



**NATIONAL ASSOCIATION  
OF TRIBAL HISTORIC  
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Office of the Assistant Secretary of the Army  
for Installations, Energy and Environment  
ATTN: DASA-ESOH  
110 Army Pentagon, Room 3E464  
Washington, DC 20310

*ATTN: USAF-2025-HQ-0036*

Re: Program Comment Plan for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes (Army Program Comment Plan)

Dr. David Guldenzopf,

The National Association of Tribal Historic Preservation Officers (NATHPO) respectfully submits the following comments on the Program Comment Plan for Army Warfighting Readiness and Associated Buildings, Structures, and Landscapes (PC plan).

NATHPO is the only national organization devoted to supporting Tribal historic preservation programs. Founded in 1998, NATHPO is a 501(c)(3) non-profit membership association of Tribal government officials who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples.

NATHPO's goal in submitting these comments is to protect Tribal sovereignty and ensure compliance with the National Historic Preservation Act (NHPA), particularly Section 106.

**Scope and Opening Objection.** NATHPO objects to the inclusion of archaeological sites, Traditional Cultural Places (TCPs), sacred sites, and historic properties of religious and cultural significance (HPRCS) within the scope of the proposed PC.

The Army's justification for the PC rests almost entirely on the standardized nature of its built infrastructure and purported inefficiencies of project-by-project Section 106 reviews. While the Army employs more than 300 cultural resource professionals, only sovereign Tribal governments hold the cultural, spiritual, and place-based knowledge necessary to identify and evaluate TCPs, sacred sites, and HPRCS significant to them. The Army further shared that contractors complete most of the survey and documentation work; unless the Army contracts the Tribe directly to conduct surveys for these unique cultural sites, contract staff is similarly incapable of providing the information necessary for the Army to make a reasonable and good faith effort at identification and documentation.

Unlike standardized housing built on national templates, archaeological sites and cultural landscapes are unique and tied to distinct Tribal knowledge systems. The Army acknowledges managing more than 84,000 archaeological sites across 13 million acres of land, yet the PC plan contains no mechanism to ensure Indigenous Knowledge (IK) is meaningfully incorporated into decision-making in a transparent and replicable manner.

***PROTECTING NATIVE PLACES***

Request: Exclude archaeological sites, sacred places, TCPs, and HPRCS from the proposed PC.

**Indigenous Knowledge.** This PC plan does not align with the Advisory Council on Historic Preservation's (ACHP) Policy Statement on Indigenous Knowledge and Historic Preservation (IK Policy), which recognizes IK as a distinct form of expertise.

The PC fails to recognize and create authoritative space in the decision-making process for designated representatives of Indian Tribes who are the appropriate subject matter experts with the experience and qualifications necessary to inform federal agency decision making in the identification of, and assessment and resolution of adverse effects to, historic properties of religious and cultural significance to them.

Additionally, this PC should recognize that, in many cases, identifying, vetting, and deciding whether and how to share IK requires research, work, or additional action on the part of the Tribe. If the Army requests that a Tribe provide IK via research, survey, monitoring, or other efforts that are the responsibility of the federal agency under the NHPA, the Tribe should be reimbursed or compensated.

Requests: Integrate the principles contained in ACHP's IK Policy throughout the PC. Identify how the Army intends to store and manage IK including limiting access to and dissemination of sensitive IK internally and externally. Provide reimbursement when agencies request information from Indian Tribes, including IK, that would otherwise be the responsibility of the federal agency under NHPA.

**Burial Sites, Human Remains, and Funerary Objects.** The PC plan does not explicitly refer to the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects (Burial Policy) and its companion guidance document. Omitting this policy risks inconsistent treatment of burial sites, human remains, and funerary objects, which require early, respectful, and culturally appropriate consultation. Reliance on excavation or data recovery as standard mitigation is particularly problematic and inconsistent with many Tribes' values.

Requests: Commit to fully implementing ACHP's Burial Policy and its companion guidance document and ensure its principles guide all identification, consultation, and treatment decisions where Tribal burials or funerary objects may be present, with deference to Tribal expertise and cultural protocols.

**Identification and Access.** The PC plan improperly shifts responsibility by encouraging Tribes to proactively identify historic properties, an inherent responsibility of the Army. Pursuant to 36 CFR 800.4(a)(4), the Army must gather information from Indian Tribes to support their identification efforts. The Army must also be cognizant that a Tribe may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.

Requests: Affirm Army's responsibility for identification and evaluation, guarantee safe access for Tribes when their expertise is warranted, and provide reimbursement for Tribal expertise.

**Mitigation.** The PC plan treats excavation and data recovery as a primary mitigation measure. This practice is inconsistent with the NHPA and predetermines the values that make a site eligible for the National Register of Historic Places (NRHP). For many Tribes, excavation is not a neutral treatment, it frequently results in direct harm to sacred places, TCPs, and HPRCS, adversely affecting the cultural and spiritual attributes that give them significance.

Defaulting to data recovery demonstrates that little effort has been made to engage in meaningful consultation or to evaluate sites beyond their potential for archaeological data. This contradicts both Section 106 requirements and the ACHP's Indigenous Knowledge and Burial policies, which emphasize

preservation in place as the preferred treatment and culturally appropriate consultation as the foundation of decision-making.

Language at 4.2.4.7.(3) requires that consulting parties request copies of any reports resulting from data recovery “subject to operational security review.” This restrictive practice does not serve Indian Tribes or the general public any benefit as a mitigative action and further burdens Tribes as they must solicit these products to provide comment.

Section 4.2.4.7.(3) further compounds the process by noting that the Army will engage in “Avoidance of duplication of effort.” The language supporting this proposal is confusing and appears to treat all place-based sites as having similar eligibility criteria, information potential, and cultural value, something that couldn’t be further from the truth.

Requests: Remove excavation and data recovery as default mitigation. Require consultation with Tribes and other consulting parties to determine the appropriate course to resolve adverse effects, prioritizing preservation in place and culturally appropriate measures over excavation.

**Tribal Consultation.** Section 4.2.4.10 states that consultation will occur during National Environmental Policy Act (NEPA) review periods. This is inconsistent with the NHPA which requires direct consultation with Tribes on HPRCS.

Request: Revise Section 4.2.4.10 to explicitly require early, direct, and ongoing consultation with Indian Tribes pursuant to the NHPA.

**NEPA as a Substitute for Section 106 Consultation.** The PC plan proposes to rely on NEPA processes as a vehicle for notification and consultation. NATHPO has significant concerns with this approach.

Relegating consultation opportunities to the NEPA process places an additional burden on Tribes. They must continually monitor large volumes of NEPA documents across multiple installations, identify undertakings that may affect HPRCS, and respond under short comment timelines.

Further, due to changes in regulations and guidance systems in the United States Supreme Court Seven County Infrastructure Coalition decision, we oppose replacing the Section 106 review process required at 36 CFR 800.3-800.7 with the public review procedures in NEPA.

Request: The Program Comment should require early, direct, and consultation under Section 106, independent of NEPA, to ensure Tribal concerns are properly addressed.

**Acceptable Loss in UXO and Contaminated Areas.** Treating sites in unexploded ordnance (UXO) or contaminated areas as acceptable losses presumes that sacred and cultural sites can be written off without consultation. Further, it fails to account for the ongoing significance a location can have regardless of physical impact.

Requests: Eliminate “acceptable loss” as a default outcome. Require consultation and develop alternative approaches such as remote documentation or culturally appropriate recognition measures that respect Tribal values while addressing safety.

**Post Review Discovery.** The current PC plan omits any provision for Post Review Discoveries; this is a serious flaw and continues to show that this PC cannot adequately account for archaeological sites, sacred places, TCPs, and HPRCS.

Properties of religious and cultural significance to Indian Tribes are often not fully identified during initial surveys, particularly when IK is not adequately incorporated. Without a Post Review Discovery

process, there is no safeguard to ensure that these places are considered if discovered during undertakings.

Requests: Revise the PC to include a clear Post Review Discovery provision consistent with 36 CFR § 800.13. Require that the discovery process explicitly involve consultation with any Indian Tribe that may attach religious and cultural significance to the discovery. Ensure IK is recognized as essential to evaluating discoveries, determining significance, and resolving adverse effects. Commit that resolution of adverse effects resulting from Post Review Discoveries will be completed through consultation with affected Tribes, not unilaterally determined by the Army or its contractors.

**Applicability and Prior Evaluations.** Section 6.0 excludes from consideration properties previously determined not eligible for the NRHP. As currently proposed, the Army has not committed to any standards for reevaluation of these properties. However, many such eligibility determinations were made without Tribal consultation.

Language at 36 CFR §800.4(c)(1) directs agencies to take into account the fact that changing perceptions or incomplete evaluations may require reevaluation. This is particularly important to account for given that many sacred sites, TCPs, and HPRCS are known only to Tribes; Army staff cannot generate this knowledge internally, nor can they replicate it through outside contractors. It should also be noted that Tribes frequently maintain a connection to a location regardless of physical disturbance.

Requests: Require reevaluation of properties whenever a Tribe identifies potential cultural or religious significance of a geographic location. Identify a timeline for reevaluation consistent with State standards (e.g., 10yrs). Ensure prior determinations are revisited with full Tribal consultation to ensure other contributing qualities and/or eligibility criteria are considered.

**Oversight and the Historic Properties Review Board.** The PC plan establishes an internal Army Historic Properties Review Board (HPRB). However, no Tribal expertise is represented.

Requests: Guarantee Tribal and/or NATHPO representation on the HPRB whenever HPRCS, sacred sites, TCPs, or NHLs associated with Tribes are considered. Require direct consultation with affected Tribes before any final HPRB decision. Compensate any non-federal participants.

**Prior Agreements.** The PC would supersede existing Programmatic Agreements (PAs) and Memoranda of Agreement (MOAs), while retaining exemptions from expired agreements. This action would undermine years of consultation and tailored protections while extending local exemptions nationally, an action that undermines the spirit of the NHPA.

Requests: NATHPO is opposed to this PC superseding existing agreement documents. NATHPO is opposed to this PC being able to apply locally developed exemptions in a national manner without full consultation on their utility and applicability.

**Periodic Review and Reporting.** The PC has indefinite duration, and limits reporting to only the ACHP; Tribes and NATHPO are excluded.

Requests: Limit duration to 10 years. Require reviews at 1, 2, and 5 years. Transmit all reports directly to Indian Tribes and NATHPO. Make NATHPO a mandatory invitee to all review meetings.

**Amendment.** Section 9.0 allows ACHP to amend the PC after consulting the Army and “other parties as it deems appropriate.” NATHPO has significant concerns with this language.

Allowing amendments without mandatory Tribal participation risks undermining existing protections and further marginalizing Indigenous voices in decisions that directly affect their heritage. Because

amendments may substantially alter the scope or application of the PC, they must be subject to the same standard of consultation as its development.

Requests: Require government-to-government consultation with federally recognized Indian Tribes and consultation with NHOs prior to any amendment that has the potential to affect Tribes. Ensure that NATHPO is invited to consult regarding all proposed amendments.

**Extension to Other Department of Defense Branches.** The PC plan proposes to allow the Chairman of the ACHP to amend the PC to extend its applicability to the other military departments of the Department of Defense (DOD), with notification occurring through a Federal Register notice. NATHPO has strong concerns with this provision.

First, such an extension bypasses the consultation central to Section 106. Second, each DoD branch has distinct missions, landscapes, and cultural resource practices. Third, substituting Federal Register notice for direct government-to-government consultation undermines the ACHP's trust responsibility; Tribes must be engaged to assess whether proposed procedures are appropriate given the diversity of DoD installations and cultural contexts. Fourth, the capacity of other branches to implement a program of this scale is uncertain. Extending the PC without assessing readiness risks compliance failures and leaves Tribal heritage compromised.

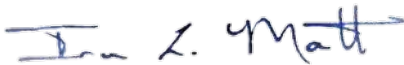
Requests: Remove unilateral authority for ACHP's Chairman to extend to other DoD departments. Require full Section 106 consultation with Indian Tribes before any extension.

**Conclusion.** NATHPO appreciates the Army's early coordination to inform consulting parties before ACHP review. This outreach has helped frame concerns and priorities before the ACHP formally considers the PC.

However, the PC as drafted is unacceptable. Without revisions, the PC risks codifying the marginalization of Tribal voices, normalizing the loss of irreplaceable heritage, and undermining the trust responsibility.

The Army's interest in amending its compliance processes and addressing the scale of its infrastructure should not result in actions that fail to account for the values Tribes ascribe to their cultural sites. While nationwide streamlined treatment may be reasonable in certain circumstances, it is not appropriate for archaeological sites, sacred places, TCPs, or HPRCS.

Thank you for the opportunity to comment,



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Cc: Valerie Grussing, Executive Director, National Association of Tribal Historic Preservation Officers  
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