



January 27, 2021

Mr. William R. Manley
Deputy Federal Preservation Officer
Naval Facilities Engineering Command Headquarters
1322 Patterson Ave. SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065

Ref: *Development of a Nationwide Programmatic Agreement Regarding the Shipyard Infrastructure Optimization Program*
ACHP Project Number: 012679

Dear Mr. Manley:

Thank you for providing the Advisory Council on Historic Preservation (ACHP) an opportunity to review the third draft of the Nationwide Programmatic Agreement (NPA) for the Shipyard Infrastructure Optimization Program (SIOP) being developed pursuant to 36 CFR § 800.14(b)(2) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA, 54 USC § 306108). The Department of the Navy (Navy) notified the ACHP, and other consulting parties, in May 2020 of its intent to develop a NPA to address historic preservation planning and project implementation to optimize critical ship maintenance functions at public shipyards and support facilities. The ACHP fully supports the Navy's goal of developing efficiencies in its Section 106 review for these undertakings that balance the need to address deficiencies and increase overall productivity and capability, while continuing to support Fleet maintenance operations. The ACHP also recognizes the historic and cultural value of the public shipyards and support facilities and the diversity of historic properties located within and around these facilities.

The ACHP continues to believe that several fundamental questions that have arisen in consultation should be addressed soon in order for further consultation to be productive. We would suggest that the Navy include in its response to consulting party comments answers to the following issues:

- Determining those consulting parties that have the right to, and who may be invited to, sign the NPA;
- The difference between a SIOP project and non-SIOP project at public shipyards and support facilities;
- The goals and applicability of a "local management procedure" (LMP) as described in the draft NPA; and
- The legality of a LMP as a Section 106 agreement document.

The ACHP is concerned the proposed schedule, with a target completion date of May 2021, may not be adequate to finalize this NPA if these issues are not clarified for the consulting parties. As an active participant in this consultation, and with awareness of comments provided by the Hawaii, Maine,

Washington, and Virginia State Historic Preservation Officers (SHPO), and other interested parties on the third draft of the NPA, the ACHP provides the following additional comments and recommendations to assist in moving the consultation forward.

Who Signs a Nationwide Programmatic Agreement? The Navy has proposed that it, the National Conference of State Historic Preservation Officers (NCSHPO), and the ACHP be signatories to the NPA. Further, the Navy proposed to invite the SHPOs from Hawaii, Maine, Washington, and Virginia and the National Park Service to be invited signatories to the NPA. In doing so, the Navy also proposed to restrict the right of those invited signatories to terminate the NPA.

In addressing this question, it is important to note that no party can modify the rights of signatories or invited signatories since those rights are set forth in the regulations (see 36 CFR § 800.6(c)). Consistent with these regulations, there can be no invited signatories to this or any other NPA because it is a program PA developed under Section 800.14(b)(2) and not a project-specific PA developed pursuant to Section 800.14(b)(3). There are no provisions in the regulations for program PAs to have invited signatories. This restriction is clearly evidenced within Section 800.14(b)(2) which established those parties who are authorized to sign the PA for it to be executed, and also details the abilities of those signatories to terminate the PA. To be clear, this section of our regulations provides no opportunity for invited signatories to participate in the execution or termination of NPAs. The ACHP acknowledges that there have been other more localized program PAs developed that included “invited signatories” in the past. Moving forward, the ACHP is rectifying past decisions to allow such signatories on a case by case basis. As the Navy intends this program PA to be nationwide in scope, it must follow the precedent of other nationwide PAs that have no invited signatories or concurring parties.

What is a SIOP Project? To date, the Navy has not yet clearly defined those activities that constitute a SIOP project and therefore would be subject to the terms of this NPA as undertakings. Based on recent information and discussions, it appears that the Navy intends for SIOP projects to be identified in individually proposed Area Development Plans (ADP). While further clarification and refinement of such projects at this stage may be appropriate, it remains fundamentally important for the purposes of establishing general measures for the resolution of adverse effects in the NPA to define at least the general parameters for what constitutes a SIOP project now. Further clarification regarding whether the ADP is the same document prescribed by Unified Facilities Criteria (UFC) 2-100-01, *Installation Master Planning* (September 2020), or whether it might be a document specific to the SIOP would also be helpful. We again urge the Navy to make the identification of SIOP projects more transparent and predictable so that parties are certain when the NPA applies and when it does not. In addition, because some of the public shipyards include National Historic Landmarks (NHLs) among the properties that may need to be modified or affected by proposed SIOP projects, the Navy must meet the requirements of Section 110(f) of the NHPA and 36 CFR § 800.10. How the Navy intends to incorporate this requirement in the NPA, and the subsequent LMPs, should be discussed further.

Understanding the scope of this NPA to be very broad, potentially encompassing the majority of Navy undertakings for the foreseeable future, we urge the Navy to also consider whether expanding it to apply to all Navy undertakings that support the continued operation and maintenance of the public shipyards and support facilities may provide appropriate flexibility, efficiency, and predictability for other stakeholders likely to continue consulting the Navy on various projects. Because the SIOP is an evolving program and there are many reasonably foreseeable projects that are necessary for the traditional and ongoing operation of public shipyards and support facilities, expanding the scope of this program alternative could provide additional review efficiencies to the Navy. If the Navy elects to maintain the focused scope of the NPA, the ACHP urges the Navy to clearly define how SIOP projects would be identified (i.e., either through development of an upfront list of projects or providing clear, established criteria for assessing whether a proposed undertaking falls within the SIOP program). Lacking such

clarification, it may be difficult for consulting parties to continue refining the terms of the NPA without fully understanding its scope.

Is a LMP a Section 106 Agreement Document? Several SHPOs have questioned the status of the proposed LMP as part of a Section 106 program alternative. It is important to note that this is not the first time a federal agency has incorporated the development of subsequent state or regionally based procedures under the terms of a broader umbrella PA to outline how the agency would meet its Section 106 responsibilities. Most notably, the development and execution of “state protocols” under the *Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* follows this approach. The intent of a “state protocol” is that the Bureau of Land Management (BLM) and a specific SHPO could “develop mutually agreed upon two-party BLM-SHPO protocols regulating their relationship and how consultation will take place.” The ACHP sees the proposed LMP as similar to a BLM-SHPO protocol, as the development of such procedures would be authorized and sanctioned by the NPA. The NPA should provide clear expectations of when the individual consultations on the development of a LMP would start and conclude.

The LMP should outline the process in which the Navy region will review projects at a public shipyard or support facility to meet the substantive requirements of Section 106: initiation of the consultation process, identification of historic properties, assessment of effects, and resolution of adverse effects. If SIOP projects are to be identified through the ADP, it will be important that a LMP outline the process in which the SHPO, and consulting parties, will be part of that development process. The Navy proposes not to seek concurrence from the SHPO on findings of “no historic properties present,” “no effect to historic properties,” and “no adverse effect to historic properties” and instead provide a list of those SIOP projects receiving such findings in an annual report. What is not yet clear in the proposed draft NPA is whether the Navy intends for the SHPO, and other identified consulting parties, to be part of the project review process when the undertaking may adversely affect a historic property in order to seek alternatives that would avoid or minimize adverse effects, or if the Navy intends to simply notify the SHPO, and other identified consulting parties, and seek concurrence on predetermined avoidance, minimization, or mitigation measures. This is an important point in the review process, and should be clarified given the Navy’s statutory requirement regarding potential adverse effects to NHLs.

Path Forward Toward Executing a NPA. The ACHP remains committed to supporting the Navy and NCSHPO in developing a NPA that will be dynamic and proactive to meet the demands of the Navy and its regions while also taking into account and establishing a system to support SIOP project review. To facilitate a productive discussion, the ACHP is providing a revised draft NPA and template LMP for consideration that are based on the information provided in the third draft of the NPA, the stated goals of the consultation, and concerns raised by consulting parties. The ACHP recommends the NPA include a template for the LMP to help guide the individual consultations that would occur between Navy regions, individual SHPOs, and other interested parties. Please find both documents attached.

The ACHP’s revised draft NPA, while not complete, outlines or includes placeholders for the most important stipulations appropriate for a NPA. The stipulations addressing nationwide mitigation measures (i.e., nationwide context and museum exhibit) should be further fleshed out to better prepare for the development of those items. The stipulation addressing the LMP focuses on the mechanics of its development and references an appendix to provide the necessary content of the LMP. When reviewing the template LMP, the Navy should make clear the role the individual SHPO, and consulting parties, would play in the project review process at individual public shipyards or support facilities. The process should also specify how the Navy region would attempt to find ways to avoid and minimize effects in either a separate consultation or through a coordinated review process under the National Environmental

Policy Act.

Please note that stipulations providing procedures to address “emergencies” and “post-review discoveries” are not included in the revised draft NPA. Because the response to these situations would likely need to be region specific, we recommend the Navy incorporate the development of such provisions in the LMPs.

In closing, we hope these comments and recommendations assist you in meeting these important goals. If you have questions or issues you would like to discuss, please feel free to contact Dr. Tom McCulloch, Assistant Director, Federal Property Management Section, at tmcculloch@achp.gov or at (202) 517-0222.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Director
Office of Federal Agency Programs

Enclosure

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**NATIONWIDE
PROGRAMMATIC AGREEMENT
AMONG
THE US NAVY,**

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**THE NATIONAL CONFERENCE ON STATE HISTORIC PRESERVATION OFFICERS, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT
PUBLIC SHIPYARDS AND SUPPORT FACILITIES**

10 **WHEREAS**, deficiencies in US Navy (Navy) public shipyard infrastructure, as identified by the
11 Government Accountability Office (GAO), require comprehensive engineering and systemic
12 improvement to meet the Navy’s fleet readiness requirements (GAO-20-64: Naval Shipyards, Key
13 Actions Remain to Improve Infrastructure to Better Support Navy Operations (November 2019); GAO-
14 17-548: Naval Shipyards, Actions Needed to Improve Poor Conditions that Affect Operations (September
15 2017); GAO-20-588: Naval Shipyards: Actions Needed to Address the Main Factors Causing
16 Maintenance Delays for Aircraft Carriers and Submarines (August 2020)); and
17

18 **WHEREAS**, the Navy’s public shipyards, located in the states of Hawai’i, Maine, Virginia and
19 Washington, and support facilities, **[INSERT STATES WHERE SUPPORT FACILITIES ARE
20 LOCATED]**, are essential components of national defense responsible for maintaining readiness of the
21 Navy’s fleet of aircraft carriers and submarines; and
22

23 **WHEREAS**, the Navy has established the Shipyard Infrastructure Optimization Program (SIOP) to plan
24 and program critical improvements at its public shipyards and support facilities, pursuant to Senate
25 Report 115-130, accompanying S.1557, the Fiscal Year (FY) 2018 Military Construction, Veterans
26 Affairs, and Related Agencies Appropriations Bill, and Senate Report 115-125, accompanying the FY
27 2018 National Defense Authorization Act; and
28

29 **WHEREAS**, the SIOP mission is to address shipyard and support facility deficiencies and increase
30 overall productivity and capability, while continuing to support Fleet maintenance operations, in the
31 foreseeable future; and
32

33 **WHEREAS**, to support the SIOP mission the Navy needs reliable schedules for planning, review, and
34 implementation of all projects within shipyards and support facilities in a manner that supports
35 synchronized project implementation with minimal disruption of the ongoing shipyard maintenance
36 mission; and
37

38 **WHEREAS**, the Navy is developing the SIOP mission in three phases: Phase I is the initial review of the
39 infrastructure problem at the naval shipyards and has been completed; Phase II will build upon Phase I
40 resulting in Area Development Plans (ADP) detailing industrial engineering analysis, modeling and
41 simulation of industrial processes for each shipyard and support facility, which is ongoing; and Phase III
42 will prioritize, develop, and execute projects identified in Phase II; and
43

44 **WHEREAS**, the Navy recognizes the historic and cultural value of the public shipyards and support
45 facilities and the diversity of historic properties located within and around these facilities; and
46

47 **WHEREAS**, the Navy plans to carry out projects including, but not limited to, demolition, alteration,
48 new construction, and adaptive use of dry docks and related facilities identified in installation-specific
49 ADPs at public shipyards and support facilities making them Undertakings subject to review under
50 Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108, and its implementing
51 regulations, 36 CFR Part 800; and

52
53 **WHEREAS**, the Navy has determined that Undertakings may have an adverse effect on historic
54 properties, which are listed in and eligible for listing in the National Register of Historic Places, and has
55 consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and the
56 Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.14(b)(2), of the regulations
57 implementing Section 106 of the NHPA (54 USC § 306108) in order to develop a Nationwide
58 Programmatic Agreement (NPA) for all potential undertakings at public shipyards and support facilities
59 and direct the development of individual local management procedures (LMP) for a public shipyard or
60 support facility to outline the process in which it will identify, evaluate, and assess effects of
61 Undertakings; and

62
63 **WHEREAS**, the Navy has consulted with the State Historic Preservation Officers (SHPO) from Hawaii,
64 Maine, Washington, and Virginia; and

65
66 **WHEREAS**, the Navy has consulted with [INSERT NAME OF INDIAN TRIBE(S)], for which
67 Undertakings may have an effect on historic properties that have religious and cultural significance to
68 them, and has invited the Tribe(s) to participate in the development of this NPA; and

69
70 **WHEREAS**, the Navy has consulted with [INSERT NAME OF NATIVE HAWAIIAN
71 ORGANIZATION(S)], for which Undertakings may have an effect on historic properties that have
72 religious and cultural significance to them, and has invited the NHO(s) to participate in the development
73 of this NPA; and

74
75 **WHEREAS**, the Navy has consulted with the Interior Region 1 and Interior Regions 8, 9, 10, & 12 of the
76 National Park Service (NPS), in accordance with 36 CFR § 800.10(b), regarding effects of the
77 Undertaking on National Historic Landmarks (NHL), and has invited the NPS to participate in the
78 development of this NPA; and

79
80 **WHEREAS**, the Navy has invited [INSERT NAME OF OTHER CONSULTING PARTIES,
81 INCLUDING LOCAL GOVERNMENTS, NON-GOVERNMENTAL AGENCIES, AND/OR OTHER
82 INTERESTED PARTIES] to consult on the development of this NPA; and

83
84 **WHEREAS**, the Navy has conducted [DESCRIBE PUBLIC OUTREACH] on the development of this
85 NPA; and

86
87 **WHEREAS**, the Navy is aware of existing Section 106 agreements regarding public shipyards and
88 support facilities, and those agreements will be taken into account in the development of LMP; and

89
90 **WHEREAS**, due to the nature of the SIOP mission requirements, the Navy has informed consulting
91 parties that avoidance and minimization of adverse effects from SIOP Undertakings may not be feasible
92 in all situations; and

93
94 **WHEREAS**, the Navy shall utilize procedures in this NPA, to the maximum extent possible, undertake
95 such planning and actions as may be necessary to minimize harm to any NHL that may be directly and
96 adversely affected by an Undertaking; and

97
98 **WHEREAS**, as detailed below, the Navy shall develop a national context and thematic study
99 documenting the history of shipbuilding and ship maintenance in the United States in order to mitigate
100 visual effects at all shipyards and intermediate maintenance facilities and the parties to this PA agree that
101 such study adequately resolves the adverse individual visual effects of Undertakings at public shipyards
102 and support facilities; and

103
104 **NOW, THEREFORE**, the Navy, the NCSHPO, and the ACHP agree that Undertakings shall be
105 implemented in accordance with the following stipulations in order to take into account the effect of
106 Undertakings on historic properties.
107

108 **STIPULATIONS**

109 The Navy shall ensure that the following measures are carried out:

110 **I. ROLES AND RESPONSIBILITIES**

- 111
- 112 A. Navy
- 113
- 114 B. ACHP
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- 116 C. NCSHPO
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120 **II. DEVELOPMENT OF LOCAL MANAGEMENT PROCEDURES**

- 121
- 122 A. Within 30 calendar days of executing the NPA, the appropriate Navy region shall initiate
- 123 consultation with the Hawai'i, Maine, Washington, and Virginia SHPO and other
- 124 consulting parties regarding the development of LMP to outline the process in which it
- 125 will identify, evaluate, and assess effects of proposed actions within the appropriate
- 126 public shipyard on historic properties to include the development and approval of the
- 127 individual ADP.
- 128
- 129 1. The Navy region shall use the template as outlined in **Appendix A** as the basis of
- 130 the consultation to develop a LMP to provide a streamlined review process for
- 131 SIOP undertakings.
- 132
- 133 a) The Navy intends for the majority of identified adverse effects to be
- 134 resolved through the LMP and the development of a Mitigation
- 135 Document.
- 136
- 137 b) The Navy intends for the nationwide mitigation (see **Stipulation III**) to
- 138 address all future visual adverse effects at public shipyards which means
- 139 visual adverse effects, if identified at the public shipyard, will not be
- 140 individually addressed in the LMP's streamlined review process.
- 141
- 142 2. The LMP for Hawai'i, Maine, Washington, and Virginia shall be executed and
- 143 implemented within 180 calendar days of executing the NPA.
- 144
- 145 B. If the Navy identifies the need to develop a LMP for a support facility in the future, it
- 146 shall notify the ACHP and the NCSHPO in writing of its intention to initiate consultation
- 147 with the appropriate SHPO to develop a LMP for that specific support facility.
- 148
- 149 1. The Navy region shall initiate consultation with the appropriate SHPO within 30
- 150 calendar days of notifying the NCSHPO and the ACHP, and other consulting
- 151 parties regarding the development of a LMP to outline the proces in which it will
- 152 identify, evaluate, and assess effects of proposed actions within a support facility
- 153 on historic properties in that region to include the development and approval of
- 154 the individual ADP.
- 155

- 156 a) The Navy region shall use the template as outlined in Appendix A as the
157 basis of the consultation to develop a LMP to provide a streamlined
158 review process for SIOP undertakings.
159
160 (1) The Navy intends for the majority of identified adverse effects to
161 be resolved through the LMP and the development of a
162 Mitigation Document.
163
164 (2) The Navy intends for the nationwide mitigation (see Stipulation
165 III) to address all future visual adverse effects at the support
166 facilities which means visual adverse effects, if identified at the
167 support facility, will not be individually addressed in the LMP's
168 streamlined review process.
169
170 2. The LMP for the support facility shall be executed and implemented within 180
171 calendar days of initial notification (Stipulation II(B)(1)).
172

173 **III. NATIONWIDE MITIGATION**
174

175 A. Development of National Context and Thematic Study
176

- 177 1. Within 60 calendar days of executing this NPA, the Navy shall initiate the
178 process to develop a national context and thematic study documenting the history
179 and ship building and ship maintenance in the US.
180
- 181 • The Navy shall develop a project plan for nationwide shipyard mitigation of visual effects at the
182 four shipyards.
 - 183
 - 184 • The project plan will identify key goals, participants, and timelines (to include a final completion
185 of the study) for deliverables.
 - 186
 - 187 • The project plan will identify measures for public distribution of project deliverables.
 - 188
 - 189 • The Navy shall solicit and consider comments from all NPA stakeholders prior to finalizing the
190 project plan.
 - 191
 - 192 • The Navy shall solicit and consider comments on draft reports prior to finalizing project
193 deliverables.

194 B. Development of an interpretive exhibition of shipyard history
195

- 196 1. Within one year of executing this NPA, the Navy shall initiate the process for
197 developing an interpretive exhibition of shipyard history to eventually be
198 installed at the future National Museum of the United States Navy
199
200
- 201 • The Navy shall develop a project plan.
 - 202
 - 203 • The project plan will identify key goals, participants, and timelines (to include a final completion
204 of the exhibit) for deliverables.
205

- 206 • The project plan will identify measures for public distribution of project deliverables.
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208 • The Navy shall solicit and consider comments from all NPA stakeholders prior to finalizing the
209 project plan.
210
211 • The Navy shall solicit and consider comments on draft reports prior to finalizing project
212 deliverables.
213

214 **IV. TRAINING IN ADMINISTRATION OF THIS NPA**

215

- 216 • Qualified Navy SMEs shall conduct training in the administration of this PA, to include
217 orientation for new employees and annual refresher training for personnel with responsibilities
218 related to Undertakings.
219
220 • Qualified Navy SMEs may request the appropriate SHPO to attend and assist in the annual
221 training.
222

223 **V. MONITORING AND REPORTING**

224

227 **VI. DISPUTE RESOLUTION**

228

- 229 A. Should a signatory object at any time to any actions proposed or the manner in which the
230 terms of the NPA are implemented, the Navy shall consult with such party to resolve the
231 dispute within 10 calendar days of receiving the objection. If the Navy determines that
232 such dispute cannot be resolved within 30 calendar days of receiving the objection, the
233 Navy shall:
234
- 235 1. Forward all documentation relevant to the dispute, including the Navy's
236 proposed resolution to the ACHP. The ACHP shall provide Navy with its advice
237 on resolution of the dispute within 30 calendar days of receiving adequate
238 documentation. Prior to reaching a final decision on the dispute, Navy shall
239 prepare a written response that takes into account any timely advice or comments
240 regarding the dispute from the ACHP, the SHPO, and consulting parties, and
241 provide them with a copy of this written response. Navy shall then proceed
242 according to its final decision.
243
 - 244 2. If the ACHP does not provide its advice regarding the dispute within the 30
245 calendar day time period, Navy may make a final decision on the dispute and
246 proceed accordingly. Prior to reaching such a final decision, the Navy shall
247 prepare a written response that takes into account any timely comments regarding
248 the dispute from the SHPO and consulting parties to the NPA, and provide them
249 and the ACHP with a copy of such written response.
250
- 251 B. The Navy's responsibility to carry out all other actions subject to the terms of this NPA
252 that are not subject of the dispute remain unchanged.
253

254 C. Should any member of the public raise a timely and substantive objection pertaining to
255 the manner in which the terms of this NPA are carried out, at any time during its
256 implementation, the Navy shall take the objection into account by consulting with the
257 objector to resolve the objection. When the Navy responds to an objection, it shall notify
258 the consulting parties of the objection and the manner in which it was resolved. The Navy
259 may request the assistance of a consulting party to resolve such an objection.
260

261 **VII. AMENDMENT**

262
263 This PA may be amended when such an amendment is agreed to in writing by all signatories. The
264 amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.
265

266 **VIII. TERMINATION**

267
268 A. If any signatory to this NPA determines that its terms will not or cannot be carried out,
269 that party shall immediately consult with the other parties to attempt to develop an
270 amendment. If within 30 calendar days (or another time period agreed to by all
271 signatories) an amendment cannot be reached, any signatory may terminate the PA upon
272 written notification to the other signatory.
273

274 B. Once the PA is terminated, and prior to work continuing on an Undertaking, the Navy
275 shall ensure that individual Undertakings are reviewed in accordance with 36 CFR §§
276 800.3 through 800.7 by the appropriate region and not in accordance with an executed
277 LMP.
278

279 **IX. ANTI-DEFICIENCY ACT**

280
281 The Navy's obligations under this NPA are subject to the availability of appropriated funds, and the
282 stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The Navy shall make
283 reasonable and good faith efforts to secure the necessary funds to implement this NPA in its entirety. If
284 compliance with the Anti-Deficiency Act alters or impairs the Navy ability to implement the stipulations
285 of this NPA, the Navy shall consult in accordance with the amendment and terminations procedures of
286 this NPA.
287

288 **X. DURATION**

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292 **Execution** of this NPA by the Navy, the NCSHPO, and the ACHP and implementation of its terms
293 evidence that the Navy has taken into account the effects of these Undertakings on historic properties and
294 afforded the ACHP an opportunity to comment.
295

296 This NPA may be executed in counterparts, each of which shall constitute an original, and all of which
297 shall constitute one and the same agreement.
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REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT
PUBLIC SHIPYARDS AND SUPPORT FACILITIES**

SIGNATORY:

U.S. NAVY

By: _____
[NAME]
[TITLE]

Date: _____

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PUBLIC SHIPYARDS AND SUPPORT FACILITIES**

SIGNATORY:

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: _____
Mark Wolfe
President

Date: _____

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**NATIONWIDE
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
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PUBLIC SHIPYARDS AND SUPPORT FACILITIES**

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
Aimee Jorjani
Chairman

Date: _____

361 APPENDIX A: LOCAL MANAGEMENT PROCEDURE TEMPLATE
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1 **LOCAL MANAGEMENT PROCEDURE**
2 **BETWEEN**
3 **THE COMMANDER NAVY REGION [INSERT REGION NAME]**
4 **AND**
5 **[INSERT STATE NAME] STATE HISTORIC PRESERVATION OFFICE**
6 **REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT**
7 **[INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]**
8 **[INSERT INSTALLATION, CITY, OR COUNTY NAME], [INSERT FIPS STATE ALPHA**
9 **CODE]**

10
11 **WHEREAS**, the US Navy (Navy), the National Conference of State Historic Preservation Officers, and
12 the Advisory Council on Historic Preservation (ACHP) executed a National Programmatic Agreement
13 (NPA) to establish a standardized, national process to address effects of SIOP and the development of
14 local management procedures (LMP) to be implemented at the regional level; and
15

16 **WHEREAS**, the Navy has obligated itself through the NPA to the development of a national context and
17 thematic study documenting the history of shipbuilding and ship maintenance in the United States and the
18 development of an interpretive exhibition of shipyard history to become a permanent display at the future
19 National Museum of the United States Navy to mitigate visual effects at all shipyards and support
20 facilities and [INSERT NAME OF REGION] is not obligated to mitigate for individual visual effects of
21 Undertakings at [INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]; and
22

23 **WHEREAS**, [use clause only if a National Historic Landmark is located in the APE] the Commander
24 Navy Region [INSERT REGION NAME] shall utilize procedures in this LMP, to the maximum extent
25 possible, undertake such planning and actions as may be necessary to minimize harm to any National
26 Historic Landmark that may be directly and adversely affected by an Undertaking; and
27

28 **NOW, THEREFORE**, the [INSERT REGION NAME] and the SHPO agree that Undertakings shall be
29 implemented in accordance with the following procedures in order to take into account the effect of
30 Undertakings on historic properties.
31

32 **PROCEDURES**

33
34 [INSERT REGION NAME] shall ensure that the following measures are carried out:
35

36 **I. ROLES AND RESPONSIBILITIES**

- 37
- 38 A. PMS-555
 - 39
 - 40 B. Naval Facilities Engineering Systems Command [INSERT APPROPRIATE NAVFAC
41 REGION]
 - 42
 - 43 C. Commanding Officer of Navy Region [INSERT REGION NAME]
 - 44
 - 45 1. At least 12 months in advance of any Navy decision actions that would restrict
46 the subsequent consideration of alternatives to avoid, minimize or mitigate the
47 undertaking's adverse effects on historic properties, the Navy shall identify all
48 SIOP Undertakings to which the Navy proposes to apply this LMP.
49

- 50 2. Identify any known Undertakings planned prior to completion of the ADP,
51 including dry dock projects and waterfront production facilities for the shipyard.
52
- 53 D. Commanding Officer of [INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]
54
- 55 E. Navy Cultural Resources Manager
56
- 57 1. This PA will be managed and implemented by subject matter experts (SME)
58 qualified in history, archaeology, historic preservation, architectural history, and
59 or historic architecture, as appropriate, consistent with the professional
60 qualifications standards of the Secretary of the Interior Professional
61 Qualifications Standards set forth at 36 CFR 61 (SME Federal Register 48:
62 44738-44739).
63
- 64 F. SHPO
65

66 II. AREA DEVELOPMENT PLANS 67

- 68 A. During development of each Area Development Plan (AD), the [INSERT REGION
69 NAME] will provide information to consulting parties on the findings of engineering
70 studies and alternative courses of action (COA) for infrastructure change at [INSERT
71 NAME OF SHIPYARD OR SUPPORT FACILITY].
72
- 73 B. The [INSERT REGION NAME] will solicit and consider all comments provided by the
74 consulting parties prior to selecting a COA for the [INSERT NAME OF SHIPYARD OR
75 SUPPORT FACILITY].
76
- 77 1. In order to support mission-critical SIOP planning and programming, intervals
78 for review and comment on ADP COAs may be as short as 14 calendar days.
79
- 80 C. The [INSERT REGION NAME] will provide the consulting parties on the selected COA,
81 to include preliminary assessments of potential effects to historic properties.
82
- 83 D. The [INSERT REGION NAME] will update the ADPs as needed, and will notify, solicit
84 and consider comments from consulting parties prior to finalizing changes to the selected
85 COA for the [INSERT NAME OF SHIPYARD OR SUPPORT FACILITY].
86
- 87 • If the Navy identifies any additional SIOP Undertakings for which the Navy intends to apply this
88 LMP, the Navy shall notify and consult consulting parties and this process needs to be addressed
89 and laid out so everyone understands the mechanics.
90

91 III. STREAMLINED REVIEW PROCESS 92

- 93 A. Identifying a SIOP project
94
- 95 1. [INSERT REGION NAME] shall ensure that all projects proposed for [INSERT
96 NAME OF SHIPYARD OR SUPPORT FACILITY] clearly identified as SIOP
97 shall be reviewed in accordance with this LMP.
98

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2. If the [INSERT REGION NAME] determines that the proposed project is listed in [INSERT APPENDIX], the [INSERT REGION NAME] shall document this determination for inclusion in the Annual Report, and [INSERT REGION NAME] has no further obligations under this Stipulation.
 3. If the [INSERT REGION NAME] determines the proposed project is an undertaking not listed in [INSERT APPENDIX], the [INSERT REGION NAME] will continue on in the Streamlined Review Process.

108 B. Define the APE and Identify Historic Properties

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1. The [INSERT REGION NAME] shall determine and document the project APE for each specific undertaking, appropriate to the scope and scale of the undertaking, and considering direct, indirect, and cumulative effects.
 2. The [INSERT REGION NAME] shall determine whether historic properties are present in the project APE. [This should be specified for each location as appropriate taking into account past surveys and known inventories]
 3. If the [INSERT REGION NAME] does not identify any historic properties within the project APE, the [INSERT REGION NAME] shall document this determination as “No Historic Properties Affected” for those undertaking for inclusion in the Annual Report, the [INSERT REGION NAME] has no further obligations under this Stipulation.
 4. If the [INSERT REGION NAME] identifies a historic property that may be directly, indirectly, or cumulatively affected within the project APE, the [INSERT REGION NAME] shall continue on in the Streamlined Review Process.

129 C. Evaluate Effects of the Undertaking

130
131 The [INSERT REGION NAME] shall assess the effects of the proposed undertaking on
132 historic properties, including direct, indirect, and cumulative effects, using the criteria of
133 adverse effects (36 CFR § 800.5(a)(1)) and will make one of the following
134 determinations:

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1. “No Effect to Historic Properties”: if the [INSERT REGION NAME] determines that historic properties present in the project APE will not be affected by the undertaking, the [INSERT REGION NAME] shall document this determination for those undertakings for inclusions in the Annual Report, and [INSERT REGION NAME] has no further obligations under this Stipulation.
 2. “No Adverse Effect to Historic Properties”: if the [INSERT REGION NAME] determines that historic properties present in the project APE will not be adversely affected by the undertaking, the [INSERT REGION NAME] shall document this determination for those undertakings for inclusions in the Annual Report, and [INSERT REGION NAME] has no further obligations under this Stipulation.

149 3. “Adverse Effect to Historic Properties”: if the [INSERT REGION NAME]
150 determines that historic properties present in the project APE will be adversely
151 affected by the undertaking, the [INSERT REGION NAME] shall proceed to
152 Stipulation III(D).
153

154 D. Resolution of Adverse Effects
155

156 1. For those undertakings with a finding of “Adverse Effect to Historic Properties”
157 the [INSERT REGION NAME] shall provide the SHPO with a packet of
158 information including, but not limited to, the following:
159

- 160 a) project description, to include depth and amount of ground disturbance
161 anticipated;
- 162 b) APE map showing the location of the project and of any identified
163 historic properties;
- 164 c) description of the historic properties affected;
- 165 d) any photos as necessary;
- 166 e) finding of effect; and
- 167 f) proposed measures to avoid, minimize, and/or mitigate adverse effects.
168

169 2. SHPO shall provide a response to [INSERT REGION NAME] adverse effect
170 notification within 30 calendar days of receipt of all pertinent documentation. If
171 no comments are received within that time, the [INSERT REGION NAME] shall
172 make a second attempt to contact the SHPO for comments before assuming
173 concurrence.
174

- 175 a) If the SHPO concurs with the proposed measures to avoid, minimize,
176 and/or mitigate adverse effects, the [INSERT REGION NAME] shall
177 proceed in preparing a formal agreement stipulating content, timing, and
178 review of deliverables, consistent with the Mitigation Document
179 template.
- 180 b) If the SHPO does not concur with the proposed measures to avoid,
181 minimize, and/or mitigate, the [INSERT REGION NAME] shall consult
182 with the SHPO for no more than a total of 30 calendar days, or other time
183 period as agreed to between SHPO and the [INSERT REGION NAME],
184 upon receipt of SHPO notification of non-concurrence to attempt to
185 resolve concerns as identified by the SHPO.

- 186 (1) If at the end of the 30 calendar days, or agreed to specified time,
187 the SHPO concurs with the measures to avoid, minimize, and/or
188 mitigate, the [INSERT REGION NAME] shall proceed in
189 preparing a formal agreement stipulating content, timing, and
190 review of deliverables, consistent with the Mitigation Document
191 template as found in Appendix C.
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200 (2) If at the end of the 30 calendar days, or agreed to specified time,
201 the SHPO does not concur with the proposed measures to avoid,
202 minimize, and/or mitigate, the [INSERT REGION NAME] shall
203 notify the ACHP in accordance with [DISPUTE RESOLUTION
204 STIPULATION CITATION].
205

206 **IV. TRAINING IN ADMINISTRATION OF LOCAL MANAGEMENT PROCEDURES**

- 207
- 208 • Qualified Navy SMEs shall conduct training in the administration of this LMP, to include
209 orientation for new employees and annual refresher training for personnel with responsibilities
210 related to Undertakings.
- 211
- 212 • Qualified Navy SMEs may request the appropriate SHPO to attend and assist in the annual
213 training.
- 214

215 **V. EMERGENCIES**

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219 **VI. POST-REVIEW DISCOVERIES**

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223 **VII. MONITORING AND REPORTING**

- 224
- 225 • Frequency – annually provide consulting parties with a report summarizing actions reviewed
226 under the LMP.
- 227
- 228 • [INSERT REGION NAME] shall host an annual meeting with consulting parties to review
229 implementation of the LMP and determine if amendment is necessary.
- 230
- 231 • Annual report shall include a list of those projects where a finding of no historic property present,
232 no historic properties affected, or no adverse effect were made.
- 233
- 234 • Upon review of the annual report, consulting parties may submit a written request for additional
235 information in the report and the [INSERT REGION NAME] shall provide that information
236 within 15 calendar days of receipt.
- 237

238 **VIII. DISPUTE RESOLUTION**

- 239
- 240 A. Should the SHPO or a concurring party to this LMP object at any time to any actions
241 proposed or the manner in which the terms of the LMP are implemented, the [INSERT
242 REGION NAME] shall consult with such party to resolve the dispute within 10 calendar
243 days of receiving the objection. If the [INSERT REGION NAME] determines that such
244 dispute cannot be resolved within 30 calendar days of receiving the objection, [INSERT
245 REGION NAME] shall:
246

- 247 1. Forward all documentation relevant to the dispute, including the [INSERT
248 REGION NAME]'s proposed resolution to the ACHP. The ACHP shall provide
249 [INSERT REGION NAME] with its advice on resolution of the dispute within 30
250 calendar days of receiving adequate documentation. Prior to reaching a final
251 decision on the dispute, [INSERT REGION NAME] shall prepare a written
252 response that takes into account any timely advice or comments regarding the
253 dispute from the ACHP, the SHPO, and concurring parties, and provide them
254 with a copy of this written response. [INSERT REGION NAME] shall then
255 proceed according to its final decision.
256
- 257 2. If the ACHP does not provide its advice regarding the dispute within the 30
258 calendar day time period, [INSERT REGION NAME] may make a final decision
259 on the dispute and proceed accordingly. Prior to reaching such a final decision,
260 [INSERT REGION NAME] shall prepare a written response that takes into
261 account any timely comments regarding the dispute from the SHPO and
262 concurring parties to the PA, and provide them and the ACHP with a copy of
263 such written response.
264
- 265 B. [INSERT REGION NAME]'s responsibility to carry out all other actions subject to the
266 terms of this LMP that are not subject of the dispute remain unchanged.
267
- 268 C. Should any member of the public raise a timely and substantive objection pertaining to
269 the manner in which the terms of this LMP are carried out, at any time during its
270 implementation, the [INSERT REGION NAME] shall take the objection into account by
271 consulting with the objector to resolve the objection. When the [INSERT REGION
272 NAME] responds to an objection, it shall notify the consulting parties of the objection
273 and the manner in which it was resolved. The [INSERT REGION NAME] may request
274 the assistance of a consulting party to resolve such an objection.
275

276 IX. AMENDMENT

277
278 This LMP may be amended when such an amendment is agreed to in writing by all signatories. The
279 amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.
280

281 X. TERMINATION

- 282
- 283 A. If any signatory to this LMP determines that its terms will not or cannot be carried out,
284 that party shall immediately consult with the other parties to attempt to develop an
285 amendment. If within 30 calendar days (or another time period agreed to by all
286 signatories) an amendment cannot be reached, any signatory may terminate the local
287 management procedure upon written notification to the other signatory.
288
- 289 B. Once the LMP is terminated, and prior to work continuing on an Undertaking, [INSERT
290 REGION NAME] shall ensure that individual Undertakings are reviewed in accordance
291 with 36 CFR §§ 800.3 through 800.7.
292

293 XI. ANTI-DEFICIENCY ACT

294
295 The [INSERT REGION NAME] obligations under this LMP are subject to the availability of
296 appropriated funds, and the stipulations of this local management procedure are subject to the provisions
297 of the Anti-Deficiency Act. The [INSERT REGION NAME] shall make reasonable and good faith efforts

298 to secure the necessary funds to implement this LMP in its entirety. If compliance with the Anti-
299 Deficiency Act alters or impairs the [INSERT REGION NAME] ability to implement the stipulations of
300 this LMP, the [INSERT REGION NAME] shall consult in accordance with the amendment and
301 terminations procedures of this LMP.
302

303 XII. DURATION

304

306
307 **Execution** of this LMP by the [INSERT REGION NAME] and SHPO and implementation of its terms
308 evidence that [INSERT REGION NAME] has taken into account the effects of these Undertakings on
309 historic properties and afforded the ACHP an opportunity to comment.

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311 This LMP may be executed in counterparts, each of which shall constitute an original, and all of which
312 shall constitute one and the same agreement.
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**LOCAL MANAGEMENT PROCEDURE
BETWEEN
THE COMMANDER NAVY REGION [INSERT REGION NAME]
AND
[INSERT STATE NAME] STATE HISTORIC PRESERVATION OFFICE
REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT
[INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]
[INSERT INSTALLATION, CITY, OR COUNTY NAME], [INSERT FIPS STATE ALPHA
CODE]**

SIGNATORY:

COMMANDER, NAVY REGION [INSERT REGION NAME]

By: _____
[INSERT COMMANDER'S NAME]
Commander, Navy Region [INSERT REGION NAME]

Date: _____

[INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]

By: _____
[INSERT COMMANDER'S NAME]
Commander, [INSERT SHIPYARD OR SUPPORT FACILITY]

Date: _____

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**LOCAL MANAGEMENT PROCEDURE
BETWEEN
THE COMMANDER NAVY REGION [INSERT REGION NAME]
AND
[INSERT STATE NAME] STATE HISTORIC PRESERVATION OFFICE
REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT
[INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]
[INSERT INSTALLATION, CITY, OR COUNTY NAME], [INSERT FIPS STATE ALPHA
CODE]**

SIGNATORY:

[INSERT STATE NAME] STATE HISTORIC PRESERVATION OFFICE

By: _____
[INSERT NAME]
[INSERT TITLE]

Date: _____

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**LOCAL MANAGEMENT PROCEDURE
BETWEEN
THE COMMANDER NAVY REGION [INSERT REGION NAME]
AND
[INSERT STATE NAME] STATE HISTORIC PRESERVATION OFFICE
REGARDING PLANNED AND PROGRAMMED IMPROVEMENTS AT
[INSERT NAME OF SHIPYARD OR SUPPORT FACILITY]
[INSERT INSTALLATION, CITY, OR COUNTY NAME], [INSERT FIPS STATE ALPHA
CODE]**

[Use this page as appropriate for those willing to sign as concurring parties]

CONCURRING PARTY:

[INSERT CONCURRING PARTY NAME]

By: _____
[INSERT NAME]
[INSERT TITLE]

Date: _____

- 391 Appendix A: Area of Potential Effect
- 392 Appendix B: List of Projects Excluded From Further Review by SHPO
- 393 Appendix C: Mitigation Document template