

Department of the Treasury  
Executive Office for Asset Forfeiture

Directive Number: 25  
(Revised September 24, 1998)

DATE: November 10, 1994

SUBJECT: **Departmental Policy Regarding the Seizure and Forfeiture  
Of Real Property that is included in or eligible for the  
National Register of Historic Places**

BACKGROUND

In 1966, Congress passed the National Historic Preservation Act (NHPA).<sup>1</sup> The purpose of NHPA is to preserve irreplaceable parts of the American heritage to allow future generations of Americans to benefit from the cultural, educational, and aesthetic qualities of these historic places.

NHPA applies to federal buildings and land managed by federal agencies. It also applies to all other historic properties which may be seized and subject to forfeiture. Treasury law enforcement agencies seizing and forfeiting these properties must protect national interests by ensuring that these properties are managed in such a way that prevents a loss of their historic integrity.

Under Section 106 of NHPA, every federal agency must take into account the effect its undertakings could have on any district, site, building, structure, or object that is included in, or eligible for the National Register of Historic Places (National Register).<sup>2</sup> [See Attachment "A"]

It is the policy of the Department of the Treasury that real property which is seized and subject to forfeiture by the United States, and is historic property within NHPA, will undergo a review process by the Advisory Council on Historic Preservation (Advisory Counsel).<sup>3</sup> [See Attachment "A"] Further, real properties, subject to forfeiture, shall be properly preserved if it is listed in the National Register or if it is determined eligible to be included therein.

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<sup>1</sup>Section 470, Title 16, United States Code.

<sup>2</sup>16 U.S.C. 470f; See Executive Order No. 11593 of May 13, 1971, 36 F.R. 8921; United States v. 25,149.48 Acres of Land, 455 F. Supp. 192 (E.D. N.C. 1978).

<sup>3</sup>Cf. 36 C.F.R. 800, Protection of Historic and Cultural Properties.

The following criteria are indications of historical or cultural properties that may fall under 36 C.F.R. 800:

1. The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and
2. that are associated with events that have made a significant contribution to the broad patterns of our history; or
3. that are associated with the lives of persons significant in our past; or
4. that embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
5. that have yielded, or may be likely to yield, information important in prehistory or history.

Under the terms of NHPA, the State Historic Preservation Officer (SHPO) has a responsibility to assist in the identification of historic properties by administering state preservation efforts, maintaining a state review board, and ensuring adequate public participation in the state program. To facilitate the requirements under NHPA, we have included, as Attachment "B", a national listing of State Historical Preservation Offices.

#### PROCEDURES

- A. Treasury law enforcement agencies shall consider the requirements of NHPA in their pre-seizure analysis whenever it appears that a real property may be subject to the conditions of the act. If it appears that a real property is subject to the conditions of the act, the Treasury law enforcement agency may verify the property's significance by consulting with the SHPO and ascertaining whether or not the property is listed in the National Register or has been nominated to the National Register. The placement of the property, targeted for seizure and forfeiture, on the National Register should be one aspect of the overall consideration in seizing a real property for forfeiture during pre-seizure analysis.

If there is reason to believe that the integrity of the investigation will be compromised by ascertaining the information, as outlined in the paragraph above, the required action may be delayed until after the seizure has occurred.

- B. It is the policy of the Department of Justice<sup>4</sup> that after seizure of a real property that is believed to be of historical value, the U.S. Marshal in the district where the property was seized will consult with the SHPO to decide whether the property is historic or is eligible to be considered historic. Except for seizures by the U.S. Customs Service, the U.S. Marshal shall determine if the seized property is of historic value. The U.S. Customs Service shall perform this task for seizures resulting from U.S. Customs Service investigations. If the property *is not* found to be historically important, the SHPO need only be furnished documentation of this finding.
- C. If the property is determined to be historic, then the policy will be to assess the effects that the seizure will have in accordance with 36 C.F.R. 800.5, *Assessing effects*.

In order to provide you with the requirements of this section, we have provided a copy of Part 800, 36 CFR for your reference as Attachment "C".

- D. If, by following the guidelines, it is decided that there are no potential effects, then no changes in the normal procedures for disposing of property will be made and only the SHPO, and other parties of interest, need be notified.
- E. If, however, there is an effect, but it *is not* considered adverse, the U.S. Marshal<sup>5</sup> or the U.S. Customs Service officer, in concurrence with the SHPO, will provide documentation to the Advisory Council explaining the reasoning why the effect will not violate the NHPA.

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<sup>4</sup>To Be Included

<sup>5</sup>bid

- F. If the effect *is found* to be adverse, the policy will be to first notify the Advisory Council and then consult with the SHPO on ways to reduce and avoid the adverse effects on the historic property. Methods to reduce adverse effects in dealing with the disposal of the historic property include, but are not limited to, the following:
1. Use preservation covenants or restrictions in the deed of the property in order to govern what can be done with the property. If it is not possible to sell the property after a reasonable amount of time with these covenants included, then they may be removed. For purposes of this policy, a reasonable amount of time will be considered to be no longer than one year.
  2. Market the property to be sold as a historic property. This will attract a potential buyer who is interested in preserving the property and will reduce the possibility of adverse effects on the property.
  3. Follow suggestions made by the Advisory Council on ways to maintain the property's historic integrity.
- G. Finally, after an appropriate method is determined to reduce the potential effect, the Treasury law enforcement agency will submit a Memorandum of Agreement outlining these methods to the Advisory Council. Prior to the disposition of the property, the agency shall consider the Advisory Council's recommendations when making a final policy decision and also obtain the concurrence of the United States Attorney and the agency's Office of Chief Counsel.
- H. Treasury law enforcement agencies shall carefully detail any covenants, restrictions, or conditions of sale or transfer of properties subject to NHPA when preparing disposition instructions. Copies of any related documents should be provided the national seized property contractor at the time of the issuance of the disposition instructions.