

**Navy Shipyard Infrastructure Optimization Program
Nationwide Programmatic Agreement
Conference Call/Online Consultation Meeting #7
Meeting Summary
1400-1533 hrs EST
December 17, 2020**

PARTICIPANTS:

ACHP:	Katharine Kerr
NCSHPO:	Erik Hein
NPS:	Elaine Jackson-Retondo, Christopher Johnson, Melia Lane-Kamahele
HI SHPO	Alan Downer, Julia Flauaus, Stephanie Hacker, Tanya Gumapac-McGuire, Susan Lebo
ME SHPO:	Kirk Mohny, Megan Rideout
VA SHPO:	Marc Holma
WA SHPO:	Nicholas Vann, Allyson Brooks
City of Bremerton:	Garrett Jackson
Coastal Defense Study Group:	Terry McGovern
Friends of the Portsmouth Naval Shipyard Museum:	Gary Bahena
National Trust for Historic Preservation	Betsy Merritt
Pamunkey Indian Tribe:	Terry Clouthier
Portsmouth Naval Shipyard Historical Foundation:	Ken Goldman
Portsmouth Naval Shipyard Museum:	Diane Cripps
Preservation Virginia:	Sonja Ingram
Strawbery Banke Museum:	Elizabeth Farish
Washington Trust for Historic Preservation:	Chris Moore
Navy Cultural Resource Team:	William (Bill) Manley (CNIC/NAVFAC HQ CR) Amanda Bennett (PSNS) Barbara Prine (DCNO) Bryana Schwarz (NAVFAC HQ) Darrell Cook (NAVFAC Atlantic) Deb Loomis (NAVSEA) Erika deBroekert (NAVFAC Pacific) Heather Robbins (NAVFAC MIDLANT) Karen Desilets (NAVFAC Pacific) Kerry Vautrot (PNSY) Jenny Dellert (PSNS) Julie Henkel (OPNAV N45) Lisa Joy (NAVFAC MIDLANT) Michael Hussey (DCNO) Nathan Stokes (NAVFAC HQ) Penne Sandbeck (NNSY) Peter Michaud (NAVFAC PWD ME) Rose Johnson (NAVFAC HQ) Scott Keyes (NAVFAC HQ) Sherry Anderson (NAVFAC Pacific) William Durig (NAVFAC HQ)
Navy PMS-555:	Fuzz Harrison
AECOM	Scott Seibel, Chester Cunanan

LOGIN PERIOD

1400-1415

Attendance confirmed through online log-in and roll call by agency. The meeting began with a review of the goals which are to:

- a) demonstrate a response to previously received comments;
- b) continue addressing data gaps; and
- c) identify areas of future development (i.e. adverse effects, Local Management Procedures (LMP)).

**DOCUMENT: REVISED DRAFT NATIONWIDE PROGRAMMATIC AGREEMENT FOR
NAVY SHIPYARD INFRASTRUCTURE OPTIMIZATION (SIOP)**

1404-1528

The discussion reviewed the December 17, 2020 version of the draft Nationwide Programmatic Agreement (NPA) that was shared with the distribution list prior to the meeting and as an attachment to the meeting chatbox. The current revisions provide more clarity, to include:

- a) why the Shipyard Infrastructure Optimization Program (SIOP) undertakings calls for a NPA;
- b) removal of the statement that additional states could be added as needed to requiring consultation with the existing parties and State Historic Preservation Offices (SHPOs) of said states;
- c) more specificity on the nationwide mitigation which is proposed to apply more specifically to the visual effects caused by projects with the understanding that all potentially adverse effects are included in mitigation;
- d) more explanation regarding which undertakings fall under the NPA; and
- e) more clarity on how existing agreements would interface with the NPA.

Document Section: PREAMBLE

1410-1438

The document is reorganized and reworded to be clearer about what SIOP is, why it is needed, and how it responds to deficiencies. Clause revisions included:

- **Lines 25-27:**
A new Whereas clause to emphasize why SIOP is beneficial to the Navy's ability to maintain operations while fixing deficiencies.
- **Lines 29-32:**
The language was revised to refer to projects that improve shipyard operations given some of these projects would occur outside the boundary of the shipyard.
- **Lines 37-42:**
A former Whereas clause was moved for clarity.
- **Lines 52-55:**
The language was revised for clarity.
- **Lines 73-74:**
Per VA SHPO feedback, in a future revision, this clause will be divided into individual WHEREAS clauses stating the parties the Navy has invited to participate based on the regulations (e.g. 800.2(c)(2), 800.2(c)(3), and 800.2(c)(5)).
- **Lines 76-78:**
The language was revised for clarity to remove ambiguity regarding documenting implementation and future actions.

- **Lines 83-85:**

In response to the question if SHPOs should be included in this clause, the Navy believes only the signatory parties should be included here as their concurrence/signatures are required. The SHPOs would be included in a clause for *invited* signatories.

Discussion

Comment: Dr. Downer, HI SHPO

1417-1420

I have two observations. One, the obligation to implement should be in the “NOW, THEREFORE” clause versus as separate WHEREAS clause. Two, as the SHPO for Hawaii, I am troubled by the fact that it is going to be the NCSHPO [National Conference of SHPOs] who is going to be the mandatory signatory and not the individual SHPOs; SHPOs implement at the local level. Even with the understanding that as a matter of law the NCSHPO is a signatory for NPAs, there are only four individual SHPOs involved in the SIOP NPA.

- **Navy response:** This “NOW, THEREFORE” language came from the ACHP [Advisory Council on Historic Preservation]. The Navy’s is framing the current draft like a prototype NPA with some modifications. SHPO signature is required for the LMPs which keeps them completely engaged and at the forefront of the overall NPA.

Chatbox Comment: Ms. Kerr, ACHP

1420-1421

The ACHP recommends the following language:

NOW, THEREFORE, [Agency abbreviation] and the ["SHPO" or "THPO"] [and the ACHP if participating] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Question: Ms. Merritt, NTHP

1420-1428

Did I hear you say that the four key SHPOs would be invited signatories?

- **Navy response:** Yes.
 - **Ms. Merritt (National Trust for Historic Preservation [NTHP]) response:** Then as *invited signatories* they would have all the same rights as signatories. So that seems to be a solution.
 - **Navy response:** There is a stipulation that explains the different between *signatories* and *invited signatories*. Only the three signatories can terminate the NPA, but SHPOs and other consulting parties can raise concerns, objections, recommendations at any point.
 - **Ms. Kerr (ACHP) response:** The topic of signatures is an important, but the ACHP suggests revisiting this later for the sake of time. Invited signatories have the regulatory right to amend or terminate an agreement that they have signed, but they are not required to execute an agreement. If an invited signatory did not sign that would not stop the agreement from being executed. ACHP would look at this language and advise the Navy on its intent that that an invited signatory would not have the right to amend or terminate the SIOP NPA.
 - **Navy response:** We invite feedback from the ACHP on this issue. The intent is that only the three signatories would have the ability to amend or terminate the SIOP NPA.

Chatbox Comment: Dr. Brooks, WA SHPO

1421

I think you mean we are concurring parties, not invited signatories. Although this seems like a PA between the Navy and the four states, not a nationwide project.

- **Navy response:** The goal is to have a NPA that can be amended to add states, as/if needed.
- **Dr. Brooks’ response:** If the Navy doesn’t want SHPOs to have the ability to terminate, then the Navy identifies the SHPOs as concurring parties *not* invited signatories. Also, if there is a

dispute at the local level, would this require Erik Hein at the NCSHPO in Washington, DC, to represent the SHPO in resolving issues with the Navy?

- **Navy response:** Feedback from the ACHP will help the Navy resolve the SHPO identification so that we have SHPO support. The Navy envisions the SHPOs and NPS [National Park Service] as invited signatories because they would be committing to specific roles. Section II.C. of the stipulations define these roles and responsibilities. If a SHPO or any other local stakeholder has a dispute, the LMP [Local Management Procedures] has guidelines to attempt resolution. If there cannot be resolution, then the national level signatories and Navy constituents would step in to resolve.
- **Mr. Hein (NCSHPO) response:** There is confusion about what gets escalated to the national level. The NCSHPO would not intervene on resolving a state-level dispute. NCSHPO would only become involved if there is a problem with the overall NPA. Currently, it appears most conflict would result from the LMPs (not the NPA framework).
- **Navy response:** Most objects would occur at the local level and be resolved through procedures outlined in the LMP. However, as the Navy envisions, if a local level dispute cannot be resolved, it does become a national problem because the LMP is a component of the NPA and would require national level engagement to resolve.

Chatbox Comment: Ms. Jackson-Retondo, NPS

1428

NPS is discussing internally whether we should be an invited signatory to this agreement.

Chatbox Comment: Ms. Kerr, ACHP

1429

Due-out for the ACHP [sic]: provide guidance on the topic of parties that sign a Section 106 agreement (specifically a Nationwide Programmatic Agreement) to include the role of a party (signatory, invited signatory, or concurring party) and regulatory rights of those parties.

Chatbox Comment: Ms. Merritt, NTHP

1433

36 CFR 800.6(c)(2)(i): "Any [Invited Signatory] that signs the [MOA] shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories."

Question: Mr. Hein, NCSHPO

1430-1433

How would the local plan implicate a problem with the overall NPA?

- **Navy response:** If the local procedures as the administrative arm of the NPA are not working, then it does indicate an issue with the overall NPA and may require national engagement to find a solution.
- **Mr. Hein response:** NCHSPO is not going to resolve a state's issue; that responsibility falls to the individual SHPO. Given what the Navy is asking for, the current draft of the SIOP NPA is a prototype NPA.
- **Navy response:** The SIOP NPA does resemble a prototype NPA but there are key differences.

Chatbox Comment/Question: Dr. Brooks, WA SHPO

1433-1434

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

See above...this is why I am confused on how we are signing...can you legally put in something that says we are invited...but not fully invited...not really invited as per the definitions [sic].

Question: In looking at the ACHP regulations on how invited signatories are defined versus how the Navy is defining them, it would be helpful to have more input, perhaps from Ms. Merritt, an attorney who also works with the NTHP. Can you change the regulations in an agreement?

- **Ms. Merritt (NTHP) response:** In looking at the same provision, what is being proposed is inconsistent with the regulations. The Navy will need to make revisions.
- **Ms. Kerr (ACHP) response:** In reference to the earlier chatbox comment, the ACHP will continue to consult with the Navy on defining how and who will sign this agreement.
- **Navy response:** The Navy will continue to work with the ACHP based on the roles envisioned by each party. To reiterate, it is the Navy's intent that the only parties who can change the NPA are the signatories. The goal is that a local level issue would not have the ability to cause termination of the NPA.

Question: Dr. Brooks, WA SHPO

1435-1438

Is this a nationwide PA or are we looking at this as an alternative under (36 CFR) 800.14?

- **Navy response:** It is both; it is a NPA created as an alternative under 36 CFR 800.14. The goal is to have a NPA that can be applied to multiple locations in the future, if needed.

Document Section: STIPULATIONS

1438-1528

The Stipulations outline how the NPA will be implemented. Overall, there are language revisions and a few more substantive changes that demonstrate a response to previously received comments.

I. APPLICABILITY

1438-1505

Section A

In regard to the "related facilities" question from ME SHPO, the Navy does not yet know what/where those facilities may be because it is too early in the process. SIOP-related facilities will be identified as the program develops.

Section B

This section was added to clarify how and when SIOP undertakings would be identified with the intent to provide at least 12 months' notice to parties.

Comment: Ms. Desilets, PHNSY

1441-1453

I understand the intent to give people advance notice of a planned SIOP undertaking. I would hesitate to give a timeframe of 12 months because the Navy does not always have 12 months as emergencies arise, projects change, etc. I suggest that the planned project list be updated annually during the annual meetings/reporting process with the understanding that 12 months advance notice is not a strict requirement.

- **Dr. Downer (HI SHPO) question:** As we understand it, SIOP undertakings are major projects that would be known within 12 months. Can you provide an example of an emergency project that the Navy would not have known about 12 months in advance?
- **Navy response:** Most SIOP undertakings will be known year(s) in advance. However, there could contingency situations requiring us to address unexpected actions that would need to occur outside of normal reviews. Clause I.B. can be augmented to allow for such exceptions even if it is to address new findings about projects already in progress. Revising this clause to allow for flexibility is important to account for exceptions and true emergencies. The Navy proposed a reasonable timeframe to be responsive to the needs of the installation and local stakeholders. We will revise this clause in a future revision to the NPA.

- **Dr. Downer (HI SHPO) comments:** I have two observations. One, I do think there should be a provision for emergencies. In my experience the term “emergency” has been used to fast-track a project that would not be considered an emergency, which is problematic. Two, and more importantly, this discussion circles back to initial question, what is covered under SIOP? Is it everything that happens in the shipyard? Does it only pertain to shipyard optimization? The SHPO is not in disagreement either way but there still needs to be more clarity.
- **Navy response:** We have been concerned that if it is every project within the shipyard, we risk overwhelming the mechanisms and staff in place to manage the SIOP.

Section C

The NPS requested additional information about how local stakeholder would be identified.

Section E

The ME SHPO commented on the need to involve the ACHP in the development of shipyard level PAs, if required. The Navy believes the ACHP will only become involved in local level management if a dispute cannot be resolved. (See ACHP response below.)

Comment: Ms. Kerr, ACHP

1502-1503

The ACHP would prefer not to be involved in the development or implementation of the LMP, so that if there is a dispute, the ACHP can provide unbiased guidance to the Navy and the SHPO to resolve the issue. The ACHP will be providing comments to all the consulting parties on the draft NPA early 2021.

Chatbox Comment: Mr. Mohney, ME SHPO

1503

My point here was that the LMP needs to be vetted for consistency with the regs [sic].

- **Navy response:** The Navy agrees with this and we see opportunities to clarify this as the NPA and LMPs template develop.

Section F

The NPS requested additional clarification on how existing PAs would integrate with the new NPA. The Navy has addressed these concerns through clause revision and or supplementation.

Section G: Area Development Plans

Question: Ms. Kerr, ACHP

1453-1459

Is the term ‘Area Development Plan’ the same term as defined in UFC 2-100-01 or is it a different term (inaudible)? And if so, what is this definition and where can we learn more about it?

- **Ms. Kerr comment:** Area Development Plans [ADPs] are a very specific component to master planning under UFC 2-100-01 which is why I wanted to be sure if the Navy is using the term in the same way. In Stipulation I.A. the Navy states SIOP undertakings will be identified in an ADP. However, an ADP covers the master planning of the entire installation. Within the Navy’s ADP, SIOP projects need to be differentiated from other planned projects. To clarify, all ADP projects would not be subject to the SIOP NPA.
- **Navy response:** The Navy’s definition of a shipyard ADP is provided in the stipulations. As currently understood, the ADPs as defined in the SIOP NPA are not the same as the installation-wide ADPs. The shipyard ADPs, in contrast to installation ADPs, included the industrial engineering and operational assessments discussed at the beginning of the consultation process. The shipyard ADP includes the stakeholder engagement that enables leadership to select the most appropriate course of action. The Navy will continue to develop this section and clarify its relation to the Unified Facility Criteria (UFC) Section 2-100-01: Installation Master Planning.

II. ROLES AND RESPONSIBILITIES **1505-1506**

Revisions to and this stipulations have mostly been addressed through previous discussion.

III. PROFESSIONAL STANDARDS AND TRAINING **1506-1506**

There have been no major changes to this section. The intent is that the LMPs are managed by Secretary of the Interior-qualified cultural resource management specialists in consultation with local subject matter experts.

IV. MEASURES TO AVOID, MINIMIZE, AND MITIGATE ADVERSE EFFECTS **1506-1516**

This section was further developed to provide more detail about how the Navy will address mitigation measures. There is a new emphasis on visual effects given it is the most common adverse effect caused by undertakings. The Navy envisions a scholarly and rigorous documentation effort that creates deliverables accessible to the general public as a preservation tool for the cultural resource management practice at large. Specific to Section E., this was added to be clear that the nationwide mitigation is one component of a larger process that is responsive to each SIOP undertaking.

Chatbox Question: Dr. Brooks, WA SHPO **1508-1510**

Will we be negotiating mitigation after this agreement? And how will you ensure that there is funding to complete it.

- **Navy response:** Yes, to the first question. The NPA provides for a full measure of ongoing mitigation measures throughout the duration of the project. As to funding, Congressional budget approvals determine the SIOP undertakings the Navy can implement. The Navy will augment this section to include limitations based on funding with the understanding that once funding does become available any delayed undertakings will resume upon receipt of funds.

Question: Mr. Holma, VA SHPO **1510-1515**

One question I had on an earlier draft here was is the Navy open to additional nationwide mitigation or is this all that is being proposed?

- **Navy response:** The Navy is interested to hear other any other nationwide mitigation measures. There is an added component whereby the Navy could work with the new planned National Museum of the United States Navy in Washington, DC to develop exhibits and/or other interpretive measures.

Sub-question: Regarding the Roles and Responsibilities section, is there going to be any commitment by the Navy to take a baseline survey of the shipyards? Specific to the shipyards in Portsmouth, VA and Norfolk, there are no recent surveys of historic properties. We (VA SHPO) have been operating under the assumption that there is an eligible district but there is no specific information about what would be considered contributing/non-contributing.

- **Navy response:** There are two projects underway at each shipyard that address this question. First, there is an infill project which is a technical survey that addresses open-ended questions about eligibility and identifies unevaluated properties. The other is a shoreline study that the Navy hopes will identify the potential for archaeological deposits.
- **Mr. Holma response:** It would be important to include in the NPA a commitment to re-evaluate resources after a certain amount of time and allow for the evaluation of new resources.
- **Navy response:** The Navy concurs with both statements and will look to include this in future revisions.

V. LOCAL MANAGEMENT PROCEDURES (LMP) 1516-1527

The main change to this section revised the language and description of the LMP as a legally binding framework of the NPA. Other revisions included:

- more information about stakeholder participation (Item 3);
- clearer explanations of SIOP undertakings (Item 4);
- more detail about how existing agreements are handled in conjunction with the NPA (Item 5);
- more clarity on the shipyard project review process (Item 9); and
- further development on the resolution of adverse effects (Item 10).

Chatbox Question: Ms. Jackson-Retondo, NPS 1525

After the Navy has an opportunity to discuss ADPs internally, can you circulate an example [sic]?

- **Navy response:** The Navy ADPs are managed by a different division and not under control of the CRM staff. The Navy will make this an action item and respond in a later meeting.

VI. DISPUTE RESOLUTION 1527-1528

VII. REPORTING

VIII. AMENDMENT AND TERMINATION

IX. ANTI-DEFICIENCY ACT

X. DURATION

XI. EXECUTION

In the interest of time, the meeting was opened up for discussion in lieu of reviewing the remaining stipulations in detail. There were no major changes to these sections, and they continue to be developed.

Next Steps/Closing 1528-1533

The Navy encourages participants to review and share comments in order to refine and/or address the current approach.

The Navy respectfully requests comments by January 15, 2021. Participants may email Bill Manley (william.manley@navy.mil) and/or the project email, CR_SIOP_Archive@aecom.com.

Chatbox Question: Mr. Holma, VA SHPO 1529

Would you please send out a clean copy in Word so we can provide track/changes?

- **Navy response:** The Navy will send participants a clean version after the meeting.

Question: Ms. Jackson-Retondo, NPS 1530-1531

Do you want the comments in the forms that were sent out or in track changes in the document?

- **Navy response:** The Navy prefers track changes within the document but the comment submission form is an option if participants prefer.

Meeting Adjourned at 1533.