

CHAPTER 6 - CULTURAL RESOURCES STEWARDSHIP

6-1. Purpose. This chapter establishes the policy for the management and protection of cultural resources at operating civil works water resources projects for which the U. S. Army Corps of Engineers is responsible.

6-2. Policy.

a. Curation and Management of Archaeological Collections.

(1) Mandatory Center of Expertise (MCX). The Corps MCX for Curation and Management of Archaeological Collections at St. Louis District shall manage Corps-wide curation needs assessments and design services for the curation of archaeological collections. The MCX shall review the status of Corps-wide curation of collections and associated documents and ensure USACE compliance with the provisions of 36 CFR Part 79 (Curation of Federally-Owned and Administered Archaeological Collections). Costs for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) will be handled through the annual budget request process established by the MCX. The MCX in coordination with the Curation Field Review Group (CFRG) will review these requests, prioritize them, and provide funding to districts based on the funding priorities established. The MCX has established standard operating procedures which detail its responsibilities.

(2) Data and Material. Data and material from historic properties (defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places) that could be impacted as a result of civil works undertakings shall be investigated, evaluated, recovered, and preserved. Specific guidance on collection management is provided in EP 1130-2-540.

(3) Collection Availability. District commanders shall ensure that collections are available for scientific and educational uses by qualified professionals, including access for study, loan, and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Human skeletal material shall not be placed on display or exhibited for public viewing in any fashion. At the discretion of the Commander, collections may also be loaned for religious uses by interested groups with a demonstrated affiliation to the materials in the collection. District commanders are also responsible for consultation with Native Americans and repatriation of human remains and associated funerary objects to appropriate Indian tribes or Native Hawaiian organizations as required by NAGPRA.

(4) Cost Estimates. Line item cost estimates for collections management and curation shall be included in all cost estimates prepared for investigations that will result in collection of material remains and associated records.

(5) Tribal Consultation.

(a) Consistent with PL 95-341, American Indian Religious Freedom Act and PL 103-141, Religious Freedom Restoration Act of 1993, commanders shall consult with affected tribes, groups, or individuals regarding appropriate action for project effect upon sacred sites, important to the practice of traditional Native American religion. Native American consultation topics may

include, but not be limited to, access to sites, use and possession of sacred objects, freedom to worship unburdened except when there are compelling government interests, and suitable preservation measures.

(b) NAGPRA requires Federal agencies to compile documentation on specific materials in archaeological collections and consult with recognized Indian tribes on these efforts. Section 3 of the Act also requires tribal consultation when cultural items, as defined by the Act, are inadvertently discovered in federally controlled or owned lands.

(c) Tribal consultation pursuant to cultural resource law may require, but not be limited to, Native American and/or Native Hawaiian attendance at meetings, on-site visits, and the sharing of information akin to intellectual property. Commanders shall ensure that Native Americans/Hawaiians who are invited to participate, by the Corps, in consultation proceedings receive appropriate compensation for their activities. Existing authorities allow for the preparation of Invitational Travel Orders and the issuance of purchase orders, not exceeding \$2,500.00, for the purpose of sharing critical information important for the furtherance or completion of consultations required by Federal laws.

(6) Repatriation.

(a) Cultural items, as defined by NAGPRA, may be repatriated or provided for reinterment to recognized Indian tribes or Native Hawaiian Organizations. Prior to repatriation, commanders must meet the procedural requirements established by NAGPRA and repatriation claims must satisfy the conditions of authenticity established by the Act. At the request of a recognized Indian tribe or Native Hawaiian Organizations, the Corps of Engineers may assist in the reinterment of NAGPRA cultural items.

(b) Undertakings by the Corps which may result in the discovery of cultural items are subject to the provisions of Section 3 of NAGPRA, including the potential for repatriation and reinterment of specific items. Specific guidance on repatriation and reinterment of human remains and associated funerary objects is provided in EP 1130-2-540 and 43 CFR Part 10, Final Rule implementing NAGPRA.

(7) State of Origin. Except as may be required by special management purposes, every effort shall be made to curate and manage archaeological collections within their state of origin.

b. Cultural Resources Management Plans. In accordance with provisions of the Archaeological Resources Protection Act (ARPA) of 1979, as amended, and the National Historic Preservation Act (NHPA) of 1966, as amended, district commanders shall ensure that a Cultural Resources Management Plan (CRMP), where appropriate, is developed for USACE projects. Specific guidance on the content and format of the plan is presented in EP 1130-2-540.

(1) Lands Held In Fee Title. Consistent with the CRMP or other management requirements, the District Commander shall implement a program, upon availability of funds, to accomplish an inventory of historic properties and site evaluation at each civil works water resource project under his/her jurisdiction and administration to comply with Section 110(a)(2) of the NHPA. Historic properties located on civil works water resource project fee owned lands shall be managed and maintained in a way that considers the preservation of their historic, archaeological, architectural and cultural values in compliance with Section 106 of the NHPA and

gives special consideration to the preservation of such values when historic properties have significance.

(2) **Lands Held In Less Than Fee Ownership.** On lands held in less than fee by the Federal government, but under Corps of Engineers jurisdiction, the District Commander shall give full consideration in planning for the preservation of historic properties that may be potentially affected by Corps activities. If Corps action will impact the property, the Corps shall be empowered to acquire necessary real estate interests to enable it to carry out the intent of Congress in mitigating adverse impacts to historic properties resulting from Corps activities.

c. **Surveys on Corps Leased Lands.** The responsibility for compliance with ER 405-1-12 rests with the Corps when real estate grants are proposed for lands that have not been examined for historic properties. However, the District Commander may allow or require the grantee to conduct necessary surveys at his own convenience and expense. Where the grantee assumes responsibility for conducting such investigations, the proposed plan of action and choice of investigator shall be approved by the District Commander.

d. **Historic Properties FDM.** When the construction of new, or major modification of existing, civil works projects will result in major impacts on significant historic properties, a Feature Design Memorandum (FDM) shall be required. This FDM shall be a major management tool guiding the proper treatment of historic properties throughout the Construction and initial Operational phases. FDMs shall be fully coordinated with Construction, Operations, Real Estate, and other Divisions to ensure compatibility among these elements. It is expected that a Historic Properties FDM may be required only in the event of one or more of the following:

(1) the project will require mitigation of an unusually large number, or a number of unusually complex, historic properties beyond that previously anticipated; or

(2) a significant Post-Authorization Change (PAC) in the project which dramatically alters the anticipated number or type of historic properties to be affected; or dramatically increases the estimated cost or scope of the anticipated historic properties mitigation plan; or increases mitigation costs above the one percent limitation such that specific Congressional authorization or waiver of the one percent limitation is required.

6-3. Cultural Resources Protection Policy.

a. **Site Location Disclosure.** In accordance with Section 9 of the ARPA (16 USC 470 hh) and Section 304 of the NHPA (16 USC 470 w-3), commanders shall restrict access to associated records that contain information relating to the nature, location, or character of a prehistoric or historic resource unless the commander determines that such disclosure would not create a risk of harm, theft, or destruction to the resource or to the area or place where the resource is located.

b. **ARPA Permits.** Requests by other agencies or persons to conduct historic or archaeological investigations of any type on Corps managed or controlled lands, sites, or properties, shall be in accordance with the requirements of guidance which implements the permit requirements of ARPA. Procedures for the development of permit requests as well as review and approval of permits for these investigations can be found in ER 405-1-12.

(1) Although not subject to the civil or criminal penalties of ARPA, the collection of

arrowheads or other artifacts from the surface of the land for private purposes without a permit shall be prohibited.

(2) ARPA permits are not required by Corps personnel acting in an official capacity, or by Corps contractors pursuant to contract requirements.

c. Enforcement.

(1) Violators of protected properties shall be prosecuted under 36 CFR Part 327, 14(a), which provides protection for historic properties and public property, or ARPA.

(2) Enforcement under 36 CFR Part 327, Title 36, Part 327.14(a), provides protection for historic properties and public property, although the maximum fine for the offense, if convicted, is \$5000.00 and/or six months imprisonment. Since the value of historic properties and associated costs resulting from unauthorized activities sometimes exceed the maximum fine under Title 36, the enforcement actions necessary to investigate, prepare cases, and apprehend violators may be more appropriately handled by others under provisions of the Archaeological Resources Protection Act.

(3) ARPA provides for criminal penalties up to \$100,000 and/or five years imprisonment, and allows for forfeiture to the Federal government of equipment and vehicles used in unauthorized activities. In addition, civil penalties may be assessed to recover Federal costs in repairing or restoring historic properties, accomplishing research, and preparing reports. For ARPA enforcement actions and investigations, commanders shall follow procedures outlined in ER 190-1-50 to obtain services of the Criminal Investigation Command (CID). Commanders may also seek counsel and assistance from the appropriate U.S. Attorney and obtain services of the appropriate U.S. Marshal for immediate attention to suspected or known felony acts.

d. Use of Metal Detectors on Water Resource Projects. The use of metal detectors shall be allowed on beaches, or other previously disturbed areas, that do not contain or would not reasonably be expected to contain archaeological, historical, or paleontological resources. Digging shall be limited to hand tools that can be used by one hand only. Hand tools shall be limited to four (4) inches wide and twelve (12) inches long. District commanders are authorized to restrict metal detector use in these areas, until completion of a cultural resources survey. If upon completion of the survey, archaeological, historical, or paleontological resources are found, district commanders are authorized to restrict the use of metal detectors in these areas.

e. Found Items. Nonidentifiable items, such as coins (of nominal value less than \$25) that are found, with or without the aid of a metal detector, do not need to be deposited with the Operations Project Manager or a Ranger. All identifiable items, such as rings, watches, etc., or items of greater than nominal value (i.e., \$25 or greater) shall be deposited with the Operations Project Manager or a Ranger for disposition in accordance with 36 CFR Part 327.15, 36 CFR Part 327.16, and subsequent revisions. All archaeological, historical, or paleontological items found shall be deposited with the Operations Project Manager or a Ranger.

f. In addition to the requirements of ARPA, the Federal land manager should refer to the Native American Graves Protection and Repatriation Act (PL 101-601) and its implementing regulations (43 CFR Part 10) for the disposition of the lawful removal of human remains and the items (funerary objects, objects of cultural patrimony, and sacred objects) as defined in the Act

and for the procedures to follow those cases where human remains are discovered.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "Otis Williams". The signature is written in a cursive, flowing style with a large initial "O".

OTIS WILLIAMS
Colonel, Corps of Engineers
Chief of Staff

1 APPENDIX
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