

HISTORIC PRESERVATION IN ASSET MANAGEMENT AND OPERATIONS

I. Purpose

This Directive establishes policy and procedures for appropriate consideration of historic properties and sacred sites in the management and operation of the full range of the Department of Homeland Security (DHS) assets. It establishes appropriate DHS roles, responsibilities, and lines of accountability to apply the relevant requirements of historic preservation public policy to DHS activities.

II. Scope

A. The requirements in this Directive apply to any DHS Component directly responsible for real and personal property management, as well as DHS operations involving fixed and mobile assets. Where a DHS Component occupies space in a historic property managed by another Federal agency, the Component must adhere to the historic preservation requirements of the property manager.

B. DHS, through its Components, controls and manages historic buildings, structures, districts, archaeological sites and artifacts, vessels, aircraft, and other historic properties, as well as Indian sacred sites. In addition, the operation and management of DHS assets could affect historic properties and non-Federal organizations and private citizens, as well as Indian sacred sites managed by other Federal agencies.

C. This Directive establishes appropriate policies, roles, responsibilities, and lines of accountability to fulfill all appropriate requirements for consideration of historic properties and Indian sacred sites in the management and operation of DHS assets. It has a particular focus on the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. § 470 et seq.) and the implementing regulations for Section 106 of the NHPA at 36 CFR Part 800, as well as Executive Order 13007, Indian Sacred Sites. However, the scope of this Directive includes other Federal laws, regulations, executive orders and mandates related to the appropriate consideration of historic properties, archaeological resources, and Indian sacred sites, as well as their associated financial reporting, in the management of Federal government assets and operations.

III. Authorities

Following is a partial list of requirements; the Instruction Guide 017-01-001 includes a list of additional authorities:

- A. Public Law 95-341, American Indian Religious Freedom Act (Title 42, U.S.C., § 1996)
- B. Public Law 107-296, Homeland Security Act
- C. Title 16, U.S.C. §§ 431-433, National and International Monuments and Memorials (Antiquities Act)
- D. Title 16, U.S.C. §§ 461-467, Historic Sites, Buildings, Objects, and Antiquities (Historic Sites, Buildings and Antiquities Act)
- E. Title 16, U.S.C. §§ 469-469c-2, Historic Sites, Buildings, Objects, and Antiquities (Archeological and Historic Preservation Act)
- F. Title 16, U.S.C. §§ 470 et seq., Historic Sites, Buildings, Objects, and Antiquities (National Historic Preservation Act)

IV. Responsibilities

The authority to fulfill requirements for consideration of historic properties and Indian sacred sites, unless otherwise delegated, is as follows:

- A. The **Secretary of DHS (Secretary)** has the ultimate authority and responsibility under the Homeland Security Act (specifically section 102(3)) to fulfill public policy requirements for consideration of historic properties and Indian sacred sites in the execution of the homeland security mission. The Secretary specifically delegated (DHS Delegation 0201.1) to the Under Secretary for Management the authority of management and oversight of facilities, property, equipment, and other material resources, which includes historic preservation requirements.
- B. The **Under Secretary for Management** has authority, as delegated by the Secretary, to establish a Historic Preservation Program for the appropriate consideration of historic properties and Indian sacred sites in the execution of the homeland security mission. To this end, the Under Secretary for Management has delegated authority for National Historic Preservation Act requirements to the Chief Administrative Officer in DHS Delegation 0520.

C. The **Chief Administrative Officer** has authority, as delegated by the Under Secretary for Management, to establish a Historic Preservation Program for the appropriate consideration of historic properties and Indian sacred sites in the execution of the homeland security mission. The Chief Administrative Officer is the Department's Senior Policy Official for historic preservation purposes and is responsible for advising the Under Secretary for Management on all historic preservation matters in the Department.

D. The **Director, Occupational Safety and Environmental Programs (Director)** advises the Chief Administrative Officer in maintaining a timely, reliable, and cost-efficient Historic Preservation Program in the Department. The Director supervises the Department's Federal Preservation Officer.

E. The **Office of the General Counsel** provides legal sufficiency review of proposals involving historic preservation and Indian sacred site considerations.

F. **All heads of Components** ensure that the planning, development, and execution of their missions conform to this Directive and must designate a Historic Preservation point of contact.

G. **Historic Preservation points of contact** act as a single point of contact on historic preservation matters in their respective component for communications from the Director.

H. **Program or Project Proponents** (in consultation with their respective Historic Preservation Contact) fulfill the procedural requirements of Section 106 of the NHPA (36 CFR Part 800) and Executive Order 13007, Indian Sacred Sites, in the management and operations of assets under their control.

V. Policy and Requirements

A. **Commitment.** DHS will integrate appropriate preservation of the historic and cultural aspects of the nation's heritage into performing the homeland security mission. Consistent with its mission requirements and other mandates of public policy, DHS will identify and protect the significant material remains of the Nation's historical and cultural foundations as a living part of its community life and development in order to give a sense of orientation to the American people.

B. **Emphasis on Planning:** Accounting for historic preservation is a requirement for the development of new plans and activities. Appropriate consideration of historic properties and Indian sacred sites in the planning for asset management and other operational activities must achieve the following objectives:

1. Allow for appropriate consultation and collaboration with other government, tribal, non-government organizations, and the public.
2. Integrate the procedures of Section 106 of NHPA and those of the National Environmental Policy Act (see DHS Management Directive 5100.1, Environmental Planning Program) in accordance with 36 CFR Part 800.8.
3. Evaluate likely consequences to historic properties and Indian sacred sites with all appropriate proposals.
4. Consider reasonable options to avoid or minimize the potential for adverse effects on historic properties and Indian sacred sites.
5. Ensure that every proposal that may adversely affect historic properties or Indian sacred sites includes appropriate measures and funding to treat the potential adverse effect.
6. Meet historic preservation requirements consistent with other considerations of national policy, operational requirements, and costs in decision-making processes.

C. **Timeliness:** Integrate historic preservation efforts, including all regulatory requirements, into project plans and schedules, with appropriate allowances for consultation with other Federal and non-Federal organizations. Fulfilling the following primary objectives will contribute to timely results from historic preservation efforts:

1. Understand the nature and extent of historic properties or Indian sacred sites that may be impacted by a DHS proposal.
2. Schedule sufficient time in project planning and development processes to allow for appropriate identification, evaluation, and treatment of impacts to historic properties, as well as to provide sufficient time for consultation with appropriate Indian tribes and religious leaders over adverse effects on Indian sacred sites.

3. Anticipate and schedule sufficient time for consultation with ACHP, State Historic Preservation Officers (SHPO) or Tribal Historic Preservation Officers (THPO), Indian Tribes, Native Hawaiian Organizations, and other interested organizations and individuals, in accordance with 36 CFR Part 800.
4. Meet appropriate regulatory compliance schedules and other requirements of consultation processes.
5. Perform historic preservation activities at the lowest appropriate level of the organization.
6. When meeting the requirements of 36 CFR Part 800, integrate the relevant requirements of the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, and the Archaeological Resources Protection Act to combine study, review, and consultation requirements.
7. Meet historic preservation requirements of other Federal property managers where a Component occupies a historic property managed or controlled by another Federal agency.

D. **Cost Efficiency:** Historic preservation activities may involve costs associated with study efforts, as well as implementation and treatment costs over project and operational life cycles. Fulfilling the following primary objectives will promote the efficient use of funds in historic preservation efforts:

1. Focus historic preservation effort on the types of DHS activities that may affect historic properties and Indian sacred sites.
2. Ensure that the scope and depth of analysis, extent of consultation efforts, and volume of documentation is proportionate to the nature and scope of the proposal, and to the complexity and level of anticipated effects on historic properties and Indian sacred sites.
3. Perform historic preservation activities at the lowest appropriate level of the organization.
4. Budget for sufficient resources in project planning and execution processes to allow for appropriate identification, evaluation, and treatment of impacts to historic properties, as well as to provide sufficient time for consultation with appropriate Indian tribes and religious leaders over adverse effects on Indian sacred sites.

5. Ensure that ratification of agreement documents resulting from consultation occurs at the lowest appropriate level of the organization with the authority to commit DHS to agreement provisions, including their future funding implications.

E. **Dependability**: Historic preservation efforts must provide dependable results in support of DHS mission requirements. Fulfilling the following primary objectives will contribute to the dependability of outcomes from historic preservation efforts:

1. Inventory the nature and extent of historic properties and Indian sacred sites that may be affected by a specific DHS proposal.
2. Evaluate the potential for effects on historic properties or Indian sacred sites from a DHS proposal.
3. Ensure that personnel and contractors have the appropriate training, experience, and qualifications.
4. Consider the rehabilitation or adaptive use of historic properties over new construction or leasing, consistent with mission requirements.
5. Preserve historical properties to the extent possible and consistent with mission requirements.
6. In accordance with 36 CFR Part 800, consult in good faith with ACHP, SHPOs/THPOs, Indian Tribes, Native Hawaiian Organizations, and other interested organizations and individuals.

F. **Special Considerations – Consultation with Native Hawaiian Organizations**: Specific requirements to consult with Native Hawaiian organizations are in 36 CFR Part 800. Because there is no formal leadership structure for the Native Hawaiian community, interested parties within that community may designate a number of leadership representatives for consultation, making the names of selected representatives and the issues in consultation generally available to the larger interested Native Hawaiian population.

G. **Special Considerations – Indian Sacred Sites**: DHS policy is to respect the interests and beliefs of federally recognized tribes and to enter into consultation with them on matters that may affect those interests and beliefs. Where appropriate, DHS will protect the location and existence of Indian sacred sites and other matters in accordance with tribal concerns, as permitted by applicable law.

H. **Special Considerations –Archaeological Excavations and Artifacts:**


1. Archaeological sites under the control of DHS should be excavated only to the extent required for evaluation and identification, unless scientific or programmatic considerations (including other planned uses of a site), or concerns about the integrity or security of a site, make more extensive excavation necessary or advisable.
2. Information about archaeological sites and collections must be (subject to confidentiality constraints) entered into appropriate data systems for future use.
3. Archaeological and historical artifacts recovered during archaeological excavations generally belong to the owner of the property. Title to archaeological and historical artifacts recovered on property under control of the Federal government generally remains with the Federal government. However the ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands is defined by the custody requirements of 43 CFR Part 10.6. Where the property is not in Federal ownership, develop plans for the disposition of archaeological artifacts prior to the start of recovery.
4. Records, storage requirements and other special considerations for archaeological collections will conform to requirements of 36 CFR Part 79. Cooperative agreements with qualified institutions and experts may be an effective tool to meet this requirement.
5. Protect sites under the control of DHS against disturbance by unauthorized persons to the extent possible.
6. Develop plans to deal with unanticipated or unintentional discoveries of archaeological materials.

I. **Special Considerations—National Historic Landmarks:** Specific requirements to protect National Historic Landmarks are contained in 36 CFR Part 800.10. Components will, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking.

J. DHS Instruction 017-01-001 shall govern requirements and procedures on the historic preservation in asset management and operations.

VI. Questions

Address any questions or concerns regarding this Directive to the Director, Office of Safety and Environmental Programs.



Elaine C. Duke
Deputy Under Secretary for Management



Date