

NCSHPO

National Conference of State Historic Preservation Officers
SUITE 342, HALL OF STATES
444 NORTH CAPITOL STREET NW, WASHINGTON, DC 20001-1412
P | 202.624.5465 F | 202.624.5419 WWW.NCSHPO.ORG

September 29, 2022

Mr. Jordan Tannenbaum
Vice-Chair, Advisory Council on Historic Preservation
410 F Street NW, Suite 308
Washington, DC 20001

RE: Proposed Program Comment for Department of the Army Vietnam War Era Housing

Via Email to: armycomments@achp.gov

Dear Vice-Chairman Tannenbaum:

Thank you for the opportunity to comment on the proposed Program Comment for Department of the Army Vietnam War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1963-1975).

We are genuinely supportive of finding solutions and efficiencies to help improve the condition of historic housing for Army families. However, this agreement far exceeds what is needed to achieve that goal. Parallel to the previous Program Comment for Interwar Housing adopted by the Advisory Council, which we did not support, this proposal once again disregards the clear objections raised by consulting parties during the process, provides broad latitude without any future consultation to destroy and deteriorate historic properties in conflict with the National Historic Preservation Act, and continues to leverage and build upon a single-minded perilous precedent that we warned would occur.

To be clear, this Program Comment would cover the “management actions” of “maintenance, repair, rehabilitation, renovation, abatement of hazardous materials, mothballing, cessation of maintenance [demolition by neglect], demolition, new construction, lease, transfer, conveyance, and the use of modern industry standard building materials and methods in the implementation of management actions.”

Although we have repeatedly stated support for a Program Comment covering maintenance, repair, rehabilitation, renovation, abatement of hazardous materials and mothballing by using a variety of alternate and economical materials, the Army continues to push for the inclusion of more drastic treatments to provide them with broad discretion to demolish, dispose and intentionally deteriorate historic properties and to replace them with any type of new construction – again, with no consultation. We simply cannot support a Program Comment that places so much unilateral discretion in the hands of *any* federal agency at the primary expense of consultation, that so blatantly disregards the intent of the National Historic Preservation Act, and that frankly establishes further precedent for agencies to justify similar preservation-deficient approaches.

Because of an unfortunate deficiency in transparency exhibited by the previous ACHP Chairman, who failed to disclose our objections to the ACHP membership at the time the unassembled meeting vote was held, which we believe led to its improper adoption, we are taking the extra step of making sure this time to disclose our objections to the full membership of the ACHP. To demonstrate the similarity of concerns with this new Program Comment, and the continued disregard of our longstanding objections, we have attached them. Nevertheless, our specific objections to this current proposed Program Comment are outlined below.

Inappropriately Large Scope and Misuse of Term of Repetitive Management Actions

ACHP guidance suggests Program Comments are appropriate when an agency has “...repetitive management actions for a large inventory of similar historic properties or for agencies that have programs that generate a large number of similar undertakings.” While in this case the Army may have a large inventory of somewhat similar properties, not all of the associated “repetitive management actions” are, by their own admission, actually repetitive.

Granted, the ACHP does not define the term “repetitive management actions” but, in our view, actions such as demolition, new construction and cessation of maintenance (demolition by neglect), are generally not in line with the purposes of the NHPA and run contrary to the fundamental principles of historic preservation. With the Army’s stated goal of improving available historic housing for Army service members and their families, we believe that certainly maintenance, repair, rehabilitation, renovation, and abatement of hazardous materials would be “repetitive actions” – and we would therefore be comfortable with and supportive of pursuing a Program Comment that focuses on this need. Unfortunately, this proposal far exceeds that scope.

Demolition as a Repetitive Management Action

The ACHP’s own guidance states that “...program comments may not be appropriate where an agency has a large number of historic properties but has infrequent undertakings that may actually affect these properties.” (emphasis supplied)

By the Army’s own admission, demolition is a very rare occurrence.

At the time of the Interwar Housing Program Comment consultation, the Army stated they had identified only 35 interwar housing units (mostly at the same installation) out of a universe of more than 3,000 that would be candidates for demolition. Given that this number accounts for only 1.2% of their inventory and given the obvious potential for adverse effects presented by the destruction of historic properties, there was and still is no compelling reason why the standard Section 106 consultation process should not apply to allow for consultation on needed and appropriate demolitions without hindering the Army’s housing program.

Additionally, although the ACHP Staff Report notes the Program Comment establishes a standard review process for demolition – it does so only for “Properties of Particular Importance” (which we will cover in further detail below). The first step to determine whether a Property of Particular Importance is eligible for demolition is first a determination whether the housing is: a) deteriorated, b) underutilized, c) excess to current needs, d) vacant, e) presents health hazards to occupants, f) presents unsafe conditions to

occupants or, g) requires replacement with new housing construction to improve the quality of life of military families. The next step is a 30-day public notice and comment period that is to be shared with SHPOs, Indian Tribes and Native Hawaiian Organizations. Any objections to the demolition are limited only to how the demolition criteria were not properly applied, or how the comment procedure was not followed. Under this scenario, for example, a Property of Particular Importance can be demolished simply if it is made vacant and the public is notified. Any comments or objections would be limited to disputing its vacancy status or whether or not the comment solicitation process was properly followed.

This proposed demolition protocol, in our view, in no way constitutes a review process in keeping with the NHPA – it is instead purely a 30-day courtesy notification. NHPA-derived procedures on the other hand provide an opportunity for dialogue that can lead to more informed decision making, open up other alternatives or options, or help to mitigate a loss and the impact upon any remaining and adjoining historic districts or individual properties.

New Construction as a Repetitive Management Action

New construction, by definition, is not historic preservation. The effects of new construction on historic properties, however, can be substantial, yet there are absolutely no provisions in this Program Comment covering this management action within Vietnam Era housing neighborhoods. There are no provisions addressing consultation, design, siting, excavation or other related issues included. The proposed definition of new construction is elastic enough that it “...may or may not occur in the immediate area of demolished Vietnam Era housing, associated buildings and structures, and landscape features, and may or may not be in similar design and layout to existing Vietnam Era housing and neighborhoods.” We do not believe this element of the proposal meets any definition of repetitive management action and allows for the construction of literally anything with any impact to historic properties as long as it is in a Vietnam era neighborhood.

Cessation of Maintenance (aka demolition by neglect) as a Repetitive Management Action

The very idea that the ACHP membership through adoption of this proposal would provide an efficiency for a federal agency to repetitively fail to maintain historic properties is, in our view, inexplicable. Cessation of maintenance is tantamount to Demolition by Neglect – the antithesis of preservation – which should never be encouraged as a repetitive management action. While we understand that a lack of available resources can lead to neglect, we cannot support a programmatic endorsement of the practice.

Lack of Consensus on National Register Eligibility

The Army asserts and declares in the Program Comment that the Vietnam era housing associated with this agreement (even Properties of Particular Importance) is only eligible for the National Register under Criteria A – due to its association with the history of the Vietnam War. Several SHPOs, as well as NCSHPO, have suggested that other criteria, in some instances, may apply. Citing a lack of architectural integrity for targeted properties, the Army has dismissed eligibility based upon any additional criteria.

Under 36 CFR 800.4(c)(2), when there is a disagreement between an agency and the SHPO on National Register eligibility, a formal determination of eligibility can be sought from the Secretary. Since no opportunity was afforded to settle this fundamental question, we object to the language in the Program Comment that makes a definitive determination as to under which criteria the properties are eligible.

Since there is not consensus on the eligibility, there is not a definitive answer, it is inappropriate for this proposed document to include that assertion and by doing so, shortcut and ignore the proper legal protocol regarding determinations of eligibility. Further, given the management actions proposed in this agreement are predicated upon the Army's sole determination that the properties lack architectural significance, and the identification of Properties of Particular Importance would seemingly present a conflict to this determination, we believe this language needs to be revised.

Properties of Particular Importance Are Meaningless

The agreement proposes the identification, by the Army, of Properties of Particular Importance for the sole reason of adding to said properties the brief notification process for the purposes of demolition and cessation of maintenance (demolition by neglect). The only additional mitigation proposed for these properties is additional documentation. Properties of Particular Importance, which are not a National Register or existing regulatory convention, are defined in the agreement as:

Army Vietnam War Era housing that retains a high degree of integrity, represents particularly important historical aspects of the Army Vietnam War Era housing program, and that represent particularly important building types or methods of construction. To be considered of particular importance Army Vietnam War Era housing must retain original location, scale, mass, proportion, materials, and ornamentation from the period of construction.

The Army, alone, identifies Properties of Particular Importance. Within six months of the adoption of the Program Comment, the Army is to provide the ACHP with a list of these properties, and any additional documentation provided as mitigation for their demolition or deterioration will also be prepared in coordination with the ACHP. At no point is the SHPO notified or provided an opportunity to comment on whether or not a property qualifies. Given the Army's unilateral statement that the entire inventory of these properties lacks architectural integrity we fail to understand how any property would even qualify as one of particular importance – rendering any additional review or mitigation meaningless.

Use of Precedent

Throughout the consultation process the Army repeatedly cited precedent as justification for this Program Comment. Although the ACHP has sought removal of the term "precedent" from the draft to enable it to be a "stand-alone document," the effect is only semantical.

On page four of the extensive and one-sided "overview" authored by the Army to persuade its adoption, the text clearly establishes the link between this agreement and two previously approved "successful examples" covering Interwar Era Housing and Capehart Wherry housing. On page 18, the Army argues that while there is no "legal precedent," the Army is right to use them to "guide and justify" subsequent Program Comments and doubles down in defense of their inclusion of the same management actions used in previous agreements. On page 27, in the text of the Program Comment itself, there once again is direct reference to the category of undertakings being based upon these same two previously adopted Program Comments. While attempting to parse the difference between precedent and legal precedent is noble, we believe in reality this is impossible when an agency refuses to do so.

Any agreement will naturally build upon the framework of those that precede it. In our view, the only way to remedy an adverse situation perpetuated through so-called precedent is through a revision or

amendment to the previous agreements from which they stem. We believe that this proposed agreement demonstrates this situation in that a federal agency is attempting not once but *twice* to eviscerate the publicly oriented, consultative process required by the National Historic Preservation Act, which was enacted to address what prior to 1966 was a virtual lack of consideration of our nation's historic places as the federal government went about its business. Moreover, historic preservation, as proven in multiple arenas for decades, is not a barrier to but rather a catalyst for well-maintained housing.

Superseding Existing Agreements

Over the years, various SHPOs and Army installations have negotiated a variety of Programmatic Agreements and Memorandums of Agreement (PAs and MOAs) covering a variety of undertakings. Those agreements are signed legal instruments and are the documented outcome of Section 106 consultations. This proposed Program Comment "...supersedes and replaces any requirements for Army Vietnam War Era housing in Army Section 106 Programmatic Agreements (PA) and Memoranda of Agreement (MOA). While it is unknown the extent to which any of these existing agreements cover potential undertakings affecting Vietnam War Era Housing, we question whether the ACHP has the legal authority to execute unilaterally program alternatives that automatically override the provisions of other executed legal instruments without the consent of its signatories and/or unless those agreements include language allowing for such. Otherwise, these existing agreements should either be terminated or amended by their signatories to reflect the provisions of the Program Comment.

Thirty-three Year Term

While we understand the origin of the proposed term of the Program Comment is to coincide with the lease agreements the Army has in place with privatized housing partners, we think this is excessive. Thirty-three years from now any Vietnam Era Housing still standing will be approaching 100 years old. One hundred years ago, a common opinion was that Victorian architecture was not worth saving. Fifty years ago, Art-Deco was not particularly valued. And just twenty years ago, mid-century modern was only beginning to generate interest. The point is, if we just devalue and demolish our historic properties today because they are viewed as having no architectural merit or integrity, will those values still be shared thirty-three years from now? At minimum, we believe any such program comment should sunset in fifteen years unless the ACHP takes a vote to affirm its continuance for an additional fifteen.

Withdrawal and Amendment Provisions Too Limited

Since a Program Comment is submitted by a federal agency to the ACHP, but it is the ACHP's comment to issue, we believe the provisions concerning withdraw and amendment should be broad. The current language suggests the ACHP could only withdraw the Program Comment due to a failure to be consistent with its terms. There could be any number of reasons why a Program Comment for something would no longer be appropriate beyond a failure to live up to its provisions. It should be clear the ACHP membership retains the authority to withdraw the Program Comment at its discretion for any circumstance. Additionally, the only provisions for Amendment are assigned to the Chairman and Executive Director relative to extensions and technical corrections. The ACHP membership should similarly retain the right to amend the agreement as necessary.

For the many reasons outlined above, we respectfully encourage our colleagues to vote NO on this Program Comment as written.

A Path To Yes

As we have indicated previously, we are very sympathetic to the needs of the Army to improve and prioritize the living conditions of our service members. Being also aware of the decades of systemically poor maintenance and limited investment that are the true root causes of this situation, we are sincerely supportive of the effort to find a solution.

We believe the answer to improving the condition of historic housing is fairly straightforward – facilitating maintenance, repair, rehabilitation, renovation, and abatement of hazardous materials represent appropriate management actions, as is, in some cases, mothballing. A Program Comment focused on these repetitive management actions would, therefore, be appropriate.

We do recognize that at times, demolition, new construction, lease, transfer and conveyance may be required to address the needs of service personnel. But to complete these management actions appropriately, due to their potential impact on historic properties, and to meet the spirit of the National Historic Preservation Act, we believe that routine consultation under the standard Section 106 process is more than adequate.

Additionally, since we believe that procedural inadequacies and faults led to the passage of the last Program Comment for Interwar Housing and given that precedent is continuously cited as a reason why the Vietnam Era Housing Program Comment should be adopted, we request the ACHP amend the earlier Interwar Housing Program Comment to remove demolition, replacement construction, new construction, lease and conveyance as covered management actions.

With these terms met, and with the other technical issues raised in this letter addressed, NCSHPO would be pleased to vote in favor of such a revised Program Comment for the Army.

Respectfully,



Ramona M. Bartos
NCSHPO President



Erik M. Hein
Executive Director

cc: ACHP Membership