



January 26, 2026

Re: Program Comment Plan for Army Warfighting Readiness and Associated Building, Structures, and Landscapes

To whom it may concern:

The Choctaw Nation of Oklahoma (CNO) thanks the Army and ACHP for the opportunity to provide comment on the Program Comment Plan for Army Warfighting Readiness and Associated Building, Structures, and Landscapes. Opportunities exist to meaningfully improve and streamline the process of National Historic Preservation Act (NHPA) Section 106 compliance. Instead of doing that, this Program Comment, would remake the process in a way that runs precisely counter to the intent of Congress laid out in the NHPA. Its clauses abrogate the federal government's legislated responsibility to involve the American public in federal preservation initiatives. This Program Comment also internally contradicts its own stated requirements and goals in a number of places in ways that will create new inefficiencies. Rather than streamlining, the Program Comment would ultimately add to the current administrative burden for Tribes and the Army in consulting on properties of traditional religious and cultural importance to Tribes. While we have concluded the current Program Comments are not at all viable, Choctaw Nation of Oklahoma looks forward to working closely with the Army and all federal entities in a government-to-government partnership that will help assist them to adequately, appropriately, and lawfully meet the federal trust responsibility and related obligations it requires.

***CHOCTAW NATION OF OKLAHOMA Comments:***

***"overly restrictive museum-level standards for historic building renovations" (p.7)***

"Museum-level standards" is not a common term in the preservation field. It appears to refer to the Secretary of the Interior's Standards for Rehabilitation. As noted on page 6 of this Program Comment. "AR 200-1 requires compliance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation". In other words, the Program Comment appears to seek to give the Army leeway to break existing federal requirements.

## **Inefficiency of the Section 106 Compliance Process and 3.0. The Program Comment Solution (p. 7-8)**

These sections argue that because the Army has SOI-qualified historic preservation staff, it is superfluous for the Army to conduct consultations with outside entities on site eligibility for the National Register (NR) along with consultation on the potential effects of Army undertakings on NR-eligible properties. Such a position is in direct opposition to what the ACHP describes as the intent of the National Historic Preservation Act (NHPA), “a partnership between the federal government and state, tribal, and local governments” (<https://www.achp.gov/digital-library-section-106-landing/national-historic-preservation-act>). This government-to-government partnership, enshrined in federal statute, must be upheld. The Choctaw Nation is not an outside entity.

The ACHP’s conclusion that the Army can comply with the NHPA without any external consultation because the Army has SOI-qualified historic preservation staff, by logical extension would mean that any federal agency, federal permit applicant, or Tribe that hires SOI-qualified historic preservation staff would be exempt from consulting with any outside entity under the NHPA. This, for all practical purposes, entirely undermines the NHPA. In reality, SOI credentials are not what makes for effective National Register eligibility determinations. Effective determinations are made through the mandatory consultation Congress said must occur between all of the parties who have an interest in that historic property. This provides the opportunity for different knowledges, governmental, and community perspectives to be voiced, which may go considerably beyond what the individual SOI-qualified staff member is personally aware of – particularly the indigenous knowledge only tribal government authorities can contribute regarding the land the federal agency seeks to utilize. Similarly, without this opportunity to consult, the American public has no voice in federal preservation, and rather than making a determination based on all of the evidence, an unelected and unaccountable federal agency official is simply making a pronouncement without regard to the interests represented by tribal and state or local governments.

### ***6.1. The Military Landscape and Associated Infrastructure (p.15)***

*These paragraphs argue that historic military landscapes are defined solely by their present use, and further argue that project-by-project review processes in 36 CFR § 800.3 – 800.7 and in Army Section 106 compliance agreements adversely affect these landscapes.*

The ACHP and Army claim that any property should be defined solely by its current use, rather than also by what might have occurred there in the past. Refusing to consider what might have occurred on lands before the Army gained jurisdiction would set federal preservation efforts back more than 60 years, to a time well before the creation of the National Historic Preservation Act of 1966. The Program Comment's position is, in fact, in direct opposition to the NHPA, and if taken to its logical extreme, few, if any, federal historic preservation efforts would occur in the United States and a multitude of sites of importance to the Choctaw Nation of Oklahoma likely would be adversely impacted.

#### **6.2.6. Mitigation Measures for Adversely Effected Historic Properties**

*Once completed, mitigation documents resulting from the treatment plan will be made available via an installation public web site to the ACHP, SHPOs, THPOs, Tribes, and NHOs as appropriate, for informational purposes. (21)*

Posting information on a public website after a decision has been made is not meaningful government-to-government consultation. Furthermore, through this new protocol the Program Comment removes any opportunity for the American public to engage in consultation regarding historic preservation efforts on land now held by the Army. Critically, without agreements, confidential information also could be exposed and the Army may not know what is and is not appropriate for informational purposes without consultation. *See also* 36 C.F.R. § 800.4(a)(4).

#### **Mitigation measures for properties of traditional religious and cultural importance.**

*This section of the Program Comment specifies that installation treatment plans addressing adverse effects to properties of traditional religious and cultural importance will be developed in consultation with Federally recognized Tribes and NHOs ascribing significance to the historic property prior to coordination with the Commands. (21).*

While the Choctaw Nation supports government-to-government consultation, this section of the Program Comment does not define how consultation would occur nor does it provide a protocol. Webinars, alongside other calls or zoom meetings with staff does not come close to meeting the meaningful consultation required of federal agencies in relation to tribal governments. Choctaw Nation defines consultation as:

*a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and Tribal Nations... . Consultation recognizes tribal sovereignty and the nation-to-nation relationship between the United States and Tribal Nations*

*and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. Consultation requires that information shared from or between tribes be given meaningful consideration and should strive for consensus or a mutually desired outcome. Consultation shall include officials with decision-making authority. Consultation shall ensure that applicable information is readily available to all parties, that federal and tribal officials have adequate time to communicate, and that after the decision, consulting Tribal Nations shall be advised as to how their input influenced that decision-making.*

Nothing like consultation has occurred in the development of this Program Comment. The law requires that the agency official “shall ensure” that the development of an alternative like this Program Comment involve appropriate tribal consultation. 36 C.F.R. § 800.14(f).

#### **6.2.7. Consultation with Federally Recognized Tribes and Native Hawaiian Organizations (22)**

The Choctaw Nation is not aware of any specific information or allegation that its preservation efforts have become overly burdensome to the Army. To the contrary, relations between the Choctaw Nation of Oklahoma and the Army recently have improved. The Choctaw Nation of Oklahoma seeks to continue our local, respectful, and consultative relationships that have been built between specific Army installations and the Choctaw Nation over the past 20+ years. Many of these have proven to be effective and efficient in federal preservation law compliance over the long-term. However, this Program Comment would terminate all of the Army’s existing historic preservation agreements with Tribes, including those with the Choctaw Nation of Oklahoma. Instead, the Program Comment seeks to replace them with a commitment for 60-day review periods and only makes vague and ambiguous statements beyond that. Given the lack of meaningful tribal consultation required in the development of this alternative, the absence of the NHPA’s standard protocols (which the law requires), and in the absence of agreement documents the Army seeks to terminate, how does the ACHP propose for Tribal consultation to take place? There is no remaining foundation on which ACHP can establish tribal consultation, especially given the loss of institutional knowledge through inevitable staff turnover.

#### **6.2.8. Inadvertent Discovery (23)**

*This section indicates that all inadvertent discoveries of Native American cultural materials will be handled under NAGPRA.*

In actuality, NAGPRA only deals with the inadvertent discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The vast majority of inadvertently discovered Native American sites do not contain these. Archeological materials at a Native American site often reflect daily life rather than the NAGPRA-focused burial and ceremonial. Daily life materials governed by NHPA, not NAGPRA, include tools, trade goods, cooking vessels, and evidence of dietary, homes, village layouts, and agricultural features such as field locations. NAGPRA provides no protocols for dealing with the inadvertent discovery of sites not containing NAGPRA materials – the NHPA does. Individual consultation under NHPA is the proper vehicle for addressing the inadvertent discovery of Native American cultural sites that do not contain NAGPRA materials but do include materials of critical value under NHPA.

*Within 48 hours of the [inadvertent] discovery, the installation will notify their chain of command and any Federally recognized Tribe or NHO that might attach religious and cultural significance to the affected property... . If there is no Federally recognized tribe or NHO response within 48 hours of the notification, the installation will carry out the mitigation measure as needed, inform the appropriate Federally recognized tribe or NHO, and report the action in their annual report*

Many federally recognized Tribes receive thousands of historic preservation-related notifications from the federal government each year and most have a 30-day response window. The CNO consults across nine different states. Not only is more time than what the Program Comment proposes necessary, but more detail is also necessary. The Program Comment must provide provisions that will enable Tribes to be aware of the short review time requirement the moment the consultation is received (notification through phone call, title of the email, etc.). More than that, as the federal government is making an increasing number of demands under EOs, declared emergencies, etc., this places new burdens on Tribes to complete review of what are often very complex cases and to provide responses within extremely short time windows. These requirements should come with additional federal funding to allow THPOs to hire the staff necessary to meet any abbreviated turn-around requirements and the ACHP should make certain the time frame set is achievable and at what cost so that OMB can budget accordingly. In the absence of that, this Program Comment and the other entities just listed are cumulatively placing what amounts to a federal mandate on Tribe that is both unfunded and impossible, ensuring that costly litigation will be required to enjoin projects until a proper assessment can be conducted. Existing NHPA agreements are designed to avoid unreasonable delays while implementing NHPA objectives. The Program Comment would eviscerate those agreements and countermand NHPA objectives.

*If the undertaking has commenced and a discovery of a historic property is made that does not involve a property of religious and cultural significance to any federally recognized tribes... If avoidance of further effects is not possible, the installation will notify their chain of command within 48 hours of the discovery. The installation will, as needed, determine a technically and financially feasible mitigation measure or alternative mitigation measure as prescribed in this program comment to resolve any adverse effect. The installation will implement any command recommendations, will carry out the mitigation measure, and report the action in their annual report (p. 23-24)*

This section lays out a process for the treatment of inadvertent discoveries of historic properties that are ostensibly not of cultural or religious significance to federally recognized Tribes. The Program Comment lays out a process that is entirely internal to the Army except for public notification well-after-the-fact in the form of an annual report. In actuality, many archaeological sites are multicomponent. These may have some areas or strata that are non-Native and others that are affiliated with federally recognized Tribes. This affiliation cannot be ascertained without at least a cursory investigation of the site and consultation with external parties. The Army and ACHP can be assured the protocol laid out in this section of the Program Comment will lead to properties that are of religious and cultural significance to federally recognized Tribes being damaged in situations that could be prevented and instead properly preserved/mitigated under the existing NHPA Section 106 review process. This outcome would be contrary to the stated purpose of this Program Comment.

#### **6.2.11. National Security Consideration**

This section of the Program Comment gives the Army FPO unilateral authority to end or act beyond any part of this Program Comment at will. It defines no specific conditions that must be met, requires no documentation of any conditions, provides no means of public accountability, nor any external notification whatsoever, other than to the ACHP. If this Program Comment can be deviated from at will without any external notification or interaction, there is little point in this document's other provisions. Functionally, this paragraph is the sum and substance of the Program Comment and consequently, we believe it is therefore inconsistent with federal law and must be removed.

## 8.0. Applicability

*This program comment shall be applied to all Army warfighting readiness activities and emergency operations that may occur on or off of Army installations and facilities (27).*

This section makes the protocols of the Program Comment applicable anywhere the Army goes, regardless of land status. By making itself apply to non-Army lands, this Program Comment undermines its own argument on pages 5-6 that the Army need not conduct undertaking-specific consultation with outside partners under the NHPA because the Army has extensive knowledge of and history with the cultural resources on the lands it currently maintains. The Army cannot fairly say it should be able to set aside NHPA because the Army knows better than anyone else it might consult with what is on lands under its jurisdiction, but then go on to say that knowledge of its own lands justifies it to set aside NHPA when its activities occur on lands far away from those Army installations and facilities. Either the Program Comment applies only to Army lands (and not everywhere the Army may operate), or the Army must comply with NHPA through undertaking-specific consultation. Otherwise, this Program Comment extends far beyond its stated intent, by providing a means for any federal agency to shirk congressional directives in NHPA simply by having an Army presence. The Choctaw Nation of Oklahoma believes that in this respect the Program Comment exceeds the legal authority of both the Army and the ACHP.

## 9.0. Notification of Termination of Army PAs, MOAs, and AAPs

The ACHP asserts it has recently created a “Tribal Signatory” status to agreement documents. This purported new status would radically diminish federally recognized Tribes’ position in the historic preservation process, while simultaneously diminishing their ability to protect Tribal sites on federal undertakings covered by those agreements. The ACHP has not communicated to the CNO where it believes the authority to create such a provision comes from, but has said this [proposal/purported action] is an effort to prevent Tribes from wantonly cancelling preservation agreements. The Choctaw Nation of Oklahoma has not terminated a single preservation agreement with the federal government in over 15 years of active cooperation and consultation. Conversely, through the Program Comment, the federal government itself seeks to unilaterally terminate dozens of good-faith agreements. Such action would undermine ACHP’s stated objective for creating “Tribal Signatory” status.



## **10.0 Program Comment Procedures Will Replace All New Agreements under NHPA.**

*The Army will cease development of new PAs, MOAs, and AAPs and will follow the procedures of this program comment for all current and future warfighting readiness activities and management actions on all associated infrastructure.*

This Program Comment provides far less than the bare minimum of what Congress requires under federal preservation law. It purports to commit the Army to continue consultation (because that is legally required) with federally recognized Tribes, yet it prevents the Army from entering into any new agreement with Tribes as long as this Program Comment remains in effect. Therefore, the unwillingness of the Army to commit itself to a consultation outcome like an agreement guarantees that any such consultation effort will not be meaningful – neither party is bound to keep commitments arrived at in consultation if no formal agreement may follow. The stated intent of this Program Comment is to streamline NHPA compliance; yet the prohibition on new agreements means that Tribal consultation will have to begin anew on every potential effect to a National Register site, every site treatment, and every inadvertent discovery. Here again, the Program Comment undermines its own objectives.

## **11.0. Amendment, Withdrawal, and Consolidation**

This Program Comment radically redefines NHPA compliance, redefines the roles of SHPOs and THPOs in ways that are outside of existing laws and regulations, does away with public engagement, does away with long-established public transparency in the 106 decision-making process, and cancels a large number of standing agreements entered into in good faith by dozens of agencies and governments. For this Program Comment to be implemented in perpetuity, for only two individuals (the ACHP Chair and the Army FPO) to have the authority to initiate an amendment or termination process, and for no one else to even have a seat at the table, runs counter to the ideals of participatory democracy and the consent of the governed that are at the very foundation of the National Historic Preservation Act.



For all these reasons, the Choctaw Nation of Oklahoma cannot support the Program Comment as currently proposed. We, however, reiterate our willingness to work with you to address any current and specific concerns or issues the Army may have and to identify more effective and streamlined ways to comply with the NHPA.



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