## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of the Final Army Alternate Procedures for Protection of Army Historic Properties

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of adoption.

**SUMMARY:** This notice announces the Department of the Army's adoption of and publishes the final Army Alternate Procedures (AAP) to 36 CFR Part 800: Protection of Army Historic Properties. The Advisory Council on Historic Preservation (Council) approved the AAP for adoption in a role-call vote at their meeting on July 13, 2001. The AAP is an optional procedure that an installation may choose to adopt to satisfy compliance with Section 106 of the National Historic Preservation Act (NHPA) in lieu of the existing regulations set forth in the Council's regulations at 36 CFR Part 800. The Army and the Council have consulted extensively with State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, and the National Trust for Historic Preservation throughout the development of the AAP. The AAP represents a plan-based approach to Section 106 compliance, in contrast to the project-by-project review approach defined in 36 CFR 800 subpart B.

**ADDRESSES:** To obtain additional copies of the AAP, contact the U.S. Army Environmental Center, ATTN: SFIM–AEC–PA (Mr. Robert DiMichele), Aberdeen Proving Ground, MD 21010–5401.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lee Foster, 703–693–0675.

**SUPPLEMENTARY INFORMATION:** The Department of the Army has adopted the final AAP for compliance with Section 106 of the NHPA and for comprehensive management of historic properties on lands owned or controlled by the Department of the Army. The AAP stands in place of the project-by-project review procedures set forth in 36 CFR Part 800. The AAP's leverage the internal policy requiring installations to prepare Integrated Cultural Resource Management Plans (ICRMP) in accordance with Army Regulation 200–4, Cultural Resources Management, as implemented by more detailed guidance in Department of the Army Pamphlet, 200–4. The AAP authorizes Army Installation Commanders to develop a Historic Property Component (HPC) to the installation's ICRMP. Once certified by the Council, the HPC serves as the installation's Section 106 compliance agreement for a five (5) year period. The installation's Section 106 compliance responsibilities would be met through internal installation implementation of the HPC rather than case-by-case, formalized, external review of individual undertakings as presently required by 36 CFR Part 800. Installations choosing not to develop certified HPCs will continue to review undertakings in accordance with 36 CFR part 800.

Copies of the AAP can also be found on the Council's web site at *www.achp.gov/army.html.*

Dated: February 25, 2002.

**Raymond J. Fatz,**

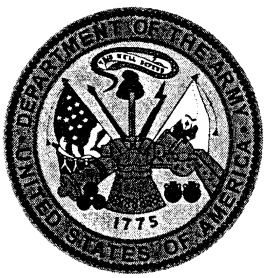
*Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA(I&E).*

**BILLING CODE 3710–08–M**

# ARMY ALTERNATE PROCEDURES

# TO 36 CFR PART 800

ADVISORY COUNCIL ON HISTORIC PRESERVATION



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## Section 1.0: Introduction

### 1.1 Purpose and Introduction

(a) *Purpose.* Section 106 of the National Historic Preservation Act (Act) requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on such undertakings. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation between the Army, and consulting parties and the public. The purposes of these alternate procedures are to provide for more efficient, consistent and comprehensive Army compliance with the goals and mandates of section 106 of the Act, to encourage more thoughtful consideration and early planning for historic properties, and to better support the Army's ability to accomplish its national defense mission. These alternate procedures further these purposes by establishing a proactive planning and management approach that stands in place of the formal project-by-project review process prescribed by the Council's regulations at 36 CFR Part 800. The approach set forth in these alternate procedures relies on the Army's existing internal planning, funding and decision making processes.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy on historic preservation. References to those related provisions are included in these procedures to identify circumstances where actions may be affected by the independent obligations of those other provisions.

(c) *Relation to internal Army Regulations.* Army Regulation 200-4 "Cultural Resources Management" (AR 200-4), an internal agency policy, sets forth the Army's requirements for complying with the Act, the Archeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom Act (AIRFA), Indian Sacred Sites under Executive Order 13007 (Indian Sacred Sites), Executive Order 13175, (Consultation and Coordination with Indian Tribal Governments), and 36 CFR Part 79 (Curation of Federally-Owned and Administered Archaeological Collections). The cornerstone of AR 200-4 is the policy requirement for all installations (other than those receiving a variance) to prepare an Integrated Cultural Resource Management Plan (ICRMP). The ICRMP integrates the entirety of the installation cultural resources program with the ongoing military mission, allows identification of potential conflicts between the installation's mission and cultural resources, and identifies actions necessary to meet statutory and regulatory requirements.

(d) These procedures utilize to the maximum extent possible existing internal Army program requirements to meet section 106 requirements. Each ICRMP developed by an installation shall have a Historic Properties Component (HPC) to ensure compliance with section 106 of the Act on a programmatic, as opposed to project-by-project, basis. Individual installations shall coordinate with internal staff elements, consult with consulting parties, and, where appropriate, consider the views of the public, on development of the HPC to ensure that the HPC includes adequate procedures for identification, evaluation, and treatment of historic properties over the five-year ICRMP planning period. Installations shall substantially involve consulting parties on development of the HPC, not the entire ICRMP, since other components of the ICRMP involve management of cultural resources beyond the statutory and regulatory authority and jurisdiction of consulting parties. Neither these procedures nor a certified HPC relieves the Army of its responsibilities to comply with other cultural resources laws such as NAGPRA and ARPA.

(e) *Optional application.* These alternate procedures recognize that certain installations may be successfully operating under the current review procedures in 36 CFR Part 800. Therefore, application of these procedures is optional. Authority rests with the installation commander to elect to comply with section 106 of the Act through application of these alternate procedures in lieu of 36 CFR Part 800. Installation commanders choosing to continue compliance through 36 CFR Part 800 instead of through these alternate procedures are strongly encouraged to revisit that determination on a periodic basis, and may choose to apply these alternate procedures at any time, in accordance with Section 1.2, below. In

addition, installation commanders operating under an HPC retain authority to revert to operation under 36 CFR Part 800 should they desire.

(f) *Role of consulting parties.* These alternate procedures promote early and effective participation of State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Federally recognized Indian Tribes, and Native Hawaiian organizations in Army planning and management of historic properties. These consulting parties play a regulatory role in development of and signature on the HPC. Once the HPC has been finalized, SHPOs, THPOs, Federally recognized Indian Tribes, and Native Hawaiian organizations will have continued opportunities to participate in implementation by reviewing and monitoring installation compliance and providing expertise concerning identification, evaluation, and management of historic properties. These alternate procedures establish minimum requirements for compliance. Installations are encouraged to tailor their planning documents to their particular needs, and, where appropriate, supplement these minimum requirements.

(g) *Role of the public.* The public includes national, regional, or local organizations and individuals with an interest in historic preservation, and local governments when not participating as consulting parties. Public views are important to a fully informed decision making process under these procedures. The process established by the National Environmental Policy Act (NEPA), as implemented by the regulations published by the Council on Environmental Quality and Army Regulation 200-2 "Environmental Effects of Army Actions" (AR 200-2) is designed to ensure meaningful public participation in Federal agency decision making. Installation commanders will use the NEPA process to the greatest extent practicable to provide for public participation under these procedures for installation activities.

(h) Nothing in these procedures changes any rights reserved to any Indian Tribe by treaty or otherwise granted to any Indian Tribe, Native Hawaiian organization, or to their members by Federal law, including Statute, regulation or Executive Order. These procedures are designed to ensure that the Army fully meets its responsibilities to consult with Federally recognized Indian Tribes and Native Hawaiian organizations when Army activities may affect historic properties of traditional religious and cultural importance to them.

### 1.2 Methods of Complying with Section 106 of the Act

(a) Each installation electing to comply with section 106 of the Act through these procedures in lieu of 36 CFR Part 800 will develop a Draft HPC, in consultation with consulting parties, and request certification of its HPC from the Council. Once certified, an installation shall comply with section 106 of the Act through implementation of its HPC for a five-year period.

(b) Prior to HPC certification, installations shall continue to comply with section 106 of the Act by reviewing undertakings pursuant to 36 CFR Part 800.

(c) Installations electing not to comply with section 106 of the Act through these procedures shall continue to comply with section 106 of the Act by following 36 CFR Part 800.

(d) Where the Army proposes to conduct any undertaking on Tribal land where a Federally recognized Indian Tribe has developed Tribal historic preservation regulations pursuant to section 101(d)(5) of the Act, and those regulations operate in place of review under 36 CFR Part 800, the Army shall follow those Tribal historic preservation regulations prior to approving and while conducting the undertaking.

### 1.3 Authority

(a) These procedures are promulgated pursuant to section 110(a)(2)(E) of the Act (16 U.S.C. 470h-2) which directs Federal agencies to develop procedures for implementing section 106 of the Act, and 36 CFR § 800.14(a) which authorizes Federal agencies, in consultation with the Council, to develop alternative procedures to implement the section 106 process, that, after Council concurrence, substitute

for the regulations set forth in 36 CFR Part 800. The Council retains final authority to determine whether the Army's alternate procedures are consistent with 36 CFR Part 800.

### 1.4 Scope

(a) These procedures apply to all levels of the Active Army, the Army National Guard, the U.S. Army Reserve, including all installations and activities under the control of the Army by ownership, lease, license, public land withdrawal, or, any similar instrument, where the Agency Official elects to comply with these procedures in lieu of 36 CFR Part 800. All of the above shall be referred to in these procedures as the Army, unless otherwise noted.

(b) These procedures do not apply to the Civil Works functions of the U.S. Army Corps of Engineers.

(c) These procedures shall not apply to installations or activities where the installation commander has elected, pursuant to Section 2.1, to continue to comply with section 106 of the Act through the process set forth under 36 CFR Part 800.

### 1.5 Definitions

*Act* means the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

*Adverse effects* are those effects of an undertaking that may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion on the National Register of Historic Places (National Register) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. The criteria of adverse effect also require consideration of all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

*Agency Official* is the Army official with jurisdiction over an undertaking as set forth in Section 1.6(a).

*Area of potential effects (APE)* means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

*Army* means Active Army, Army National Guard, U.S. Army Reserve, and all installations and activities as described in Section 1.4.

*Comment*, when used in relation to the Council, means the findings and recommendations of the Council formally provided in writing to the Secretary of the Army under section 106 of the Act.

*Consulting parties* are those parties that have a consultative role in the section 106 process; these parties are the SHPO, the THPO, Federally recognized Indian Tribes, Native Hawaiian organizations, representatives of local governments, and applicants for Federal permits, licenses, assistance or other forms of Federal approval. Members of the public may participate as consulting parties upon the invitation of the installation commander.

*Consultation* means the formal process of seeking, discussing, identifying and considering the views of consulting parties. For purposes of these procedures, consultation with Federally recognized Indian Tribes means consultation on a government-to-government basis as defined below.

*Coordination*, for the purposes of these procedures, means the informal communication and exchange of information and ideas between consulting parties concerning historic preservation issues affecting the Army. Coordination is intended to be an informal process, on a staff-to-staff basis, for routine management issues as distinguished from the formal consultation and tribal consultation processes as defined by these procedures.

*Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

*Day* or days means calendar days.

*Effect* means alteration to the characteristics of an historic property that qualify it for inclusion in or make it eligible for inclusion in the National Register.

*Federally recognized Indian Tribe,* for the purposes of these procedures, means: (i) an Indian or Alaska Native Tribe, band, nation, pueblo, village or community within the continental United States presently acknowledged by the Secretary of the Interior to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act, Public Law 103-454; and (ii) Regional Corporations or Village Corporations, as those terms are defined in Section 3 of the Alaskan Native Claims Settlement Act (43 U.S.C. 1602), which are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Government-to-government relations,* for the purposes of these procedures, means relations formally established between the Army and Federally recognized Indian Tribes through their respective governmental structures. In recognition of a Federally recognized Indian Tribe's status as a sovereign nation, formal government-to-government relations are established and maintained directly between installation commanders and the heads of Tribal governments. In accordance with AR 200-4, installation commanders initiate government-to-government relations with Federally recognized Indian Tribes by means of formal, written communication to the heads of Tribal governments. Such letters should designate an installation official who is authorized to conduct follow-on consultations with the Tribe's designated representative. Installation commanders are encouraged to meet face-to-face with the heads of Tribal governments as part of the process to initiate government-to-government consultation. Any final decisions on installation HPCs that have been the subject of government-to-government consultation will be formally transmitted from the installation commander to the head of the Tribal government.

*Historic preservation or preservation* includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

*Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization. The term "eligible for inclusion in the National Register" includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

*Historic Properties Component (HPC)* means, in accordance with these procedures, that portion of the ICRMP which relates directly to the implementation of section 106 of the Act. The HPC is a five-year plan that provides for installation identification, evaluation, assessment of effects, treatment, and management of historic properties, including those of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization. The HPC is the basis upon which an installation's program is evaluated for certification for purposes of these procedures. While the HPC remains a component of the ICRMP, it stands alone as a legal compliance document under these procedures.

*Installation* means a grouping of facilities located in the same vicinity, which are under control of the Army and used by Army organizations. This includes land and improvements. In addition to those used primarily by soldiers, the term "installation" applies to real properties such as depots, arsenals, ammunition plants (both contractor and government operated), hospitals, terminals, and other special mission installations. The term may also be applied to a state or a region in which the Army maintains facilities. For example, the Army National Guard may consider National Guard facilities within a state to be one installation and the U.S. Army Reserve may consider Regional Support Centers to be installations. Under these procedures, a subinstallation may be certified individually or as part of its support installation.

*Integrated Cultural Resources Management Plan (ICRMP)* is a five-year plan developed and implemented by an installation commander to provide for the management of cultural resources in a way that maximizes beneficial effects on such resources and minimizes adverse effects and impacts without impeding the mission of the Army.

*National Historic Landmark (NHL)* means a historic property that the Secretary of the Interior has designated a National Historic Landmark pursuant to the Historic Sites Act of 1935, Public Law 100-17.

*National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

*National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

*Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

*Native Hawaiian organization* means any organization which (1) serves and represents the interests of Native Hawaiians, (2) has as a primary and stated purpose the provision of services to Native Hawaiians, and (3) has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. Such organizations include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei.

*NEPA process* means the decision making process established by the National Environmental Policy Act as implemented by the regulations published by the Council on Environmental Quality and AR 200-2. The NEPA process involves preparation of a NEPA document, either a Record of Environmental Consideration, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), followed by a decision document. An EA results in either a Finding of No Significant Impact or Notice of Intent to prepare an EIS. An EIS results in a Record of Decision.

*Professional standards* means, for the purposes of these procedures, those standards set forth in the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), which apply to individuals conducting technical work for the Army. Tribal members and Native Hawaiians are uniquely qualified to identify and assist in the evaluation, assessment of effect, and treatment of historic properties to which they attach traditional religious and cultural importance. When the Army requests assistance from Federally recognized Indian Tribes and Native Hawaiian organizations to aid in the identification, evaluation, assessment of effects and treatment of historic properties of traditional religious and cultural importance, such Tribal members and Native Hawaiians need not meet the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-44739).

*Review and monitoring* means an informal process in which an installation shall coordinate with consulting parties to discuss proposed undertakings for the upcoming year, results of plan implementation during the previous year, the overall effectiveness of the installation's HPC, and the need for making amendments to it. At a minimum, this review and monitoring shall be conducted annually.

*Sovereign* or *sovereignty,* with respect to Federally recognized Indian Tribes means the exercise of inherent sovereign powers over their members and territories.

*State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer.

*Surface Danger Zone* means the area designated on the ground of a training complex (to include associated safety areas) for the vertical and lateral containment of projectiles, fragments, debris, and components resulting from the firing or detonation of weapon systems to include exploded and unexploded ordnance.

*Tribal consultation* means seeking, discussing, identifying and considering Tribal views through good faith dialogue with Federally recognized Indian Tribes on a government-to-government basis in recognition of the unique relationship between Federal and Tribal governments and the status of Federally recognized Indian Tribes as sovereign nations (see government-to-government relations). The Tribal Historic Preservation Officer (THPO) serves as the Tribal official for government-to-government consultation for undertakings affecting historic properties off Tribal lands only where the Tribal government has designated the THPO as the Tribe's designated representative responsible for carrying out such functions.

*Tribal Historic Preservation Officer (THPO)* means the Tribal official, appointed by the head of the Tribal government or as designated by a Tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on Tribal lands in accordance with section 101(d)(2) of the Act.

*Tribal lands* mean all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

*Undertaking* means a project, activity, or program that is funded in whole or in part under the direct or indirect jurisdiction of the Army, including those carried out by or on behalf of the Army, those carried out in whole or in part with Army funds, and those requiring Army approval.

**1.6 Participants**

(a) *Army.*

(1) The Army Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance either through implementing these alternate procedures or continuing operation under 36 CFR Part 800. For purposes of these procedures, the Army Agency Official with jurisdiction over an undertaking is the installation commander or official representative designated by the commander. The Army Agency Official shall ensure that professional standards, as defined in Section 1.5, are met in the conduct of identification, evaluation, assessment of effects, and treatment of historic properties.

(i) Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (DASA (ESOH)) is the Army Federal Preservation Officer (FPO) responsible for policy, program direction and oversight of the Army's responsibilities under the Act. The DASA (ESOH) is responsible for ensuring the Army's implementation of these alternate procedures.

(ii) The ACSIM is the Army staff proponent for implementing the Act and Army-specific policy and guidelines set forth in AR 200-4. ACSIM functional responsibilities are carried out through the Director of Environmental Programs (DEP) and the Commander, U.S. Army Environmental Center as set forth in AR 200-4.
The ACSIM shall:

(A) Carry out the ACSIM's assigned staff functions in AR 200-4;

(B) Review HPCs and installation historic preservation programs in accordance with the staffing procedures set forth in Section 4.1; and,

(C) Serve as the Agency Official on the Army Staff for purposes of consultation and coordination with consulting parties and the public on development of these alternate procedures, amendment and implementing guidance.

(iii) Commanders of Major Commands; Commander, U.S. Army Reserve Command; and Director, Army National Guard (MACOM commanders) shall:

(A) Carry out the MACOM's historic property management and compliance responsibilities set forth in AR 200-4;

(B) Review installation programs to ensure that historic preservation compliance responsibilities under these procedures are implemented across all installations electing to comply with these procedures within their MACOM;

(C) Review installation HPCs, amendments, and program elements for consistency with these procedures and the certification criteria;

(D) When requested, participate in consultation on HPC certification, amendment and recertification to resolve objections; and,

(E) Assist installation commanders in establishing funding priorities to meet the requirements of these procedures, and assist in resolution of issues and objections regarding installation performance under these procedures.

(iv) Installation and Activity Commanders, Commanders of U.S. Army Reserve Regional Support Centers, and Adjutants General (installation commanders) shall:

(A) Carry out their assigned historic property management and compliance responsibilities set forth in AR 200-4;

(B) As the Agency Officials responsible for installation undertakings, ensure that such undertakings are implemented in accordance with either these procedures or 36 CFR Part 800;

(C) Develop a historic preservation program, including an HPC, in accordance with Section 3.0 and AR 200-4;

(D) Serve as the Agency Official responsible for consulting on HPC and its implementation with SHPOs, THPOs, Native Hawaiian organizations, and Federally recognized Indian Tribes when required under these procedures. Tribal consultation shall occur with Federally recognized Indian Tribes on a government-to-government basis, as defined in Section 1.5; and,

(E) Ensure that such consultation provides a reasonable opportunity for the SHPO, THPO, Federally recognized Indian Tribes, and Native Hawaiian organizations to identify their concerns with the identification, evaluation, assessment of effect and treatment of historic properties, and after consideration, address such concerns.

(F) If electing to implement these procedures:

(1) Sign an HPC, and amendments thereto, recognizing that the HPC is the installation's procedure for complying with section 106 of the Act;

(2) Invite the SHPO, THPO, Federally recognized Indian Tribe or Native Hawaiian organization to consult in development of and sign the HPC;

(3) Implement a signed HPC to comply with section 106 of the Act; and,

(4) Prior to certification, comply with section 106 of the Act through review of undertakings under 36 CFR Part 800.

(b) *Advisory Council on Historic Preservation.*

(1) The Council issues regulations to implement section 106 of the Act; provides guidance and advice on the application of its regulations, 36 CFR Part 800; oversees the operation of the section 106 process; enters into agreements with Federally recognized Indian Tribes under section 101(d)(5) of the Act; and approves Federal agency procedures for substitution of the Council's regulations. Consulting parties and the public, may at any time seek advice, guidance, and assistance from the Council on the application of these procedures.

(2) For the purposes of these procedures, the Council reviews and evaluates HPCs and certifies that an installation is authorized to implement an approved HPC.

(c) *State Historic Preservation Officer.*

(1) The SHPO administers the national preservation program at the State level and is responsible for conducting comprehensive statewide surveys of historic properties and for maintaining inventories of these properties. Under section 101(b)(3)(E) of the Act, SHPOs are directly responsible for advising and assisting Federal agencies, such as the Army, in carrying out their historic preservation responsibilities. For purposes of these procedures, the SHPO advises and consults with individual installations in the development, implementation, recertification and Major Amendment of the HPC.

(2) The SHPO has access to expertise regarding historic properties within the State. The SHPO, throughout HPC implementation, may provide assistance to the installation commander and ensure access to and application of such expertise.

(3) When participating as a consulting party, the SHPO is invited to sign the HPC.

(d) *Federally Recognized Indian Tribes and Native Hawaiian Organizations.*

(1) Section 101(d)(6)(B) of the Act requires the Army to consult with any Federally recognized Indian Tribe and Native Hawaiian organization that attaches traditional religious and cultural importance to historic properties that may be affected by an undertaking. For Federally recognized Indian Tribes, this consultation may take place for historic properties located both on and off Tribal lands. Consultation with Federally recognized Indian Tribes shall be conducted as Tribal consultation and initiated on a government-to-government basis, and shall occur through the provisions of these procedures. While installation commanders must invite Federally recognized Indian Tribes to participate in government-to-government consultation, as sovereign nations, such Tribes may decline to participate.

(2) Where an installation's undertakings may affect historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization, that Tribe or organization shall be invited to participate as a consulting party on the development, implementation, recertification and Major Amendment to the HPC.

(3) When participating as consulting parties, Federally recognized Indian Tribes and Native Hawaiian organizations shall be invited to sign the HPC.

(e) *Tribal Historic Preservation Officer.*

(1) Where the Secretary of the Interior has authorized a Federally recognized Indian Tribe to carry out some or all of the SHPO responsibilities on Tribal lands pursuant to section 101(d)(2) of the Act, the THPO acts as a consulting party on the development, implementation, recertification and Major Amendment to the HPC. The THPO participates as a consulting party when:

(i) An installation's undertakings occur on or affect historic properties on Tribal lands; or,

(ii) An installation's undertakings may affect a historic property of traditional religious and cultural importance to the Tribe both on and off Tribal lands, and the THPO is the Tribe's designated representative for government-to-government consultation.

(2) When the THPO has participated as a consulting party, the Federally recognized Indian tribe which he or she represents is invited to sign the HPC.

(f) *The Public.*

(1) The installation commander shall seek and consider the views of the general public regarding the development, implementation, and recertification of the HPC in a manner consistent with Section 3.5 and Section 5.2 below.

**Section 2.0: Applicability of Procedures**

**2.1 Installation Determination**

(a) Installation commanders electing to comply with these procedures in lieu of 36 CFR Part 800 shall document that determination in writing and provide notice to:

(1) The ACSIM, through its MACOM;

(2) The SHPO;

(3) The Council;

(4) The head of any Federally recognized Indian Tribe or Native Hawaiian organization that attaches traditional religious and cultural importance to any historic property on the installation or affected by installation activities; and,

(5) The THPO for any Federally recognized Indian Tribe where historic properties on Tribal land will be affected by installation activities, including those properties of traditional religious and cultural importance to the Tribe.

(b) Installation commanders electing to continue compliance with section 106 of the Act through 36 CFR Part 800 as opposed to these procedures may revisit their decision at any time thereafter and elect to comply with these procedures by:

(1) Filing the notice required by Section 2.1(a);

(2) Establishing the necessary program elements set forth in Section 3.0; and,

(3) Completing the certification process established by Section 4.0.

(c) When an installation commander operating under a certified HPC decides that the HPC is no longer appropriate, the installation commander may terminate the HPC by taking the following actions:

(1) Provide a notice of the installation commander's intent to terminate to all consulting parties 45 days prior to the effective date of termination. The notice of intent to terminate should provide a brief explanation for the decision to terminate;

(2) Invite the Council, MACOM, ACSIM, and consulting parties to provide their views on the proposed termination during the 45-day notification period, and consider those views during the 45-day period. The installation commander will only furnish additional notice to consulting parties when a decision to continue operation under the HPC is made; and,

(3) At the end of the 45-day period, revert to compliance with section 106 through 36 CFR Part 800.

(d) Installation commanders who have terminated their HPC may elect to implement these procedures at a later time through the certification process in Section 4.3.

## Section 3.0: Program Elements for Installations Participating in the Alternate Procedures

### 3.1 Designation of Cultural Resource Manager (CRM) and Coordinator for Native American Affairs

(a) Each installation commander shall designate, consistent with AR 200-4, an installation CRM to coordinate the section 106 responsibilities required under these procedures. The installation commander will ensure that the CRM has appropriate knowledge, skills, and professional training and education to carry out installation cultural resources management responsibilities. The CRM shall ensure that all historic properties technical work, including identification and evaluation of historic properties, assessment and treatment of effects, and preparation of HPCs, is conducted by individuals who meet the applicable professional standards defined in Section 1.5.

(b) Each installation commander shall designate, consistent with AR 200-4, a Coordinator for Native American Affairs if there are Native American issues. The installation commander will ensure that the Coordinator for Native American Affairs has appropriate knowledge, skills, and professional training and education to conduct installation consultation responsibilities with Federally recognized Indian Tribes and Native Hawaiian organizations. The Coordinator for Native American Affairs is responsible for facilitating the government-to-government relationship and, when designated, carry out staff-to-staff consultation responsibilities with Federally recognized Indian Tribes. The Coordinator for Native American Affairs will have access to the installation command staff in order to facilitate direct government-to-government consultation.

(c) If the installation commander deems it appropriate, he or she will fill the Coordinator for Native American Affairs position with an individual other than the CRM.

### 3.2 Professional Standards for the Development of the HPC

(a) Prior to developing the HPC, the installation commander shall ensure that:

(1) The CRM is either qualified under the standards set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and/or has access to technical experts who meet these standards to identify, evaluate, assess effects to, and treat historic properties, and for certification purposes in Section 4.0 below; and,

(2) When such expertise is provided by Federally recognized Indian Tribes and Native Hawaiian organizations regarding identification of properties of traditional religious and cultural importance, they need not meet the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation.

(b) The Army is responsible for all findings and determinations made by external parties. When an external party prepares a document or study, the Army is responsible for its content and ensuring that it meets applicable standards and guidelines.

### 3.3 Identification of Consulting Parties for HPC Development

(a) Prior to the development of the HPC, the installation commander shall:

(1) Identify the SHPO(s) associated with the installation;

(2) Identify the THPO(s) when installation activities may affect historic properties on Tribal lands;

(3) Identify any Federally recognized Indian Tribes who may attach traditional religious and cultural importance to any historic properties on or off Tribal lands that may be affected by installation activities;

(4) Identify any Native Hawaiian organization that may attach traditional religious and cultural importance to any historic properties that may be affected by installation activities;

(5) In consultation with the SHPO(s), THPO(s), Federally recognized Indian Tribes, and Native Hawaiian organizations, identify other parties that are entitled, or should be invited to be consulting parties, including interested members of the public; and,

(6) Invite consulting parties to participate in the development of the installation's HPC.

(b) Installation commanders should contact Federally recognized Indian Tribes early to establish a schedule and protocol for conducting consultation on a government-to-government basis for development of the HPC.

### 3.4 Consultation and Coordination for HPC Development

(a) Each installation commander shall develop a draft HPC in consultation with the parties identified in Section 3.3, above, and, in coordination with appropriate installation staff (including natural resource management; facilities/housing management; range management, testing, training, and operations; master planning; public affairs office; the CRM, the Coordinator for Native American Affairs, and the Staff Judge Advocate).

(b) The installation commander shall ensure that all parties participating in consultation are provided adequate documentation early in the process regarding the installation's mission and operations, historic properties under its control, and the installation command structure. The documentation should be provided to consulting parties at least 30 days in advance of the initial consultation meeting to allow for a full review prior to participation in HPC development.

(c) HPC development begins with an initial consultation meeting between installation staff and consulting parties to identify issues that should be addressed in the HPC. Consultation and coordination shall continue throughout HPC development to ensure adequate opportunity for these parties to fully participate in development of the HPC. Installations are encouraged to invite consulting parties to participate in workgroups for drafting the HPC, but, at a minimum, must, provide opportunities for periodic review, and comment on draft work products.

**3.5 HPC Development**

The installation commander shall prepare an HPC to include the following:

(a) *Introduction*: This is a description of the installation's past and present mission(s) to include information that describes the types of activities associated with each mission that might have an effect on historic properties. The introduction shall also identify where the CRM position, and, when appropriate, the Coordinator for Native American Affairs position, is located within the installation's organizational structure.

(b) *Planning Level Survey (PLS):* The PLS, based on review of existing literature, records, and data, identifies the historic properties that are known, or may be expected to be present, on the installation. The PLS shall be updated as necessary to include additional information made available through the identification and evaluation of historic properties. The PLS shall, as appropriate:

(1) Provide locations of known historic properties, including historic properties having traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations, that have been listed in the National Register, or determined eligible for inclusion in the National Register, and those properties that require evaluation for determination of eligibility for the National Register;

(2) Be constructed in such a way that sensitive site information shall be excluded from the HPC, where distribution might jeopardize either the historic property or the confidentiality concerns of Federally recognized Indian Tribes and Native Hawaiian organizations;

(3) Establish an annual inventory schedule that identifies and prioritizes those areas of the installation that are programmed for undertakings in the next fiscal year to ensure that inventories and analyses of alternatives are completed early in the planning processes for these activities;

(4) Provide locations that have been previously inventoried where no historic properties have been identified;

(5) Provide information on current and projected future conditions of identified historic properties;

(6) Contain or provide reference to existing historic contexts, archeological sensitivity assessments, predictive models, and other relevant reports addressing historic properties on the installation;

(7) Provide a listing of any affiliated Federally recognized Indian Tribes or Native Hawaiian organizations, other consulting parties and members of the public having an interest in the historic properties associated with the installation.

(c) *Categorized Undertakings:* This section shall include:

(1) A summary of the categories of undertakings that the installation anticipates conducting over the five-year planning period and should serve as the basis for development of standardized treatments, under Section 3.5(e), where such activities have the potential to result in effects to historic properties. Categories of undertakings should include maintenance and repair, ground-disturbing activities, renovation, adaptive reuse, rehabilitation, substantial alteration, demolition, disposal through transfer, sale, or lease, and mothballing. This is not a list of individual undertakings;

(2) If available, a list of potential undertakings that the installation has programmed over the five-year planning period; and,

(3) Past and proposed undertakings that should be considered by consulting parties through the HPC's review and monitoring process required by Section 3.5(f)(2).

(d) *Categorical Exclusions*: The HPC should include a list of undertakings that are categorically excluded from review. This list of categorical exclusions, developed in consultation with consulting parties, is supplemental to the Army-wide exempt undertakings listed in Section 4.5. Final approval of an HPC's categorical exclusions, as provided for in 36 CFR § 800.14(c), will be made by the Council as part of the certification process; however, the Council may terminate a categorical exclusion at the Army's request or when the Council determines that the exclusion no longer meets the criteria of 36 CFR § 800.14(c)(1). The Council shall notify the Army 30 days before termination becomes effective.

(e) *Management Goals and Practices*: The purpose of this section is to establish proactive consideration of preservation concerns carried out by management practices that are integrated into day-to-day installation activities to avoid adverse effects to historic properties. This section shall include:

(1) A description of the installation's desired future condition for historic properties over the course of the planning period;

(2) A description of goals for management and preservation of the installation's historic properties to be achieved over the course of the planning period; and,

(3) A list of management practices that can be employed to best meet the desired future condition and stated management goals. These management practices should:

(i) Be comparable with preservation standards and guidelines included in DA PAM 200-4 and the relevant Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation;

(ii) Focus on the major activities of an installation, including those identified in the Categorized Undertakings section of the HPC; and,

(iii) Focus on standardizing effective historic preservation practices and procedures for installation properties that, at a minimum, include preservation, adaptive reuse, rehabilitation standards, and, as appropriate, interpretation for historic properties.

(f) *Standard Operating Procedures (SOPs):* SOPs are critical to an installation's proper management of its undertakings and must be developed in close consultation with consulting parties, including SHPOs, THPOs, Federally recognized Indian Tribes, and Native Hawaiian organizations. SOPs shall be developed to provide consistent implementation of management goals, historic preservation standards, coordination, consultation, and mitigation procedures for historic properties that may be affected by installation undertakings. Where Federally recognized Indian Tribes attach traditional religious and cultural importance to historic properties, consultation with Tribes may take place for properties both on and off Tribal lands. These procedures shall be tailored for the particular conditions and specific requirements at an installation. At a minimum, HPCs shall include the following:

(1) *SOPs for Installation Decision Making Process:* These SOPs define the progressive steps which an installation shall take in its internal decision making process in order to manage its undertakings and their potential to affect historic properties. The goal of this SOP should be to avoid adverse effects in the first instance; to mitigate such effects where avoidance is not feasible; and to proceed with notification when adverse effects cannot be mitigated. In order to document this process, an installation commander should complete each step of the process before proceeding to the next.

(i) *Identifying Undertakings and Defining APEs*: This SOP shall provide for identifying undertakings and defining the APE for each undertaking.

(ii) *Identifying and Evaluating Historic Properties:* This SOP shall contain procedures for identifying historic properties within the APE, evaluating their eligibility for the National Register

and assessing the effects on them, including those properties having traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations (recognizing that such properties may be eligible under any of the National Register criteria). This SOP should also contain a procedure for resolving any disputes over the eligibility of a property to the National Register. Any unresolved disputes concerning eligibility shall be forwarded to the Keeper of the National Register in accordance with 36 CFR Part 63.

(iii) *Applying Best Management Practices:* This SOP shall provide for the consideration and application of historic preservation management practices established pursuant to Section 3.5(e) to avoid adverse effects in the first instance and to meet identified HPC preservation goals. Avoidance of adverse effects would preclude the need to proceed with a more detailed alternatives review. Avoidance of adverse effects includes, for example, rehabilitating historic buildings following the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995), and modifying project plans to physically avoid and protect archeological sites and historic properties of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization.

(iv) *Alternatives Review:* This SOP shall provide a process for the review of project alternatives for undertakings where application of best management practices is not feasible or would not avoid adverse effects. Prior to applying mitigation measures to minimize unavoidable adverse effects to historic properties, application of this SOP is required. This SOP will:

(A) Conduct a review of project alternatives, using the NEPA process, when practical, to consider whether other feasible alternatives to avoid or reduce impacts to a historic property can be implemented. Alternatives should include the relocation or modification of project features, or the rehabilitation, renovation, adaptive reuse, transfer, or mothballing of historic buildings; and,

(B) Conduct an economic analysis for historic buildings proposed for demolition that addresses and compares the economic costs associated with alternatives, including the life-cycle costs associated with rehabilitation and reuse; demolition and new construction; and mothballing and reuse.

(v) *Treatment of Adverse Effects:* This SOP shall provide for treating/mitigating adverse effects that cannot be avoided through the application of best management practices or implementation of a project alternative. This SOP should include HABS/HAER recordation, archeological data recovery, and mitigation procedures for transfer, sale or lease of historic properties out of Army ownership to a non-federal entity.

(vi) *Documenting Acceptable Loss:* This SOP shall provide for determinations to proceed with an undertaking having an adverse effect where the installation commander has determined that treatment/mitigation is not in the best public interest or is not financially or otherwise feasible. The installation commander's determination, including a discussion as to how the preceding steps in the decision making process were carried out and a rationale as to why mitigation measures will not be applied, shall be provided to consulting parties and the Council for a 30-day review, prior to implementing the undertaking. Upon receiving the written views of the Council, the installation commander must consider the Council's comments and provide written documentation of his or her decision to the Council and the consulting parties.

(2) *Review and Monitoring:* This SOP shall establish an annual review and monitoring coordination process among appropriate installation staff and consulting parties. Review and monitoring shall:

(i) Provide in advance, sufficient information to allow meaningful participation of consulting parties in the review and monitoring process;

(ii) Include review of the installation's programmed undertakings for the upcoming fiscal year to provide consulting parties an advanced opportunity to express their views on specific methods for identification, evaluation, and treatment of historic properties affected by such undertakings;

(iii) Include evaluation of past undertakings for the concluded fiscal year and the results of historic preservation efforts related to those undertakings;

(iv) Include evaluation of the effectiveness of the installation's HPC and the need to make amendments to it; and,

(v) Rely to the greatest extent practicable, on information generated by existing Army auditing, programming, and reporting systems.

(3) *Obtaining Technical Assistance in HPC Implementation:* Recognizing the importance of consulting parties' expertise in the management of historic properties, this SOP may be used to establish a process for the continued involvement of consulting parties and qualified organizations with a demonstrated interest in management of the installation's historic properties during HPC implementation through use of reimbursable arrangements.

(i) This SOP should establish reimbursable arrangements, such as cooperative agreements and procurement contracts, to obtain technical assistance from SHPOs, THPOs, Federally Recognized Indian Tribes, Native Hawaiian organizations, and other qualified organizations with a demonstrated interest in management of the installation's historic properties.

(ii) This SOP will ensure that the installation obtains necessary technical assistance in identification, evaluation, assessment of effects, and treatment of historic properties, using, to the maximum extent practicable, reimbursable arrangements such as procurement contracts and cooperative agreements with consulting parties and qualified organizations with a demonstrated interest in management of the installation's historic properties.

(iii) This SOP will recognize that:

(A) Federally recognized Indian Tribes are uniquely qualified to identify, evaluate, and treat historic properties to which they attach traditional religious and cultural importance on and off Tribal lands;

(B) Native Hawaiian organizations are uniquely qualified to identify, evaluate, and treat historic properties to which they attach traditional religious and cultural importance; and,

(C) SHPOs and THPOs possess indispensable professional expertise for identification and evaluation of historic properties as well as assessment and treatment of effects.

(iv) This SOP shall ensure that all actions to implement the HPC will be taken by individuals who meet professional standards under regulations established by the Secretary of Interior in accordance with Section 112 (a)(1)(A) of the Act. The Army Agency Official shall ensure that professional standards, as defined in Section 1.5 of these procedures, are met in the conduct of identification, evaluation, and assessment of effects and treatment of historic properties. When the Army requests assistance from Federally recognized Indian Tribes and Native Hawaiian organizations in the identification, evaluation, assessment of effects and treatment of historic properties of traditional religious and cultural importance, they need not meet the Secretary of Interior's Professional Qualifications Standards.

(4) *Consultation for Inadvertent Discovery and for Emergency Actions:* This SOP shall establish an expeditious consultation process between the installation and the consulting parties for emergency actions and for the inadvertent discovery of historic properties, including those of traditional religious and cultural importance to Federally recognized Indian Tribes or Native Hawaiian organizations.

Consultation with Federally recognized Indian Tribes shall take place for such properties both on and off Tribal lands.

(5) *Categorical Exclusions:* This SOP shall provide for a process to determine when an approved categorical exclusion is applicable to an undertaking.

(6) *National Historic Landmarks:* This SOP shall contain provisions to give special consideration to installation undertakings that may directly and adversely affect NHLs by taking such planning and actions, where feasible, to minimize harm to the NHL. This SOP shall afford the Council and the National Park Service a reasonable opportunity to comment on the NEPA document(s) prepared for or associated with the undertaking prior to its approval.

(7) *Shared Public Data:* This SOP shall provide for the sharing of data between the installation and consulting parties and the public. The procedure should, at a minimum, identify the categories of data to be shared, the format in which the data will be provided and the standards of data accuracy that will be met. To the greatest extent permitted by law, including section 304 of the Act and section 9 of ARPA, this SOP shall also ensure that shared data concerning the precise location and nature of historic properties, properties of traditional religious and cultural importance, and sacred sites identified pursuant to Executive Order 13007 are protected from public disclosure through NEPA or the Freedom of Information Act. Particular care should be taken to safeguard electronic data.

**Section 4.0: Program Review and Certification**

The installation commander shall develop a final HPC only after completing internal Army review and consultation with consulting parties and public participation in accordance with the procedures set forth in this section. The installation commander shall sign and implement the final HPC in recognition of its status as a section 106 legal compliance document. Should the command change during HPC implementation, the CRM or Native American Affairs Coordinator, shall advise the incoming installation commander of the HPC, its content, commitments and legal effect.

**4.1 Army Program Review**

(a) Installation commanders that have elected to comply with these procedures in lieu of 36 CFR Part 800 shall forward a Draft HPC, meeting the requirements set forth in Section 3.0, through the MACOM to Headquarters Department of the Army (HQDA) for review and comment through the following procedures.

(b) The installation commander shall forward the Draft HPC and supporting documentation to the MACOM for review. The review package shall include:

(1) The Draft HPC addressing all program elements set forth in Section 3.0;

(2) The Draft NEPA document, generally an EA, developed to consider the environmental impacts of adopting and developing the Draft HPC;

(3) Confirmation that relevant installation level staff, including legal, operations and training, facilities and public works, have reviewed the Draft HPC;

(4) Summary of consultation with consulting parties and the results of such consultation, including the written comments, if any; and,

(5) An explanation of outstanding issues of concern when the Draft HPC does not reflect the mutual agreement of the installation and consulting parties.

(c) The MACOM shall conduct appropriate technical and legal review of the Draft HPC and supporting documentation, and forward the review package with the MACOM's written comments to the ACSIM within 30 days.

(d) The ACSIM, or his/her designee, shall coordinate HQDA review of the Draft HPC and supporting documentation, and, within 30, days provide written comments to the MACOM and installation commander regarding the Draft HPC's consistency with technical, legal and policy practices.

(e) The installation commander shall release the Draft HPC and NEPA document for review by the public and consulting parties in accordance with the procedures set forth in Section 4.2 after giving consideration to MACOM and HQDA comments and integrating such comments where appropriate. The installation commander shall withhold sensitive site data to the greatest extent permitted by ARPA and the Act.

**4.2 Consulting Party and Public Review**

(a) *Public Review*. After consultation with consulting parties in accordance with Section 3.4, and internal Army program review pursuant to Section 4.1, the installation shall release the Draft HPC and NEPA document, including, if appropriate, a draft Finding of No Significant Impact to the public for 30-day review and comment. The installation shall publicize the availability of these documents using appropriate public notification procedures established by the Army's published NEPA regulations, 32 CFR Part 651. In addition, the installation shall forward copies of the Draft HPC and Draft NEPA document to any members of the public who have been identified as having an interest in the effects of Army activities on historic properties located on the installation or affected by installation activities, and local government officials.

(b) *Tribal, Native Hawaiian organization, SHPO, THPO and Council Review*:

(1) Concurrent with public review, the installation commander shall forward the Draft HPC and NEPA document to the following entities and invite their views:

(i) The Council;

(ii) The SHPO;

(iii) The THPO for any Federally recognized Indian Tribe where historic properties on Tribal lands will be affected by installation activities, including those properties of traditional religious and cultural importance to the Tribe;

(iv) The Tribal government and Native Hawaiian organization that attaches traditional religious and cultural importance to any historic property on the installation or affected by installation activities;

(v) any other consulting parties that have taken part in development of the HPC; and,

(2) Within 30 days of receipt of Draft HPC and NEPA document, consulting parties shall:

(i) Provide their written views to the installation;

(ii) Indicate whether or not they intend to be a signatory to the HPC; and,

(iii) Identify specific objections to the HPC.

(3) If any consulting party fails to provide written response within the 30-day review period, the installation commanders may presume there is no objection by that consulting party to the Draft HPC.

(4) Installation commanders shall consider the comments from the public and the written views and recommendations of the Council, SHPO, THPO, Tribal government or Native Hawaiian organization, and make adjustments to the Draft HPC and NEPA document, if appropriate.

(5) Where a SHPO, THPO, Tribal government or Native Hawaiian organization has objected in writing to the Draft HPC and refused to be a signatory, installation commanders shall consult with the objecting party to resolve the objection, prior to forwarding the Draft HPC and supporting documentation to the Council for review and certification.

**4.3 Council Review and Certification**

(a) After considering, and where appropriate, addressing the views of other consulting parties and the public, and consulting to resolve objections, the installation commander shall finalize and sign the HPC, obtain the signature of consulting parties (other than those with outstanding objections), and forward the signed HPC to the Council with a request to review and certify the installation's HPC. The following supporting documentation will be included:

(1) Final NEPA documentation,

(2) Written views, if any, of consulting parties, including SHPO, THPO, Tribal governments or Native Hawaiian organizations,

(3) Summary of consultation with consulting parties, including SHPO, THPO, Tribal governments or Native Hawaiian organization(s),

(4) any views expressed by the public; and,

(5) Where a consulting party has declined to participate as a signatory to the HPC, a summary of the party's objections and the installation's efforts to resolve the objections.

(b) The Council shall review the HPC to determine whether it meets the following certification criteria:

(1) Establish the Program Elements set forth in Section 3.0;

(2) Include appropriate SOPs to ensure that the installation will effectively manage its historic properties, identify and consider the effects of its undertakings on historic properties, including those of traditional religious and cultural importance to a Federally recognized Indian Tribe or Native Hawaiian organization, apply appropriate treatment standards, and coordinate and consult with consulting parties;

(3) Demonstrate that it was developed in consultation with the SHPO, THPO, Tribal governments or Native Hawaiian organizations that attach traditional religious and cultural importance to historic properties on the installation or affected by installation activities;

(4) Demonstrate that the public participated in development and/or review;

(5) Establish procedures for coordination to facilitate review and monitoring;

(6) Establish procedures for obtaining Council and National Park Service comments through the NEPA process where an undertaking will have a direct and adverse effect on an NHL; and,

(7) For installations with identified NHLs, establish procedures, where feasible, for minimizing the effects of undertakings that may have a direct and adverse effect on an NHL.

(c) Within 30 days of its receipt of the HPC and supporting documentation, the Council shall apply the certification criteria set forth in Section 4.3(b)(1)-(7), and shall:

(1) Determine that the installation's HPC meets the criteria and sign the HPC, certifying the installation to comply with section 106 of the Act through implementation of the HPC. Within 30 days of receiving the Council's certification, the installation commander shall provide signed copies of the certified HPC to consulting parties; or,

(2) Determine that the installation historic preservation program shall meet the certification criteria with minor adjustments; and,

(i) Provide views to the installation with suggested changes, and,

(ii) Sign the HPC, subject to the installation's incorporation of changes, certifying the installation to comply with section 106 of the Act through implementation of the HPC. Within 60 days of receipt of the Council's certification, the installation commander, unless an extension period is agreed to, shall make the recommended changes and shall provide copies of the revised HPC to the Council, and the consulting parties. If the Council does not receive the installation changes within 60 days or the extension period, the Council shall notify the installation commander and consulting parties that the HPC has failed to meet certification criteria, and the installation shall follow Section 4.3(d), below.

(3) Determine that the installation has failed to meet one or more of the certification criteria set forth in Section 4.3(b)(1)-(7), and:

(i) Provide the installation with formal written views that identify the specific criterion and related deficiency; and,

(ii) Make specific recommendations to the installation for addressing the identified deficiency.

(d) Where the Council has determined that the installation's HPC has failed to meet the certification criteria, the installation commander shall:

(1) Address the identified deficiency and resubmit the HPC and supporting documentation to the Council for certification in accordance with Section 4.3(a), in which case the Council shall conduct the review and provide a certification determination pursuant to Section 4.3(b)-(c); or,

(2) Object, in writing, to the Council's recommendations and consult with the Council to resolve the objections.

(i) If, after good faith consultation, the Council and installation commander agree that the objection(s) cannot be resolved, the installation shall notify its MACOM.

(ii) If, 30 days after MACOM notification, objections remain unresolved, consultation under these procedures shall terminate and the installation commander will notify consulting parties and continue to operate under 36 CFR Part 800.

(3) The installation commander may resubmit his request for certification and reinitiate consultation at any time after termination.

**4.4 Effect of Certification**

(a) Installations with a certified HPC shall operate under the procedures set forth herein as implemented by that HPC. The provisions of the certified HPC shall substitute for the requirements of 36 CFR Part 800 for a period of five years from the date of certification.

(b) Installations electing to apply these procedures that have not met certification requirements shall review undertakings in accordance with the procedures set forth in 36 CFR Part 800.

(c) Installations shall implement treatment and mitigation commitments made in existing project-specific Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs). Upon completion of pre-existing mitigation and treatment requirements, such agreements shall terminate. Requirements of other installation level Programmatic Agreements shall terminate upon certification. However, successful procedures in such agreements for the identification, evaluation, assessment of effects and treatment of historic properties should be considered during consultation, and if appropriate, integrated in the SOPs.

### 4.5 Exempt Undertakings

(a) The following categories of undertakings are exempt from further review by an installation operating under a certified HPC:

(1) Undertakings addressed through a fully executed nationwide Programmatic Agreement or other Program Alternative executed in accordance with 36 CFR Part 800.14.

(2) Undertakings categorically excluded by an installation's HPC pursuant to Section 3.5(a)(4).

(3) Undertakings where there is an imminent threat to human health and safety. Such actions include:

(i) In-place disposal of unexploded ordnance;

(ii) Disposal of ordnance in existing open burning/open detonation units;

(iii) Emergency response to releases of hazardous substances, pollutants and contaminants; and,

(iv) Military activities in existing designated surface danger zones.

(b) Where a Federally recognized Indian Tribe has entered into an agreement with the Council to substitute Tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the Army shall follow those Tribal historic preservation regulations for undertakings occurring on or affecting historic properties on Tribal lands.

(c) In instances where another Federal agency is involved with the Army in an undertaking, the Army and the other agency may mutually agree that the other agency be designated as lead Federal agency. In such cases, undertakings will be reviewed in accordance with 36 CFR Part 800.

## Section 5.0: Amendment and Recertification

### 5.1 Plan Amendment

(a) At any time after obtaining Council certification, a consulting party may identify changed circumstances and propose an HPC amendment to the installation commander.

(b) If an installation commander determines that an amendment to an HPC may be necessary, the installation shall continue to review undertakings and treat adverse effects in accordance with the established HPC, unless he/she determines that the HPC is insufficient to meet its responsibilities under section 106 of the Act. If the installation commander determines that the HPC is no longer sufficient to meet those responsibilities, it shall review its undertakings in accordance with 36 CFR Part 800 until the proposed HPC amendment is completed.

(c) Where an installation commander determines that an amendment proposed by a consulting party is not necessary, and agreement cannot be reached between the installation commander and the consulting party to amend the HPC, the consulting party may request Council review under Section 7.2.

(d) *Major Amendments:* Any proposal to alter, delete, or add to an HPC's list of categorical exclusions, best management practices, or established standard operating procedures shall be considered a Major Amendment to the HPC.

(1) The installation commander shall:

(i) Forward the proposed amendment to consulting parties;

(ii) Consult with such parties and invite them to be signatories on the HPC Major Amendment; and,

(iii) Seek and consider views of the public through the NEPA process, if applicable.

(2) Within 45 days of its receipt of the proposed HPC Major Amendment, each consulting party shall:

(i) Provide written comments to the installation;

(ii) Indicate whether it intends to be a signatory to the proposed HPC Major Amendment; and, if not,

(iii) Provide written objections to both the installation commander and the Council.

(3) When a consulting party fails to provide written response within the 45-day review period, the installation commander may presume that there is no objection to the proposed HPC Major Amendment by that consulting party.

(4) If all consulting parties and the installation commander concur with the proposed HPC Major Amendment, the installation commander shall obtain the consulting parties signatures, sign the final HPC Major Amendment, and forward it to the Council for review, approval, and signature. If the Council does not respond within 30 days of its receipt of the amendment, then the amendment shall be considered final. The installation commander shall send copies of the final signed HPC Major Amendment to consulting parties and its MACOM.

(5) If all consulting parties do not concur with the proposed HPC Major Amendment and/or the Council objects within 30 days of the proposed amendment, the Council shall provide its written views and recommendations on the proposed HPC Major Amendment to the installation commander;

(i) If the installation commander considers the Council's views and implements the Council's recommendations, then the HPC Major Amendment shall be considered final.

(ii) If the installation commander objects to the Council's recommendations, the installation commander shall consult with the Council to resolve the objections.

(A) If the Council and the installation commander agree that the objection cannot be resolved, installation shall notify its MACOM.

(B) If, 30 days after MACOM notification, objections remain unresolved, consultation shall terminate and the installation shall either continue implementation of its certified HPC without the amendment or, where that is not feasible, comply with 36 CFR Part 800. The installation commander shall notify consulting parties of his or her final decision.

(iii) The installation commander may reinitiate consultation on the proposed amendment to the HPC any time after termination.

(e) *Minor Amendments:* When circumstances at an installation change, requiring Minor Amendment(s) to an administrative provision in the installation's HPC, such as identification of the CRM, Coordinator for Native American Affairs, changes to the planning level survey, changes to the list of categorized undertakings, and technical editorial changes, the installation commander shall:

(1) Amend the HPC without further consultation or coordination; and,

(2) Provide a Notice of Change to consulting parties and the Council.

**5.2 Recertification**

(a) No later than six months prior to expiration of the five-year term of certification, the installation commander shall initiate the process for obtaining renewed certification through the procedures set forth in Sections 3.0 and 4.0 of these procedures.

(b) The installation shall continue to operate under its certified HPC during the recertification process unless the five-year term of the HPC has expired. Where the five-year term of the HPC has expired, the installation commander shall:

(1) Continue to operate under the certified HPC for a period of time to be determined by the Council, in consultation with the installation commander; and,

(2) Inform consulting parties of the time extension, and work with them towards completing the recertification process; or,

(3) Inform consulting parties and review individual undertakings in accordance with 36 CFR Part 800 until recertification of the HPC is completed.

**Section 6.0: Administrative Remedies**

**6.1 Evaluation of Council Determinations**

(a) Within 30 days of the Council's final determination to certify or recertify an installation to operate under its HPC, or approve a Major Amendment, a consulting party may object in writing to the Council's determination. The objection must:

(1) Be forwarded to the Council, the installation commander and the MACOM;

(2) Be specifically related to a deficiency in:

(i) Consultation with the consulting party; and/or,

(ii) Consideration of historic properties of importance to that objecting party.

(b) The Council shall review the objection, obtain the installation's views, and within 30 days provide the Council's written determination to both the objecting party and the installation commander.

(c) The Council's written determination shall either:

(1) Validate the Council's previous determination to certify or recertify the HPC, or to approve a Major Amendment;

(2) Allow the installation to continue implementation while resolving objections; or,

(3) Revoke the previous determination and require the installation to review its undertakings in accordance with 36 CFR Part 800.

### 6.2 Evaluation of HPC Implementation

(a) Any time subsequent to Council certification or recertification, if a consulting party believes that an installation has failed to implement its HPC, the consulting party shall first notify the installation commander, in writing, of its objection. The consulting party must provide information and documentation sufficient to set forth the basis for its objection. The installation commander and consulting party shall attempt to resolve the objection informally before proceeding with the formal procedures set forth below.

(b) If a consulting party has raised an objection with the installation commander and the objection has not been resolved informally, the objecting party may elevate its objection to the Council, in writing. The written objection must:

(1) Be forwarded to the Council and the installation commander;

(2) Be specifically related to an installation's failure to implement an identified SOP in the HPC; and,

(3) Describe the objecting party's efforts to resolve the objection informally at the installation level.

(c) Where the consulting party has objected to a specific undertaking, the installation commander shall, during the 15-day Council review period set forth below, defer that discrete portion of the undertaking which may cause adverse effects to historic properties. This deferral provision will not apply where the activity at issue is an exempt undertaking under Section 4.5 or where the adverse effects have been documented as acceptable loss under an installation's HPC implementing Section 3.5(f)(1)(vi) of these procedures.

(d) The Council, within 15 days of receiving the written objection of a consulting party, shall provide a written response to the consulting party and the installation commander, expressing its views, and, if appropriate, making specific recommendations for resolution of the consulting party's objections.

(e) If the Council does not provide its written views within the 15-day review period, the installation commander shall assume that there is no Council objection and proceed with the undertaking.

(f) If the Council does provide its written views within the 15 day review period, the installation commander shall document his or her consideration of the Council's views, provide copies of the documentation to the Council and the objecting consulting party, and proceed with the undertaking.

(g) The Council may also object to an installation's implementation of its HPC, in which case the Council will provide its written views and specific recommendations for resolution to the installation commander for his or her consideration. The installation commander shall document his or her consideration of the Council's views and provide copies of the documentation to the Council and the consulting parties.

## Section 7.0: Council Review of Army Section 106 Compliance

### 7.1 Council Review of Army Alternate Procedures

(a) The Council may periodically evaluate the effectiveness of these procedures in meeting the mandates, goals and objectives of section 106 of the Act and make recommendations to the Army to improve the efficiency and effectiveness of its compliance with section 106, under these procedures.

(b) As required by section 203 of the Act, the Army shall assist the Council in their evaluation by providing requested documentation on Army policies, procedures, and actions taken to comply with section 106 of the Act.

(c) The Council shall make the results of any evaluation conducted under this section available for public inspection.

**7.2 Council Review of Installation Compliance**

(a) The Council may review an installation's compliance with its HPC only where a documented pattern of failure to implement the installation's HPC is evident. The Council's review may be undertaken on its own initiative or at the request of a consulting party based in part on the objections rising from evaluation under Section 6.2. Based on its review, the Council shall:

(1) Determine that the installation is substantially complying with the HPC and make recommendations for program improvements; or,

(2) Initiate consultation with the installation commander and MACOM, if appropriate, and recommend a course of action to ensure installation implementation of its HPC.

(3) Provide a copy of any written recommendations to consulting parties.

(b) The installation commander, after receiving Council recommendations, shall either:

(1) Conclude consultation and implement its HPC in accordance with Council recommendations; or,

(2) Make a determination to revert to operation under 36 CFR Part 800 and provide notice to consulting parties, the Council, and the ACSIM through its MACOM.

**Appendix A: Acronyms**

**ACRONYMS USED IN PROPOSED ARMY ALTERNATE PROCEDURES TO 36 CFR PART 800**

| | |
|---|---|
| **AAP** | Army Alternate Procedures |
| **ACSIM** | Assistant Chief of Staff for Installation Management |
| **AR 200-2** | Army Regulation 200-2: Environmental Effects of Army Actions |
| **AR 200-4** | Army Regulation 200-4: Cultural Resources Management |
| **Act** | The National Historic Preservation Act |
| **APE** | Area of Potential Effects |
| **ARPA** | The Archeological Resources Protection Act |
| **CRM** | Cultural Resources Manager |
| **DA PAM 200-4** | Department of the Army Pamphlet 200-4: Cultural Resources Management |
| **DEP** | Director of Environmental Programs |
| **EA** | Environmental Assessment |
| **EIS** | Environmental Impact Statement |
| **FPO** | Federal Preservation Officer |
| **HPC** | Historic Properties Component (the section 106 portion of an ICRMP) |
| **HQDA** | Headquarters, Department of the Army |
| **ICRMP** | Integrated Cultural Resources Management Plan |
| **MACOM** | Major Command |
| **MOA** | Memorandum of Agreement |
| **NAGPRA** | The Native American Graves Protection and Repatriation Act |
| **NEPA** | The National Environmental Policy Act |
| **NHL** | National Historic Landmark |
| **NHPA** | The National Historic Preservation Act |
| **PA** | Programmatic Agreement |
| **PLS** | Planning Level Survey |
| **SHPO** | State Historic Preservation Officer |
| **SOP** | Standard Operating Procedure |
| **THPO** | Tribal Historic Preservation Officer |

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