



May 14, 2024

Sara Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Room 308
Washington, DC 20001

**Re: Proposed Program Comment for the Preservation of Pre-1919
Historic Army Housing, Associated Buildings and Structures, and
Landscape Features**

Dear Chair Bronin,

The National Trust for Historic Preservation (“National Trust”) and the National Conference of State Historic Preservation Officers (“NCSHPO”) would like to share our comments with you concerning the proposed “*Program Comment for the Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features*” (“Program Comment”), which was originally circulated to members of the Advisory Council on Historic Preservation (“ACHP”) on March 8, 2024.

As an initial matter, we are concerned that not enough time has been allowed for the review of last-minute revisions to the Program Comment. A substantial amount of new material, with revisions and responses to comments, was sent the Friday afternoon before voting begins. While revisions are a positive gesture, in light of the severe criticisms that have been submitted by State Historic Preservation Officers and others, more time is needed to review the specific responses. Since the Army will not agree to an additional extension of time, a No vote is warranted in our view to allow time for consideration of the new material and restarting the clock.

As both of our organizations have previously stated, we are opposed to the ACHP’s adoption of this Program Comment unless all National Historic Landmark (“NHL”) properties are removed from its scope. This is perhaps unsurprising, since we have strongly opposed previous Army Program Comments, but our opposition in this instance is stronger, because of the higher level of significance of the affected historic resources. No previous Army Program Comment has applied to NHLs, which are the most significant historic properties controlled by the Army. This Program Comment would affect 638 NHL resources, which comprise 74% of the buildings affected by the Program Comment.¹ NHLs are protected by Section 110(f) of the National Historic Preservation Act, which requires a uniquely extreme effort by federal agencies to minimize adverse effects to them “to the maximum extent possible.” 54 U.S.C. § 306107.

¹ *Program Comment*, at p.2.

We do not believe that this higher standard is met by the Program Comment. One key reason why is because the Program Comment would eliminate the existing SHPO reviews of undertakings that have the potential to cause adverse effects. These SHPO reviews are crucial and effective opportunities that help to ensure that adverse effects are avoided and minimized. The elimination of SHPO reviews is a purposeful removal of existing (and thus clearly “possible”) efforts to avoid and minimize adverse effects to NHLs, which in our view would be inconsistent with the “maximum extent possible” approach to avoidance prescribed by Section 110(f).

In response to these concerns, the Army has (confusingly) asserted that the Program Comment will not cause any adverse effects, because the execution of the Program Comment will redefine any future adverse effects as non-adverse, by virtue of the Army's compliance with the National Historic Preservation Act via the Program Comment. This circuitous, bureaucratic logic is a fallacy, and avoids the basic fact that, at its core, this Program Comment would empower the Army's for-profit privatized housing partners to remove historic materials from NHL buildings and make other alterations with no third-party oversight. We agree with the multiple individual SHPOs who have expressed their concerns that the Program Comment will result in adverse effects to NHLs.

The ACHP should take note that the State Historic Preservation Officers from the very states most affected by this Program Comment have written expressing their strong opposition to it. The SHPOs from Texas, Kansas, Arizona, Virginia, and Hawai'i, who collectively have jurisdiction over 560 of the 638 NHL resources affected by this Program Comment, have all expressed their strong opposition. These SHPOs are highly qualified and have extensive experience monitoring the preservation activities and decision-making of the Army's for-profit privatized housing partners, including those impacting the specific NHLs included in the Program Comment. And in most cases, they have existing Section 106 agreements that have been negotiated and are functioning well, but would be preempted by this proposed Program Comment. The opposition of these SHPOs is highly significant and compelling. The ACHP should heed their advice and listen to their experiences with the Army's for-profit privatized housing partners, which are overwhelmingly negative.²

The ACHP must acknowledge that the Army's for-profit housing partners have explicit incentives to seek the most profitable outcomes in their decision-making regarding these NHL resources. This is a fundamentally incongruous and inappropriate approach to compliance with the Army's “maximum extent possible” responsibility under Section 110(f). The Army has also acknowledged during consulting party meetings that their for-profit privatized housing partners are currently not adequately maintaining the NHL properties that are included in the Program Comment, despite agreement documents that require them to do so. In recent months we have also become aware of the for-profit privatized

² “Unfortunately, it is often the private housing partners that do not have qualified staff or do not engage in consultation with the Army staff and SHPO to work out viable alternatives when historic materials need replacement. We are seeing a continued loss of historic features and materials due to simple neglect, including highly significant properties like the Rookery at Fort Leavenworth.” *Letter from Kansas SHPO to Army* (Jan. 16, 2024).

housing partners' neglect of NHL properties, and even outright proposals to demolish them.³ This is an extremely troubling situation, and we cannot support the removal of oversight given these circumstances.

The Army has also failed to provide a reasonable justification for the Program Comment in the first place. The Army has made it clear that the enrichment of its for-profit privatized housing partners is the primary motivation for this Program Comment: if these entities were only able to make more money from these NHLs, the Army argues, then they would be able to adequately maintain them and provide reasonable housing for service members and their families. This argument ignores the fact that the Army's privatized housing partners are massive, profitable corporations. One of the Army's main for-profit privatized housing partners, Michaels, recently announced that it intends to spend \$500 million on housing at seven Army installations, including Ft. Belvoir, Ft. Huachuca, and Ft. Leavenworth.⁴ The resources thus clearly exist for the Army's for-profit privatized housing partners to honor their existing agreements. They are simply making a business decision to neglect our nation's heritage and breach their existing agreements, which they are now asking the ACHP to formally condone.

Alarming, we have also recently learned that the cost of compliance with the existing agreements is exacerbated in part because of the debt service costs that the for-profit privatized housing partners have voluntarily assumed related to these NHL resources. Essentially, the Army's for-profit privatized housing partners have taken out loans against the Army's NHL properties, and that business decision has added to their expenses related to them. The full protections of the National Historic Preservation Act, including SHPO review, should not be sacrificed for the Army's NHL properties because of the business decisions by the Army's for-profit privatized housing partners.

The ACHP should also take into account the fact that the 638 NHL resources affected by this Program Comment constitute a miniscule percentage of the Army's privatized housing stock, which exceeds 200,000 units.⁵ The Army asserts that the proper maintenance of the approximately 0.3% of Army privatized homes that are designated as NHLs is an unbearable burden for the Army's for-profit privatized housing partners. In our view, this assertion is completely unpersuasive since the NHLs that would be affected by the Program Comment are the tiny portion of the Army's historic residences that have been identified as meriting the highest standard of historic preservation. The ACHP should not accept that there is an economic imperative here.

³ For an example of documented neglect, see <https://www.kansascity.com/news/local/article286094221.html>.

⁴ See <https://www.morningstar.com/news/accesswire/840030msn/michaels-to-invest-more-than-500-million-in-its-military-housing-portfolio> and <https://www.multihousingnews.com/michaels-to-invest-500m-in-military-housing-portfolio>.

⁵ *Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program*, GAO-23-105377 (Apr. 06, 2023) (available at <https://www.gao.gov/products/gao-23-105377>).

In light of this evidence, we are highly concerned that allowing the Army's for-profit privatized housing partners the unsupervised authority to remove historic materials and make other alterations to the Army's most significant historic homes will result in adverse effects to NHLs. In our view, the risk that these adverse effects could occur, and the fact that their avoidance is not being sought "to the maximum extent possible," renders this Program Comment non-compliant with Section 110(f).

In sum, we urge the ACHP to reject the adoption of this Program Comment unless all NHLs are removed from its scope. We welcome inquiries from other ACHP members about our position, and we thank you for your consideration of our comments.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel
National Trust for Historic Preservation



Chris Cody
Associate General Counsel
National Trust for Historic Preservation



Erik Hein
Executive Director
NCSHPO

cc: Chris Koeppel, Jaime Loichinger, Javier Marques, and Reid Nelson, ACHP
Carol Quillen, President and CEO, National Trust for Historic Preservation
Shaw Sprague, Vice President for Government Relations, NTHP
Tom Mayes, Chief Legal Officer and General Counsel, NTHP
Ramona Bartos, Chair, NCSHPO