exterior, and site project types. This exemption is granted on the condition that the Navy performs maintenance and repair projects according to the Secretary of the Interior's Standards for Historic Preservation.

Cumulatively, this exemption will relieve the Navy from considerable resources devoted to Section 106 coordination and review.

The PA utilizes the Navy's existing "categorization of the built environment" protocol which determines *relative significance* among the pool of listed/eligible housing units and allows the Navy to channel its resources to the more significant historic family housing units.

For less significant historic housing units, the PA provides for administrative short cuts that may result in accelerated Section 106 completion for non-maintenance and repair projects. These short cuts have the potential to further reduce the impact on resources for Section 106 compliance.

For additional information, contact Dr. Jay Thomas, Navy Cultural Resources Office at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

11.0 HISTORIC COLD WAR PROPERTIES

The 1991 Department of Defense Appropriation Act directed DoD to inventory, protect, and conserve "physical and literary property and relics connected with the origins and development of the Cold War". DoD's Cold War Task Area identified sites, structures, landscapes, records and artifacts from 1945 through 1989 as components of the Cold War heritage which the Defense Appropriation Act addresses.

The National Register does not ordinarily consider properties less than fifty years old to be eligible for listing, although roughly 3% of the properties listed on the National Register have achieved significance within the last fifty years. The National Register encourages nomination of recently significant properties if they are of "exceptional" importance to a community, a state, a region, or the nation.

11.1 COMPLYING WITH THE LEGISLATION

A professional Overview Survey determines whether the installation controls any properties that may be of "exceptional" Cold War significance and thereby potentially meets the National Register eligibility criteria. Note that an Overview Survey is simple and economical, combining a literature search and a surface site inspection. An Overview Survey ordinarily does not produce detailed National Register documentation. To be useful to the DON, an Overview Survey needs SHPO concurrence.

If an Overview Survey identifies any exceptionally significant properties, their existence and treatment guidance should be included in the ICRMP. Additional, more detailed survey work on properties identified as exceptionally significant will proceed as specified in the ICRMP.

If a professional Overview Survey indicates that an installation's Cold War properties do not meet National Register eligibility criteria, then no Section 106 compliance actions are required when undertakings affect them.

If no ICRMP exists or if an ICRMP has not been updated to address Cold War properties, preservation agencies sometimes impose significant delays on Navy and Marine Corps undertakings while they determine whether any Cold War properties that meet National Register criteria may be affected by the undertaking and while possible mitigation actions are negotiated.

There may be case-by-case exceptions to this general approach. If they arise, consult the Navy Cultural Resources Office, Dr. Jay Thomas, at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.

12.0 CURATION OF ARCHAEOLOGICAL COLLECTIONS

The Department of the Navy complies with 36 CFR 79, “Curation of Federally-owned and Administered Archeological Collections,” a regulation which implements parts of the National Historic Preservation Act and the Archaeological Resources Protection Act. Every commanding officer is responsible for archaeological collections under command control. The collections include prehistoric and historic artifacts and materials, and associated records, that have been recovered from Navy land or through Navy projects, including Navy-licensed federal undertakings. These materials are valuable government property and are irreplaceable elements of the nation’s heritage. There is at present no legal mechanism for disposing of these collections, so they must be retained and properly maintained.

12.1 EXISTING COLLECTIONS

Existing collections that are the responsibility of the command should first be identified, inspected, and reviewed for compliance with NAGPRA as this law has specific requirements including timetables. After screening artifacts for NAGPRA compliance, the collections should then be reviewed with respect to the requirements of 36 CFR 79. If collections are not in good condition, they should be rehabilitated through chemical stabilization, conservation, labeling, and repackaging with archival materials. Existing collections should be in the care of curatorial repositories that meet the requirements of the regulation. If necessary, therefore, arrangements should be made to place the collections at an appropriate facility. The regulation also calls for periodic monitoring (i.e., inspection and inventory) of collections to ensure that they are being professionally managed and preserved, whether they are stored on the installation or at an off-site facility.

12.2 NEW COLLECTIONS

Commands should take steps to ensure that any new collection is placed in a repository that has the capability of providing professionally adequate, long-term curatorial services as described in the regulation. It is advisable to make arrangements for the acceptance of a collection at a curation facility as early as possible, ideally, even before its excavation.

12.3 PROCURING CURATORIAL SERVICES

Any federal agency may opt to provide curatorial services itself or to secure the services through a variety of means, including contract, purchase order, memorandum of understanding, cooperative agreement or other agreement with a state, local, or tribal curatorial facility, a university, museum or other scientific or educational institution, interagency agreement with another federal agency, or transfer of the collection. Collections remain the property of the federal government. While a collection is temporarily located with another organization for curation purposes, the collection remains the responsibility of the cognizant command. Since the

construction, maintenance, and administration of a curation facility is a highly specialized, complex, and costly undertaking, it is rarely possible for a naval installation to provide these services itself on-base.

12.4 STEPS TO COMPLIANCE

Here are some important steps for compliance:

- Identify all existing collections
- Review and evaluate curatorial services according to standards set forth in 36 CFR 79.5 and 79.9
- Rehabilitate collections if necessary
- Maintain administrative records for each collection
- Ensure that collections are available for scientific, educational and religious uses, subject to protection of the condition, research potential, religious or sacred significance and uniqueness of each collection
- Ensure that contracts, agreements and other written instruments for curatorial services adhere to the professional standards set forth in 36 CFR 79.8
- Ensure periodic inspections and inventories in accordance with Federal Property and Administrative Services Act (40 U.S. C. 484, its implementing regulations in 41 CFR 101, and Department of the Navy regulations).

For additional information, contact Dr. Jay Thomas, Navy Cultural Resources Office, at (202) 685-9196, or e-mail: thomasj@navfac.navy.mil.