



Maryland
DEPARTMENT OF PLANNING
MARYLAND HISTORICAL TRUST

July 26, 2022

Ms. Stacey M. Jensen
Office of the Assistant Secretary of the Army, Civil Works
108 Army Pentagon
Washington, DC 20310-0108
Sent via email: usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil

Re: Docket ID No. COE-2022-0006
MD SHPO Comments on the Department of the Army, U.S. Army Corps of Engineers' Notice
Regarding the Modernization of Army Civil Works Policy Priorities

Dear Ms. Jensen:

Thank you for notifying the Maryland Historical Trust (MHT) about the Department of the Army, U.S. Army Corps of Engineers' (Corps) renewed effort to modernize the Civil Works program of the Corps through a variety of priority policy initiatives. The Maryland Historical Trust (MHT) serves as Maryland's State Historic Preservation Office (MD SHPO) pursuant to the National Historic Preservation Act of 1966 (NHPA). Thus, MHT staff have reviewed the information presented in the Federal Register notice as well as the supplementary information that was presented during the virtual overview and virtual public meetings the Army held in June and July of 2022. Following our review of this information, we are writing to provide our initial comments on the Corps' proposed policy initiatives.

We truly appreciate and commend these early efforts to gather input and recommendations that will be used to inform the Army's future decision-making related to Native American/Tribal Nation consultation, better serving the needs of disadvantaged and underserved communities, and pursuing potential rulemaking actions regarding the Corps' Regulatory Program's implementing regulations for Section 106 of the NHPA. As noted in the Federal Register notice, the Advisory Council on Historic Preservation (ACHP) oversees Federal agencies' compliance with the NHPA and issues regulations that define how the agencies can meet their statutory responsibilities under the NHPA (36 CFR 800). While the vast majority of the Army's Civil Works programs use the ACHP's regulations, the Corps' Regulatory Program uses regulations that were promulgated in 1990 (55 FR 27003; 33 CFR 325, Appendix C).

Understandably, the Regulatory Program's reliance on Appendix C (rather than 36 CFR 800) has resulted in inconsistencies and confusion amongst Regulatory staff, the public, State and Tribal Historic Preservation Offices, cultural resources consultants, and others – particularly when it comes to the Corps' use of "permit area," versus the ACHP's use of "area of potential effect." As a result of these challenges and inconsistencies, we understand that the Army has prioritized rulemaking on Appendix C as a policy initiative. MHT strongly agrees that it would be beneficial to all parties for the Army to rescind the use of Appendix C and either rely on 36 CFR 800 or develop a Program Alternative that best ensures compliance with the ACHP's regulations and promotes improved Tribal coordination and consultation with other underserved communities.

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We would like to take this opportunity to acknowledge our appreciation of the effective working relationship that the Corps' Baltimore District and MHT have worked to develop and maintain for over two decades. This partnership has enabled both of our agencies to reasonably meet our respective historic preservation responsibilities within the often-challenging limitations and inconsistencies between Appendix C and 36 CFR 800. Nevertheless, MHT fully supports the Army's proposed initiative to update its Civil Works policies. Modernizing these policies by rescinding Appendix C and relying on the ACHP's regulations, and/or the development of a Program Alternative, would be expected to provide a clearer and more consistent implementation of Section 106 of the NHPA for the Corps' Regulatory programs. Such an effort would allow for a more efficacious and efficient consultative process and facilitate compliance with Section 106 requirements. We look forward to further consultation and more community-level engagement at the District level as the Army's outreach effort continues.

If you have any questions or require further information from MHT, please contact Dr. Dixie Henry at dixie.henry@maryland.gov. Thank you for providing us with this opportunity to comment.

Sincerely,



Elizabeth Hughes
Director / State Historic Preservation Officer
Maryland Historical Trust

EH/DLH/

cc: Reid Nelson (ACHP / rmelson@achp.gov)
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