



NANSEMOND INDIAN NATION

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January 26, 2026

Sent via email

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

Re: Comments on the Program Comment for Army Warfighting Readiness and Associated Infrastructure

Dear Mr. Nelson,

The Nansemond Indian Nation (the “Nation”) is deeply concerned regarding the illegal, illogical, and clumsy approach to the Program Comment for Army Warfighting Readiness and Associated Infrastructure (the “Program Comment”). The Nation asks the Advisory Council on Historic Preservation (“AHP”) to decline to approve the Program Comment in its current form. The issues raised by various components of this Program Comment strike at the heart of AHP’s remit to promote the preservation of this country’s historic resources. Approval of this Program Comment would turn the AHP into a handmaiden for the dismantling of the bedrock preservation principles and laws for which the AHP was established.

The Nation is a federally recognized Tribal Nation with a population of over 500 citizens headquartered in Suffolk, Virginia. The Nation’s federal service area includes Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia, which is a region with a high concentration of military installations. Department of Defense facilities in Tidewater Virginia include several locations where ancestral remains have been recovered and which hold archaeological landscapes of immense significance to Virginia Algonquian Tribes including the Nation.

If the AHP considers approving the Program Comment for the Army, it should require extensive revisions to the current document given the significant changes that have been incorporated into the document since the last public review in August 2025. Required revisions should be based on additional consultation with the numerous concerned Tribal Nations, Tribal Historic Preservation Officers (“THPOs”), State Historic Preservation Officers (“SHPOs”), and preservation organizations, in order to ensure that the Army and other branches of the Department of Defense comply with the National Historic Preservation Act (“NHPA”), the National Environmental Policy Act (“NEPA”), and other laws, regulations, and Executive Orders ensuring substantive Tribal consultation.

1. Consultation and Section 106 reviews on historic properties with Tribal Nations, consulting parties, and SHPOs, do not compromise the integrity of Army historic landscapes as the Program Comment asserts.

“The project-by-project review processes in 36 CFR § 800.3 – 800.7 and in Army Section 106 compliance agreements adversely effects historic military landscapes. The project-by-project review process delays, modifies, and may halt full implementation of Army warfighting readiness activities and critical associated infrastructure development. This directly impacts the defining features and characteristics that contribute to the historical significance of the military landscape. In essence, the standard Section 106 project review process compromises and diminishes the integrity of these evolving, living historic landscapes by hindering the ongoing historical processes that continue to shape them.”

(Program Comment, page 15)

This Orwellian characterization seeks to recast essential historic preservation activities as damage to history. As the original inhabitants and stewards of this country, the Nation knows that the visible architecture and landscape of Army activities throughout the country are a tiny fraction of the history these landscapes have held over time and continue to hold. The Section 106 process is not an adverse effect; it is a process by which knowledge comes to light regarding a project’s potential to harm historic resources. It does not inherently stop a project from harming historic resources. Instead, the Section 106 process simply facilitates awareness of potential harms and creates an avenue to reduce or avoid these adverse impacts. This entire Program Comment is a hostile attack on the requirements of the NHPA and NEPA to consider the impacts of federal projects on historic properties of importance to Tribal Nations.

2. The Army’s proposal to eliminate all consultation with SHPOs and the ACHP for all “Army warfighting readiness activities and management actions” also decimates meaningful and substantive Tribal consultation in practice.

“This program comment replaces the procedures in 36 CFR § 800.3 – 800.7 for Army warfighting readiness activities and management actions on associated infrastructure. Therefore, Army installation project-by-project review and consultation with SHPOs and the ACHP for that category of undertakings is no longer required and shall no longer occur.”

(Program Comment, page 10)

In order for Tribal Nations to meaningfully consult on historic properties, they need to know that the historic properties exist. Across the country, THPOs and SHPOs regularly provide comments on Army and other Department of Defense projects, requesting adjustments to archaeological and architectural survey methods, Tribal consultation outreach, evaluation decisions, treatment plan design, and adverse effect determinations. Regularly, THPOs and SHPOs come to a different conclusion than an individual Army Cultural Resources Manager (“CRM”) might at first. These recommendations and the review process itself contribute to the identification of Tribally-significant properties that otherwise might have been lost or destroyed without a Tribal Nation

ever becoming aware of them. The Army's assertion that its CRMs have all of the expertise and experience as SHPO staff is patently incorrect. One single Army staff member – who under the Program Comment is not even necessarily required to be qualified in historic architecture or archaeology – is not equivalent to the entire staff of a state agency with multiple areas of professional expertise, which has existed for decades and is dedicated to the state's cultural resources. The Program Comment's approach in which Army CRMs make decisions unilaterally and in secret will strip the Army, Tribal Nations, and all stakeholders to our country's history of the irreplaceable expertise provided by all the parties who would have participated in Section 106 reviews if given the opportunity, including SHPO and ACHP staff. Furthermore, it places all decision-making authority for historic properties and Tribal consultation requirements into the hands of a civilian staff member, low on the Army's authority chain, whose job and career can be easily pressured by more senior officials and current policy concerns.

3. This Program Comment contains no mechanism for meaningful Tribal consultation.

Despite some window-dressing promising the opportunity for the input of Tribal Nations regarding Indigenous Knowledge, properties of traditional religious and cultural importance, and traditional cultural properties, this Program Comment contains no clear avenue for Tribal consultation to take place. With the very limited exception of informing THPOs and Tribal Nations when the annual report for an installation is available, or merely informing THPOs and Tribal Nations regarding mitigation decisions for a National Historic Landmark ("NHL"), the Program Comment does not provide any details about how Tribal Nations will be informed about historic properties so that they can provide information regarding whether a property is of Tribal traditional or religious significance or whether Indigenous Knowledge provides new insight into a property's eligibility. The Program Comment does not say whether a Tribal Nation has any review opportunities, as required under the NHPA and NEPA. The Program Comment provides no assurances that Tribal Nations will be informed of any site at risk on Army installations moving forward, unless an Army staff member independently decides that the Native American Graves Protection and Repatriation Act ("NAGPRA") is applicable. Tribal Nations know that it is often Tribal representatives who have to remind federal agencies of what the law requires and why a law is applicable to a given situation. By preventing Tribal representatives from having an opportunity to be in the room and be an active part of important conversations, and by withholding consultations regarding impacts to historic properties, the Army will effectively strip Tribal Nations of their legal rights under a series of preservation, environmental, and religious freedom laws.

4. Adoption of this Program Comment is highly likely to result in the disrespectful damage and/or destruction of Indigenous ancestral remains.

This Program Comment contains very little information about how archaeological sites will be managed and stewarded moving forward, but its discussion of standard archaeological site mitigation is limited to avoidance, site protection, data recovery, or archaeological monitoring. The Program Comment does not provide any avenue whereby Tribal Nations, THPOs, SHPOs, or other consulting parties will be provided with these proposed archaeological methods for review and input. When a single Army CRM is responsible for designing survey methods, identifying and evaluating sites, and deciding the applicable mitigation methods—without any independent oversight and input—sites will be missed and destroyed in construction, burials will be identified

during monitoring, and decisions will be made regarding the treatment of ancestral remains without the involvement of the affected Tribal Nation.

5. ACHP should consider the future implications of this Program Comment, and should reject it on those grounds.

If this Program Comment is approved, any federal agency could say that compliance with Section 106 is inconsistent with its mission and create an inconsistent process that allows it to control all of the NHPA review activities and information access. ACHP should not facilitate this end run around the NHPA.

6. ACHP should also not allow other branches of the military adopt this Program Comment without additional public and Tribal review.

Not every Tribal Nation is affected by or involved with Army installations, and as such, may not be aware of or have the capacity to object to this Program Comment. Yet, these same Tribal Nations may well be significantly affected by another agency in the Department of Defense adopting this Program Comment in subsequent projects.

7. The Army did not meaningfully respond to the original comments on this Program Comment from the Nation.

The Program Comment in its revised form includes more sweeping language with fewer guardrails and is overall far worse than the only other version the Nation was given the opportunity to review. This Program Comment has been produced without a meaningful engagement with the ideas and concerns from affected Tribal Nations, THPOs, and SHPOs.

8. The Nation also supports and echoes comments by the Virginia Department of Historic Resources, particularly the January 24, 2026 letter's sections on Justification for the Program Comment; Lack of Accountability; Termination of Agreement Documents; The Military Landscape Framework; Historic Properties Management Procedures, Assessment of Effects, and Mitigation; and Management of NHLs.

ACHP staff and Council members should consider the history of their agency and how their agency will be perceived if they approve a Program Comment that is so thoughtless, so overreaching, and such an abrogation of federal preservation law, environmental law, and laws ensuring Tribal consultation and maintaining the federal trust responsibility toward Tribal Nations.

Again, the Nation has considerable concerns regarding the implications of this Program Comment for our ancestral and contemporary homelands. The Nation asks ACHP to consider our comments and those of other affected parties and to require significant revisions to this document.

Sincerely,

Keith F. Anderson

Chief Keith F. Anderson
Nansemond Indian Nation

cc:

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