

VOLUME 8

“CULTURAL RESOURCES MANAGEMENT”

SUMMARY OF VOLUME 8 CHANGES

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VOLUME 8: CULTURAL RESOURCES MANAGEMENT

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REFERENCES

- (a) MCO 5750.1H
- (b) DoD Instruction 4715.16, “Cultural Resources Management,” September 18, 2008
- (c) SECNAV Instruction 4000.35A
- (d) 54 U.S.C. 300101
- (e) Executive Order (E.O.) 13327, “Federal Real Property Asset Management,” February 5, 2004
- (f) E.O. 13287, “Preserve America,” March 3, 2003
- (g) Final Governing Standards (FGS) as developed by Lead Environmental Components for each country with significant DoD installations
- (h) Part 229 of Title 32, Code of Federal Regulations (32 CFR 229)
- (i) 16 U.S.C. §470aa-mm
- (j) 43 CFR 10
- (k) 36 CFR 61
- (l) 25 U.S.C. §§3001-3013
- (m) 36 CFR 79
- (n) 5 U.S.C. §552
- (o) 32 CFR 187
- (p) 42 U.S.C. 4321 et seq.
- (q) 36 CFR 800
- (r) DoD Instruction 4715.05-G, “Overseas Environmental Baseline Guidance Document,” May 1, 2007
- (s) SECNAV M-5210.1
- (t) MCO 11000.25
- (u) 36 CFR 62
- (v) E.O. 13007, “Indian Sacred Sites,” May 24, 1996
- (w) E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” November 6, 2000
- (x) Presidential Memorandum, "Government-to-Government Relations with Native American Tribal Governments," April 29, 1994
- (y) DoD Instruction 4710.02, “DoD Interactions with Federally-Recognized Tribes,” September 14, 2006
- (z) “Department of Defense American Indian and Alaska Native Policy (Annotated),” October 20, 1998
- (aa) E.O. 13693, “Planning for Federal Sustainability in the Next Decade,” March 19, 2015

VOLUME 8: CHAPTER 1

“SCOPE”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 1

SCOPE

0101 PURPOSE

This Volume establishes Marine Corps policy and assigns responsibilities in accordance with the statutes and regulations cited in paragraphs 0201 and 0202, respectively, for achieving compliance with applicable federal statutory and regulatory requirements, Presidential Memoranda, Executive Orders (E.O.s), and Department of Defense (DoD) regulations and policies for the integrated management of cultural resources on Marine Corps lands or that may be affected by Marine Corps actions.

0102 APPLICABILITY

010201. This Volume applies to all real properties under the control of the Marine Corps by ownership, lease, or similar instrument that are located in the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States. This Volume also applies to lands not under Marine Corps ownership, lease, or similar instrument in those cases where actions financed, permitted, or sponsored by the Marine Corps may affect cultural resources on such lands. As noted in Volume 1 paragraph 0102 of this Order, these policies apply to overseas locations as well; exceptions will be identified as necessary throughout this Volume. Waters contiguous to the land areas may contain cultural resources; therefore, this Volume also applies to water areas under direct control of the Marine Corps and to submerged cultural resources located therein. For water areas under partial control subject to impacts related to Marine Corps actions, the Marine Corps will assess the effects of those actions on submerged resources located therein.

010202. This Volume does not apply to “Heritage Assets,” or historic objects associated with Marine Corps history (e.g., weapons, armored vehicles, plant, property, and equipment items that are considered to be unique due to their historical or natural significance; cultural, educational, or artistic importance; or significant architectural characteristics for the purposes of accountability in accordance with the Chief Financial Officers Act). Heritage assets, e.g., military artifacts, are addressed by MCO 5750.1H (Reference (a)).

010203. Due to the interdisciplinary nature of cultural resources, personnel should also refer to other volumes in this Order, specifically Volume 3 (Funding) for funding policy guidance and requirements and Volume 12 (Environmental Planning and Review) for guidance on preparing National Environmental Policy Act of 1969 (NEPA) documentation for cultural resource management actions and integrated cultural resources management plans (ICRMPs).

0103 BACKGROUND

Marines need access to a variety of landscapes and facilities to conduct training. However, training can impact cultural resources on public lands. The American people place intrinsic value on certain resources; failure to protect those resources under the stewardship of the Marine Corps may lead to legislative, executive, or judicial directives limiting Marine Corps access to lands necessary to

maintain military readiness. Installation commanders shall ensure that the cultural resources entrusted to Marine Corps care remain available for future generations.

VOLUME 8: CHAPTER 2

“AUTHORITY”

SUMMARY OF SUBSTANTIVE CHANGES

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CHAPTER 2

AUTHORITY

0201 FEDERAL STATUTES

This policy tiers off of the policies for cultural resources management outlined in Department of Defense (DoD) Instruction 4715.16 (Reference (b)) and Secretary of the Navy (SECNAV) Instruction 4000.35A, (Reference (c)). In addition, this policy incorporates the provisions of the following federal legislation, E.O.s, DoD and SECNAV regulations, and guidance, as appropriate to the management of cultural resources under the purview of the Marine Corps. (Only statutes b, j, and l apply to overseas installations).

- 020101. NEPA of 1969 (42 United States Code (U.S.C.) 4321 et seq.).
- 020102. National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. §§100101, 300101-307108 or Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515).
- 020103. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. §§3001-3013).
- 020104. Archeological Resources Protection Act (ARPA) of 1979, as amended (16 U.S.C. §470aa-mm).
- 020105. American Indian Religious Freedom Act (42 U.S.C. 1996 and 1996a).
- 020106. Antiquities Act of 1906 (54 U.S.C. §§320301-320303).
- 020107. Abandoned Shipwreck Act of 1987 (43 U.S.C. §§2101-2106).
- 020108. Archeological and Historic Data Preservation Act of 1974 (16 U.S.C. §469-469cc).
- 020109. Cooperative Agreements for Management of Cultural Resources (10 U.S.C. §2684).
- 020110. Federal Records Act of 1950 (44 U.S.C. §3101).
- 020111. Historic Sites Act of 1935 (54 U.S.C. §§102303-102304, 309101, 320101-320106).
- 020112. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, concluded on May 14, 1954 (Treaty Doc. 106-1(A)) [Congressional Record, September 25, 2008, page S9555].

0202 FEDERAL REGULATIONS

Only paragraph 020214 applies to overseas installations.

020201. 32 Code of Federal Regulations (CFR) 187, “Environmental Effects Abroad of Major Department of Defense Actions”.

020202. 32 CFR 229, “Protection of Archeological Resources: Uniform Regulations”.

020203. 36 CFR 60, “National Register of Historic Places”.

020204. 36 CFR 61, “Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation”.

020205. 36 CFR 63, “Determinations of Eligibility for Inclusion in the National Register of Historic Places”.

020206. 36 CFR 65, “National Historic Landmarks Program”.

020207. 36 CFR 66, “Recovery of Scientific, Prehistoric, Historic and Archeological Data”.

020208. 36 CFR 67, Section 7, “The Secretary of the Interior’s Standards for Rehabilitation”.

020209. 36 CFR 68, “The Secretary of the Interior’s Standards for the Treatment of Historic Properties”.

020210. 36 CFR 78, “Waiver of Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act”.

020211. 36 CFR 79, “Curation of Federally-Owned and Administered Archeological Collections”.

020212. 36 CFR 800, “Protection of Historic Properties”.

020213. 40 CFR 1500-1508, “Council on Environmental Quality”.

020214. 43 CFR 3, “Department of the Interior, Preservation of American Antiquities”.

020215. 43 CFR 10, “Native American Graves Protection and Repatriation Regulations”.

0203 EXECUTIVE ORDERS

Paragraphs 020302, 020303, and 020304 do not apply to overseas installations.

- 020301. E.O. 11593, “Protection and Enhancement of the Cultural Environment”.
- 020302. E.O. 13006, “Locating Federal Facilities on Historic Properties in our Nation’s Central Cities”.
- 020303. E.O. 13007, “Indian Sacred Sites”.
- 020304. E.O. 13175, “Consultation and Coordination with Indian Tribal Governments”.
- 020305. E.O. 13287, “Preserve America”.
- 020306. E.O. 13327, “Federal Real Property Asset Management”.
- 020307. E.O. 13693, “Planning for Federal Sustainability in the Next Decade”.

- 0204 FEDERAL GUIDANCE
 - 020401. 48 FR 22716, “The Secretary of the Interior's Professional Qualification Standards”.
 - 020402. 53 FR 4742, “Guidelines for Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act”.
 - 020403. 62 FR 33707, “The Secretary of the Interior’s Proposed Historic Preservation Professional Qualification Standards”.

- 0205 DEPARTMENT OF DEFENSE (DOD) POLICY
 - 020501. DoD Instruction 4710.02 “DoD Interactions with Federally-Recognized Tribes,” 14 September 2006.
 - 020502. DoD Instruction 4710.03 “DoD Consultation Policy with Native Hawaiian Organizations,” 25 October 2011.
 - 020503. DoD Minimum Antiterrorism Standards for Buildings (UFC 4-010-01).
 - 020504. SECNAV Instruction 11010.14A, “Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes”.
 - 020505. SECNAV Manual 5210.1, “Department of the Navy Records Management Program Records Management Manual”.
 - 020506. Nationwide Programmatic Memorandum of Agreement (MOA) among the United States Department of Defense, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (Concerning World War II Temporary Buildings).

020507. Program Comment for Wherry and Capehart Era Family Housing at Air Force and Navy Bases.

020508. Program Comment: DoD Cold War-Era Unaccompanied Personnel Housing.

020509. Program Comment: DoD World War II- and Cold War-Era Ammunition Storage Facilities.

020510. DoD Instruction 4715.5 “Overseas Environmental Baseline Guidance Document”.

VOLUME 8: CHAPTER 3

“REQUIREMENTS”

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CHAPTER 3

REQUIREMENTS

0301 GENERAL

030101. The federal legislation, E.O.s, DoD and SECNAV regulations, and guidance pertaining to cultural resources establish requirements applicable to Marine Corps installations and activities as outlined below.

030102. In accordance with Section 300101 et seq. of Title 54, United States Code (54 U.S.C. 300101 et seq.) (also known and referred to in this Order as “National Historic Preservation Act,” (NHPA) as amended) (Reference (d)) and DoD policies, the Marine Corps is responsible for managing and maintaining cultural resources under its control through a comprehensive program that considers the preservation of their historic, archaeological, architectural, and cultural values; supports the mission; and results in sound and responsible stewardship. Through the integration of its cultural resources management policies and procedures with Marine Corps mission, the Marine Corps will provide stewardship of cultural resources in a sustainable manner that supports the mission and promotes the quality of life for stakeholders.

0302 INVENTORY AND EVALUATION

030201. General

Section 110 of Reference (d), in accordance with Executive Order (E.O.) 13327 (Reference (e)), calls for federal agencies to maintain accurate information on the state of federally-owned historic properties. A Marine Corps installation with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties, the general condition and management needs of such properties, and the steps underway or planned to meet those management needs as required by Section 110(a)(2) of Reference (d) and in accordance with E.O. 13287 (Reference (f)) or, pursuant to Final Governing Standards (FGS) as developed by Lead Environmental Components for each country with significant DoD installations (Reference (g)), inventories of properties listed on the World Heritage List or host nation equivalent of the National Register of Historic Places (NRHP). Codes reflecting the inventory status of Marine Corps real property shall be updated in Internet Navy Facilities Assets Data Store (iNFADS) on an annual basis.

030202. Inventory

A. All Marine Corps installations are responsible for identifying cultural resources within the installation boundaries and maintaining complete and current information regarding resource location, significance, condition, and use. Marine Corps installations will survey unsurveyed or inadequately surveyed land parcels or unevaluated buildings/structures within the installation, prioritizing surveys according to mission requirements and the potential to affect cultural resources. Survey priority goals may be aligned with environmental review of proposed undertakings (e.g., surveys in support of Section 106 process undertakings may take priority); however, annual survey goals should typically exceed acreage or buildings/structures to be affected by the installation’s proposed undertakings.

B. Inventory of resources of traditional, religious, or cultural significance to Native American tribes, Alaskan Native villages or corporations, or Native Hawaiian organizations (NHOs) should be completed in consultation with representatives of affiliated tribes or organizations. Inventories of host nation cultural properties should be coordinated with host nation officials, as directed by Reference (g).

030203. Evaluation

All Marine Corps installations are responsible for evaluating the NRHP eligibility or host nation significance of identified resources within the boundaries of the installation. Evaluation of historic buildings and structures should be done in conjunction with the inventory and should take place when buildings/structures turn 50 years in age; both survey and evaluation should be preceded by development of detailed historic contexts for the installation. In the event a building/structure is not evaluated upon turning 50 years of age, then the building/structure shall be treated as though it is eligible for the NRHP until such time a formal evaluation and consultation is completed. Marine Corps installations will proactively program projects for evaluation of cultural resources on an annual basis, prioritizing evaluation of resources in consultation with internal and external stakeholders, and as necessary to support environmental reviews for undertakings. Evaluation of traditional cultural properties or other resources of traditional, religious, or cultural significance to Native American tribes, Alaskan Native villages or corporations, or NHOs should be completed in consultation with representatives of affiliated tribes or organizations. Evaluations of host nation cultural properties should be coordinated with host nation officials, as directed by Reference (g). Properties previously determined eligible or ineligible may periodically require re-evaluation due to the passage of time, evolving understanding of historical significance, or inadequate previous evaluations.

030204. Nomination

All Marine Corps installations are responsible for nominating historic properties to the NRHP, as appropriate to facilitate the mission, in consultation with Headquarters, Marine Corps, Facilities and Services Division (HQMC) (LF)/Marine Corps Installations Command, Facilities Division (MCICOM (GF)). Nomination forms prepared by installations should be submitted to the State Historic Preservation Office (SHPO) and any consulting partners, as applicable, for review and comment, and should be staffed for signature by the Department of the Navy (DON) Federal Preservation Officer (FPO) via the Marine Corps Deputy FPO. Once signed, the forms will be returned to the installation for submittal to the Keeper of the National Register through the SHPO. Marine Corps commanders should prioritize nominations based on installation planning requirements; those resources that have potential for public use or access should be nominated first to facilitate outreach or heritage tourism efforts. Commanding Generals/Commanding Officers (CGs/COs) should be aware that resources determined eligible for listing on the NRHP are afforded the same level of protection as those listed on the NRHP. Overseas installations do not have this requirement; evaluations are coordinated with the appropriate host nation official, who applies host nation procedures for nomination to local, prefectural, or national cultural property lists.

030205. Permits

In some instances, archaeological investigations may require federal, state, or host nation permits. The most common categories of permits are described below.

A. ARPA Permits

1. ARPA permits are required when the following three criteria are met:

- a. The project is on federal land.
- b. Digging or collection of artifacts will occur.
- c. The participants are not directly contracted to or by the Marine

Corps.

2. Part 229 of Title 32, Code of Federal Regulations (32 CFR 229) (Reference (h)) provides guidance for DoD compliance with the requirements of ARPA; language related to permits is included in parts 229.5 through 229.11. For the purposes of Marine Corps compliance with 16 U.S.C. §470aa-mm (also known and referred to in this Order as “Archeological Resources Protection Act,” (ARPA) as amended) (Reference (i)) and Reference (h), the CG/CO is considered the federal land manager as defined in Section 3(c) of 43 CFR 10 (Reference (j)). As the federal land manager, the CG/CO will issue ARPA permits when required and will ensure that applicants meet the professional standards for “Archeologist” outlined in 36 CFR 61 (Reference (k)). Permits for archaeological investigations that could result in the excavation or removal of Native American tribe, Alaskan Native village or corporation, or NHO human remains and other cultural items as defined in 25 U.S.C. §§3001-3013 (also known and referred to in this Order as “Native American Graves Protection and Repatriation Act” (NAGPRA)) (Reference (l)), or in the excavation of archaeological resources that are of religious or cultural importance to federally recognized Native American tribes, Alaskan Native villages or corporations, or NHOs, will be issued after the CG/CO conducts consultation in accordance with section 5 of Reference (e) and Section 7 of Reference (h) with the culturally affiliated Native American tribes, Alaskan Native villages or corporations, or NHOs (see also Section 7 of Reference (h)).

3. The CG/CO will ensure that documentation of consultation with culturally affiliated Native American tribes, Alaskan Native villages or corporations, or NHOs is prepared and maintained as part of the record of each such permit. ARPA permits shall provide for the disposition of NAGPRA cultural items in accordance with subsections 3(a) and 3(b) of Reference (l) and in accordance with Reference (j), or for the appropriate curation of collections pursuant to 36 CFR 79 (Reference (m)) (see also Section 13 of Reference (k)). Also in accordance with Section 9 of Reference (i) and parts 229.9 and 229.18 of Reference (h), the CG/CO may withhold information concerning the nature and location of archaeological resources from the public in accordance with subchapter II of chapter 5 of Title 5 of U.S.C. (see 5 U.S.C. §552, also known and referred to in this order as “Freedom of Information Act,” (Reference (n))) or in accordance with any other provision of law.

B. Other Federal Agency Permits

In situations where the Marine Corps shall conduct archaeological investigations on lands owned by other federal agencies, the Marine Corps will coordinate with that agency’s representative to determine whether permits are necessary in advance of the investigations.

Examples of federal agencies that require permits include the Bureau of Land Management and the U.S. Forest Service.

C. Host Nation Permits

Overseas installations should refer to the appropriate final governing standards (FGS) regarding permit requirements for archaeological investigations.

0303 RESOURCE PROTECTION

Marine Corps installations shall implement policies and procedures for assessment of the condition of known cultural resources; avoidance or mitigation of impacts on cultural resources from Marine Corps actions or the actions of contractors or tenants working on Marine Corps installations; maintenance and treatment actions to ensure preservation or enhance the condition of cultural resources; management of the data related to cultural resources; and public outreach and education.

030301. Inventory and Evaluation of Cultural Resources

Although inventory and evaluation of cultural resources are critical aspects of the Marine Corps cultural resources management program, as well as necessary for compliance with federal statutes and regulations, management shall also include policies and procedures for assessing the condition of known resources, avoidance or mitigation of impacts on cultural resources from Marine Corps actions or the actions of contractors or tenants working on Marine Corps installations, maintenance and treatment actions to ensure preservation or enhance the condition of cultural resources, management of the data related to cultural resources, and public outreach and education. The Marine Corps will ensure that such properties are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

030302. ICRMPs

Reference (b) requires that all installations with cultural resource management responsibilities within the United States develop and implement ICRMPs in consultation and partnership with internal and external stakeholders of the cultural resources management program. The Marine Corps develops ICRMPs as management tools to ensure the most time- and cost-efficient method of integration with project and operations planning to facilitate mission. The ICRMP, which is signed and implemented by the installation commander, is the planning tool for consolidating the inventory and management requirements in accordance with Reference (d) and other statutes, and so is an essential element in legal compliance with those statutes. Guidelines for preparing ICRMPs for Marine Corps installations are provided by HQMC (LF)/MCICOM (GF), based on the list of required elements for ICRMPs noted in Reference (b). All ICRMPs will be reviewed annually by the installation and updated as required. Recommend coordinating the annual review with the SHPO/Tribal Historic Preservation Office (THPO). All 5-year ICRMPs will be reviewed by the HQMC (LF)/MCICOM (GF) Cultural Resources Manager (CRM) prior to final signature by the commanding officer. ICRMPs shall be signed by the commanding officer after obtaining Region and HQMC)LF/MCICOM (GF) concurrence. Installation commanders are encouraged to implement their ICRMP through a base order.

030303. Project Review

A. Environmental Review

The NEPA process (or process for overseas installations pursuant to 32 CFR 187 (Reference (o))) is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment, including the cultural environment. Although 42 U.S.C. 4321 et seq. (also known and referred to in this order as “National Environmental Policy Act” (NEPA)) (Reference (p)) and Section 106 of Reference (d) processes (or References (g) and (o) review processes for overseas installations) can be coordinated for specific undertakings, they have separate requirements. For example, a project may receive a Categorical Exclusion as defined by Reference (p), but still require review pursuant to Section 106 of Reference (d). Marine Corps installations are responsible for ensuring that accurate information regarding cultural resources and the potential impacts of a Proposed Action or Alternatives on such resources are included in all NEPA analyses completed for the installation. To ensure that cultural resources concerns are adequately addressed in the Marine Corps environmental review process, the installation CRM should be included in the review of Request for Environmental Review Forms and participate in Environmental Impact Review Boards.

B. NHPA

The NHPA, as codified pursuant to 36 CFR 800 (Reference (q)), requires the head of any federal agency, including the military services, to take into account the impacts of their undertakings on historic properties. An undertaking is defined as any federal, federally-assisted, or federally-licensed action, activity, or program, new or continuing, that may have an effect on historic properties. This effort, commonly called the “Section 106 process” after the section in Reference (d) that calls for such effort, is designed to identify possible conflicts between historic preservation objectives and the undertaking, and to resolve those conflicts in the public interest through consultation. Neither Reference (d) nor Advisory Council on Historic Preservation (ACHP) regulations require that all historic properties be preserved; they only require the agency consider the effects of the proposed undertaking on those properties and fulfill the procedural requirements for Reference (d) prior to implementation. The underlying purpose of Reference (d) is to balance progress with preservation. Consultation with the SHPO and/or the ACHP and the public is required. If an undertaking may affect properties having historic value to a Native American tribe, Alaskan Native village or corporation, or NHO, such entity shall be afforded the opportunity to participate as consulting parties during the consultation process. Failure of the Marine Corps to take into account the effects of an undertaking on historic properties and afford the ACHP a reasonable opportunity to comment on such effects, can result in formal notification from the ACHP to the Secretary of the Navy of foreclosure of the ACHP’s opportunity to comment on the undertaking pursuant to Reference (d). Failure to comply with the Section 106 process may result in litigation or other forms of redress against DoN that can halt or delay critical activities or programs. A summary of the procedural requirements of Section 106 is available on the ACHP’s website. Because both Reference (d) and its implementing regulations (see Reference (q)) are subject to change, Marine Corps personnel should check this website periodically.

1. Compliance via Program Alternatives. Compliance with Section 106 can also be governed by the terms of an agreement document or program alternative, such as a program

comment, MOA, or programmatic agreement (PA). Installation CGs/COs should review all agreement documents that pertain to management of cultural resources on their installations to identify the roles and responsibilities assigned to the installation pursuant to each agreement. Examples of such agreements include the program comments referenced in paragraph 030305 and PAs governing Section 106 of Reference (d) compliance for the various public-private venture (PPV) ground leases.

2. Overseas Installations. For overseas installations, Section 402 of Reference (d) states that “prior to the approval of any federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.” Currently, there are no implementing regulations for Section 402; however, the core elements of the “take into account” process are encompassed in Reference (g). For more information, reference the DoD Instruction 4715.05-G (Reference (r)).

030304. Emergency Situations

In accordance with Section 12 of Reference (q)(emergency situations), the timeline for Section 106 review of renovations and repairs to historic buildings can be substantially reduced if the renovation or repair is required as a result of an emergency situation (e.g., flooding, tornados, earthquakes, or hurricanes). The reduction of the timeline only applies in those situations where the President or the Governor has declared an official state of emergency. The Marine Corps notifies the ACHP, the SHPO/THPO, and any other interested parties of the project; these parties then have seven days, rather than the traditional 30 days, to comment on the undertaking. As a proactive measure, the Marine Corps could also work with the ACHP, SHPO/THPO, and interested parties to develop a PA (see paragraph 8302.d(2)(a)) outlining streamlined procedures for emergency situations. Marine Corps installations will ensure that all reasonable efforts are made to avoid or minimize disturbance of significant cultural resources during emergency operations and will communicate with applicable Marine Corps personnel and external stakeholders regarding potential effects on significant cultural resources that could occur in association with such activities. Once the emergency has passed, Marine Corps installations will complete all appropriate actions to complete the Section 106 process, including submittal of any reports or correspondence documenting the actions taken. Although Reference (q) does not apply to overseas installations, the policies outlined above should be considered a best management practice (BMP) to the extent they do not conflict with Reference (g).

030305. Program Alternatives

Program alternatives, as defined in Section 14 of Reference (q), may be used as an alternative to case-by-case consultation in accordance with Section 106 of Reference (d). Appropriate applications are described in Reference (q) and include efforts to streamline compliance for categories of similar undertakings or similar effects, and may be applied at state, regional, or nationwide levels. Marine Corps installations are encouraged to pursue program alternatives with stakeholders, as appropriate, to streamline compliance with federal regulations or structure protocols for consultation and responses to situations such as inadvertent discovery of human remains.

Implementation and use of program alternatives generally requires up-to-date inventories and a comprehensive management approach. Program alternatives include PAs, program comments, standard treatments, exemptions, and alternative procedures. Adopting any program alternative requires consultation with relevant stakeholders and, for regional or national alternatives, coordination with the chain of command and other affected commands and agencies. Program comments do not apply to overseas installations.

030306. Monitoring, Maintenance, and Treatment

A. For archaeological resources, Marine Corps installations shall develop procedures for monitoring the condition of known archaeological sites for evidence of disturbance from natural processes, such as erosion, fire, or floods, or human action, such as training activities, landscape maintenance activities, recreational use, or intentional looting. Monitoring procedures should be paired with procedures for stabilizing sites should impacts be noted, documenting site condition, and reporting impacts to the appropriate stakeholders, such as the SHPO, Native American tribes, Alaskan Native villages or corporations, and NHOs with ancestral ties to the installation, or appropriate host nation officials. CRMs and conservation law enforcement officers should obtain ARPA training in order to learn the proper procedures for enforcement of ARPA and reporting ARPA (or host nation equivalent) violations on Marine Corps installations, and should ensure that all installation personnel who conduct activities that have the potential to impact archaeological resources are provided with training on how to avoid such impacts as well as standard operating procedures to follow should archaeological materials be inadvertently discovered. Specific guidance on enforcement of ARPA on DoD lands, including discussion of prohibited acts and criminal penalties, assessment of penalties, and reporting, is provided in Reference (h). The CG/CO will ensure that military police, installation legal staff, the installation Public Affairs Officer, Conservation Law Enforcement Officers, and the fish, game, and recreation management staff are familiar with the requirements and applicable civil and criminal penalties as defined by References (i) and (h). CGs/COs will ensure that land use instruments allowing for military use are reviewed to determine proper roles and responsibilities.

B. For situations involving resources of interest to Native American tribes, Alaskan Native villages or corporations, or NHOs that have a tangible, physical footprint on Marine Corps installations (e.g., areas containing medicinal plants, human burial sites, petroglyphs, identified cultural landmarks) or protected cultural properties on overseas installations, the Marine Corps should develop a monitoring procedure in consultation with the appropriate tribes, villages/corporations, NHOs, or host nation officials. Marine Corps installations should ensure that procedures for reporting inadvertent discoveries of human remains or items of cultural patrimony are distributed to all installation personnel, tenants, and contractors. To facilitate consultation regarding inadvertent discoveries, domestic Marine Corps installations are encouraged to pursue comprehensive agreements or NAGPRA Plans of Action with affiliated tribes or organizations.

C. For historic buildings, structures, or districts that are eligible for or listed on the NRHP, or designated as protected cultural properties on overseas installations, installations should develop Maintenance and Treatment Plans (MTPs) for long-term care of these resources. An MTP is typically a 5-year management plan that provides guidance to CRMs and installation maintenance and facilities personnel in addressing deterioration or failure of historic materials and systems. An MTP identifies historic properties' character-defining features, contributing elements,

materials, and condition and promotes the preservation of these resources through planning, design, cyclic maintenance, and appropriate treatments for repair, rehabilitation, and restoration. An MTP is generally installation-specific due to regional variations in construction methods and weather, and should focus on a range of alternatives and treatments from stabilization to restoration.

030307. National Historic Landmarks (guidance does not apply to overseas installations)

A. Section 101(b) of Reference (d) provides for the inclusion of national historic landmarks (NHLs) on the NRHP. Section 110(f) affords NHLs more stringent protection than other NRHP resources. Federal regulations outline procedures for consultation with the SHPO, the ACHP, and the National Park Service (NPS) to minimize harm to NHLs by federal agency undertakings.

B. The NPS maintains a continued relationship with owners of NHLs. Agencies shall cooperate with the procedures of periodic visits, contacts with SHPOs, and other measures that the NPS uses to ensure that landmarks retain their integrity, to advise agencies concerning accepted preservation standards, and to update administrative records on landmark properties. The Department of the Interior (DOI) reports annually to Congress regarding damaged or threatened NHLs.

C. Although property owners and SHPOs may nominate NHLs, designation ordinarily occurs after a study by the NPS. Preservation is not absolutely required as long as mandated procedures are followed and documented in any decision not to preserve. A finding of adverse effect to an NHL requires full ACHP participation in the consultation process.

030308. Curation

A. The overall goal of the federal curation program, as set forth in Reference (m), is to ensure the preservation and accessibility of cultural resource collections and documents for use by members of the public interested in the archaeology and history of the region. In accordance with the requirements of Reference (m), the installation CG/CO shall ensure that all archaeological collections and associated records, as defined in part 79.4(a) of Reference (m), are processed, maintained, and preserved. Associated records shall be maintained and preserved pursuant to SECNAV M-5210.1 (Reference (s)).

B. Collections from federal lands should be deposited in a repository that meets the standards outlined in Reference (q) to ensure that they will be safeguarded and permanently curated in accordance with federal guidelines. A curation facility is specifically designed to serve as a physical repository where collections and records are sorted, repackaged, assessed for conservation needs, and then placed in an appropriate, environmentally-controlled, secure storage area. Collections from federal lands remain the property of the federal government; accordingly, CRMs should schedule an annual visit to the curation repository to ensure that the collections are being managed appropriately. In the event, ordnance is encountered during an archaeological investigation or monitoring activity, Marine Corps Explosives Ordnance Disposal (EOD) shall be contacted for evaluation and action. Any historic ordnance encountered shall be inspected and rendered inert by Marine Corps Explosives Ordnance Disposal (EOD) and then returned to the CRM. If EOD cannot render the item(s) inert or sees the item(s) as representing a safety hazard, the item(s) will be photo-

documented and measured under EOD supervision and then given to EOD for appropriate storage or disposal.

C. The procedures outlined in Reference (m) do not apply to overseas installations; refer to any curation language provided in the relevant FGS.

030309. Data Management

Integrating cultural resources management data with the installation geographic information system (GIS) program allows the cultural resources program to more efficiently support the Marine Corps mission of readiness. GIS layers should be developed for all categories of cultural resources present within the installation (e.g., historic buildings, archaeological sites, and resources of interest to Native American tribes, Alaskan Native villages or corporations, or NHOs). GIS layers should also be developed to show the progress of archaeological survey efforts and any sensitivity assessments used by the installation to prioritize survey efforts. The GIS program can facilitate integration of cultural resource BMPs into installation planning and projects. GIS layers and themes depicting archaeological resources and sacred sites are considered sensitive and will not be released to the general public. These layers should be password-protected. When preparing the scope of work for contracts addressing cultural resources issues, installations should include the language for GIS requirements provided in MCO 11000.25 (Reference (t)) to ensure that GIS deliverables meet federal standards and are compatible with Marine Corps data models.

030310. Public Outreach

Reference (f) encourages federal agencies to preserve America's heritage by actively advancing intergovernmental cooperation and partnerships for the preservation and use of historic properties and promoting heritage tourism. A preservation awareness program shall be directed to both Marine Corps personnel and external interests if it is to be effective. Education can promote awareness of important Marine Corps cultural resources projects and the rationale behind them. Special events with local and national significance offer excellent opportunities to educate the public on cultural resources preservation. Events such as Earth Day (22 April), Independence Day (Fourth of July), Veteran's Day, National Historic Preservation Week (third week in May), National Public Lands Day (last Saturday in September), and local town celebrations are opportunities for the Marine Corps to help educate people about cultural resources and preservation principles. Although the public outreach and heritage tourism elements of Reference (f) do not apply to overseas installations, development of a preservation awareness program for internal and external stakeholders should be considered a BMP.

0304 CONSULTATION

Marine Corps installations have a responsibility to consult with internal and external stakeholders on a regular basis. References (b), (d), and (l) require coordination with interested parties and other government agencies, depending on the action involved.

030401. Consultation with Internal and External Stakeholders

A. To ensure that management of cultural resources is integrated with installation planning and in compliance with federal statutes and regulations, the Marine Corps has a responsibility to consult with internal and external stakeholders on a regular basis. References (d), (l), and (p) and the FGS require varying levels of coordination with interested parties and other government or host nation agencies, depending on the action involved. External agencies and stakeholders that might be involved in cultural resources management include:

1. Other federal agencies.
2. SHPOs.
3. Native American tribes, Alaskan Native villages and corporations, or NHOs.
4. ACHP.
5. NPS.
6. Keeper of the National Register, DOI.
7. Host nation officials.
8. Interested members of the public, including ethnographic groups, historic organizations, and others.

B. Although the Marine Corps might contract cultural resources professionals to conduct surveys and evaluations, it is the responsibility of the Marine Corps to consult with external stakeholders. Consultation should not be delegated to contractors (including Naval Facilities Engineering Command or the U.S. Army Corps of Engineers). The Marine Corps will comply with all pertinent laws and regulations concerning the management and preservation of cultural resources and will, where appropriate, consult or coordinate with external stakeholders, as required:

1. To comply with Reference (d) Sections 106, 110, and 402.
2. To comply with References (o) or (p).
3. In accordance with Reference (d), if the Marine Corps and the SHPO come to a disagreement regarding NRHP eligibility recommendations, the Keeper of the National Register can be consulted. Guidance on preparing a determination of eligibility can be found at Section 3(d) in 36 CFR 62 (Reference (u)).
4. In accordance with Reference (d), if the Marine Corps and the SHPO come to a disagreement regarding the Section 106 process, the ACHP may assist. The Marine Corps shall also invite the ACHP to participate in consultations regarding the resolution of adverse effects to historic properties.

5. In accordance with References (d), (g), (l), and (p), the CRM shall coordinate with interested Native American tribes, Alaskan Native villages and corporations, or NHOs.

6. In accordance with Reference (d), the CRM will consult with the NPS for all Section 106 undertakings that have the potential to affect a NHL.

030402. Consultation with Native American Tribes, Alaskan Native Villages or Corporations, or NHOs

References (d), E.O. 13007 (Reference (v)), E.O. 13175 (Reference (w)), Presidential Memorandum (Reference (x)), DoD Instruction 4710.02 (Reference (y)), and “Department of Defense American Indian and Alaskan Native Policy (Annotated)” (Reference (z)) include guidance on how federal agencies should consult with federally recognized Native American tribes, Alaskan Native villages or corporations, and NHOs. It should be noted that not all of this guidance refers to all Native entities (e.g., Reference (y) refers only to Native American tribes and Alaskan Native villages). The goal of the consultation process is to identify both resource management concerns and the strategies for addressing them through an interactive dialogue with appropriate American Indian tribes, Alaskan Native villages and corporations, and NHOs. Consultation takes on many forms but shall be conducted on a government-to-government basis unless delegated by agreement to subordinate representatives of each government (e.g., the THPO and installation CRM). Consultation responsibilities cannot be delegated to contractors even in those instances where management responsibility for some resources has been delegated to another entity (e.g., in the case of PPV contracts, the Marine Corps retains the responsibility for consultation with Native American tribes, Alaskan Native villages or corporations, and NHOs). The Marine Corps might need to consult on a project basis for proposed actions that could affect cultural resources of interest to American Indian tribes, Alaskan Native villages and corporations, and NHOs. If Marine Corps activities have the potential to affect such resources, all interested Native American tribes, Alaskan Native villages or corporations, and NHOs will be consulted early in the planning process and their concerns will be addressed to the greatest extent possible. Establishing a permanent relationship with Native American tribes, Alaskan Native villages or corporations, and NHOs will lead to better understanding of each party’s interests and concerns and development of a trust relationship. This will streamline future project-based consultation and streamline the inadvertent discovery process.

0305 CONFIDENTIALITY REQUIREMENTS

Cultural resource preservation statutes require Marine Corps installations to withhold certain information from disclosure to the public. Section 470w-3(a) (Confidentiality of the location of sensitive historic resources) of Reference (d) states that:

030501. “The head of a federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may:

- A. Cause a significant invasion of privacy;

- B. Risk harm to the historic resources; or
- C. Impede the use of a traditional religious site by practitioners.”

030502. On federal property, Reference (i) also provides provisions for restriction of information on archaeological site locations. Native American tribes, Alaskan Native villages or corporations, and NHOs have an interest in restricting this information and are not expected to divulge such location information unless they can be reassured of restrictions for access. Therefore, it is extremely important that persons using this document and other cultural resources reports and maps understand that access to all archaeological resource descriptions and locations is restricted to the CRM or Environmental Manager for internal use only. Access to such information in databases and the GIS should be limited to CRMs, cultural resource professionals, and others with a substantial need to know.

0306 SUSTAINABILITY

030601. Sustainability

One of the primary elements of environmental stewardship within the DoD is sustainability. Within DoD, sustainability applies to design, construction, operations, and resource conservation. Through conservation, improved maintainability, recycling, reduction and reuse of waste, and other actions and innovations, the Marine Corps can meet today’s needs without compromising the ability of future generations to meet their own.

030602. Sustainable Conservation

The federal government encourages agencies to take the lead in being stewards of the environment to preserve today’s resources for the future. E.O. 13693 (Reference (aa)) encourages the rehabilitation of federally owned historic buildings, including utilizing best practices and technologies to “promote long-term viability of the buildings.”

030603. Archaeological Resources

A. Archaeological sites provide a historical physical record of how people have interacted with their environment and tell us of how they have led their lives. Because archeological sites mark a moment in time, they are non-renewable resources. With respect to sustainability, archaeological sites on Marine Corps installations can be considered:

1. The only source for understanding the development of human society in prehistoric and much of historic times within the lands contained within installations.
2. A source of enjoyment and interest through intellectual and physical engagement and leisure-time pursuits, contributing to general mental, spiritual, and physical health.
3. An important medium for general education, life-long learning, and personal development.

4. A vital basis of people’s awareness of historical and cultural identity, sense of community and place, and a key source of perspective on social change.

5. A means of understanding long-term environmental change in relation to sustainability.

6. A source of evidence about past use of renewable energy and recyclable resources such as water, timber, mineral resources, and organic waste.

B. In addition to promoting public awareness of archaeological information and the benefits of preservation to the larger installation community (see paragraph 030310), Marine Corps installations should employ innovative technical and interpretive practices to integrate archaeology into the mission.

030604. Historic Buildings and Structures

Sustainability in the built environment can be achieved through adaptive reuse of historic structures. When making decisions regarding replacement, renovation, or demolition of historic buildings and structures, it is Marine Corps policy to:

A. Accurately analyze the life-cycle benefits and costs of sustainable or adaptive reuse of historic buildings and structures compared to new construction.

B. Employ innovative technical and design practices to facilitate mission use of historic buildings and structures with minimum loss of historic integrity.

C. Prefer partnerships with government, public, and private organizations to promote local economic development and vitality through use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties in lieu of demolition.

D. Consider systematic deconstruction and architectural salvage of historic building fabric when demolition is necessary, especially where historic fabric may be reused to preserve other similar properties in the inventory.

0307 ANNUAL REPORTING AND METRICS

The Marine Corps is responsible for responding to various data calls and asset management inventories on an annual basis. Responses to data calls may include input of data by installation CRMs into DON databases (e.g., iNFADS heritage asset codes) and Marine Corps databases (e.g., Conservation Metrics Portal) or responses via phone or email to HQMC (LF)/MCICOM (GF) personnel. In order to ensure accurate reporting of assets and asset status each year, installations shall maintain records of their responses to each data call, labeled with the fiscal year of the response and including any supporting information to support their responses, in a file accessible to their supervisors or to the HQMC (LF)/MCICOM (GF) Cultural Resources Specialist.

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VOLUME 8: CHAPTER 4

“RESPONSIBILITIES”

SUMMARY OF SUBSTANTIVE CHANGES

Hyperlinks are denoted by *bold, italic, blue and underlined font*.

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CHAPTER 4

RESPONSIBILITIES

0401 CMC (LF)/COMMANDER MCICOM (GF)

CMC (LF)/Commander MCICOM (GF) shall:

040101. Establish a cultural resources management program and promulgate guidelines and attendant responsibilities.

040102. Designate a qualified staff person to serve as the Marine Corps Deputy FPO and representative on the DoD Historic Preservation Working Group.

040103. Coordinate with the Deputy Under Secretary of Defense, Environmental Security, DoD components, DOI, ACHP, and the National Conference of SHPOs in matters related to cultural resources management.

040104. Identify Marine Corps-wide priorities and allocate centrally-managed funds that may be used for cultural resources management. Maintain cost records of inventory and treatment of cultural resources.

040105. Maintain Marine Corps procedural and policy-making expertise for inter-agency coordination and other aspects of compliance with preservation legislation; assist in resolving disputes with federal, State, local, and foreign regulatory agencies.

040106. Forward NRHP nominations to the Office of the Assistant Secretary of the Navy for Energy, Installations and Environment, and the Keeper of the NRHP.

040107. Respond to Congressional and other inquiries to satisfy Office of the Secretary of Defense reporting requirements.

040108. Provide support to Marine Corps installations and Marine Corps commands/units and tenants by interpreting federal, State, local, and overseas historic and archaeological resource requirements and by uniformly applying Marine Corps policy as set forth in this Order.

040109. Ensure, through field visits and the Environmental Compliance Evaluation Program, Marine Corps cooperation and compliance with federal, State, and local regulatory agencies with regard to cultural resources statutes and regulations.

0402 COMMANDING GENERAL (CG) MARINE CORPS EAST, WEST, PACIFIC, AND NATIONAL CAPITAL REGION

CG Marine Corps East, West, Pacific, and National Capital Region shall identify and promote opportunities for regional environmental initiatives and contracting support to gain efficiencies. Create environmental program efficiencies by collectively funding studies, coordinating common

training programs, developing appropriate Memorandums of Agreement between stakeholders (e.g., Marine Corps TECOM installations, Marine Aircraft Wings, Resident Officer In Charge of Construction offices, etc.) and the Region, and facilitating mutual support between installations as practicable.

0403 COMMANDING GENERAL (CG)/COMMANDING OFFICER (CO) OF MARINE CORPS INSTALLATIONS AND COMMARFORRES

CG/CO of Marine Corps installations and COMMARFORRES shall:

040301. Program, budget, and allocate funds for qualified staffing, training, surveys, plans, curation, and studies to facilitate the identification, evaluation, inventory, planning, maintenance, and protection of historic properties and other cultural resources at installations under their cognizance.

040302. Develop, sign, and implement an ICRMP for all installation lands and waters that contain cultural resources, and integrate the ICRMP with other installation planning documents and routine procedures applicable to activity projects and programs. Use of a base order to implement the ICRMP is recommended.

040303. Coordinate among subordinate and tenant activities to achieve maximum efficiency regarding compliance with cultural resources management requirements within the region.

040304. Provide for the professional identification, evaluation, inventory, nomination, and protection of cultural resources under their control and ensure that the appropriate data management systems, including spatial data systems, accurately reflect the eligibility status of such resources.

040305. Follow all legally-mandated procedures if historic properties (as defined by Reference (d)) are to be transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

040306. Consult or coordinate with the SHPO and other consulting parties, interested groups, and individuals, as required by Reference (p) (or Reference (o) for overseas installations), Sections 106 and 402 of Reference (d), and Reference (g), when proposed actions have the potential to effect cultural resources. When appropriate or in the interests of BMPs, enter into agreements to facilitate consultation and establish consultation protocols or response procedures. Neglecting to consult with these interested parties early in the planning process could result in unnecessary tension, which will cause delays that translate into government time and cost.

040307. Consult with Native American tribes, Alaskan Native villages or corporations, and NHOs prior to any Marine Corps action that might impact American Indian tribal or Native Hawaiian interests as defined by applicable laws and regulations, including planned excavation and inadvertent discovery provisions in accordance with Reference (l).

040308. Ensure that inadvertently discovered archaeological resources, human remains, or cultural items (as defined by Reference (l)) are protected at the site of discovery until

cultural resource professionals evaluate the resources' significance and make recommendations regarding protection or recovery. Ensure that the chain of command is kept informed.

040309. Whenever practical, use historic buildings instead of new acquisition, construction, or leasing to satisfy mission requirements.

040310. Ensure that funds budgeted for historic preservation are applied to NRHP resources.

040311. Provide for storage and professional curation of salvaged archaeological resources and records that result from compliance actions.

040312. Take appropriate action on archaeological permit requests. Review requests for permits to allow the excavation and removal of archaeological resources from Marine Corps lands.

040313. Provide for the identification and repatriation of Native American tribe, Alaskan Native village or corporation, or NHO remains and associated cultural items in accordance with Reference (1) and other implementing regulations issued by the DOI.

040314. Allow Native American tribes, Alaskan Native villages or corporations, Native Hawaiians, NHOs, and host nation cultural practitioners access to sites and resources that are of religious importance or that are important to the continuance of their cultures, as consistent with the military mission, the American Indian Religious Freedom Act, and other appropriate laws and regulations subject to the same considerations as the general public.

040315. When warranted by the presence of cultural resources, designate a staff person to serve as CRM. CRMs should be provided with adequate training to ensure that they have a full understanding of their position duties and can provide adequate guidance on compliance with cultural laws and regulations to other stakeholders.

0404 CULTURAL RESOURCE MANAGER (CRM)

Cultural Resource Manager (CRM) shall:

040401. Provide day-to-day management for cultural resources at the installation level, help ensure that all installation activities are in compliance with applicable cultural resources requirements, serve as a liaison between all persons involved in the ICRMP, write the ICRMP or develop its statement of work, and implement the ICRMP.

040402. Understand the military mission, and have a clear understanding of how their job supports the military mission.

040403. Locate, inventory, evaluate, and protect historic buildings; structures; districts; archaeological sites; resources of traditional, religious, or cultural significance to American Indian tribes or NHOs; properties listed on the World Heritage List or host nation equivalent to the NRHP; and other cultural resources in accordance with Marine Corps policy and federal statutes and

regulations. If survey and evaluation tasks are contracted to cultural resources professionals, prepare statements of work, monitor work progress, and review all work products prior to submission to external stakeholders.

040404. Disseminate technical guidance regarding maintenance, storage, and protection of cultural resources to installation personnel whose actions have the potential to affect cultural resources.

040405. Coordinate the maintenance of cultural resources records in the appropriate data management systems to assure that accurate information regarding Marine Corps cultural resources can be provided to Congress, the Marine Corps Deputy FPO, and other interested parties when required.

040406. As the CG/CO's delegated representative, coordinate and consult with outside entities, including the SHPO, American Indian tribes and NHOs, and local interest groups, as mandated in References (d), (i), (l), (p), (z), and other laws and regulations listed in paragraphs 0201 and 0202 of this Volume.

VOLUME 8: APPENDIX A

“FEDERAL STATUTES, FEDERAL REGULATIONS, EXECUTIVE ORDERS, AND DOD POLICIES”

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APPENDIX A
FEDERAL STATUTES, FEDERAL REGULATIONS, EXECUTIVE ORDERS, AND DOD
POLICIES

1 FEDERAL STATUTES

This policy tiers off of the policies for cultural resources management outlined in DoD Instruction 4715.16, “Cultural Resources Management,” and Secretary of the Navy Instruction (SECNAV Instruction) 4000.35A, “Department of the Navy Cultural Resources Program.” In addition, this policy incorporates the provisions of the following federal legislation, Executive Orders (E.O.s), Department of Defense (DoD) regulations, and guidance, as appropriate to the management of cultural resources under the purview of the Marine Corps. (Only federal statutes b, j, and l apply to overseas installations).

a. National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.

This Act ensures that environmental factors are given the same consideration as other factors in decision making by federal agencies. NEPA mandates that all federal agencies consider the environmental effects of, and any alternatives to, all proposals for major federal actions that significantly affect the quality of the human environment. The Act also established the Council of Environmental Quality in the Executive Office of the President.

b. National Historic Preservation Act (NHPA) of 1966, as Amended (54 U.S.C. §100101, §300101-307108 or Section 1 of the National Historic Preservation Act, Public Law 89-665, as amended by Public Law 96-515)

This Act provides for the nomination, identification (through listing on the National Register of Historic Places (NRHP)), and protection of historical and cultural properties of significance. The Act establishes specific procedures for compliance, including initial review authority by the cognizant State Historic Protection Officer.

c. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq.

This Act requires federal agencies to establish procedures for identifying Native American groups associated with cultural items on federal lands, to inventory human remains and funerary objects in federal possession, and to return such items upon request to affiliated groups. The Act also requires that any discoveries of cultural items covered by this statute shall be reported to the head of the cognizant federal entity, who will notify the appropriate Native American tribe or organization and cease activity in the area of discovery for at least 30 days.

d. Archeological Resources Protection Act (ARPA) of 1979, as amended, 16 U.S.C. §470aa-mm

This Act prohibits the removal, sale, receipt, and interstate transportation of archaeological resources obtained illegally (without permits) from public or Native American lands and authorizes

agency permit procedures for investigations of archaeological resources on public lands under the agency's control. Public Law 100-555 amended the ARPA to require the Secretaries of the Interior, Agriculture, and Defense (1) to develop plans for surveying the lands under their control to determine the nature and extent of archaeological resources, and (2) to prepare a schedule for surveying those lands that are likely to contain the most scientifically valuable archaeological resources.

e. American Indian Religious Freedom Act, 42 U.S.C. §1996 and §1996a

This Act states the policy of the United States to protect and preserve for Native Americans their inherent rights of freedom to believe, express, and exercise the traditional religions of Native Americans, Eskimos, Aleuts, and Native Hawaiians. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites.

f. Antiquities Act of 1906, 54 U.S.C. §§320301-320303

This Act provides for the protection of historic and prehistoric ruins and objects of antiquity on federal lands and for the authorized scientific investigation of antiquities on federal lands, subject to permits and other regulatory requirements.

g. Abandoned Shipwreck Act of 1987, 43 U.S.C. §§2101-2106

This Act specifies that any wreck that lies embedded within a state's submerged lands is property of that state and subject to that state's jurisdiction if the wreck is determined as being abandoned.

h. Archeological and Historic Data Preservation Act of 1974 (16 U.S.C. §469-469cc)

This Act directs federal agencies to notify the Secretary of the Interior when any federal construction project of a federally licensed activity or program may cause irreparable loss or destruction of significant scientific, prehistoric, historic, or archaeological data. The Act also provides a mechanism for funding the protection of historic and archaeological data.

i. Cooperative Agreements for Management of Cultural Resources, 10 U.S.C. §2684

This subchapter of the U.S. Code states that the Secretary of Defense or the Secretary of a military department may enter into a cooperative agreement with a state or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources located on a site authorized by subsection (b) and for the conduct of research regarding the cultural resources. Activities under the cooperative agreement shall be subject to the availability of funds to carry out the cooperative agreement.

j. Federal Records Act of 1950, 44 U.S.C. §3101

According to the Federal Records Act of 1950, the head of each federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions,

policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

k. Historic Sites Act of 1935, 54 U.S.C. §§102303-102304, §309101, §§320101-320106

This Act lists national historic sites and sets forth federal policy to preserve historic and prehistoric properties of national significance. The Act enables the Secretary of the Interior to protect nationally significant historic resources and includes the authority to establish and acquire nationally significant sites.

l. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, concluded on May 14, 1954 (Treaty Doc. 106-1(A)) [Congressional Record, September 25, 2008, page S9555]

This international treaty requires its signatories to protect cultural property in war. Under the Hague Convention, immovable and moveable cultural property “including monuments of architecture, art, archaeological sites, manuscripts, books and other objects of artistic, historical or archaeological interest” are protected to ensure the cultural legacy and by extension the cultural property of, nations, groups and distinct members of a society worldwide, facing armed conflict.

2 FEDERAL REGULATIONS

Only regulation n applies to overseas installations.

a. 32 CFR Part 187

32 CFR Part 187 provides policy and procedures to enable DoD officials to be informed and take account of environmental considerations when authorizing or approving certain major federal actions that do significant harm to the environment of places outside the United States. Its sole objective is to establish internal procedures to achieve this purpose, and nothing in it shall be construed to create a cause of action.

b. 32 CFR 229

The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

c. 36 CFR 60

36 CFR 60 regulates the NHPA and set forth the procedural requirements for listing properties on the NRHP.

d. 36 CFR 61

The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved.

e. 36 CFR 63

These regulations have been developed to assist federal agencies in identifying and evaluating the eligibility of properties for inclusion in the NRHP.

f. 36 CFR 65

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

g. 36 CFR 66

36 CFR 66 was designed to preserve significant historical and archeological data from loss or destruction, to include any unexpected archeological resources discovered as a result of a federal construction project or federally licensed activity or program.

h. 36 CFR 67, Section 7

36 CFR 67, Section 7 focuses on “certified historic structures” as defined by the Internal Revenue Service Code of 1986. These regulations are used in the Preservation Tax Incentives Program.

i. 36 CFR 68

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration, and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund.

j. 36 CFR 78

Section 110 of the NHPA, sets forth certain responsibilities of federal agencies in carrying out the purposes of the NHPA. Subsection 110(j) authorizes the Secretary of the Interior to promulgate regulations under which the requirements in section 110 may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security. Waiver of responsibilities under section 110 does not affect an agency's section 106 responsibilities for taking into account the effects of emergency activities on properties included in or eligible for the NRHP and for affording the Advisory Council on Historic Preservation an opportunity to comment on such activities.

k. 36 CFR 79

36 CFR 79 establish definitions, standards, procedures and guidelines to be followed by federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. §§431-433), the Reservoir Salvage Act (16 U.S.C. §469-469c), section 110 of the NHPA (16 U.S.C. §470h-2) or the Archaeological Resources Protection Act (16 U.S.C. §470aa-mm).

l. 36 CFR 800

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

m. 40 CFR 1500-1508

40 CFR 1500-1508 are the procedural provisions of NEPA that were published by the Council on Environmental Quality (CEQ).

n. 43 CFR 3

43 CFR 3 regulations that jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic and scientific interest, shall be exercised under the act by the respective Departments as (a) by the Secretary of Agriculture over lands within the exterior limits of forest reserves; (a) by the Secretary of the Army over lands within the exterior limits of military reservations; and (c) by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, provided, the Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. §§431-433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

o. 43 CFR 10

These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

3 EXECUTIVE ORDERS

E.O.s b, c, and d do not apply to overseas installations.

a. E.O. 11593, “Protection and Enhancement of the Cultural Environment,” May 13, 1971

This E.O. directs federal agencies to provide leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation; to ensure the preservation of cultural resources; to locate, inventory, and nominate to the NRHP all properties under their control that meet the criteria for nomination; and to ensure that cultural resources are not inadvertently damaged, destroyed, or transferred before the completion of inventories and evaluation for the NRHP.

b. E.O. 13006, “Locating Federal Facilities on Historic Properties in our Nation’s Central Cities,” May 21, 1996

This Order states that locating Federal Facilities on Historic Properties in Our Nations Central Cities, subject to the Rural Development Act and Executive Order 12072, requires that first consideration be given to locate federal facilities in historic buildings and districts within central business areas when operationally appropriate and economically prudent. It also directs federal agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation Program.

c. E.O. 13007, “Indian Sacred Sites,” May 24, 1996

This Order is designed to protect and preserve Indian religious practices, this EO directs each federal agency that manages federal lands to “(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.” This EO also directs each federal agency to report to the President on “procedures implemented or proposed to facilitate with appropriate Indian tribes and religious leaders.” Several EM sites and facilities are located on Tribal aboriginal and treaty lands. Staff at these facilities work with the Tribes to allow Tribal members safe access to DOE sites for Tribal cultural/religious purposes.

d. E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” November 6, 2000

The objective of this Order is to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications,

to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

e. E.O. 13287, “Preserve America,” March 3, 2003

This Order underlines the policy of the federal government to provide leadership in preserving America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties.

f. E.O. 13327, “Federal Real Property Asset Management,” February 6, 2004

This Order underlines the policy of the United States to promote the efficient and economical use of America’s real property assets and to assure management accountability for implementing federal real property management reforms. Based on this policy, executive branch departments and agencies shall recognize the importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.

g. E.O. 13693, “Planning for Federal Sustainability in the Next Decade,” March 19, 2015

This Order has a goal to maintain Federal leadership in sustainability and greenhouse gas emission reductions. It revoked E.O. 13423 and E.O. 13514. This E.O. continues the policy of the United States that agencies shall increase efficiency and improve their environmental performance to help protect the planet for future generations and save taxpayer dollars through avoided energy costs and increased efficiency, while also making Federal facilities more resilient. To improve environmental performance and Federal sustainability, the E.O. states that priority should first be placed on reducing energy use and cost, then on finding renewable or alternative energy solutions. The E.O. sets goals for greenhouse gas emissions and for sustainability, including energy conservation, clean energy, renewable energy, alternative energy, water use efficiency, potable water consumption, fleet efficiency, building efficiency, sustainable acquisition, waste and pollution prevention, performance contracts, and electronics stewardship.

4 FEDERAL GUIDANCE

a. 48 FR 22716

The Secretary of the Interior’s Professional Qualification Standards describe the minimum educational and professional experience requirements in history, archeology (historic or prehistoric), architectural history, architecture and historic architecture required to perform identification, evaluation, registration, and treatment activities.

b. 53 FR 4742

Guidelines for Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act states that (1) the heads of all federal agencies shall assume responsibility for the

preservation of historic properties which are owned or controlled by such agency. (2) Each federal agency shall establish (unless exempted pursuant to Section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the NRHP, and protection of historic properties.

c. 62 FR 33707

The Secretary of the Interior's Proposed Historic Preservation Professional Qualification Standards were developed by the National Park Service to ensure that a consistent level of expertise would be applied nationally to the identification, evaluation, documentation, registration, treatment, and interpretation of historic and archeological resources.

5 DEPARTMENT OF DEFENSE (DOD) POLICY

Only items b, d, and j apply to overseas installations.

a. DoD Instruction 4710.02 "DoD Interactions with Federally-Recognized Tribes,"
September 14, 2006

This Instruction underlines the DoD policy to (1) Meet its responsibilities to tribes as derived from federal trust doctrine, treaties, and agreements between the United States Government and tribal governments, and to comply with federal statutes, regulations, Presidential Memorandums, and Executive Orders governing DoD interactions with tribes. (2) Build stable and enduring government-to-government relations with federally recognized tribal governments in a manner that sustains the DoD mission and minimizes effects on protected tribal resources. (3) Fully integrate, down to staff officers and civilian officials at the installation level, the principles and practices of meaningful consultation and communication with tribes. (4) Take into consideration the significance that tribes ascribe to protected tribal resources on protected lands.

b. DoD Instruction 4710.03 "Consultation Policy with Native Hawaiian Organizations,"
October 25, 2011

This established the policy and assigned the responsibilities for DoD consultations with Native Hawaiian Organizations when proposing actions that may affect a property or place of traditional religious and cultural importance to Native Hawaiian Organizations.

c. DoD Minimum Antiterrorism Standards for Buildings (UFC 4-010-01)

This UFC stipulates that each military service will ensure that antiterrorism (AT) protective features be incorporated into planning, design and execution of all facility construction to mitigate AT vulnerabilities and terrorist threats. In addition, 10 U.S.C. §2859 required the Secretary of Defense to develop common guidance and criteria to be used to develop construction standards designed to reduce the vulnerability to terrorist attack and to improve the security of the occupants of those structures. This UFC is intended to meet those requirements. In accordance with DoD Instruction 2000.16, all DoD Components will fully comply with this UFC.

d. SECNAV Instruction 11010.14A, “Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes,” October 11, 2005

This instruction stresses that it is DON policy to consult with representatives of federally recognized Tribal Governments as provided by law on all issues impacting Indian lands, protected tribal resources or rights under treaties, and issues of concern to Tribal Governments on DON lands; conduct consultation on a government-to-government basis in recognition of Tribal Government sovereignty; conduct consultation openly and in good faith, using written, electronic, telephonic and face-to-face consultation formats, as appropriate; initiate consultation at the earliest possible juncture in the planning process and retain final decision-making authority over DON assets and actions; protect culturally sensitive information from public disclosure, including Freedom of Information Act exemptions, and withholding sensitive information from written summaries and transcripts; and consult with non-federally recognized Indian tribes, traditional cultural leaders and other Native Americans on the same basis as other interested parties when particular statutes and regulations require such consultation.

e. SECNAV M 5210.1, “Department of the Navy Records Management Program Records Management Manual,” November 16, 2007

This manual establishes policies and procedures for life-cycle management (creation, maintenance, use and disposition) of DON records. This manual provides guidelines and procedures for the proper administration of a records management program. It also contains all DON records disposition schedules approved by the National Archives and Records Administration.

f. Nationwide Programmatic Memorandum of Agreement (MOA) among the United States Department of Defense, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (Concerning World War II Temporary Buildings)

DoD, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers signed a Programmatic MOA, completing the Section 106 review process for a program of demolition of the remaining World War II-era temporary military buildings (For the purposes of the Programmatic MOA, this includes all temporary buildings built between 1939 and 1946 on military property).

g. Program Comment for Wherry and Capehart Era Family Housing at Air Force and Navy Bases

This Program Comment, adopted pursuant to 36 CFR 800.14(e), demonstrates Air Force and Navy compliance with their responsibilities under Section 106 of the National Historic Preservation Act with regard to the following actions in the management of the Wherry and Capehart Era family housing: maintenance, repair, layaway, mothballing, privatization and transfer out of federal agency ownership, substantial alteration through renovation, demolition, and demolition and replacement of Wherry and Capehart Era housing, associated structures and landscape features that may be eligible for listing on the NRHP.

h. Program Comment: DoD Cold War-Era Unaccompanied Personnel Housing

This Program Comment provides DoD, and its Military Departments with an alternative way to comply with their responsibilities under Section 106 of the NHPA with regard to the effect of the following management actions on Cold War Era Unaccompanied Personnel Housing that may be listed or eligible for listing on the NRHP: ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

i. Program Comment: DoD World War II- and Cold War-Era Ammunition Storage Facilities

This Program Comment provides the DoD and its Military Departments with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act with regard to the effect of the following management actions on World War II and Cold War Era ammunition storage facilities that may be eligible for listing on the NRHP: ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

j. DoD Instruction 4715.5 “Overseas Environmental Baseline Guidance Document,” November 1, 2013

This guide provides criteria, standards, and management practices for environmental compliance at DoD installations overseas. The primary purpose of this Guide is to provide criteria and management practices to be used by DoD Environmental Executive Agents in determining Final Governing Standards (FGS) in accordance with DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations". This Guide also establishes standards for environmental compliance at DoD installations in countries for which no FGS have been established.