

IMPLEMENTATION OF A CULTURAL RESOURCE MANAGEMENT PROGRAM

I. Purpose

Our nation has a long and rich past that has produced sites, buildings, structures, objects, and historic districts that tell the story of our collective history. The importance of the preservation of our national heritage is established in federal laws and Executive Orders (EOs) requiring federal agencies to identify and consider their impacts on cultural resources; apply the appropriate level of responsibility for the management of cultural resources; consult with other agencies, State and Tribal Historic Preservation Officers, Federally recognized tribes (tribes), Native Hawaiian organizations, and consulting parties; and provide for public involvement in federal decision-making.

The Department of Homeland Security (Department or DHS) Instruction 017-01-001, Revision 01, *Implementation of a Cultural Resource Management Program*, and DHS Directive 017-01, Revision 01, *Cultural Resource Management Program*, (hereinafter Instruction and Directive, respectively) together establish the policy, procedures, and responsibilities for cultural resource management programs to comply with the cultural resource laws, regulations, and EOs listed in Section III of this Instruction. DHS applies the Directive and this Instruction in support of the DHS mission and consistent with sound principles of cultural resource management.

II. Scope

The purpose of this Instruction is to comply with the requirements of Section 110 of the National Historic Preservation Act (Title 54, U.S.C. § 306102 *et seq*), by establishing a cultural resources management program through the appropriate consideration and treatment of cultural resources in the management and operation of DHS missions. Given the diverse mission requirements within DHS, and the numerous laws, regulations, and EOs applicable to cultural resources, it is not feasible to describe in this Instruction the decision-making process for every DHS program or the detailed compliance requirements for the list of authorities in Section III of this Instruction. Therefore, this Instruction provides basic principles for implementing a successful cultural resources management program with a focus on compliance with the National Historic Preservation Act (NHPA).

The requirements of this Instruction apply to the execution of policies, procedures, missions, and operations across DHS, as appropriate. These include, but are not limited to:

- A. Mission planning and operations;
- B. Master planning and natural resource management;
- C. Issuance of federal grants, or provision of financial assistance to carry out activities or programs;
- D. Issuance of a permit, license, or approval;
- E. Research or development;
- F. Promulgations of regulations, acquisitions, and procurements;
- G. Management of real and personal property;
- H. Fixed and mobile asset management and operation;
- I. Asset rehabilitation, renovation, supplementation and/or replacement, and acquisitions (including construction); and
- J. Disposal or transfer of real or personal property.

III. Authorities

- A. Title 10, U.S.C. § 113 note, Sunken Military Craft Act of 2004
- B. Title 16, U.S.C. §§ 470aa-470mm, Archaeological Resources Protection Act of 1979
- C. Title 19, U.S.C. § 2601-13, Convention on Cultural Property Implementation Act of 1983
- D. Title 25, U.S.C. §§ 3001-3013, Native American Graves Protection and Repatriation Act of 1990
- E. Title 42, U.S.C. §§ 1996, 1996a, American Indian Religious Freedom Act of 1978, as amended
- F. Title 42, U.S.C. § 4321 *et seq.*, National Environmental Policy Act of 1970
- G. Title 43, U.S.C. §§ 2101-2106, Abandoned Shipwreck Act of 1987
- H. Title 54, U.S.C. § 300101, National Historic Preservation Act of 1966, as amended

- I. Title 54, U.S.C. §§ 305101-305106, National Historic Lighthouse Preservation Act of 2000
- J. Title 54, U.S.C. §§ 306101-306114, Federal Agency Historic Preservation Responsibilities: Program Responsibilities and Authorities
- K. Title 54, U.S.C. §§ 312501-312508, Archeological and Historic Preservation Act of 1974
- L. Title 54, U.S.C. §§ 320301-320303, Antiquities Act of 1906
- M. Title 54, U.S.C. §§ 320101 *et seq.*, Historic Sites, Buildings, Objects, and Antiquities Act of 1935
- N. Executive Order 13007, *Indian Sacred Sites*, May 24, 1996
- O. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, November 6, 2000
- P. Executive Order 13287, *Preserve America*, March 3, 2003
- Q. Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, August 17, 2017
- R. Title 36, CFR Part 60.1(a), National Register of Historic Places
- S. Title 36, CFR Part 61, Procedures for State, Tribal, and local government historic preservation programs
- T. Title 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places
- U. Title 36 CFR Part 65, National Historic Landmarks Program
- V. Title 36 CFR Part 67.7, Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings
- W. Title 36 CFR Part 68, Secretary of the Interior's Standards for the Treatment of Historic Properties
- X. Title 36 CFR Part 79, Curation of Federally-Owned and Administered Archeological Collections
- Y. Title 36, CFR Part 800, Protection of Historic Properties
- Z. 48 FR 44716, Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

- AA. 63 FR 20495, Secretary of the Interior's Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act
- BB. Statement of Federal Financial Accounting Standards #8, *Supplementary Stewardship Reporting*
- CC. Statement of Federal Financial Accounting Standards #16, *Amendments to Accounting for Property, Plant and Equipment: Measurement and Reporting for Multi-Use Heritage Assets*
- DD. Statement of Federal Financial Accounting Standards #29, *Heritage Assets and Stewardship Land*
- EE. DHS Tribal Consultation Policy, May 11, 2009
- FF. DHS Management Directive 0004, *Administrative Services Line of Business Integration and Management*
- GG. DHS Directive 023-01, rev. 01, *Implementation of the National Environmental Policy Act*, October 31, 2014
- HH. DHS Delegation 00002, rev. 00.3, *Delegation to the Under Secretary for Management*
- II. DHS Delegation 00500, rev. 01, *Delegation to the Chief Readiness Support Officer*
- JJ. DHS Delegation 00501, rev. 00, *Delegation for Environmental Management, Energy Management, and Environmental Planning & Historic Preservation*

IV. Definitions

- A. **Adverse Effect** - As defined in Section 106 of the NHPA (36 CFR § 800.5(a)(1)), an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion on the National Register of Historic Places (NRHP) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Additionally, an adverse effect may also generally constitute an undesired harmful result on a cultural resource resulting from a federal action.
- B. **Area of Potential Effects (APE)** - For Section 106 purposes, the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an

undertaking and may vary depending on the type of effects caused by the undertaking. (36 CFR § 800.16(d))

C. **Archeological Resource** - As defined in the Archaeological Resource Protection Act (ARPA), "any material remains of past human life or activities which are of archaeological interest...shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items...No item shall be treated as an archaeological resource...unless such item is at least 100 years of age." (16 U.S.C. § 470bb)

D. **Component** - As defined in DHS Directive 252-01, *Organization of the Department of Homeland Security*, a Component is an organization which reports directly to the Office of the Secretary of DHS when approved as such by the Secretary. This is inclusive of both Operational Components and Support (also known as headquarters) Components. Operational Components have specific centralized program responsibility for directly achieving one or more of the Department's mission activities; generally, has authority over its Finance, Human Resources, Information Technology, Procurement, and Security programs. A Support Component generally provides specific assistance to other DHS Components and/or external organizations; generally, utilizes shared services through Management.

E. **Consultation** - The process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them regarding matters arising in proposed project planning. The term is defined for Section 106 purposes at 36 CFR § 800.16(f), and in the Secretary of the Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act." DHS actions on matters that have Tribal implications should conform with DHS Tribal Consultation Policy.

F. **Consulting Party** - The groups or individuals who have a consultative role relative to DHS's compliance with or implementation of the statutes, regulations, and EOs set forth in Section III. Consulting parties may include, but are not necessarily limited to, a State Historic Preservation Officer, Tribal Historic Preservation Officer, Indian tribes, Native Hawaiian organizations, representatives of local governments, individuals or organizations with a demonstrated interest, and the public. A consulting party within the context of Section 106 may have a prescribed role or may be invited (see 36 CFR § 800.2(c)).

G. **Cultural Resource** - Physical evidence of past human activity, which may include, but is not limited to, archeological sites as defined in ARPA, historic properties as defined in NHPA, and sacred sites as defined in EO 13007. The term is used herein as an all-encompassing term for any resource that is protected by or the subject of the statutes and regulations that are the subject of

this Directive and Instruction. The term is also used when evaluating potential impacts on the human environment within National Environmental Policy Act (NEPA) analysis.

H. **Cultural Resource Specialist** - An individual who provides specialized cultural resource management services, including conducting the appropriate archeological, historical or architectural analysis and preparing compliance documentation. Cultural resource specialists perform historic property inventories, evaluations, assessment of effects, and resolution of adverse effects, among other duties. A cultural resource specialist meets qualifications specified in the Secretary of the Interior's *Professional Qualifications Standards*.

I. **Disposal** - The process by which real or personal property is removed from a portfolio. Such property may be considered "excess" and disposed for a variety of reasons most often including when an operational need for property no longer exists, operational requirements have changed, or the property has reached the end of useful service life. (DHS Management Directive 119-02, *Real Property Management Program*)

J. **Effects** - Effects on cultural resources are generally described as the results of an action which may be beneficial or adverse. For the purposes of Section 106 of the NHPA, alterations to the characteristics of an historic property qualifying it for inclusion in or eligibility for the NRHP (36 CFR § 800.16(i)) constitutes an effect. Within the Section 106 regulations (36 CFR § 800.4(d) and 800.5), effects are categorized as no historic properties affected (no historic properties present, or historic properties present but none affected), or historic properties affected (no adverse effect or adverse effect).

K. **Federally Recognized Tribe** - Deriving from U.S. Constitutional provisions and defined in the "Federally Recognized Indian Tribe List Act of 1994" (25 U.S.C. § 5130 *et seq.*), an Indian tribe, including Alaska Native Corporations, designated by the Secretary of the Interior as having a formal government-to-government relationship with the U.S. Government. Federally recognized tribes exist politically as "domestic independent nations," with the right to self-determination, self-governance, and tribal sovereignty based on their tribal trust relationship with the United States.

L. **Heritage Assets** - As defined by the DHS Financial Management Policy Manual, heritage assets are property, plant, and equipment (PP&E) that are unusual for one or more of the following reasons: (1) historical or natural significance; (2) cultural, educational, or artistic importance; or (3) significant architectural characteristics. Heritage assets include: (1) collection-type heritage assets such as objects gathered and maintained for exhibition as museum collections, art collections, and library collections; or (2) non-collection type heritage assets, such as parks, memorials, monuments, and buildings.

M. **Historic Property** - Any prehistoric or historic district, site, building,

structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the NRHP criteria. (36 CFR § 800.16(l)(1))

N. **Indian Sacred Site** - As defined in EO 13007, a specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe or an Indian individual appropriately authorized to be a representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion, provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

O. **Lead Federal Agency** - The designated lead federal agency that fulfills the collective responsibilities for cultural resource compliance when more than one federal agency is involved in an activity.

P. **National Historic Landmark** - A district, site, building, structure or object, in public or private ownership, judged and designated by the Secretary of the Interior to possess national significance in American history, archeology, architecture, engineering, and culture. (36 CFR § 65.3(h))

Q. **National Historic Preservation Act (NHPA)** - The NHPA is an act of Congress that establishes a program for the preservation of historic properties throughout the nation. Within this Instruction, two main sections of the NHPA will be regularly referenced:

Section 106: Requires federal agencies to consider effects on historic properties that may result from an undertaking and affords the Advisory Council on Historic Preservation with a reasonable opportunity to comment. In addition, federal agencies are required to consult with State and Tribal Historic Preservation Officers, Federally recognized tribes, and Native Hawaiian organizations, where appropriate (54 U.S.C § 306108).

Section 110: Sets out the broad historic preservation responsibilities of federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs and policies of all federal agencies (54 U.S.C. §§ 306101-306114).

R. **National Register of Historic Places** - The national listing maintained by the Secretary of the Interior of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. (36 CFR § 60(i))

S. **Native Hawaiian Organization** - Any organization which serves and

represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. Native Hawaiians are those individuals who are descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. (36 CFR § 800.16(s)(1-2))

T. **Personal Property** - A tangible item that has probable economic benefits which can be obtained or controlled by the entity which owns or controls it. The definition excludes real property and items permanently affixed to real property.

U. **Programmatic Agreement** - A document that records the terms or conditions agreed upon to resolve the potential adverse effects of a federal agency program, complex undertaking, or other situations. (36 CFR § 800.16(t))

V. **Real Property** - Includes all land, buildings, and structures, as specified by the Federal Real Property Council provisions under EO 13327, *Federal Real Property Asset Management* and outlined in the DHS Directive: 119-02, *Real Property Management Program*.

W. **Traditional Cultural Property** - Eligible historic properties based on associations with cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions that contribute to the cultural identity of a living community. See National Park Service (NPS) Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1998).

X. **Tribal Lands** - All lands located within the exterior boundaries of any Indian reservation and all dependent Indian communities. (36 CFR § 800.16(x))

Y. **Undertaking** - A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval. (36 CFR § 800.16(y))

V. Responsibilities

This section explains additional responsibilities as defined in DHS Directive 017-01, rev. 01. The responsibility and authority to fulfill the requirements for cultural resource compliance, unless otherwise delegated, is as follows:

A. **Under Secretary for Management (USM)** has authority and responsibility, as delegated by the Secretary of Homeland Security (DHS Delegation 00002, rev. 00.3) to establish programs and policy for the appropriate consideration and management of cultural resources in the execution of the homeland security mission. In exercising the authority delegated from the Secretary, the USM:

1. Consults, as needed, with Component Heads to facilitate integration of appropriate consideration and management of cultural resources into DHS missions and to support the allocation of appropriate resource needs;
2. Represents the Department, unless otherwise delegated, with outside entities regarding cultural resource matters; and
3. Delegates to the Chief Readiness Support Officer (DHS Delegation 00500, rev. 01) Department-wide responsibility for the coordination, policy, and planning of cultural resource programs and operations across DHS.

B. **Chief Readiness Support Officer (CRSO)** establishes a cultural resource program to provide coordination, policy, and planning for the appropriate recognition and management of cultural resources during execution of the homeland security mission. In exercising this authority, the CRSO:

1. Monitors the performance of DHS cultural resource programs;
2. Consults with Component Chief Administrative Officers and other appropriate senior staff to ensure their policies and procedures incorporate the requirements of the Directive and this Instruction;
3. Engages, as needed, in actions that may require the attention of the senior executive levels of the Department regarding activities with potential policy and planning implications including, but not limited to:
 - a. Proposed development of program comments to 54 U.S.C. § 306108 (Section 106) of the NHPA, per 36 CFR § 800.14(e);
 - b. Regulations or policies that may have significant impacts on cultural resources and the DHS mission; and
 - c. Actions with significant stakeholder or Congressional interest.
4. Recommends, as requested by the USM, appropriate action on budget requests for cultural resource activities and programs;

5. Coordinates the Departmental response for cultural resource related information or assigns information requests to the appropriate Component Head, or designee, for resolution;
6. Serves as the Department's Senior Policy Official for the NHPA and EO 13287, as well as a member of the Advisory Council on Historic Preservation (ACHP);
7. Assigns the Department Federal Preservation Officer (FPO) and Deputy FPO; and
8. Delegates to Sustainability and Environmental Programs, Executive Director (DHS Delegation 00501, rev. 00) the ability to execute and administer guidance and policy for a timely, dependable, and cost-efficient cultural resource program.

C. **Sustainability and Environmental Programs, Executive Director (SEP Executive Director)** implements the Department's cultural resource program. In establishing a cultural resource program, the SEP Executive Director:

1. Develops, as needed, policy, guidance, and training for carrying out cultural resource activities across DHS;
2. Develops performance metrics, as needed, for Departmental cultural resource programs;
3. Advises the CRSO on activities requiring CRSO consideration listed in V.B.3(a-c);
4. Evaluates for the CRSO, as requested, budget requests for cultural resource management;
5. Serves as the DHS point of contact on interactions with the ACHP, Department of the Interior, and other federal agency headquarters for cultural resource matters; and
6. Evaluates and approves new or substantively revised cultural resource supplemental instructions.

D. **DHS Federal Preservation Officer (DHS FPO)**: Is the Department official responsible for coordinating and providing oversight of cultural resource management activities to ensure compliance with applicable statutes, implementing regulations, EOs, and DHS Policy, among other duties. The DHS FPO, or their designee:

1. Serves in an acting role of Component FPO if the Component has not designated a qualified individual;
2. Meets the Secretary of the Interior's Professional Qualification Standards or oversees staff or contractors who meet those standards;
3. Has sufficient authority to ensure that Departmental decisions made pursuant to Sections 106 and 110 of the NHPA are reviewed and commented upon in a meaningful and technically sound manner;
4. Coordinates the development of DHS cultural resources policy and guidance and establishes standardized processes for implementing cultural resources mandates, regulations, and policy, as applicable;
5. Provides guidance on implementation of cultural resources policy and advises all levels of DHS regarding compliance with cultural resources mandates, regulations, and policy, and its applicability to the DHS mission;
6. Coordinates and responds to requests for cultural resource related information received at the Department-level among appropriate Component FPOs or assigns the requests to the appropriate Component FPO, or designee, for resolution;
7. Develops, maintains, and provides Department-wide cultural resource awareness and training programs;
8. Administers Department headquarters' issuance of permits under the ARPA, as needed;
9. Has final signatory authority for Department headquarters' nominations of historic properties to the NRHP; and
10. Receives and acts upon, as needed, the written notification of Department-wide cultural resource activities that meet any of the notification criteria listed below.
 - a. DHS activities with a cultural resource nexus that are likely to rise to the Secretary, USM, CRSO, or SEP Executive Director level and/or those that are likely to receive national attention;
 - b. Component designation, or change, of an FPO;
 - c. Decisions to terminate consultation under 36 CFR § 800.7;

- d. Receipt of a letter from the ACHP asserting that the Department or Component has foreclosed the ACHP's opportunity to comment per 36 CFR § 800.9 (e.g., agency foreclosure);
- e. Intention of the Department or Component to seek alternate procedures to Section 106 of the NHPA in the form of a program comment, per 36 CFR § 800.14(e);
- f. Discovery of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony before the initiation of repatriation or disposition activities pursuant to the Native American Graves and Repatriation Act (NAGPRA); and
- g. Notification of the anticipated demolition or report of excess of DHS-owned NRHP eligible or listed, or National Historic Landmark, properties.

E. **Office of General Counsel (OGC)**: Includes legal offices of all DHS headquarters and Components, and provides, upon request, legal advice to leadership and management regarding DHS cultural resource compliance and the legal sufficiency of cultural resource documents. OGC also coordinates the DHS legal position with the Department of Justice, as appropriate, in the case of litigation.

F. **DHS Office of Tribal Affairs (OTA)**: The DHS OTA serves as the main point of contact between the Secretary or Component Head and tribal leaders across the country, working with intergovernmental partners across the Department to coordinate Department-level engagement of elected officials, or their designees, related to key Department policy decisions. For the purposes of this Instruction, DHS OTA is consulted upon the request of DHS headquarters or Component tribal affairs representatives. Requests for assistance may be presented on any tribal affairs topic such as activities that may significantly affect cultural resources on tribal lands, tribal treaty rights, or areas that may hold cultural or religious significance to a tribe or Native Hawaiian organization.

G. **Component Heads**, or their designee, refers to the head of Operational and Support Components as defined in Section IV.D. Component Heads:

1. Designate the Component FPO, who serves as the senior official having oversight responsibility for the Component's cultural resources program. Support or headquarters, Components may be assisted by the DHS FPO instead of designating a separate FPO;
2. Ensure the planning, development, and execution of their missions conform to the policy and procedures in the Directive and this Instruction. This includes ensuring that their respective program and project

Proponent fully and appropriately consider integration of cultural resource management into their programs, activities, and operations in accordance with the Component's business practices and organizational structure;

3. Coordinate with the CRSO on Component cultural resource program activities identified in section V.B.3(a-c), and provide copies of all related formal communication documents, as appropriate;
4. Plan, program, and budget subject to the availability of funds for the requirements of the Directive and this Instruction; and
5. Develop supplemental instructions, as needed, for submittal and approval of SEP Executive Director.

H. Component Federal Preservation Officer (Component FPO):

Components are encouraged to designate a qualified individual in the appropriate organizational location to serve as the FPO. The Component FPO, or designee, maintains the responsibilities identified in Section V.D (1-9) of this Instruction for their Component. The Component FPO, or their designee, also:

1. Develops Component-specific cultural resource management program supplemental instructions, handbooks, standard operating procedures, etc. in compliance with this Instruction (see Section VI.I), as needed;
2. Coordinates with the DHS FPO on cultural resource issues with broader Departmental implications that are brought before the ACHP or the Keeper of the National Register, as needed;
3. Recommends the appropriate preservation and curation of cultural resource records, materials, and artifacts of historic value to the Component;
4. Assists Proponents in integrating requirements for consideration of cultural resources into their activities in fulfillment of the requirements of the Directive and this Instruction, which at a minimum involve the following:
 - a. Dependable, timely, and cost-efficient procedures to consider cultural resources;
 - b. Subject matter expertise regarding proposed actions to ensure appropriate compliance prior to decision-making which may limit options to avoid, minimize, or mitigate an adverse effect on cultural resources;

c. Cultural resources management training opportunities, including planning and compliance, for appropriate Component lines of business, regions, field offices, etc.; and

d. Agreements with federal and state agencies and tribes to comply with cultural resource requirements in an efficient and timely manner, as appropriate.

I. **Proponent:** The Proponent is the identified project or program manager that has the immediate authority to decide a course of action or has the authority to recommend a course of action, from among options, to the next higher organization level (e.g., district to region) for approval. The Proponent would also normally have authority to establish the total estimate of resource requirements for the proposed action or, in the execution phase, have the authority to direct the use of resources. While the Proponent is not normally expected to personally execute and document the cultural resource process, they have the lead role and are responsible for initiating the effort and retain responsibility, with support from the DHS or Component FPO or a Cultural Resource Specialist, for the content and quality of the process, documentation, and compliance. The Proponent:

1. Fulfills the procedural requirements of Section 106 and Section 110 of the NHPA, among other cultural resource mandates, regulations, EOs, and DHS policies, as necessary;
2. Employs practical means consistent with other considerations of national policy to avoid, minimize, or mitigate adverse effects on cultural resources;
3. Ensures the quality of analysis and documentation produced in the cultural resource management process;
4. Ensures appropriate outreach and communication with federal, tribal, state, local, and public interests prior to decision-making; and
5. Ensures that their program or project funding requests include adequate resources to fulfill cultural resource management requirements, appropriate treatment, and mitigation measures, as needed.

VI. Procedures

A. **Implementation.** Considerations of the presence of cultural resources and appropriate engagement with consulting party occurs as early as possible in the project planning stages to allow for necessary studies and impact analyses to be conducted; to help facilitate the development of alternatives; and to implement

any appropriate avoidance, minimization, or mitigation measures. Compliance with cultural resource management requirements are incorporated, as appropriate, into other DHS planning processes, including but not limited to: master planning; environmental planning; budgeting/programming; acquisitions; contracting; and facilities management.

B. Integration with NEPA and Coordination of the Section 106

Compliance Process. NEPA is a procedural law passed to ensure federal agencies consider the environmental impacts of their actions in the decision-making process, including impacts on cultural resources. Section 106 of the NHPA also requires agencies to consider the effects of their actions on historic properties before making a decision. While the statutory obligations under NEPA and NHPA are independent, integrating the processes creates efficiencies, promotes transparency and accountability, and supports a broad discussion of effects on the human environment. Section 106 and NEPA may be successfully coordinated to improve efficiency and assist in informed decision-making by following the procedures set forth in 36 CFR § 800.8. These procedures allow agencies to streamline their review through the utilization of the NEPA process to fulfill certain Section 106 requirements. Guidance has been issued jointly by the Council on Environmental Quality and the ACHP for additional recommendations on improving the efficiency and effectiveness of the integration of NEPA and Section 106 processes and is available on both agency websites.

When considering NEPA and Section 106 streamlining efforts, it is important to consider early coordination, education of consulting parties, comprehensive planning schedules, appropriate communication plans, the use of NEPA documents to facilitate consultation, and integrated strategies for special studies, which all may aid in the successful coordination of Section 106 and NEPA. Components with a nexus to the Fixing America's Surface Transportation Act, Title 41 (42 U.S.C. § 4370m) and EO 13807, also referred to as One Federal Decision, are encouraged to utilize the integration of NEPA and Section 106 and other best practices to meet timeframes and milestones in the processing of environmental review and authorization decisions for covered projects.

DHS seeks to coordinate compliance with Section 106 with the steps taken to meet the requirements of the NEPA, when appropriate. Components ensure cultural resource analysis is included in NEPA analysis and documentation by:

1. Considering Section 106 responsibilities early in the NEPA process, and planning public participation, analysis, and review to meet the purposes and requirements of both statutes in a timely and efficient manner;
2. Considering the types of potential effects on historic properties and the significance of those effects when determining if a categorical

exclusion (CATEX), environmental assessment (EA), or environmental impact statement (EIS) is appropriate; and

3. Considering adverse effects on historic properties, which may not, on their own, necessitate preparation of an EA or EIS; however, an EA or EIS may be warranted if those adverse effects cannot be lessened to below significant levels. Factors that may be considered for evaluating whether an effect on historic properties is significant include the type of effects, the classification and number of historic properties involved, or the level of consulting party interest regarding the resources or potential effects, among others. The use of a DHS-approved CATEX does not eliminate the responsibility to comply with Section 106 or other applicable authorities, including those listed in Section III of this Instruction. f

4. Consider completing the Section 106 review prior to a final project decision so that a broad range of alternatives may be considered during the planning process. Because the information gathering and consultation done in the Section 106 review should inform the NEPA review, and vice versa, the timing of both reviews should be coordinated.

C. **Consultation.** Consultation with the appropriate parties is vital to successful cultural resource management and compliance. It is important to schedule enough time and make a reasonable and good faith effort to ensure consulting parties are identified and have a meaningful opportunity to participate in the consultation process. Many of the authorities listed in Section III of this Instruction have prescriptive consultation practices and timeframes, such as those of NAGPRA and EO 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*. For compliance with Section 106, DHS headquarters and Components have a responsibility to:

1. determine if a resource is eligible for listing on the NRHP;
2. consult with the appropriate parties on those findings;
3. make Section 106 effect determinations; and
4. appropriately consult to resolve adverse effects on historic properties.

Section 106 consultation normally includes the ACHP and SHPO, while other parties may be invited to consult. In certain situations where tribal lands may be involved or a tribe may attach religious and cultural significance to a historic property, Tribal Historic Preservation Officers (THPOs), as designated, federally recognized tribes, and Native Hawaiian organizations must also be consulted. When a THPO has been designated,

the federal agency consults with the THPO in lieu of the SHPO for proposed undertakings on tribal lands.

1. **Advisory Council on Historic Preservation (ACHP).** The DHS Secretary is among the seven federal agency heads designated by the President to serve as a member of the ACHP. The ACHP is an independent federal advisory agency, established by the NHPA, to promote the preservation, enhancement, and productive use of the Nation's historic resources. The ACHP advises the President and Congress on national historic preservation policy and may participate in consultations based on criteria outlined in Appendix A of 36 CFR Part 800. The ACHP may be involved in a project if there are conflicts over compliance with the Section 106 implementing regulations or if the undertaking is of a scale or scope that warrants their involvement (see 36 CFR § 800.6(a)(1)(i)(B-C)). This can occur at any time either by invitation from the agency or one of the consulting parties, or on its own initiative. DHS headquarters and Components follow the procedures outlined in the implementing regulations for Section 106 for determining when to invite the ACHP to participate in their undertaking.

The ACHP also works with federal agencies on opportunities to streamline the Section 106 review process while still meeting legal obligations. DHS highly encourages the development and use of ACHP-approved program alternatives. These can include resource-specific, Statewide, Nationwide, and Prototype Programmatic Agreements (PAs) and Program Comments. By working with the appropriate SHPOs or THPOs, the ACHP, Indian Tribes and Native Hawaiian organizations and other parties, as appropriate, these streamlining tools can help to efficiently manage compliance requirements while reducing DHS project timelines and costs.

2. **State Historic Preservation Officer (SHPO).** The SHPO is the official appointed or designated pursuant to Section 101(b)(1) or a representative designated to act for the SHPO (36 CFR § 800.16(v)), responsible for administering the state's historic preservation program. Serving as the subject matter expert for their state or territory, SHPOs consult on federal undertakings that may affect historic properties, review NRHP nominations, carry out stewardship initiatives, and advise and assist, as appropriate, federal agencies in carrying out their NHPA compliance responsibilities. When consulting with the SHPO:

- a. engage in early coordination to avoid review delays;
- b. provide adequate project, finding, and effect determination information as laid out in 36 CFR § 800.11; and

c. plan for a 30-day review period from receipt of a complete documentation package for a response on the federal effect and finding determinations, unless there is an emergency action, (see Section VI.F).

3. **Federally Recognized Tribes.** Federally recognized tribes (tribes), including Alaska Native Corporations (ANC), have a special trust relationship with the U.S. Government, and DHS is responsible for ensuring government-to-government consultation occurs for Department activities, as appropriate. Pursuant to EO 13175, *Consultation and Coordination with Indian Tribal Governments*, federal departments are required to “strengthen the United States government-to-government relationships with Indian tribes and establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications...” It is DHS policy to make a good faith effort to consult and collaborate on federal actions that could impact tribal resources, tribal treaty rights, ancestral lands, traditional cultural properties, and areas of religious or cultural significance. Information shared about religious practices or cultural history is often highly sensitive and should be treated as privileged unless the tribe states otherwise. Note: providing public notices or copies of notices is not sufficient to initiate or fulfill consultation requirements with tribes.

Tribal consultation must respect the government-to-government relationship between the U.S. Government and tribes, be respectful of tribal self-government and sovereignty, and follow DHS headquarters and Component protocols for government-to-government meetings. The Proponent or its consultant should work with the appropriate FPO or Cultural Resource Specialist and, if needed, the appropriate OTA staff to identify tribes with a potential interest in the project area, project type, or those affected by an inadvertent discovery. This research includes tribes that currently or historically occupied or used an area, regardless of where they may currently reside.

Where appropriate, consultation at the staff level occurs early and often to adequately identify and assess potential effects on cultural resources and attempts resolution of any adverse effects. Best efforts should be employed to meaningfully consult with tribal leadership as well as any designated historic or cultural representative, in addition to the THPO, for compliance with the NHPA, NAGPRA, and other relevant laws and EOs, as applicable. For compliance with the NHPA (section 101(d)(6)(B)), federal agencies are required to consult with any tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking regardless of the location of the historic property (36 CFR § 800.2(2)(ii)).

DHS headquarters and Component cultural resource programs are encouraged to consult with their OTA or specialists to strategize consultation plans for mission activities with potentially significant tribal concerns that may include effects on: cultural landscapes; sacred sites; traditional cultural properties; access to lands for ceremonial purposes, subsistence, or native plant collection; treaty rights; and potential effects on historic properties.

4. **Tribal Historic Preservation Officer (THPO).** The THPO is the official appointed by tribal government or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for Section 106 compliance responsibilities of the SHPO for actions affecting tribal lands pursuant to Section 101(d)(2) of the NHPA (36 CFR § 800.16(w)). For activities off tribal lands, including ancestral lands and/or areas with traditional or religious significance, it is important to contact tribal governments as well as the THPO to determine the appropriate point of contact for proposed undertakings that may affect historic properties. While the THPO is also afforded 30 days to respond to Section 106 review requests on effect findings or NRHP determinations, THPOs may request additional time for review or formal consultation.

5. **Native Hawaiian Organizations.** In addition to consulting with tribes, Section 106 of the NHPA requires consultation with Native Hawaiian organizations that may attach religious and/or cultural significance to historic properties that may be affected by DHS undertakings. These properties may be located on ancestral or ceded lands, e.g., Hawaiian Homelands. Other federal statutes also require consultation with Native Hawaiian organizations, such as the American Indian Religious Freedom Act and NAGPRA. The Hawaii SHPO or Office of Native Hawaiian Affairs may be able to suggest which Native Hawaiian organizations to contact for consultation purposes.

6. **Other Consulting Parties.** Consulting parties can range from internal DHS offices such as facility managers and operations, tribal affairs, public affairs, and project management, to external groups such as nonprofit organizations, historic societies, local government, State recognized tribes, and other federal agencies. Potential consulting parties are invited to participate as early as possible in the planning process to reduce the potential for issues and delays.

It should be noted, except for agreements executed between the federal agency and the ACHP under 36 CFR § 800.7(a)(2), SHPOs are required signatories on agreements to resolve adverse effects off tribal lands, while THPOs, when designated by a tribe, are required signatories on agreements to resolve adverse effects on tribal lands occurring from

actions on or off tribal lands. When a THPO has not been designated for Section 106 compliance for undertakings on or affecting tribal lands, tribal leadership is contacted to identify representation, in addition to the SHPO. The ACHP may also choose to participate in limited cases as outlined in 36 CFR § 800.6(a)(1)(i). The following groups of potential consulting parties may be invited signatories to an agreement document but are not required.

a. **Other Federal Agencies.** When multiple federal agencies are involved in an activity, Components determine whether they will serve in a lead, co-lead, or participating agency role. Roles and responsibilities should be clearly identified along with project schedules to enhance efficiency and streamlining efforts.

1) For Section 106, some or all agencies involved in an undertaking may designate a lead federal agency (36 CFR § 800.2(a)(2)), which identifies the appropriate official to serve as the agency official who acts on their behalf, fulfilling their collective responsibilities under Section 106.

2) If a lead agency is not designated, each agency remains responsible for individually complying with Section 106. When serving as the lead agency for an undertaking, take into consideration the recommendations of the participating agencies, unless an interagency agreement has outlined a different decision-making process.

3) When DHS headquarters or a Component occupies space or routinely conducts activities at a facility that is managed by another federal agency, DHS coordinates with the responsible federal agency as early in the project planning process as possible to determine agency roles.

4) When an undertaking may adversely affect an NHL, consultation is required to take place with the SHPO and the NPS on those effects, and measures to avoid, minimize, or mitigate the adverse effect.

b. **Local Government.** Representatives of local governments represent the interests of their citizens in an area where a proposed activity is located. Local governments may provide important information for the consideration of decision-makers. Under Section 106, local governments are entitled to participate in the process to provide their views and comments on an undertaking.

c. **Federal Applicants.** Applicants for federal funding, permits, licenses, and other approvals are entitled to provide their views and comments and to participate in the Section 106 process. Federal applicants may be authorized to initiate consultation, but the delegating federal agency retains legal responsibility for all materials prepared on its behalf and must make sure all materials meet applicable standards and guidelines. DHS headquarters and Components also retain responsibility for conducting consultation with tribes and Native Hawaiian organizations.

d. **Other Groups or Individuals.** Within the Section 106 process, individuals and organizations with a demonstrated interest in an undertaking and who do not fall into one of the other above categories may be invited to become a consulting party. A demonstrated interest means that the party must either have a legal or economic tie to the project or affected properties or they must have a concern with the project's effect on historic properties. Such groups could include local historic preservation groups or officials, State recognized tribes, community organizations such as land trusts or environmental interest groups, individual property owners, or alumni groups.

7. **The Public.** Meaningful engagement with the public, consistent with other federal requirements, is DHS policy. Public involvement improves the effectiveness of DHS missions and activities, as well as builds trust between DHS and the communities it serves. Seeking input from the public is also mandated by various authorities listed in Section III of this Instruction. Public engagement begins as early as possible and includes seeking information on proposed activities, alternatives, and mitigation via mailings, emails, websites, social media, radio programs, library postings, or public meetings, as appropriate. The following factors are considered when determining the appropriate nature and extent of public involvement efforts:

- a. The scope of the proposed activity;
- b. Extent of previous identification efforts and type of cultural resources already identified;
- c. Whether the project is of tribal, local, regional, national, or international interest;
- d. The potential effects of the activity;
- e. The urgency of the activity; and

- f. The national security classification of the activity.

D. Planning and Management. DHS headquarters and Components initiate and complete the appropriate consultation with consulting parties whenever management of physical assets (including any associated acquisition, construction, operation, or maintenance activities) or operational activities have the potential to affect historic properties or cultural resources. For Section 106, Proponents clearly define the geographic APE within which their undertaking may directly or indirectly cause alterations in the character or use of any historic properties which may be present. It is important to establish the area within which all potentially affected historic properties may be located, including those owned by other federal and non-federal interests. Available internal resources and databases as well as those provided by SHPOs, THPOs, tribes, Native Hawaiian organizations, other consulting parties, and the NPS should be utilized to determine previously identified cultural resources.

It is important to satisfy the requirements of Section 106 and EO 13007, as appropriate, before implementing an undertaking that may affect historic properties or Indian sacred sites. DHS headquarters and Components must determine whether their undertaking would result in a determination of no historic properties affected or historic properties affected and, if historic properties would be affected, then apply the criteria of adverse effect. Examples of adverse effects that could be caused by an undertaking include those where a historic property or sacred site may be transferred, sold, removed, relocated, rehabilitated, repaired, maintained, substantially altered, demolished, or neglected and allowed to deteriorate (except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to tribe or Native Hawaiian organization).

1. **DHS Property Management.** Components with disposal authority are responsible for ensuring that the requirements of Section 106 of the NHPA and EO 13007, as appropriate, are met before transferring or selling a DHS asset. Those Components without disposal authority, work with the General Services Administration to ensure proper compliance with any environmental and cultural resource requirements.

DHS headquarters and Components with historic properties under their jurisdiction and/or control maintain an inventory of those properties to include their historic status and any needed treatment measures. Components regularly reassess and update this inventory on buildings aged 45 years or more to make additional NRHP eligibility determinations and to anticipate management and compliance requirements. Components are encouraged to nominate eligible historic properties to the NRHP with the assistance of the DHS or Component FPO, Cultural Resource Specialist, or qualified contractor.

2. **Historic Property Management Plan (HPMP).** DHS headquarters and Components should develop HPMPs to document the way cultural resource requirements are considered in real property and land management. Typically, an HPMP is developed for a specific geographic location or group/type of properties. It is appropriate to integrate the HPMP with property master plans, NEPA documents, or other similar efforts and documents, as appropriate. HPMPs, which should be updated as new data and project planning requires, may include:

- a. Identification of the property and site ownership;
- b. A short and concise historic context of the site or land boundaries;
- c. A list of the type and NRHP status of known historic properties;
- d. For Official Use Only maps identifying site locations, as well as areas previously surveyed for cultural resources;
- e. A discussion of ongoing and future, if known, operations and their potential impact on identified cultural resources;
- f. Prioritization of cultural resource management activities to include, but not limited to, stabilization, restoration, or enhancement;
- g. Guidelines for routine maintenance and operation activities;
- h. Procedures for Section 106 consultation with consulting parties; and
- i. Correspondence letters regarding the HPMP from the SHPO, THPO or affected tribes, ANCs, or Native Hawaiian organizations, as appropriate.

1. **Inadvertent Discovery.** DHS headquarters and Components put protocols in place for addressing the inadvertent discovery of cultural resources. An undertaking or activity-specific Inadvertent Discovery Plan (IDP) may be created in coordination with the Proponent, SHPO, THPO, tribes, Native Hawaiian organizations, and other consulting parties, if determined to be appropriate. The IDP should be included in acquisition and contract language and provided to facility and operation managers. The inadvertent discovery plan should provide, at a minimum, a process for:

- a. Establishing in the field what constitutes an inadvertent discovery;
- b. Stop work procedures with timely notification processes;
- c. Treatment and evaluation of cultural resources during consultation; and
- d. Specific processes for the discovery and identification of human remains and associated materials.

E. **Use.** Preservation considerations should be incorporated into the management of historic buildings, structures, districts, sites, objects, and other cultural resources. Alterations, restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, construction of handicap access or other similar actions on historic properties should be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Compliance with cultural resource management requirements are incorporated into master planning and real property management. When appropriate, consistent with mission needs, and when economically feasible, DHS gives preference to the rehabilitation or adaptive reuse of historic properties over new construction or leasing.

F. **Emergency Actions.** Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106. A few examples of exempt responses are replacement of collapsed bridges in an active evacuation route; any actions to stop or slow down an existing fire from spreading (though planned, controlled fires are subject to Section 106); and removal of debris or portions of a building to reach trapped persons.

Prior to taking other emergency actions, including non-immediate actions that may affect a historic property, allow seven days for comments by the ACHP, SHPO, THPO, tribe, and Native Hawaiian organizations, as appropriate. If seven days are not available, notify applicable parties and invite comments in available time. These streamlined consultation timelines are only applicable for 30 days after formal declaration of disaster or emergency unless an extension is granted by ACHP. Components are encouraged to take advantage of the flexibility of complying with Section 106 as outlined in 36 CFR § 800.12(b), which allow for emergency reviews or the establishment of programmatic approaches to address historic properties in emergency circumstances.

G. **Reporting Requirements.** Performance metrics are important indicators of Department compliance with the requirements of cultural resource mandates, the Directive, and this Instruction. CRSO issues data calls to Components, when necessary, to obtain the information required by both internal and external reporting requests and ensures a consolidated response. Component cultural resource programs are expected to provide data for various Department, Office

of Management Budget, ACHP, Department of the Interior, and Congressional inquiries.

1. **Performance Reporting.** Internal performance metrics, such as those on the CRSO Scorecard and SEP Program Management Reviews (PMRs) are established with participation from Components through committees and work groups. Components are required to complete a CRSO Scorecard to evaluate conformance with various environmental and cultural resource laws and policies. The Environmental Planning and Historic Preservation (EPHP) section of the scorecard, which is for internal use only, informs DHS headquarters on ways to improve Departmental EPHP programs and compliance. The metrics capture Component efforts in the identification and tracking of historic properties for Section 106 and Section 110 compliance. Scorecard metrics are reported annually to the CRSO and presented annually to the SEP Executive Director during PMRs.

2. **Heritage Assets.** Financial offices throughout DHS comply with the Federal Accounting Standards Advisory Board Supplemental Federal Financial Accounting Standards (SFFAS) 8, *Supplemental Stewardship Reporting*; SFFAS 16, *Amendments to Accounting for Property, Plant and Equipment: Measurement and Reporting for Multi-Use Heritage Assets*; and SFFAS 29, *Heritage Assets and Stewardship Land*, and report accordingly. DHS and Component FPOs and Cultural Resource Specialists are encouraged to regularly engage with financial offices to assist in accurate heritage asset reporting. Should DHS headquarters or Component receive a gift of an asset with cultural or historic significance such as gifts from tribes, policies set forth in Directive 112-02, *Gifts to the Department of Homeland Security* are followed.

It is important to note that the requirements and definitions for classifying a property asset as “historically significant,” applicable to Sections 106 and 110 of the NHPA, are separate and distinct from heritage assets. While it is expected that most assets meeting the definition of “historically significant” under Sections 106 and 110 of the NHPA could also meet the heritage asset definition, they are separate determinations.

3. **Real Property.** DHS eadquarters and Components utilize real property databases to capture information on real property for the Department, including the Federal Real Property Council (FRPC) data element on NRHP eligible or listed status for purposes of compliance with Section 110 of the NHPA. To integrate Component cultural resource management programs with real and personal property management, DHS headquarters and Components work with real property managers to provide accurate historical status listings and descriptions of real property assets, as required, to the CRSO for

submission to the Federal Real Property Profile (FRPP). DHS or Component FPOs or Cultural Resource Specialists contact the appropriate individual within their organization to ensure accurate annual reporting of the historical status of Departmental assets.

H. Environmental Planning and Historic Preservation Decision Support System (EPHP DSS). The EPHP DSS, owned by the CRSO for Department-wide utilization, is an automated system designed to standardize and improve the efficiency and effectiveness of DHS environmental reviews of proposed CATEX-level actions for compliance with applicable environmental and cultural resource management laws and regulations. The EPHP DSS enables knowledge sharing across DHS regarding environmental planning activities and requirements, is a repository for DHS NEPA documents, and is used to gather information necessary for meeting internal and external EPHP reporting requirements. For cultural resources, questions in the system primarily focus on compliance with Section 106 of the NHPA and EO 13007. Users are prompted to make an effect determination for proposed activities and upload required consultation and concurrence letters from SHPOs, THPOs, tribes, Native Hawaiian organizations, and the ACHP, as appropriate. Additional information and requirements on use of the system, such as user roles and workflow, is provided online within the EPHP DSS.

I. Policies/Procedures and Supplemental Instructions. Component policies and procedures, including any instruction manuals, guidance documents, and standard operating procedures, will comply with the Directive, this Instruction, and the authorities listed in Section III. When a Component develops supplemental instruction to ensure compliance, the instruction should provide for the following:

1. implementation of the Directive and this Instruction, including the organizational level for compliance and internal processing requirements, approval processes, and elevation procedures;
2. a plan for the ongoing management, maintenance, and stewardship of cultural resources under DHS headquarters or Component control including the collection and curation of records and other data, to include data produced by historical research or archaeological survey and excavation; and
3. if applicable, describes the process or requirements for the review of applications from persons or organizations seeking approval of their proposed activities (e.g., federal assistance, permits, and licenses) for ensuring cultural resources compliance.

Components intending to designate a FPO, will submit to SEP draft supplemental instructions that, at a minimum, meet the above criteria and have been approved

by the Component's appropriate approving officials. Upon receipt of the Component's draft supplemental procedures, SEP will complete its initial review and provide comments back within 15 working days. Issues that cannot be resolved between SEP and the Component within 10 working days thereafter are elevated to the respective CRSO (or equivalent) for resolution. Components are notified by SEP Executive Director in writing when supplemental instructions have been approved.

Components with existing FPOs meeting the requirements outlined in section V.H, will provide in writing to SEP, within 12 months of the Directive and this Instruction being signed, a justification for use of proposed or existing procedures. Upon receipt of the justification, SEP will complete its review within 15 working days. SEP Executive Director will provide a conformance determination in writing. Should a Component's existing policy not conform with Departmental policy, a revision will be necessary. In situations where a Component has drafted supplemental procedures that have not completed internal approvals, an interim approval may be granted by SEP Executive Director. At the discretion of the SEP Executive Director, interim approval may be granted for up to six months as Components revise procedures that meet the minimum criteria and content described above. Written requests for extensions of this interim approval will be granted by SEP Executive Director with evidence that the Component is proceeding in good faith to complete its respective policy or procedural approval process.

Components will review their approved supplemental instructions and revise and update them as necessary, but at a minimum, whenever the Directive and this Instruction are revised.

J. Information Protected from Public Disclosure. DHS will not publicly disclose information that may reveal the locations of sensitive sites, or share maps, photographs, and drawings of those sites, when such information is not otherwise publicly available, or at the behest of a tribe or landowner. Section 304 of the NHPA (54 U.S.C. 307103) protects sensitive site information from public disclosure when such disclosure could result in the damage of NRHP listed sites, lead to an invasion of privacy, or hinder the traditional religious use of a site. Determinations of site sensitivity should be made through consultation with tribes, Native Hawaiian organizations, SHPOs/THPOs, and the Component FPO, as appropriate. If the Component does not have a designated FPO, the DHS FPO is consulted.

K. **Applicability of the NHPA Abroad.** For Section 106 purposes, undertakings carried out by or on behalf of DHS, or for which DHS provides assistance, extend to areas defined as a “State”, which includes the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and also specifically includes the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau per 54 U.S.C. 300317.

Efforts to identify and consider effects on cultural resources in other countries may be carried out in consultation with the host country's cultural resource authorities, with affected communities and groups, and other relevant parties. In accordance with section 402 of the NHPA (16 U.S.C. § 470a-2), when DHS proposes to approve an undertaking outside the U.S. in other countries that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register, DHS shall take into account the effect of the undertaking on the property for the purpose of avoiding or mitigating any adverse effect.

VII. Questions

Address any questions or concerns regarding this Instruction to the Sustainability and Environmental Programs, Executive Director.



Tom Chaleki
Chief Readiness Support Officer

10/28/20

Date