**U.S. DEPARTMENT OF VETERANS AFFAIRS**

**NATIONAL CEMETERIES**

**NATIONAL HISTORIC PRESERVATION ACT PROGRAM ALTERNATIVE WHITE PAPER**

**February 2024**

The U.S. Department of Veterans Affairs (VA) requests a Program Alternative from the ACHP to set a national standard for the assessment of adverse effects to National Cemeteries. A Program Alternative would alleviate the inconsistent interpretation and application of a policy that leads to onerous Section 106 consultations. Section 106 complications for projects in National Cemeteries are a direct result of a policy issued by the Keeper of the National Register of Historic Places (NRHP) in 2011, which introduces incongruities in the application of the Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOI Standards) and the assessment of effects under Section 106.

**National Cemetery Administration Background:**

The mission of VA’s National Cemetery Administration (NCA) is to honor Veterans and their family members with final resting places and lasting tributes that commemorate their service and sacrifice to our nation. NCA is responsible for maintaining existing National Cemeteries, expanding existing National Cemeteries, and establishing new National Cemeteries to accommodate future interment needs.

**Scope:**

Currently, the federal government is responsible for 171 National Cemeteries with stewardship spread between NCA (155; 109 of which are open for interments), the National Park Service (14), and the Army (2, including Arlington). NCA manages about 800 buildings and structures and 23,000 acres of land across its 155 National Cemeteries. Nearly 5.3 million people — including 4 million Veterans from the Revolutionary War to the wars in Iraq and Afghanistan — are buried in a VA National Cemetery. Since 1973, annual interments in VA National Cemeteries have increased by more than 412%, and this upward trend is expected to continue.

**Keeper of the NRHP 2011 Policy:**

In 2011, the Keeper issued a clarification of policy (2011 Policy) concerning the eligibility of National Cemeteries to the NRHP. The 2011 Policy was issued to clarify statements made in the 1990 publication of National Register Bulletin 15, which stated that National Cemeteries “are eligible because they have been designated by Congress as primary memorials to the military history of the United States.” The 2011 Policy clarified the delineation of boundaries for National Cemeteries when the property includes developed and undeveloped acreage; the methodology to count cemetery features, such as headstones, in NRHP nominations; and extended the Period of Significance to the “present” for all National Cemeteries. The 2011 Policy also states that all National Cemeteries, regardless of age, are eligible for the NRHP, and that all resources within these cemeteries – regardless of age or function – contribute to the significance of these historic properties. Though VA has found this guidance useful in developing NRHP multiple property contexts and individual nominations for National Cemeteries, the agency has encountered challenges with its interpretation during Section 106 reviews.

**Section 106 Challenges:**

NCA undertakings primarily consist of: (1) acquisition and development of acreage for new National Cemeteries, (2) acquisition and development of land for expansion of existing National Cemeteries, (3) maintenance, removal, or replacement of infrastructure (e.g., lodges, administrative buildings, public information centers, committal shelters, garages, warehouses, maintenance sheds, fences, etc.), (4) maintenance, removal, or replacement of walls, monuments, memorials, and grave markers, and (5) recovery actions following disasters.

VA works to uniformly apply the guidance of the 2011 Policy nationwide. However, VA has noted variances in the ways that State Historic Preservation Officers (SHPOs) and other consulting parties interpret the 2011 Policy. The inconsistent interpretation complicates NCA consultation efforts, which results in project delays. NCA is not able to consistently assess effects across these historic properties despite similarities in the undertakings and contributing resources, due to differences in interpretation of the 2011 Policy.

Such assessments are complicated by how the 2011 Policy interacts with application of the SOI Standards. As the existing form and appearance of a National Cemetery changes each time a Veteran is interred, it is primarily the use of the National Cemetery, rather than its physical characteristics that convey significance. The 2011 Policy recognizes that National Cemeteries are “properties considered ever-changing” and anticipates that “most cemeteries will represent multiple layers of expansion with new sections being acquired and developed for use periodically as available grave sites are depleted.” However, acknowledgement of this reality in the 2011 Policy does not translate into clear direction on how to assess the effects of use and development for the purposes of Section 106.

Below are examples from real Section 106 consultations to illustrate challenges posed by the 2011 Policy.

1. A columbarium wall is proposed for construction in an existing National Cemetery eligible for the NRHP solely under Criterion A. VA finds the addition of burial space strengthens the significance and integrity of the National Cemetery and makes a finding of no adverse effect. Consulting parties disagree on the basis that installation of new burial infrastructure introduces a change to the landscape, a contributing resource. Due to the 2011 Policy, once the columbarium wall is built, the columbarium wall immediately becomes a contributing resource. Consequently, should VA propose to remove it, consulting parties can argue that its removal is also an adverse effect. When a resource can simultaneously both diminish and increase the integrity of the historic property’s significant features, it complicates consultation.
2. A modern hardware-store-bought gazebo/smoking shelter is placed outside an administrative building for staff breaks. After a few years, it is proposed for relocation to a different administrative building. Because it is an impermanent and contemporary addition, a finding of no adverse effect is made for its relocation. As all resources are contributing, consulting parties disagree and conclude that the shelter’s removal from one building and its relocation to another building results in two separate adverse effects.
3. A maintenance building and several committal shelters built in the last decade are proposed for demolition and replacement. VA makes a finding of no adverse effect because the function they serve for the National Cemetery will continue in the form of their replacements and they are architecturally insignificant. However, due to physical destruction of a contributing resource to a historic property, consulting parties disagree and conclude their demolition is an adverse effect.

**Multi-Agency Challenges with Application of 2011 Policy:**

These challenges are not unique to VA. VA has discussed Section 106 compliance for National Cemeteries with representatives of the Army and the National Park Service – the two other federal agencies with National Cemeteries – and confirmed that there is inconsistent interpretation of the 2011 Policy.

**Proactively Solving Challenges with a Program Alternative:**

VA requests guidance from the ACHP concerning application of the 2011 Policy when assessing adverse effects to historic properties in accordance with 36 CFR § 800.5 and proposes that this guidance be utilized to develop a nationwide Program Alternative that will inform individual consultation efforts for all National Cemeteries. VA requests a Program Alternative that would clarify application of the SOI Standards specifically to National Cemeteries in order to assist with the development and efficient utilization of National Cemeteries, provide clarity to SHPOs and consulting parties on the 2011 Policy, and assist VA with developing appropriate emergency procedures when responding to disasters.

**Questions for Future Discussion:**

1. All National Cemeteries are eligible under Criterion A. Some are also eligible under Criterion C.[[1]](#footnote-1) For cemeteries only eligible under Criterion A, can changes to the physicality of the cemetery that serve the mission of NCA (e.g., installation of columbaria to increase capacity), and thus result in increased significance, be universally clarified as not adverse? Is the construction of vital cemetery features, such as columbaria and memorials, ever an adverse effect? Would such construction adversely affect the viewsheds of the National Cemetery? Is this dependent on a cemetery’s eligibility under Criterion C?
2. Is the expansion of a National Cemetery beyond its original boundaries an adverse effect regardless of the presence/absence of other properties listed in or eligible for listing in the NRHP within the APE?
3. Is the demolition of any building, structure, or object no longer needed for cemetery purposes within the grounds of a National Cemetery always an adverse effect? If not, is the determining factor the function of the resource (i.e., columbarium as opposed to gasoline storage shed), the date of construction of the resource (i.e., 1867 as opposed to 2021), or some other characteristic? Is this dependent on a National Cemetery’s eligibility under Criterion C?
4. Would all actions in accordance with NCA’s National Shrine Commitment Operational Standards and Measures Guidebook (Shrine Standards), developed pursuant to Public Law 106-117 (Section 613), be interpreted as beneficial to the integrity of the National Cemetery as a historic property? If not, what actions would adversely affect integrity and why? Would actions in accordance with the Shrine Standards inherently comply with the SOI Standards and therefore not constitute an adverse effect?
5. If the period of significance for National Cemeteries concludes at the present, how could introduction or removal of a resource cause diminished integrity (assuming appropriate care and maintenance)?
6. As all National Cemeteries are eligible as memorials to military service, are honor, reverence, and continued use by the military community the true character-defining features of National Cemeteries, in which case, should National Cemeteries be treated as Traditional Cultural Properties/Places (TCPs)?

**Next Steps:**

VA requests the opportunity to discuss the 2011 Policy and development of a Program Alternative for National Cemeteries with ACHP. We are available at your convenience to schedule a meeting.

1. In accordance with National Register Bulletin 15 and the 2011 Policy, VA has determined all National Cemeteries eligible under Criterion A (Criterion 1 for National Historic Landmarks). Approximately half of those listed in the NRHP are listed under additional criteria such as Criterion C: *Architecture/Landscape Architecture*. Many National Cemeteries are component pieces of historic districts, adding further complexity to evaluation of their eligibility. [↑](#footnote-ref-1)