



April 9, 2024

Mr. Joseph McMahan
U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street, NW
Washington, DC 20314-1000

Re: Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties (Docket ID No. COE-2023-0004)

Dear Mr. McMahan:

The American Cultural Resources Association (ACRA), the trade association for firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the U.S. Army Corps of Engineers' (Corps) Proposed Rule on Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties (Docket ID No. COE-2023-0004).

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, anthropologists, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialogue where every stakeholder has a voice.

ACRA strongly supports Corps' proposal to amend its Regulatory Program's permitting regulations to replace Appendix C and follow the National Historic Preservation Act's (NHPA) Section 106 implementing regulations at 36 CFR 800 (Part 800 regulations).

The Part 800 regulations are the product of an extensive and long-standing cycle of consultation, development, evaluation, and amendment. They provide a high level of consistency, clarity, and certainty to Section 106 proceedings. This ensures that all stakeholders have a voice in the process and that the need for development is balanced with the need to consider the impacts of such development on our nation's cultural heritage.

ACRA strongly believes that it is in the best interests of the Corps, its stakeholders, and the public for the Corps to rescind Appendix C and adopt the Part 800 regulations. Adoption by the Corps of the Part 800 regulations for its regulatory program will result in stronger and more meaningful consultation with Tribal governments and descendant communities, better enabling the Corps to fulfill its trust responsibility to Tribal Nations.

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This action also will lessen inconsistencies between how the Corps approaches Section 106 reviews and those of other federal agencies which follow the Part 800 regulations, and will improve consistency among Corps districts on how Section 106 is implemented. These efforts will reduce litigation and unnecessary delays. Ultimately, they will enable all stakeholders, including CRM firms and state/Tribal historic preservation officers, to assist the Corps in fulfilling its Section 106 responsibilities in a better and timelier manner.

Adoption of the Part 800 regulations also will ensure that the Corps' regulatory program will evolve with other agency programs over time without the need for updates. The regulations have matured over the years as our nation's approach to CRM, historic preservation, community engagement and inclusion, and potential effects has changed. Part 800 regulations will continue to evolve over time; by adopting these regulations, the Corps will provide long-term certainty and predictability to its regulatory program.

In addition, ACRA hopes that rescinding Appendix C and adopting the Part 800 regulations will move the Corps' regulatory program away from the current narrow definition of "permit area" and towards the Part 800 regulations' definition of "area of potential effects." Appendix C's "permit area" definition often failed to reflect the broad and complete range of direct and indirect foreseeable and cumulative effects of permitted work. The permit area interpretation created a higher risk of adverse impacts to values and resources of cultural or historical significance and confusion and unnecessary delays due to conflicts with other portions of review areas which adhered to the Part 800 regulations. By adopting the Part 800 regulations and their definition of "area of potential effects," the Corps will ensure that reviews under its regulatory program are aligned with those of other federal programs with Section 106 responsibilities.

ACRA strongly encourages the Corps to take steps to ensure that it has adequate staff capacity and training to be able to manage the transition from Appendix C to the Part 800 regulations. Successful implementation of the regulations depends upon having qualified cultural resource staff working as part of the regulatory teams in each district, and taking steps to promote standardization of processes across districts to avoid unnecessary confusion and complexity. ACRA stands ready to work with the Corps to ensure a smooth transition to the Part 800 regulations.

We appreciate USACE's work on this important issue and its consideration of ACRA's views.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amanda Stratton".

Amanda Stratton
Executive Director