



SOCIETY FOR AMERICAN ARCHAEOLOGY

January 15, 2021

President-elect Joe Biden
Vice President-elect Kamala Harris
Office of Presidential Transition
1401 Constitution Ave, NW
Washington, DC 20230

RE: Opposition to Interior Secretarial Order #3389

Dear President-Elect Biden and Vice President-Elect Harris,

As other cultural resources organizations may have already informed you, the current Secretary of the Interior recently issued [a secretarial order](#) that would greatly weaken protections for heritage resources under Section 106 of the National Historic Preservation Act (NHPA). We urge your administration to swiftly revoke this unwise and counter-productive order as soon as possible following the inauguration.

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 nearly 7,000 members, 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. SAA has members throughout the U.S., as well as in many nations around the world.

Proponents state that Secretarial Order #3389 would improve efficiency and transparency in federal undertakings on Department of Interior land by streamlining compliance and increasing coordination between the National Environmental Policy Act (NEPA) and the Section 106 processes. We believe it will have exactly the opposite effect. The order requires DOI agencies to use the newly-revised NEPA process instead of the Section 106 process, even though agencies will still need to complete Section 106 reviews as required by the NHPA. Substituting Section 106 documentation with a NEPA Environmental Assessment or Environmental Impact Statement will, therefore, not result in any time savings. It will simply add more documentation requirements, increase costs, and create confusion among stakeholders.

The order also requires Department of the Interior agencies to renegotiate all existing Programmatic Agreements (PA) in order to ensure that they comply with the new arrangement. PAs are valuable tools that allow for predictability, time savings, and consistency in how stakeholder actions can proceed under the NHPA. Renegotiating the PAs will result in enormous time delays, costs, and confusion.

Of particular concern to the SAA is the order's disapproval of offsite compensatory mitigation to the impacts of undertakings on heritage resources. Section 106 clearly says that agencies will avoid, minimize, or mitigate any adverse effects on historic properties. The statute does not specify where, or where not, such mitigation can and should take place. In fact, the NHPA was written precisely in such a way to maximize agencies' flexibility in offsetting damaging impacts to cultural resources. All that the law mandates is that, when impacts are unavoidable, mitigation work be done. The order's disuse of offsite mitigation options rests, therefore, upon a deliberate misreading of the law, and would result in the severe limitation of agencies' ability to preserve our cultural assets along with the potential of increasing time and costs.

For these and other reasons, the SAA implores your administration to revoke Secretarial Order #3389 as soon as possible. Thank you for your attention to this crucial matter.

Sincerely,

A handwritten signature in cursive script that reads "Joe Watkins".

Joe E. Watkins, Ph.D., RPA
President

CC: Darryl LaCounte, Director, Bureau of Indian Affairs
William Pendley, Acting Director, Bureau of Land Management
Brenda Burman, Commissioner, Bureau of Reclamation
Margaret Everson, Acting Director, National Park Service
Aurelia Skipwith, Director, U.S. Fish and Wildlife Service