



December 4, 2020

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1400 Independence Ave SW
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Chris Koeppel
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1400 Independence Ave SW
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Re: [Invitation to Consult] National Phasing Programmatic Agreement (NHPA Section 106)

Dear Mr. Stevens and Mr. Koeppel:

The American Cultural Resources Association (ACRA), the trade association for private firms that specialize in cultural resources management (CRM), appreciates this opportunity to comment on the U.S. Forest Service's (FS) proposed Nationwide Programmatic Agreement (PA). We commend you and the FS for your work in developing this PA and your continued commitment to the protection and preservation of our nation's cultural and historical resources.

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, historians, and an increasingly diverse group of other specialists. Using free market business practices, ACRA firms deploy skilled teams to provide clients with the best service while fulfilling ethical, professional, and legal commitments to people and cultural resources, as well as providing communities with a voice in development processes.

ACRA has reviewed the FS's proposed Nationwide PA and offers the following comments.

I. Clarifying the Linkage Between HIPs and NEPA

The PA appears to link the development of the Heritage Implementation Plan (HIP) to the National Environmental Policy Act (NEPA) process, as specified in 36 CFR 800.8. However, the PA is not clear as to how the relationship between the two will work, particularly in these Sections:

- Section II(C)(i) states that, “[t]he Agency Official will invite HIP consulting parties to attend public meetings when the Agency Official determines public meetings are necessary.” This leaves unclear whether such “public meetings” are the same as NEPA public scoping meetings. If such meetings are outside the NEPA public scoping, their purpose and the factors used to determine their necessity are unclear, particularly since this provision states that it is up to the Agency Official to determine whether they are necessary. If such meetings are part of the NEPA process, it is unclear whether development of the HIPs will be included as part of the scoping process. ACRA believes this needs to be clarified.

- With respect to Area of Potential Effect (APE) considerations, the draft PA leaves some questions unanswered. By specifying that the APE will be established “in consultation with the HIP consulting parties,” Section VI(C)(ii)(1) leaves unclear what happens if the consulting parties agree to a different APE than that described in the NEPA document. It is unclear if this APE will be included as an alternative in the NEPA document. Furthermore, if the consulting parties identify the APE, the PA leaves unclear how other alternatives in the NEPA document should be handled. Finally, it is not clear what would happen if the APE changes during the course of the project.
- Section VI(C)(ii)(2) states that “the Project overview will describe the Project APE . . . If such information is in the NEPA document, the HIP may refer to the NEPA document for such information.” ACRA believes that, if the development of the HIP and the phased approach is linked to the NEPA process, such information needs to be included in the NEPA document and public scoping meetings for full disclosure.
- If the HIP is linked to the NEPA process, the PA leaves unclear what level of documentation will be required (e.g., categorical exclusion, environmental assessment, or environmental impact statement, etc.) These terms are defined in Appendix A (Definitions), but are not used in the body of the PA. Each of these levels has a different compliance path in terms of complexity which, in turn, will most likely affect the development and timing of the HIP. In addition, in the case of environmental assessments and environmental impact statements, it is unclear as to whether the HIP will address all alternatives or just the preferred alternative. That difference will most likely affect the timing for the development and review of the HIP. In addition, the proposed PA states that the HIP is to be developed prior to the NEPA decision. If that is the case, ACRA believes that the HIP should address all alternatives, not just the preferred alternative, and included in the NEPA document.

ACRA believes that the PA should more clearly address the level of NEPA documentation anticipated and how and where the HIP will fit in with the process.

II. Inclusion of Tribes and THPOs in the PA

ACRA commends the FS for engaging with the National Conference of State Historic Preservation Officers (NCSHPO) in the development of this PA, as well as the Advisory Council on Historic Preservation (ACHP). ACRA believes that the National Association of Tribal Historic Preservation Officers (NATHPO) should also be engaged in, and ultimately a party to, this PA, as they are the tribal equivalent of NCSHPO.

Similarly, ACRA believes that in all instances where the PA references a SHPO, THPOs should also be included. Federal statute rightly require consultation with tribal governments for actions that take place on tribal lands; this point should be made explicit in the document by stating that THPOs must be part of the process.

III. Heritage Professional Qualifications May Lead to Confusion.

The PA, in in Section II(B)iv, describes the qualifications that an FS Heritage Professionals must meet. As currently drafted, the PA includes 36 CFR 296.8, which applies to the Archaeological Resources Protection Act (ARPA), and applicants for ARPA permits. This could lead to confusion unless the FS is planning on using contractors as heritage professionals, which would appear to contradict the PA's statement in Section II(B) that Heritage Professionals are FS staff. ACRA therefore recommends that the reference to 36 CFR 296.8 be removed and instead reference Appendix A to 36 CFR Part 61 and the Secretary of the Interior's Professional Qualifications Standards. Both are generic and are the standard, most commonly-used references for professional qualifications.

IV. Avoidance Strategies Are Not Prioritized.

The draft PA rightly references the importance of mitigation efforts. However, ACRA believes it is important to reiterate that avoidance of impacting historic resources, if at all possible, is a preferable option. Therefore, ACRA recommends that all references to mitigation be amended to reference "mitigation and avoidance."

V. All Consulting Parties Should be Included.

One of the keys to ensuring that a HIP is successful is requiring that all consulting parties be engaged throughout the process. However, in a number of provisions the PA does not ensure that all parties will be consulted. For example, Section VI(C)(ix) requires that just ACHP and the SHPO should be notified of an emergency situation. Similarly, Section VII(C)(i) requires the FS to share a copy of the signed HIP with ACHP and the SHPOs. ACRA believes in these provisions and others, all consulting parties should be included in these consultations and communications.

We appreciate the FS considering our concerns as it moves forward.

Sincerely,



Amanda Stratton
Executive Director