



# COMMONWEALTH of VIRGINIA

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401 F St NW #308  
Washington, DC 20001

RE- *Program Comment for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes*  
DHR File No. 2025-4210

Dear Mr. Nelson,

We have received your request for comments on the Program Comment referenced above. On 18 December, the Department of the Army (Army) Federal Preservation Officer formally requested a Program Comment for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes in accordance with the National Historic Preservation Act (NHPA) 54 U.S.C. 306108, and 36 CFR § 800.14(e). The goal of the Program Comment is to provide the Army compliance with the NHPA for Army warfighting readiness activities by means of the procedures in 36 CFR § 800.14(e), in lieu of conducting individual projects reviews under 36 CFR § 800.3 through 800.7. Our comments are provided as assistance to the Advisory Council on Historic Preservation (the Council) and the Army.

It cannot be overstated that the Army is a large and complex federal agency. Each Army installation has its own unique history, cultural resources, training activities, landscape, and challenges. **DHR continues to have grave concerns that the very broad, vague, and ill-defined nature of the proposed Program Comment will set a precedent of allowing Federal Agencies to seek Program Comments from the Council for their entire mission rather than a defined category of undertakings. The gross lack of detail and specificity within the Program Comment regarding the procedures for its implementation, review by qualified Cultural Resources Managers (CRM), reporting, and external communication will result in a wholly internal review of all Army undertakings with no external accountability. The proposed termination of legally binding Programmatic Agreements and Memoranda of Agreement via the Program Comment is not consistent with Federal regulations. Many of the tenets of this Program Comment are contradictory or directly in opposition to the stated goals, purpose, intent, and content of the NHPA.**

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DHR is and has been very supportive of the use of program alternatives to streamline the Section 106 review process, and DHR has encouraged many federal agencies to develop individual programmatic agreements to streamline routine operations and maintenance activities. We have worked closely with cultural resource managers and historic preservation professionals at various Army and other Department of Defense (DOD) installations to tailor agreement documents that fit the needs of the installation. **DHR believes that these individual programmatic agreements empower individual Army base leadership to make decisions that suit the needs of the Installation while preserving our nation's history and the historic resources specific to each base.**

**These agreement documents are the result of collaborative efforts among the Army, DHR, the ACHP and other consulting parties and represent legally-binding commitments from the Army. DHR objects to termination of existing programmatic agreements (PAs), memoranda of agreements (MOAs), and other program alternatives without appropriate consultation and completion of outstanding legal obligations.**

### **Intent of the Program Comment and Definition of Category of Undertakings**

The Army has defined the class of undertakings addressed by this Program Comment as “Army warfighting readiness activities and management actions on associated infrastructure.” DHR continues to object to this definition. **“Warfighting readiness” is simply not a clearly defined, discrete, or specific undertaking class per 36 CFR § 800.14 (1).** By establishing a Program Comment around “Warfighting readiness,” the Army seeks to create a program alternative for the NHPA that can ultimately include the entire mission of the Army. This conflates mission objectives with clearly defined undertakings and will allow the Army to define all of its undertakings under the umbrella of this Program Comment.

The broad scope of the Program Comment combined with the complete elimination of consultation with the State Historic Preservation Offices and the public from all consultations and undermines the spirit and intent of the NHPA. The NHPA and the review process defined in 36 CFR § 800 values the knowledge and input of those outside the Federal Agency in the understanding and preservation of historic properties. Eliminating all external review of all undertakings by the Army does not honor the intent and purpose of the NHPA.

**Furthermore, granting a Program Comment to the Army for their entire Agency mission opens the door for other agencies to do the same.** If the Army can establish a program alternative for its entire mission thereby eliminating any need to consult with ACHP, SHPO, and the public for all actions taken by the Army, it is DHR's opinion that other Agencies are likely to do that same. Particularly other Department of Defense branches for which there is precedent for adopting Army program comments and benefits of a comparable review process on shared properties such as Joint Bases. **The precedent set by this Program Comment will undermine the intent of the NHPA and likely result in other Federal Agencies following suit.**

### **Justification for the Program Comment**

The Army has stated that it is “disproportionately affected by the NHPA Section 106 review process.” However, the Army has not provided clear examples of *disproportionate* effects. The overview and justification for the Program Comment includes disingenuous characterizations of burdensome reviews

under Section 106 of the NHPA. The Program Comment justification diminishes and misrepresents the role SHPOs have in the Section 106 process and implies that the Army's obligation to comply with the NHPA is an administrative hinderance to their mission. This expressed opinion that the requirements to fulfill its obligations under the NHPA are too onerous for the Army calls into question the Army's approach to compliance and their future approach towards implementing a Program Comment with only minimal external oversight.

One of the most glaring examples of the Army mischaracterizing the Section 106 process is the statement:

"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."

This is an obvious falsehood that seeks to undermine the NHPA and 36 CFR Part 800. **If the Council accepts this justification provided and issues this document based on the need and justification stated by the Army, the Council will be agreeing that their own regulations and foundational laws are critically at odds with the mission of Federal Agencies rather than an important part of the Federal government's responsibility to be stewards of historic properties for the benefit of the Nation.**

### **Lack of Accountability**

The Program Comment provides no meaningful mechanism for external review of actions taken under the Program Comment. All possible public or SHPO review of individual undertakings, included in previous drafts of this program comment via National Environmental Policy Act reviews, has been removed from this final document. The National Historic Preservation Act is founded on the principle that SHPOs, Indian Tribes and Native Hawaiian Organizations, interested parties, and the public serve a valuable role in advising and assisting the Federal Agency in carrying out their historic preservation responsibilities. The Army is not in possession of equivalent knowledge and access to information regarding historic properties as SHPOs and interested members of the public; this is the entire reasoning behind including SHPO, the public, and interested parties in the review process outlined in 36 CFR § 800.

An Annual Report for such a far-reaching Program Comment will inevitably be either too brief or too ponderous to meaningfully review or assess whether the Army's review and determinations have been appropriate. As the Program Comment contains no framework or details regarding the intended content of the Annual report, its content, format, and detail will be left to the discretion of the Army. In order to be useful in assessing the implementation of the Program Comment, the Annual Report would need to contain a list of all undertakings completed by the Army for an entire year in enough detail to understand the properties identified, evaluated, and effects assessed. A report of this magnitude would be impossible to prepare and review.

**The duration of this Program Comment is essentially indefinite and its termination at the discretion of the Army. Considering its breadth, its lack of precedence, and the numerous proposed policies and procedures that are untested within the Program Comment, an indefinite duration is ill-advised.**

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**DHR strongly urges the Council to set an expiration on this Program Comment upon which its effectiveness and the Army's implementation of the Program Comment can be evaluated.**

If complying with the requirements under the NHPA, and consideration of the recommendations of SHPO, consulting parties, and the public are incongruous with the Army's goals of modernization, absent any meaningful review by parties outside the Army (as proposed in this Program Comment) there will be no regulatory obligations that keep the Army from determining any commitment to historic preservation as "not technically or financially feasible." Without public consultation with the SHPOs and other consulting parties, there will be no mechanisms to hold the Army accountable when there are adverse effects to our Nation's historic properties. Given the adversarial characterization of the Section 106 process within the Program Comment, one must assume that the internal reviews will not be implemented in good faith, to detriment of the historic properties of our Commonwealth and nation.

**Termination of Agreement Documents**

In Virginia, many of the Army installations have existing, successful streamlining agreements in place to ensure that the Army is not obligated to consult under 36 CFR § 800 for numerous routine undertakings that have low potential to adversely affect historic properties. These agreement documents and program alternatives were developed with collaborative input from those with local knowledge. The proposed termination of existing agreement documents via this Program Comment threatens the good working relationship between DHR and the Army installations within Virginia as well as contradicts the requirement for termination processes as defined in the legally binding agreement documents.

MOAs and PAs are legally binding documents that commit the Army, both by statute and by federal regulations, to carry out the undertaking in accordance with the terms of the agreement in satisfaction of its responsibilities under Section 106. It is DHR's opinion that existing Agreements, especially those established to document agreed upon mitigation measures for ongoing projects with adverse effects, remain valid and legally binding, and it is DHR's opinion that the Army is obligated to uphold the terms of these Agreements. **If the Army seeks to terminate these Agreements, they must do so via the procedures outlined in the Agreement document. It is DHR's opinion that terminating these Agreements via the Program Comment is not legally valid.**

**The Military Landscape Framework**

The Army's intention to manage every installation through the context of a "military landscape" represents a very limited viewpoint and complete disregard for any historic property that was not built by the Army. It also demonstrates a complete lack of understanding of the National Register. Within the framework of the National Register, a historic military landscape is a *thematic context* used for evaluating historic properties. The Program Comment misconstrues and conflates a thematic historic context with the Army's warfighting mission. While it is true that military landscapes are a distinct type of landscape that are constantly changing and evolving, the Program Comment repeatedly misinterprets the use of this historic thematic context as an attempt to justify "warfighting readiness" as a class of undertakings exempt from review or consultation.

Under this framework, the Army characterizes all historic resources that pre-date the Army's ownership of an installation as "remnants of earlier pre-military landscapes, sites, and features" (Section 6.1, page 13).

This blanket characterization of archaeological sites, cultural landscapes, historic properties, cemeteries, and any non-Army historic property illustrates a complete disregard for thousands of historic properties that will be treated in accordance with this Program Comment. The Program Comment further reflects this by failing to discuss archaeological sites beyond standard mitigation measures for those sites and focusing the bulk of the content of the Program Comment on treatment from Army built environment resources.

The Program Comment incorrectly states that the changes and new features that emerge from ongoing warfighting readiness activities are not incidental alterations but intrinsic character-defining elements essential to the military landscape's ongoing historical narrative. Therefore, any warfighting readiness activity-related physical changes to the setting of historic properties and any visual, atmospheric, and audible elements or changes resulting from those activities “*are defining characteristics of evolving military landscapes.*” Again, the Army demonstrates its total lack of understanding of the NHPA, how to evaluate a historic property, and how an agency determines the effects of an undertaking.

The framework of a continuously evolving military landscape is used justify eliminating from review, both internally and externally under this Program Comment, a majority of the Army’s undertakings. The NHPA does not mandate maintaining historic properties as static. It is understood that historic properties, including complex landscapes, will evolve. **The NHPA is intended to ensure that consideration is made for the potential effects of that evolution when the Federal Government is driving the change. To imply that those actions taken by the Army to evolve “their military landscape” cannot be an adverse effect contradicts to the foundation of the NHPA. This evolution of the military landscape that the Army envisions under this Program Comment will occur without detailed consideration of those “remnants” pre-military landscapes that represent our Nation’s (not just the Army’s history).**

#### **Historic Properties Management Procedures, Assessment of Effects, and Mitigation**

The Program Comment states that “the identification, evaluation, determination of effect, monitoring, treatment and mitigation of adverse effects to historic properties will be implemented by Army installations and activities in an accelerated manner,” and completely removes the SHPO, consulting parties, and the public from the process as a whole. The Program Comment lacks any details regarding the process the Army will follow to implement these management procedures. It is not expressed or clarified if this accelerated review will be conducted in its entirety by Cultural Resource Management staff or professionals who meet the Secretary of Interior’s Professional Qualifications Standards in accordance with Section 112(a)(1)(A) of the NHPA (SOI-qualified). The Program Comment indicates this review will occur “under the supervision of” an SOI-qualified individual; this is intentionally vague and could allow for anyone to conduct these reviews if that person has an SOI-qualified individual as a superior at any point in their chain of command.

The Army has emphasized that it maintains a well-qualified staff of over 300 cultural resources professionals whom the Army believes to be sufficient to implement this Program Comment and to substitute the review of undertakings by SHPO. In DHR’s experience this is not always the case. For example, in Virginia, Fort Belvoir did not have professionally qualified CRM for over a year between 2023 and 2024. During that time, Fort Belvoir submitted very few projects to be reviewed and was likely out of compliance during much of that time. The Program Comment does not require installations to have an SOI-qualified Cultural Resource Manager to conduct the internal reviews. With Federal hiring freezes and personnel reductions, the Program Comment does not account for the possibility that many installations



may not have any qualified professionals to implement this Program Comment and conduct internal reviews. Based on this information, one must assume that the implementation of this Program Comment will be conducted by unqualified personnel at some installations.

The Program Comment states that the Army installations (not the CRM or an SOI-qualified individual) will conduct this review in consideration of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, not in accordance with the Standards. It is not clearly expressed where the Army intends to or may deviate from the Standards, although a majority of the subsequent built environment management procedures listed in the Program Comment are inconsistent with the Standards.

The Program Comment also further allows installations to prepare lists of routine undertakings with known effects that are not adverse. There is no requirement that these lists be reviewed by a CRM or SOI-qualified individuals to confirm that the assessment that they will not adversely affect historic properties is appropriate nor will those undertakings on these lists be subject to any further review in the future for the indefinite duration of this Program Comment. Installations, not the CRM, are tasked with developing mitigation treatment plans and Commands with approval. This lack of oversight by even internal SOI-qualified Army staff is inconsistent with the NHPA and 36 CFR § 800.

Regarding the assessment of effects to historic property, the Army has stated that:

“Any warfighting readiness activity-related physical changes to the setting of historic properties and the introduction of any warfighting readiness activity-related visual, atmospheric, and audible elements contribute to the significance of the military landscape and therefore shall not be assessed as an adverse effect under this program comment.”

This elimination from consideration any effects that are not physical alterations to the built environment is inconsistent with 36 CFR § 800 and will result in significant alterations to historic properties. The lack of consideration to building interiors (which can and do still retain character defining features, despite the Army’s statement to the contrary) or exteriors beyond the facade will further result in undocumented and unmitigated adverse effects to historic properties. Many of the building treatment measures outlined in the Program Comment are inconsistent with the Secretary of Interior’s Standards and the Army is under no obligation to consider historically appropriate building materials (even on historic facades) if they are not “economically or technically feasible.” All of these treatments could adversely affect historic properties and, under this Program Comment, the Army will be under no obligation to consider alternatives, avoid, minimize, or mitigate these effects.

Mitigation options outlined in the Program Comment include standard mitigation such as documentation via HABS/HAER/HALS recordation and data recovery or monitoring for archaeological sites. Alternative mitigation measures are permitted and their application does not require them to be applied to properties being affected nor is their appropriateness reviewed by an SOI-qualified individual. The Army proposes the use of “National Mitigation Areas” and alternative mitigation on Army Readiness and Environmental Protection Integration (REPI) program areas. These are areas for which the Army has already committed to preservation measures and the historic properties within these alternative mitigation areas may in no way relate to historic properties affected by specific undertakings. **This concept of “banking” mitigation to outside installations is largely an untested concept for cultural resources. It sets a precedent of allowing unchecked adverse effects on a property to be compensated on another property and**

**prioritizes the preservation of some historic properties over others. Historic properties are not interchangeable; they are each unique and possess specific qualities that qualify them for listing in the National Register.**

**The Program Comment provides no clear mechanism from the dissemination of mitigation materials outside of the Army to SHPO, the public, or scholars. Adversely affecting historic properties results in irreparable harm to those properties and, in most cases, a loss of the historic record. Archaeological data recovery is a destructive process and its mitigative value lies in the future use to both the archaeological scientific community and its dissemination to the communities associated with the site(s). The Army's proposed mitigation measures with no mechanism for dissemination is a further potential adverse effect to any affected historic properties.**

### **Management of NHLs**

Section 110(f) of the National Historic Preservation Act (NHPA) requires federal agencies to take extra care when their actions might directly and adversely affect an NHL. Agencies must minimize harm to the landmark to the maximum extent possible. Based on recent consultation meetings regarding proposed adverse effects to the Fort Myer NHL District, DHR has concerns that the Army will not "implement a higher standard of care" or attempt to minimize harm to the landmark to the maximum extent possible due to the lack of accountability, reporting beyond their proposed internal process. DHR did not receive requested evidence that the Army had exhausted all options to minimize harm to the Fort Myer NHL District during recent consultations. Furthermore, reasonable and appropriate mitigation options proposed by DHR and consulting parties were rejected with little explanation.

The Program Comment has not outlined specific procedures laid out in the Program Comment to meet the requirement for extra care agencies must give NHLs, beyond consultation with the National Park Service and ACHP if an adverse effect is identified. As the Army has stated in the Program Comment, any changes made to the setting of the "military landscape," modifications to building interiors, the use of alternative building materials (many of which would be likely adverse effects, especially in NHLs), and any number of undefined "routine undertakings" would not be considered an adverse effect which would ultimately result in most, if not all, actions taken by the Army within NHLs receiving no external review. **The Army will justify the degradation of National Historic Landmarks, our Nation's most significant historic resources, for the sake of "warfighting readiness" with no oversight or accountability.**

### **Arlington National Cemetery**

The Army intends to apply the Program Comment to Arlington Nation Cemetery (ANC), per their response to comments and the agreement documents listed in Appendix E. It is not clear how the activities at the ANC support the warfighting mission or why it should be subject to this Program Comment. By the Program Comment's own definition of a military landscape, ANC is a military memorial. The ANC is our nation's most hallowed ground and represents the American people of past, present and future generations. All national cemeteries are considered exceptionally significant, as a result of their Congressional designation, as nationally significant places of burial and commemoration. They should be subject to a higher level of scrutiny and review. Given their status as exceptionally significant, it is vitally important that the public have an opportunity to review and consult on undertakings that have the potential to affect historic properties. The Program Comment itself states that unlike the continually evolving installation military

landscapes that require the approach of this Program Comment, military memorials are “static historic military sites.” (Section 6.1, page 14). **ANC is not an active warfighting facility; the Army does not utilize ANC to train, test, equip, or deploy Army forces nor is it an industrial facility. While DHR understands the Army’s perspective regarding morale and quality of life, the application of this Program Comment to ANC as a memorial landscape for all branches of the military and their families is inappropriate.**

DHR has a good working relationship with the ANC. The existing programmatic agreement(s) streamline routine operations and maintenance activities, so that the ANC can continue its mission to honor those who have served our nation. Removing the SHPO and the public from consultation will only further erode trust in federal agencies.

### **Conclusion**

**It is DHR’s opinion that this Program Comment lacks the basic requirements under 36 CFR § 800.14(e) for a Program Comment.** This Program Comment fails to clearly define the category of undertakings to which it will apply. It fails to adequately address the likely effects on historic properties (including a complete disregard to effects to any historic properties except those built by the Army). It fails to clearly specify the steps the agency official will take to ensure that the effects are taken into account. The Program Comment puts all of the above requirements at the judgement, discretion, and internal decision making of the Army. It precludes any meaningful input from SHPOs, THPOs, Tribal governments, Native Hawaiian Organizations, consulting parties, and the public.

**The NHPA was established because Congress and the American people understood the value of historic preservation and saw our Nation’s history as being rapidly lost or eroded due to a lack of legally mandated historic preservation programs.** Per the NHPA, the preservation of our National history is “in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.”

The Army is the steward of our Nation’s history on the lands managed by the Army. The historic properties that may be affected by the Army’s Warfighting readiness activities do not just include buildings, structures, objects, and landscapes built, owned and operated by the Army. The Army has disregarded any resources that were there prior to their development of the land. Encompassed with Army managed lands are archaeological sites representing thousands of years of American history and prehistory; buildings, structures, and landscapes built and established before the Army’s use of the land; and culturally significant landscapes, traditional cultural places, and burial spaces containing ancestral remains of federally recognized Tribes, Native Hawaiian Organizations, and other communities. The diversity of the historic properties managed by the Army and the complexities involved in considering impacts to them in Federal decision-making epitomizes the purpose and value of the National Historic Preservation Act and the intent of 36 CFR § 800. The Army’s cultural resource staff are not subject matter experts in all of the myriad of historic properties under the Army’s purview; SHPOs/THPOs and consulting parties serve a vital role in assisting the Army in their obligations to consider the effects their activities have on those properties.

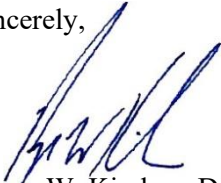
**To authorize this Program Comment as written will result in no external accountability, input, or oversight of the Army’s actions that will affect our Nation’s historic resources. Such a blanket, far-reaching Program Comment is inconsistent with the NHPA on all the points enumerated above and**



**will set a precedent that could extend to all Federal Agencies and result in undermining the processes outlined in 36 CFR § 800 for Federal actions beyond just those of the Army.**

Thank you for allowing us the opportunity to review the Program Comment. If you have any questions regarding these comments, please contact Jenny Bellville-Marrion at 804-482-8091 or via email, [jennifer.bellville-marrion@dhr.virginia.gov](mailto:jennifer.bellville-marrion@dhr.virginia.gov).

Sincerely,



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