

## **NASA Interim Directive for National Historic Preservation Act Leases**

**Responsible Offices: Office of the Chief Financial Officer and Office of Strategic Infrastructure**

### **Preface**

#### **(1) PURPOSE**

The purpose of this document is to set forth the procedural guidance for executing leases under the authority of the National Historic Preservation Act (NHPA).

#### **(2) APPLICABILITY**

- a. This NID applies to NASA Headquarters (HQ) and NASA Centers, including Component Facilities and Technical and Service Support Centers and to the NASA Management Office/Jet Propulsion Laboratory (JPL) only to the extent specified or referenced in the appropriate contracts (referenced below as the "Center").
- b. In this NID, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.
- c. In this NID, all document citations are assumed to be the latest version unless otherwise noted.

#### **(3) AUTHORITY**

- a. The National Aeronautics and Space Act, 51 U.S.C. § 20113(a).
- b. National Historic Preservation Act, Public Law 102-575, 54 U.S.C. § 306121 and § 306122.
- c. Protection of Historic Properties, 36 C.F.R. Part 800.
- d. NPD 8800.14, Policy for Real Estate Management Program.

#### **(4) APPLICABLE DOCUMENTS AND FORMS**

- a. Federal Real Property Asset Management, Executive Order 13327, 69 Federal Register 5897 (February 6, 2004).
- b. NPR 8831.2, Facilities Maintenance and Operations Management.

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- c. NASA Form (NF) 1509, Facility Project - Brief Project Document.
- d. Standard Form (SF) 132, Apportionment and Reapportionment Schedule.
- e. SF 133, Report on Budget Execution and Budgetary Resources.
- f. NASA Business Case Guide for Real Property and Facilities Project Investments.
- g. Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards (SFFAS) 29 Heritage Assets and Stewardship Land.
- h. Advisory Council on Historic Preservation legal opinion, January 28, 2014.

## **(5) APPLICABLE DOCUMENTS AND FORMS**

This NASA Interim Directive for National Historic Preservation Act Leases supplements NPR 8800.15, Real Estate Management Program, and does not cancel any existing policy document. The text will be integrated as a new section in NPR 8800.15 when that policy document is next revised.

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# Chapter 1: Stewardship of Real Property

## 1.1 OVERVIEW

Federal law and policy require NASA to manage its physical assets, and Federal land use policy and the Space Act allow NASA to establish partnerships with public or private entities.

The National Historic Preservation Act (NHPA) authorizes Federal agencies to lease their historic property to others and retain the resulting proceeds for the preservation of the agency's historic properties.

### 1.1.1 Guiding Principles of NASA Historic Real Property Management

Guidance on out-granting of NASA real property, including historic property, can be found in NPR 8800.15. Historic property covered in this directive includes individually eligible or registered historic properties (to include districts), and properties contributing to historic districts.

1.1.1.1 The NHPA, 54 U.S.C. § 306121 (a) states that Federal agencies have the ability to enter into lease agreements as follows:

*“Notwithstanding any other provision of law, each Federal agency, after consultation with the Council—*

- (1) shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes; and*
- (2) may lease historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.”*

1.1.1.2 Historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places (NRHP) may be leased or exchanged under the NHPA authority.

### 1.1.2 Roles and Responsibilities of NASA Real Property Managers

1.1.2.1 NASA Mission Support Directorate, Office of Strategic Infrastructure (OSI)

a. The Assistant Administrator for OSI shall serve as NASA's Senior Real Property Officer in accordance with Executive Order 13327.

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b. The Director, Facilities and Real Estate Division (FRED), serves as the principal point of contact for real property activities and provides NASA-wide policies for real property management. The Director of FRED shall approve NHPA leases and may delegate signature authority.

1.1.2.2 The Federal Preservation Officer (FPO) shall:

a. Serve as the principal point of contact for the Center Historic Preservation Officers (HPOs), including the HPO for the Jet Propulsion Lab (JPL).

b. In coordination with the HPOs, identify a consultation strategy in accordance with NHPA lease requirements early in the process.

c. Consult with the Advisory Council on Historic Preservation (ACHP) regarding NHPA leases unless otherwise delegated to the HPO.

1.1.2.3 The Office of the Chief Financial Officer (OCFO), Budget Division Director, shall:

a. Establish and maintain NASA Structure Management (NSM) Hierarchy in the Meta Data Manager (MdM) system, which allows program activity to be easily identifiable within NASA's core financial system—Systems, Applications, and Products (SAP)—and allows spending to be controlled at the Agency level through the use of separate and unique project codes. The use of separate and unique project codes will serve as a control to allow spending decisions related to NHPA lease net proceeds to require concurrence from the OCFO since this office will need to move funds between collection and expenditure project codes.

b. Prepare the SF 132 estimate request to the Office of Management and Budget (OMB).

c. Update the Agency Operating Plan and Agency Execution Plan based on the approved SF 132 apportionment amounts for each fund.

1.1.2.4 The OCFO, Financial Management Division, Fund Control and Distribution Branch Chief, shall:

a. As approved requests are received, assign FRED approval authority over spending NHPA lease proceeds at the Centers. This Branch distributes to the theme and Mission Support Directorate (MSD), Resources Performance Management distributes to the Center level.

1.1.2.5 The OCFO, Financial Management Division, External Reporting Branch Chief, shall:

a. Coordinate CFO Act of 1990 external reporting requirements, such as Government-wide Treasury Account Symbol Adjusted Trial Balance System (GTAS) submissions.

1.1.2.6 The OCFO, Financial Management Division, Property Branch Chief, shall:

a. Ensure that capital assets and multi-use heritage assets are recorded and are appropriately depreciated and that multi-use heritage assets are appropriately disclosed in accordance with NASA financial management policy and the Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards (SFFAS) 29-Heritage Assets and Stewardship Land.

1.1.2.7 The OCFO, Policy Division, shall:

a. Provide and maintain an Agency-wide NHPA financial policy in order that NHPA activities be treated consistently.

1.1.2.8 Center Directors and the Director, NASA Management Office/JPL shall:

a. Preserve the integrity of historic real property.

b. Be fully aware of all real property agreements, specifically in-grants and out-grants.

c. Develop a business case to support their concept for out-lease of NASA historic real property under NHPA. The business case is an analysis that provides estimates of cost and benefits with stated requirements and expectations for projected outcomes.

d. Adhere to all other requirements in NPR 8800.15 regarding real property agreements.

1.1.2.9 Historic Preservation Officers (HPOs) shall:

a. Ensure that NHPA leases comply with the NHPA requirements.

b. Consult with the relevant State Historic Preservation Officer (SHPO) and the FPO.

c. Work with the lessees in ongoing management of the leased property.

1.1.2.10 Real Property Accountable Officers (RPAOs) shall:

a. Develop strategies for real property management and oversee the development, review, and approval of all in-grant and out-grant agreements, including partnerships or leases of historic properties.

b. Advise and assist other Center personnel regarding real property accountability matters concerning historic properties.

c. Develop Center-specific real property guidance and procedures, as required to ensure compliance with applicable laws, regulations, and NASA policies, and to ensure that all property transaction documents affecting real property records are processed in accordance with NASA policies.

d. Maintain contact and coordination with the following offices and managers for review and approval of historic real property transactions and supporting documents:

(1) NASA HQ, FRED.

(2) The Center Environmental Office.

(3) Center Safety and Mission Assurance Office.

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- (4) Center Security Office.
- (5) The Historic Preservation Officer (HPO).
- (6) Other Government agency representatives, as required.
- (7) The Center Deputy Chief Financial Officer, Finance (DCFO (F)).
- (8) The Center Office of Chief Counsel.
- e. Perform reconciliations of real property records with the Center DCFO (F).

1.1.2.11 Center DCFO (F) shall:

- a. Maintain control of real property-related financial data in accordance with NASA financial management requirements.
- b. Reconcile capitalized real property assets with financial accounting records on a monthly basis in coordination with the Center RPAO.
- c. Ensure leases, associated costs, and revenues (as well as any liabilities from advance payments) are recorded accurately in accordance with all promulgated accounting standards and the U.S. Treasury Financial Management guidelines in the NASA accounting system.

## Chapter 2. NHPA Leases

### 2.1 PLANNING/BUSINESS CASE

2.1.1 In determining whether to lease NASA historic property, the Center shall develop a business case in accordance with the NASA Business Case Guide for Real Property and Facilities Project Investments. The business case should demonstrate how the lease is the best economic value to the Government and supports the preservation of historic properties.

2.1.1.1 The business case should compare the NHPA lease to other options, including the status quo option.

2.1.1.2 The business case shall show that the HPO has commenced development of a consultation strategy with the FPO.

2.1.2 Because NHPA leases require consultation with the ACHP, the Business Case shall be forwarded to OSI at least 90 days in advance of the lease to allow time for the ACHP consultation process. This also allows FRED and the FPO time to approve the business case in advance of routing the lease in the electronic router (e-router).

2.1.2.1 Each business case should be:

- a. Accurate and represent the best estimates of cost and future benefits for each analyzed alternative.
- b. Clearly stated. The business case should be easily understood by all stakeholders.
- c. Unbiased. All meaningful alternatives should be considered, presented and analyzed in a consistent manner.

### 2.2 COMPLIANCE

2.2.1 NHPA leases shall comply with the following conditions:

- a. The lease interest to be granted is not required for a NASA program.
- b. The lease will not have a negative impact to NASA's mission. The Center Director or designee will ensure that Center stakeholders who are affected by an agreement have the opportunity to review and modify business cases and draft agreements to prevent any negative impact on their core mission.
- c. The lease will include ongoing maintenance and repair of historic properties (as detailed in NPR 8831.2) and conditions required for compliance with the NHPA.
- d. The grantee's exercise of rights granted will not interfere with NASA operations.
- e. Fair value consideration is received by NASA on behalf of the U.S. Government.

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- f. The lease will be reviewed and approved by FRED, including any option(s) to extend or renew, prior to execution of the lease.
- g. The lease will contain termination provisions to avoid costs to NASA.

## **2.3 DEVELOPMENT OF NHPA LEASES**

2.3.1 NASA Centers are responsible for developing NHPA leases that are compatible with NASA missions. Each lease will be unique in its aspects; however, the lease should support and not harm or compromise the NASA mission.

2.3.2 NASA Centers are to ensure fairness in competition between all potential entities who may be interested in leasing historic properties under NASA's control. To encourage competition, the opportunity to lease the historic property shall be broadly advertised through a notice of availability published in widely recognized distribution channels.

2.3.3 Centers should only submit NHPA leases for review and approval to HQ that have been reviewed and concurred on by the center's environmental office, HPO, safety office, security office, Office of the Chief Financial Officer, Chief Counsel's Office, and the facilities office (including the master planner and the RPAO).

2.3.4 Consultation with the relevant SHPO may be required and should commence prior to submitting a lease to HQ for approval, since certain lease conditions may be requested by the SHPO (e.g., if the SHPO requires mitigation for any potential adverse effects).

2.3.5 All lease approval requests sent to HQ should include a(n):

- a. Draft of the unsigned lease as agreed in principle by all parties, including SHPO input.
- b. Summary of lease to include a description of the property, the term of the lease, and name of Partner.
- c. Approved business case for the lease or a site development that includes the lease.

## **2.4 APPROVAL PROCESS FOR NHPA LEASES**

2.4.1 The approval process for NHPA leases is as follows:

- a. Center should first submit the business case for review and approval to FRED.
- b. NASA FPO consults with the ACHP on intent to enter into an NHPA lease.
- c. Center consults with the SHPO and other interested parties (and ACHP, if appropriate) on lease action in accordance with NHPA.
- d. Center shall develop draft lease. This is done in coordination with the HPO and other

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internal stakeholders (e.g., Chief Counsel's Office).

- e. Center shall submit the draft of the NHPA lease for review and approval to FRED.
- f. Center shall submit the final draft of the NHPA lease via PAM in accordance with the routing instructions provided by FRED. HQ Reviewers will include Chief of Safety and Mission Assurance, Chief of Security, Environmental Management Division, Office of the General Counsel (OGC), and OCFO.

2.4.2 Center shall submit a revised lease for approval in the event there are any material changes after the final draft has been approved but prior to being signed by all parties or any material change to an existing lease.

## **2.5 LEASE EXECUTION**

2.5.1 After receiving HQ approval, the Center may enter into the lease agreement. Unless otherwise stipulated by the Associate Administrator of OSI or Director of FRED, the Center Director is authorized to sign the lease.

## **2.6 LEASE PROCEEDS**

2.6.1 The NHPA, Section 111(b) (now 54 U.S.C. §306121(b)), addresses the use of lease proceeds for historic properties as follows:

*Notwithstanding any other provision of law, the proceeds of a lease under subsection (a) may be retained by the agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other property that is on the National Register that is owned by, or are under the jurisdiction or control of, the agency. Any surplus proceeds from such leases shall be deposited in the Treasury at the end of the 2d fiscal year following the fiscal year in which the proceeds were received.*

2.6.2 NHPA lease proceeds may be used as follows:

- a. NHPA lease proceeds can be used to defray direct costs—such as administrative costs, maintenance and repair costs, code upgrades, and other directly-related lease expenses incurred by the Agency—for the properties identified in Section 2.6.2.b, below.
- b. NHPA lease proceeds can be used on the following types of historic properties at the Center generating the revenue:
  - i. The NHPA lease asset.
  - ii. Properties that are contributing to the historic district in which the leased property is located. Contributing properties are those properties identified through historic property surveys that have been concurred with by the SHPO as contributing to a historic district. Lease proceeds may not be spent on noncontributing properties or elements within the boundaries of a

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historic district.

iii. Any NASA NRHP-listed properties.

c. All actions undertaken in accordance with Section 2.6.2(a) are subject to the requirements of Section 106 of the NHPA (now 54 U.S.C. §306108).

2.6.3 Requests for lease proceeds for repair and maintenance of NRHP-listed properties.

a. Each Center generating NHPA revenue shall submit an NHPA Lease Proceeds Usage Plan (LPUP) to FRED that identifies how the Center plans to use the NHPA proceeds annually.

b. Non-revenue-generating Centers may submit a proposal to FRED for repair of related projects for NRHP-listed properties at their Center that would benefit from use of NHPA proceeds. Projects submitted by non-revenue-generating Centers shall be projects that can be obligated within a three (3)-month timeframe and be for properties meeting Section 2.6.2 above.

c. HQ reserves the authority to reprioritize revenue for urgent repair projects of NRHP-listed properties in order to meet mission or Agency needs.

2.6.4 Use of NASA Form (NF) 1509 for Project review and approval:

a. Center projects shall be submitted through PAM or NASA's Construction of Facilities project approval database as appropriate for review by FRED and the FPO, and shall include an NF 1509 to ensure projects meet the intent of the policy and law.

b. Centers may include ten percent (10%) of the project cost estimate for contingency that may remain unobligated until within six (6) months of their expiration date, at which time FRED will work with the Center to either obligate the funds or reallocate them to another Center.

c. Centers are expected to maintain a list of projects, award dates, costs, and contingencies and keep FRED updated on project progress to assist with tracking of funds obligations and disbursement.

d. Rejected projects may be appealed to FRED but may require consultation with ACHP. This process may take time to resolve.

e. Projects may not proceed without concurrence from FRED.

2.6.5 Financial management of NHPA lease proceeds:

i. Net Proceeds shall be obligated by the Center generating the revenue by March 31<sup>st</sup> of the second fiscal year following the fiscal year in which the proceeds are earned (i.e., their third fiscal year—the fiscal year at the end of which the proceeds must be deposited in the Treasury). Centers requiring more time to obligate the proceeds may request an extension from the Director of FRED. Generally, proceeds that are not obligated by March 31<sup>st</sup> of their third fiscal year are subject to reallocation to projects at other Centers, and should be returned to FRED for reapportionment to other priority NRHP-listed historic preservation projects.

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- ii. Any funds received in connection with the lease under non-NHPA authorities (e.g., demand services or other services offered or provided to the lessee as part of the lease agreement) shall be segregated from lease base rent proceeds and shall be deposited into a separate reimbursable account (i.e., a separate funded program or other appropriate account for the relevant authority).
- iii. Surplus proceeds from NHPA leases shall be deposited into the Treasury at the end of the second fiscal year following the fiscal year in which the proceeds are earned and not obligated.

## **2.7 ACCOUNTING AND FINANCIAL RECORDS**

2.7.1 Accounting for NHPA leases shall follow internal NASA accounting classification conventions supporting the identification of all accounting transactions related to each active NHPA lease (e.g., Work Breakdown Structure (WBS) codes) in accordance with NASA policy for numbering programs and projects.

2.7.2 Complete financial records of all NHPA leases shall be maintained utilizing the unique WBS identity assigned to each lease. Such financial records shall include, but not be limited to, estimated costs, waived costs and the reason for the waiver, excluded indirect costs, actual costs, estimated customer reimbursements, actual customer reimbursements, lease proceeds and Net Proceeds. These records shall be made available to OCFO and FRED upon request.

2.7.3 Direct Lease Costs. The Center generating NHPA lease proceeds has authority to use said proceeds up to the full cost recovery of allowable expenses directly related to the specific lease, such as lease administration, maintenance, and repair of leased assets.

2.7.4 Lease "Net Proceeds" are defined as the remaining amount of base rent lease revenue that is over and above the cost recovery of allowable direct expenses related to a specific lease. Pursuant to Section 2.6.5, supra., net Proceeds shall be obligated by the Center generating the revenue by March 31<sup>st</sup> of their fiscal third year (the year in which the funds are to be returned to the Treasury). Centers requiring more time for obligation of Net Proceeds may request an extension to the Director of FRED. Generally, Net Proceeds that are not obligated by the above timeframe are subject to reallocation to projects at other Centers. Usage of NHPA Net Proceeds shall be coordinated with HQ OCFO and require approval from FRED in coordination with project review and approval, Section III, supra.

### **2.7.5 Revenue Recognition and Earnings for Lease Proceeds**

- a) Revenue derived from a NHPA lease shall be recognized and recorded in the Agency accounting system in the period that reasonably corresponds to the period of occupancy of the property by the lessee resulting in an amount owed to NASA.
- b) All consideration received by NASA in connection with the NHPA lease shall be

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applied to lease amounts due. Generally, NHPA lease revenue will be recognized when lease payments become due in accordance with provisions of the lease agreement and associated with the respective lease in the accounting system.

c) Security and other NHPA lease deposits shall be recognized in accordance with provisions of the lease agreement. Such deposits will not be available to the lessee until such time that the terms and conditions of the lease related to the deposit have been fulfilled.

d) NHPA lease funds cannot be obligated or expensed until the NHPA proceeds have been earned. For NHPA lease proceeds to be earned, there must be the passage of time and the lessee must have used the leased property according to the lease terms. Thus, NHPA lease revenue shall be earned in proportion to the lessee executing its rights to the use of the property over time.

2.7.6 Unobligated Proceeds: Any funds that remain unobligated as of March 31 of their third year will be returned to FRED for reapportionment for other priority NRHP-listed historic preservation projects.

## **2.8 QUARTERLY REPORTING REQUIREMENTS**

2.8.1 Each quarter, Centers shall report the following information to OCFO for each active NHPA lease by WBS for the current quarter and cumulative to-date totals:

- a. Base (cash) rent received.
- b. Additional payments received, i.e., demand services, utility payments, etc.
- c. Value of in-kind consideration received in the preceding calendar year.
- d. Expenditures incurred to cover the full costs to NASA in connection with the NHPA lease.
- e. Calculation of NHPA lease Net Proceeds earned to date.
- f. Service pool payments received and the methodology used for calculation of the allocated expenses.
- g. Service pool costs paid.
- h. Expenditures from NHPA lease rent incurred to defray the costs of administration, maintenance, and repair as defined in Section 2.6.1, herein..
- i. Expenditures from NHPA lease net proceeds incurred on projects, including the name and identifying number of the project, a description of the project, the current period expenditures on the project, and the cumulative expenditures to date on the project.
- j. Copy of the general ledger accounts that support all allowable expenses incurred with regard to the NHPA lease to date for expenses for which the Center is seeking funds for the quarter.

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## **2.9 ANNUAL REPORTING REQUIREMENTS**

2.9.1 The OCFO shall issue a data call for annual reporting requirements by November 15 for the preceding fiscal year. The data call shall include a request for NHPA Lease Revenues and Expenses forecast that will provide necessary data for an apportionment request as part of the annual budget process. Realistic forecasting of anticipated revenues and expenditures is critical in submitting the Agency's Operating Plan to OMB and program oversight.

2.9.2 The data call shall also include a request for NHPA Lease Annual Revenue and Expense (actuals) that will provide accountability for the NHPA lease program. This data call will require accurate information on each lease and the overall NHPA lease program at the Center.

2.9.2.1 Reporting will include a detailed description of:

- a. Revenues received in the preceding fiscal year, separately detailing rent revenues subject to NHPA and other revenues (e.g., for demand services also part of the lease agreement).
- b. Benefit collections in the preceding fiscal year.
- c. Expenditures to cover the Direct Lease Costs.
- d. Expenditures of Net Proceeds (from the capital asset account).
- e. Expenditures for demand services.