



SOCIETY FOR AMERICAN ARCHAEOLOGY

August 23, 2025

Dr. David Guldenzopf
Office of the Assistant Secretary of the Army
for Installations, Energy and Environment
ATTN: DASA-ESOH
110 Army Pentagon, Room 3E464
Washington, DC 20310

RE: Army Program Comment Plan

Dear Dr. Guldenzopf,

The Society for American Archaeology (SAA) is pleased to present the following comments on the Army's "Plan for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes" (APCP), which "initiates the Army's public participation requirements for the Army's proposed Program Comment (PC) for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes." While we understand the Army's need to promulgate a new PC under the National Historic Preservation Act (NHPA), the SAA has some concerns with the proposal as presented.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With nearly 7,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

As noted in the justifications section of the APCP, "the Army is requesting a program comment from the Advisory Council on Historic Preservation (ACHP) to urgently streamline its compliance with Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR Part 800." The APCP seeks to create a new PC for approximately 132,000 warfighting and readiness installations that is based on the success of its PCs for historic housing and that avoids a project-by-project approach for Section 106 compliance.

The NHPA was enacted to create a collaborative process among states, tribes, local governments, and the federal government to preserve historic properties impacted by federal and federally sponsored undertakings. The law ensures that stakeholders' voices are heard, because it is through their involvement that American heritage that might be impacted by such undertakings are identified. The SAA appreciates that the very nature of the Army's history and the imperatives of its mission constitute a unique challenge when it comes to compliance with the NHPA. We congratulate the Army on the extensive work that it has done over the years to preserve and protect its historic properties, including archaeological sites and artifacts. We also agree that if greater efficiencies in NHPA compliance can be realized through the creation of a new PC, then those possibilities should be explored. Nevertheless, any such PC must reflect the priorities of the statute on which it is based, and there are certain provisions in the APCP that do not adhere to the letter of the NHPA.

The following are our specific concerns and questions:

2.1. Overview states that "SHPO-reviewed Integrated Cultural Resource Management Plans (ICRMPs) are maintained at 124 installations," then goes on to say that "the current Section 106 compliance process on Army installations is inefficient, inconsistent, and at times detrimental to mission readiness," yet provides no concrete or specific examples of why this is the case. In fact, the APCP goes on to describe the current regulatory environment as "creating a labyrinthine regulatory environment where similar historic properties are treated disparately based on the subjective interpretations of various State Historic Preservation Officers (SHPOs), installations, and other stakeholders." That is precisely the point. The NHPA was not designed to produce uniform outcomes. It is a process-driven statute written to ensure that the values of states, tribes, localities, and impacted communities are taken into account when federal undertakings are planned.

4.1. Intent states that "in accordance with 36 CFR 800.14(e), the Army will implement this program comment in lieu of conducting individual undertaking reviews under 36 CFR 800.3 - 800.7, Army NHPA Section 106 Memoranda of Agreement (MOAs), Programmatic Agreements (PAs), and Army Alternate Procedures (AAP), for the activities and properties covered by this program comment." Programmatic Agreements are contracts. It is a fundamental precept of the U.S. Constitution that no *ex post facto* laws shall be passed. This provision would be an *ex post facto* impairment of contracts. In order to alter or override existing PAs and MOAs to adhere to the proposed PC program comment the Army must formally terminate existing agreements.

4.2.4.1. Inventory, evaluation, determination of effect, and monitoring of historic properties subsection (b) states "to streamline processes, the identification, evaluation, determination of effect, and monitoring of historic properties will be implemented by Army installations and activities in lieu of project-by-project reviews..." The document, however, does not specify who will carry out these activities for the Army. Will this be done by current Army historic

preservation personnel who meet federal position classification standards for archeology, GS-0193?

4.2.4.1. Inventory, evaluation, determination of effect, and monitoring of historic properties subsection (b) also states that "...in lieu of project-by-project reviews and consultations required under 36 CFR 800.3 - 800.7, MOAs, PAs, AAPs for the activities and properties covered by this program comment." This seems to mean that no further consultation will take place regarding activities covered by the PC once it is finalized. No PC can override the statutory requirement that the agency is required to consult with Tribal Historic Preservation Officers (THPOs) and Native Hawaiian Organizations (NHOs) on properties of religious and cultural significance.

4.2.4.1. Inventory, evaluation, determination of effect, and monitoring of historic properties subsection (e) states that "installations may at their discretion seek non-binding technical advice from SHPO staff and others, and may seek traditional knowledge from Tribal representatives, THPOs, and NHOs." The SAA strongly objects to this provision. The Army's responsibilities to federally recognized tribes and NHOs, as described in section 4.2.4.10 (Consultation with Federally Recognized Indian Tribes and Native Hawaiian Organizations), apply to the NHPA as well. There is no legal authority to replace the NHPA with the National Environmental Policy Act. In addition, federally-recognized tribes and Native Hawaiian Organizations are sovereign entities with which you must consult independent of the public process. One of the fundamental precepts of the statute is that state, local, and tribal concerns and recommendations are taken into account during the planning process. No PC can permit actions that run counter to the explicit requirements of the statute. Consultation with THPOs, NHOs and other holders of traditional cultural knowledge is mandatory when addressing the impacts of actions on historic properties and landscapes. Consultation with SHPOs must also be required in any eventual PC. No program can abrogate these congressionally mandated requirements.

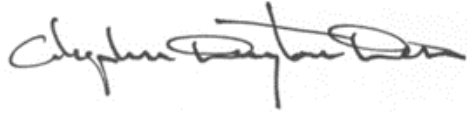
4.2.4.7. Mitigation Measures for Adverse Effects to Historic Properties subsection (5) states that "the Army may implement compensatory mitigation in lieu of the standardized mitigation measures for adversely effected historic properties." Compensatory mitigation is a valuable approach and practice in the preservation of historic properties. There needs to be more explanation in the APCP on how it will be implemented.

5.0. Annual Report and Annual Meeting seems to imply that only the ACHP will be able to review the Army's annual report on the implementation of the eventual PC. Many Army installations have a good relationship with their preservation partners. SHPOs and THPOs should be able to see the annual report as well as the ACHP.

9.1. Amendment by Chairman, ACHP, states that "the Chairman of the ACHP may amend this program comment to extend its applicability to the other military departments of the Department of Defense." The SAA strongly disagrees with this provision. If other branches of the military seek program comments of their own, then they must work with the ACHP under the statute to develop them.

We should be taking pride in our military history particularly during America 250. The Army should also be taking particular care to ensure the preservation and maintenance of those structures that represent the best of nation's military history and the work of our nation's veterans.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher D. Dore". The signature is fluid and cursive, with the first name "Christopher" being more legible than the last name "Dore".

Christopher D. Dore
President