



January 26, 2026

Reid Nelson
Executive Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

RE: *Proposed Program Comment for Army Warfighting Readiness and Associated Infrastructure*

Dear Reid,

The National Trust for Historic Preservation in the United States (“National Trust”) appreciates the opportunity to comment on the Proposed Program Comment for Army Warfighting Readiness and Associated Infrastructure (“Program Comment”). The National Trust participated in the Army’s Section 106 consultation for this Program Comment, during which we identified several critical concerns about the Program Comment that remain unaddressed. We hope to work with ACHP staff to address these issues with the goal of assisting the Army in complying with the National Historic Preservation Act (“NHPA”), 54 U.S.C. §§ 300101 *et seq.*

I. The scope of the Program Comment is impermissibly broad.

The scope of the proposed Program Comment would encompass all Army undertakings and all of the Army’s historic resources. This is inconsistent with 36 C.F.R. § 800.14(e), which requires that program comments apply to a “category” of undertakings. Past program comments, including those applicable to the Army, have always addressed specific categories of resources and/or undertakings where repetitive preservation and management issues merited alterations to streamline the standard Section 106 compliance process. The proposed Program Comment does not follow that precedent, and instead requests that the Army be completely exempted from all future consultation under Section 106 regardless of the category or nature of the undertaking. This is beyond the authorities established in 36 C.F.R. § 800.14(e).

II. The Program Comment is a *de facto* exemption.

Given its all-encompassing scope and non-consideration of any specific “category”, the proposed Program Comment is both practically and legally a *de facto* exemption from Section 106, rather than a program comment. Exemptions from Section 106 are addressed in 54 U.S.C. § 304108(c) and 36 C.F.R. § 800.14(c), and require more

stringent considerations than program comments, such as defining “the magnitude of the exempted undertaking” and “the likelihood of impairment of historic property.” Those criteria have not been considered here, and would not be satisfied. The ACHP has never granted an exemption as broad in scope as the proposed Program Comment.

III. The ACHP Chair cannot unilaterally extend the Program Comment to other military departments.

Section 11.1 of the proposed Program Comment would empower the Chair of the ACHP to unilaterally extend the Program Comment to “the other military departments of the Department of Defense.” This is inconsistent with the plain language of 36 C.F.R. § 800.14(e), which states that an agency official may “request the Council” to issue a program comment. This is a very meaningful discrepancy: the Council includes numerous members with a wide variety of expertise in historic preservation, while the Chair is a singular political appointee. The Chair alone is not empowered by 36 C.F.R. § 800.14(e) to extend program comments from one agency to another without any action by the Council.

Additionally, no justification has been provided for the extension of the Program Comment to any other military departments within the Department of Defense. The Program Comment exclusively discusses the Army, and it includes extensive information like the Army’s justification for the Program Comment, the Army’s purported capacity to implement the Program Comment, and a description of the Army’s historic resources that would be affected. There is no such information about any other military departments in the administrative record. Without this information, the extension of the Program Comment to other military departments would lack a reasonable basis and be inherently arbitrary and capricious.

IV. The Program Comment cannot cancel the Army’s existing contractual agreements.

The Army has entered into 115 installation-level agreements that currently govern nearly all of its Section 106 compliance. Those agreements were painstakingly negotiated to meet the Army’s needs and to address installation-specific preservation challenges. They are binding and enforceable legal agreements between the Army and the states that house the Army’s installations, and most include termination clauses that require specific actions to be taken for the agreements to be cancelled. There is no legal authority established in 36 C.F.R. § 800.14 that allows for the cancellation of these wholly separate legal agreements via a program comment. The Army has a responsibility to honor its existing agreements, including following through with agreed-upon mitigation for adverse effects to historic resources that the Army has already caused, and following the processes established in termination clauses if the Army seeks to withdraw.

V. The Program Comment should require compliance with the Secretary of the Interior’s Standards.

The Program Comment would end the Army’s compliance with the most

fundamental federal historic preservation standard, the Secretary of the Interior's Standards for the Treatment of Historic Properties ("SOIS"). 36 C.F.R. Part 68. The Program Comment states that "[I]dentification, evaluation, assessment of effect, and documentation / mitigation of historic properties will be conducted by installations in *consideration* of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (emphasis added).¹ The Program Comment should instead *require compliance* with the SOIS for all of these actions. Compliance with the SOIS is the baseline for adequate historic preservation and is essential to avoid and minimize adverse effects. If compliance with the SOIS is not required, the Program Comment will result in widespread adverse effects. Further, if no attempt is made to comply with the SOIS, the Army will be in dereliction of its legal responsibility for the preservation of its historic properties, under Section 110(a) of the NHPA. 54 U.S.C. § 306101.

VI. The Program Comment does not adequately mitigate adverse effects.

The Program Comment would authorize the Army to demolish approximately 122,000 historic buildings and 84,000 archaeological sites without any further Section 106 consultation. The Program Comment would also authorize the Chair to extend the Program Comment to other military departments, and while the number and nature of their historic resources is unknown, they likely number in the tens or even hundreds of thousands as well. As mitigation for this unprecedented level of potential destruction, as well as for ending all compliance with the SOIS, and eliminating all future opportunities for public comment on their preservation activities, the Army proposes to "identify" three National Mitigation Areas that will serve as "enduring compensatory mitigation for implementation of this program comment".² The proposed National Mitigation Areas are:

- 1) Carlisle Federal Indian Boarding School National Monument, Carlisle Barracks, PA;
- 2) Castner Range National Monument, Fort Bliss, TX; and
- 3) 500 Acre Conservation Easement Protecting Kūkaniloko, O‘ahu, HI.

This proposed mitigation is inappropriate and grossly inadequate given the magnitude of the adverse effects that would be caused by the Program Comment. One of the proposed National Mitigation Areas, Carlisle Federal Indian Boarding School, is a National Monument operated by the National Park Service,³ whose high standards for the preservation of national monuments already ensure that this site will be preserved, so the Army's proposed mitigation at this site is inconsequential.

The Army's second proposed National Mitigation Area, Castner Range National Monument, is not accessible to the public due to the presence of MECs ("munitions and

¹ Pg. 24, Section 6.2.10, *Program Comment for Army Warfighting Readiness and Associated Infrastructure*.

² *Id.*

³ <https://www.nps.gov/cibs/index.htm>.

explosives of concern”) and UXOs (“unexploded ordnance”).⁴ Again, this proposed mitigation is inconsequential, as it will create no new public benefit nor result in any new preservation of historic resources. The Army’s third proposed National Mitigation Area, the 500-Acre Conservation Easement Protecting Kūkaniloko, O‘ahu, HI (“Conservation Easement”), is likewise inconsequential. The Conservation Easement was already purchased in 2012 using \$13 million authorized by the Hawai‘i state legislature, \$7.5 million from partners including the Trust for Public Land and the Office of Hawaiian Affairs, and only \$4.5 million from the Army. Just like Castner Range, the land is already protected and is not publicly accessible, thus the Army’s proposed mitigation is again inconsequential.

The Army also proposes to mitigate adverse effects to historic resources through the development of “treatment plans” for adversely affected resources.⁵ The proposed “treatment plans” would be developed at the discretion of the Army and may or may not include documentation of the affected historic resources, standard mitigation measures for archaeological sites, and alternative mitigation measures. The Army makes no actual commitments to perform any of this mitigation; it merely suggests that it might do so at its own discretion. Unfortunately, many of these actions that the Army seeks to cast as mitigation (like the avoidance of archaeological sites) are basic standards for NHPA compliance and as such cannot be considered mitigation measures.

In sum, the Army’s only proposed mitigation commitment for the authorization to demolish hundreds of thousands of historic resources is to preserve three places that are already preserved, and are either not publicly accessible or are administered by another federal agency. This proposed mitigation is inadequate and not even remotely related to the magnitude of the adverse effects that the Program Comment would cause.

VII. The Program Comment should not be of unlimited duration.

All previous program comments have had either finite durations or scheduled comprehensive reviews. No justification or reasoning is offered as to why this Program Comment, the most expansive and comprehensive ever proposed, should be permanent. The ACHP should require a finite duration of ten years or less to ensure that the Program Comment is publicly re-evaluated within a reasonable timeframe. The Army’s proposed self-generated annual reports will not provide a similar opportunity for an independent, holistic evaluation of the Program Comment’s implementation.

The Program Comment will also require significant updates. The Army estimates that over 300,000 new historic resources will come under its control “in the coming years”.⁶ That will more than double the number of historic resources presently impacted by the Program Comment. The treatment of those hundreds of thousands of historic resources should be evaluated as they come under the Army’s control and cannot be reasonably prescribed years in advance. Not only are those future resources diverse, but new

⁴ <https://www.castnerrange.org/faqs>.

⁵ Pg. 20, Section 6.2.6, *Program Comment for Army Warfighting Readiness and Associated Infrastructure*.

⁶ Pg. 5, Section 2.0 ¶ 2, *Program Comment*.

preservation technologies and best practices are constantly in development, and our understanding of how late-20th century building materials age is still evolving. Thus the Program Comment will likely need to be substantially updated and thus should not be of unlimited duration.

VIII. The Program Comment would unreasonably undermine the National Historic Preservation Act.

The Army is one of the largest owners of historic resources in the federal government, controlling over 120,000 historic buildings, 13 million acres of land, 84,000 archaeological sites, 20 National Historic Landmarks, and over 300,000 additional resources that will age into historic significance in the coming years. Combined with the portfolios of the other military departments, the scope of the Program Comment includes a significant percentage of the federal government's historic resources. Exempting such a staggering number of historic resources from the NHPA's Section 106 consultation process would fail to comply with the NHPA's intention to ensure that our nation's significant historic resources are considered as a part of agency undertakings. As we approach the 250th anniversary of our nation's founding, the legacy of historic resources owned and cared for by the Army, and the Army's own history represented by these historic resources, should be acknowledged as increasingly important and valued by the public.

The use of 36 C.F.R. § 800.14(e) to negate the protections of Section 106 for such a substantial number of our nation's historic resources is contrary to the purpose and intent of the NHPA. Congress established a system whereby every federal agency is required to consider the effects of their undertakings on historic resources, and every state is required to have a SHPO who in turn has a responsibility to advise and assist Federal agencies in carrying out their historic preservation responsibilities. 54 U.S.C. §§ 302303(b)(5), (6), (9). The proposed Program Comment is inadequate to ensure compliance with these requirements of the NHPA.

In the wake of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), it is questionable whether the ACHP has the authority to contravene Section 106 by extending 36 C.F.R. § 800.14(e) to grant a federal agency a functional exemption from all of its activities. Congress established specific criteria for exemptions in statute, yet the ACHP has not considered those criteria and is instead poised to use a regulation to negate the most fundamental requirements of the NHPA. 54 U.S.C. § 304108(c). Congress has clearly articulated the requirements that federal agencies must meet to comply with the NHPA, and the ACHP cannot grant exemptions to those requirements absent compliance with 54 U.S.C. § 304108(c) or 36 C.F.R. § 800.14(c).

IX. The Program Comment would end all public participation in the preservation of our nation's historic places on military installations.

The Program Comment would end all public participation in the preservation of historic places on our nation's military installations. This is extremely problematic. The ACHP's Section 106 regulations not only require public participation, they extoll its critical

importance: “The views of the public are essential to informed Federal decision making in the section 106 process.” 36 C.F.R. § 800.2(d)(1). Congress also recognized the importance of public participation in the National Trust’s Congressional charter, which includes a responsibility to “facilitate public participation” in historic preservation. 54 U.S.C. § 312102(a).

The National Trust believes that the public -- and especially veterans and veterans’ advocacy organizations -- deserve a voice in the preservation of our nation’s military heritage. For example, the National Trust has long worked with the Southwest Association of Buffalo Soldiers on the preservation of the Mountain View Officers’ Club at Fort Huachuca in Sierra Vista, AZ, and we previously worked with the Naval Order of the United States on preservation efforts at the former Charleston Naval Base in North Charleston, SC. These types of organizations, as well as individual veterans and other members of the public, should be allowed to participate in the preservation of our nation’s military heritage.

X. The ACHP should take into account public comments.

Every public comment received by the Army during the Section 106 consultation for the Program Comment was opposed to its enactment. The ACHP should take into account the unanimity of public comments, including those from the preservation community and especially the SHPOs who regularly interact with the Army. There is a troubling discrepancy between the Army’s representations as to the success of its historic preservation program and the experience of SHPOs and the National Trust.

For example, the Georgia SHPO, who works extensively with the Army at installations including Fort Benning and Fort Stewart (the largest Army installation east of the Mississippi), commented:

[T]he Army repeatedly describes the implementation of previous PCs as “successful.” However, it’s unclear to us whether the Army’s continuing assertion that previous PCs have been “successful” is referring to successful preservation of historic properties or to the Army successfully dodging compliance requirements of S.106. As evidenced by what is occurring on installations in Georgia, it appears to be the latter. Rather than effectively balancing “historic preservation with operational needs,” the previous Army PCs have provided the Army a clear path to circumvent historic preservation regulations with no consequences.

[W]e are concerned that if the Warfighting PC is adopted, the incentive for the Army to avoid adverse effects will no longer exist, all decision-making will shift to an internal only process that will reduce or eliminate consultation and transparency in the process, and that qualified installation-level cultural resources staff critical to the efficiency being sought will be removed from the process (as evidenced by existing PC implementation).

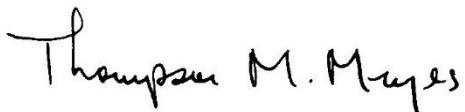
Other SHPOs identified critical deficits in the Army’s capacity and expertise that seriously undermine the ability of the Program Comment to succeed. For example, the

Alabama SHPO commented that “three of the four regular US Army Posts in our state do not have SOI-qualified personnel on staff.” This is both alarming and emblematic of a systemic lack of appropriately qualified individuals within the Army’s cultural resources staff. The Connecticut SHPO similarly noted that “[T]he PC proudly notes that the Army employs approximately 300 historic preservation professionals and owns 122,000 buildings and structures associated with the readiness mission that are subject to Section 106. While the number of professionals is commendable, this roughly equates to each staff person being responsible for more than 400 buildings at a time (and that is if all professionals were qualified in architecture rather than archaeology)”. In the experience of the National Trust, the overwhelming majority of the Army’s cultural resource professionals are indeed archaeologists rather than architects or architectural historians. At the very least, the ACHP should require a specific breakdown of the areas of expertise for the Army’s cultural resource staff prior to entrusting hundreds of thousands of historic buildings to potentially only a handful of qualified architects.

XI. Conclusion

The National Trust is strongly opposed to the proposed Program Comment. We are especially concerned by the multiple legal problems relating to the proposed Program Comment, including inconsistencies with Section 106 and the implementing regulations that we identify in this letter. Given these serious legal issues, and the unprecedented scale of the Program Comment’s likely adverse effects upon hundreds of thousands of historic resources, and the incredibly harmful precedent that its adoption would set, we urge ACHP staff to recommend denial of the Program Comment. It is our sincere hope that the ACHP will not adopt the Program Comment, and we hope to work with ACHP staff to help educate other voting members as to why the ACHP should not adopt the Program Comment. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Thompson M. Mayes". The signature is fluid and cursive, with "Thompson" on the top line and "M. Mayes" on the bottom line.

Thompson M. Mayes
Chief Legal Officer and General Counsel

cc: Erik Hein, NCSHPO
Valerie Grussing, NATHPO
Kelly Fanizzo, ACHP
Jaime Lochinger, ACHP
ACHP Members