



SOCIETY FOR AMERICAN ARCHAEOLOGY

March 29, 2024

US Army Corps of Engineers
Attn: CECW–CO–R, 441 G Street NW
Washington, DC 20314–1000

RE: Docket ID: COE–2023–0004
RIN 0710–AB46

The Society for American Archaeology (SAA) is pleased to present the following comments on the proposed rule by the Army Corps of Engineers (USACE) Regulatory Program to remove Appendix C from 33 CFR part 325 and to utilize the Section 106 implementing regulations at 36 CFR part 800. The SAA is strongly in favor of the proposed rule and urges the USACE to finalize it as quickly as possible.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 5,500 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Promulgated in 1990 by the Corps Regulatory Program, Appendix C is a program alternative that governs its procedures relative to Section 106 of the National Historic Preservation Act. The deficiencies of Appendix C are well known. For example, on determining the scope of the undertaking, Appendix C limits its review to direct impacts within the permit area itself. This is usually much smaller than 36 CFR 800's definition of "area of potential effects," because Appendix C does not consider indirect effects (36 CFR 800.16[d]). The latter regulation is much more expansive: "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." The definition in 36 CFR 800.16 recognizes that impacts of a project on historic and cultural resources can extend well beyond the boundaries of the planned undertaking and that an undertaking can have indirect effects that extend beyond direct ones. The recognition of both direct and indirect effects thus provides maximum protection levels for threatened historic resources.

In addition, Appendix C makes no provision for tribal consultation. Government-to-government dialogue on USACE projects is vital for the protection of irreplaceable tangible tribal heritage. The National Historic Preservation Act (54 USC § 302702) and 36 CFR 800 (36 CFR 800.2[c][1][II] and 800.2[c][2]) makes such consultation a centerpiece of compliance with Section 106. Bringing the USACE Regulatory Program under the umbrella of Section 106's consultation procedures can only have substantial positive benefits for all involved, though we do note that the USACE's tribal virtual meeting on the proposed rule, scheduled for March 21, seemed too close to the deadline for filing comments. On a related note, the SAA strongly recommends that the USACE resolve treaty rights in advance of the Section 106 process. The Section 106 process should not begin until any treaty rights issues are resolved. Government-to-government consultation on USACE projects recognizes tribal sovereignty and that tribes have a legal stake in the protection of irreplaceable tangible representations of their heritage.

To ensure a successful transition from Appendix C to Section 106 regulations, it is imperative that USACE have adequate numbers of cultural resources staff in their regulatory offices. The Section 106 regulations are much more expansive, as noted, and will require more cultural resources staff to ensure that regulatory actions are processed in a timely fashion.

For these and other reasons, the SAA strongly supports the proposed rule and urges the USACE to finalize it as quickly as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Sandweiss", with a stylized flourish at the end.

Daniel H. Sandweiss, PhD, RPA
President