PROGRAMMATIC AGREEMENT

Between

PICATINNY ARSENAL, NEW JERSEY
And
NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

FOR THE

PRIVATIZATION OF FAMILY HOUSING AT
PICATINNY ARSENAL, NEW JERSEY

WHEREAS, Picatinny Arsenal, pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A, Section 2801), which amends 10 U.S.C. 169 by addition of a new subchapter, IV-Alternative Authority for Acquisition and Improvement of Military Housing, has determined to privatize family housing at Picatinny Arsenal, New Jersey, through the Residential Communities Initiative (RCI) (Undertaking); and

WHEREAS, under the RCI the ~~Picatinny Arsenal~~ CARLISLE MONMOUTH PICATINNY (CMPC) Communities, LLC will implement the privatization of current and future family housing and ancillary facilities at Picatinny Arsenal; and

WHEREAS, ~~Picatinny Arsenal Communities~~ CMPC, LLC will be a separate legal entity known as a Limited Liability Corporation that will be formed after Congressional review of the Picatinny Arsenal RCI project. The partners of ~~Picatinny Arsenal Communities~~ CMPC, LLC will be the Department of the Army, acting through the Garrison Commander of Picatinny Arsenal, and American Eagle ~~Military Housing~~ COMMUNITIES, LLC; and

WHEREAS, ~~Picatinny Arsenal Communities~~ CMPC, LLC, will be granted a ground lease of the Picatinny Arsenal housing areas and the stipulations of this Programmatic Agreement will be made an exhibit to the ground lease so that the stipulations become an integral part of the ground lease; and

WHEREAS, the privatization of the housing at Picatinny Arsenal will result in the transfer of a long-term interest in the construction, demolition, renovation, rehabilitation, operation, and maintenance of housing and other ancillary facilities at Picatinny Arsenal largely independent of direct government control, but intended for the use of soldiers and their families; and

WHEREAS, Picatinny Arsenal has determined that implementation of the project has the potential to have an adverse effect on properties eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the New Jersey State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

in accordance with Sections 106 and 111 of the National Historic Preservation Act (NHPA), as amended, (16 U.S.C. 470 et. seq.) and the implementing regulations found at 36 CFR Part 800 (2000); and

WHEREAS, Picatinny Arsenal has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process, which is in accordance with sections 106 and 111 of NHPA, as amended, (16 U.S.C. 470 et. seq.) and the implementing regulations found at 36 CFR Part 800 (2000); and

WHEREAS, the Area of Potential Effect (APE) for the RCI program at Picatinny Arsenal includes existing Picatinny Arsenal housing areas and any areas proposed for development of new housing (Attachment A map of RCI area) and supporting amenities; and

WHEREAS, Picatinny Arsenal has conducted an inventory of historic properties and archaeologically sensitive areas and has an Integrated Cultural Resources Management Plan (ICRMP) identifying these areas, within the APE for the RCI program is the Business and Administration District, Navy Hill Building 3250; and there is no current anticipation that the Undertaking will result in an alteration or demolition of the properties listed on (Attachment B List of buildings); and

WHEREAS, Picatinny Arsenal has completed its NRHP eligibility determinations for Picatinny Arsenal housing assets in accordance with Section 110(a)(2) of the NHPA and determined that the Business and Administrative District is eligible for listing in the NRHP, and the New Jersey SHPO has concurred with these determinations; and

WHEREAS, Picatinny Arsenal has provided the public an opportunity to comment on this Undertaking through the National Environmental Policy Act (NEPA) process and has incorporated the recommendations of the public and reviewing agencies into this Agreement.

NOW THEREFORE, Picatinny Arsenal, and the New Jersey SHPO agree that there will be no adverse effect provided the following stipulations are met.

STIPULATIONS

PICATINNY ARSENAL will ensure that the following measures are carried out:

I. APPLICABILITY, BASELINE INFORMATION, AND PROFESSIONAL QUALIFICATIONS STANDARDS

A. Picatinny Arsenal will provide an information package concerning the NRHP eligibility of the Business and Administrative District and Building 3250 (the Commander's Quarters) to Picatinny Arsenal Communities, LLC This information package will describe contributing (NRHP eligible) and non-contributing (not NRHP eligible) structures and buildings, historic landscapes, and archeological sites that may be present within or adjacent to existing housing developments and areas proposed for development of housing and supporting amenities.

B. Based on analysis of the residential infrastructure, Picatinny Arsenal has determined in consultation with the New Jersey SHPO that no other existing, residential buildings, structures, objects, districts or landscapes affected by the Undertaking are now National Register of Historic Places eligible under NRHP criteria. In accordance with its ICRMP (Attachment C SOP's) Picatinny Arsenal will conduct a periodic (not less than every ten years) historic architectural survey of all buildings, structures, and landscapes on Picatinny Arsenal property that have reached fifty years of age or meet the cold war era criteria since the previous survey. These periodic surveys will occur as needed or as required with the changing legislation. Any new NRHP eligible properties recognized through this process and administered or affected by Picatinny Arsenal Communities, LLC will be subject to the provisions of this Agreement.

C. Future development of the Business and Administrative District in accordance with Picatinny Arsenal's ICRMP and Undertakings by Picatinny Arsenal may result in changes to the list of contributing structures and boundaries of the District. If so, Picatinny Arsenal will consult with the New Jersey SHPO to revise the documentation set forth in I.A., and notify Picatinny Arsenal Communities, LLC of such changes.

D. Picatinny Arsenal shall document, in accordance with the National Parks Service guidelines, existing interior and exterior conditions at contributing (NRHP eligible) structures, buildings, and landscapes in the historic housing areas prior to execution communities' development management plan. Picatinny Arsenal will provide the documentation to the signatories and concurring party to this Agreement in a format that will remain functional throughout the term of this Agreement including still photographs. The ~~Picatinny Arsenal Communities~~ CPMC, LLC will supplement the documentation to maintain accuracy and record modifications to historic properties. One copy of the documentation and any supplemental materials, as they are developed, shall be provided to Picatinny Arsenal and to the New Jersey SHPO. This documentation will serve as a reference throughout the term of this Agreement.

E. The New Jersey SHPO may, at any time, request Picatinny Arsenal provide an NRHP eligibility evaluation of a property administered or affected by Picatinny Arsenal Communities, LLC and shall provide the requested NRHP eligibility evaluation to the New Jersey SHPO within 30 business days of receipt of the request.

F. For the purposes of this Agreement the Picatinny Arsenal Cultural Resource Manager (CRM) will at a minimum, consist of an individual who meets 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, or other appropriate preservation professional as approved by SHPO. The Picatinny Arsenal CRM will serve as the point of contact with the New Jersey SHPO. SHPO must be notified of change in qualified CRM. If no qualified CRM is employed by Picatinny Arsenal, project reviews must come to the SHPO.

G. For the purposes of this Agreement ~~Picatinny Arsenal Communities,~~ CMPC LLC shall have access to and utilize "Qualified Staff," on an "as needed basis," for the development of rehabilitation plans, to review and screen proposed projects and work requirements that affect historic properties For the purposes of this Agreement, "Qualified Staff" is defined as an individual who meets 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, or Archaeology, as appropriate.

II. CONVEYANCE ACTIVITIES

A. Picatinny Arsenal may convey long-term interests in family housing units and ancillary improvements to ~~Picatinny Arsenal Communities,~~ CMPC LLC by real estate instrument. To ensure that the Ground Lease shall contain such terms and conditions as necessary and appropriate to meet the requirements of Sections 106 and 111 of the NHPA to provide for adequate consideration and treatment of historic properties that may be affected by the RCI program, this Programmatic Agreement in its entirety shall be incorporated into and made part of the Ground Lease.

B. Before execution of any conveyance or finalization of the Ground Lease for the Undertaking, Picatinny Arsenal shall provide ~~Picatinny Arsenal Communities~~, CMPC LLC all previously compiled information on any historic properties within the APE to guide CMPC ~~Picatinny Arsenal Communities~~, LLC in the management and use of the properties. Picatinny Arsenal shall indicate that the Business and Administrative District and Building 3250 (Commanders Quarters) is subject to alternate and more stringent management requirements pursuant to Stipulation III.

C. Renewal or any modifications to the Ground Lease shall be subject to consultation among the signatories to determine whether such renewal or modifications constitute a new Federal Undertaking subject to provisions of NHPA.

III. HISTORIC PROPERTY MANAGEMENT

A. ~~Picatinny Arsenal Communities~~, LLC shall conform to the most current management standards and guidelines for treatment of historic properties established by the *Secretary of the Interior's Standards for the Treatment of Historic Properties, with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (*Treatment Standards*).

B. ~~Picatinny Arsenal Communities,~~ LLC shall incorporate in landlord/tenant agreements for occupation of historic properties: provision for reasonable access by Picatinny Arsenal and New Jersey SHPO; all pertinent conditions of this Agreement; and allow Picatinny Arsenal, and the New Jersey SHPO a reasonable opportunity to review and comment upon the language of such agreements.

C. Project Review and Consultation

Picatinny Arsenal CRM will monitor the activities of ~~Picatinny Arsenal Communities~~, LLC and the activities of the property management agent, American Eagle ~~Military Housing~~, LLC using the review process specified in C.1 through 5, below. The ~~P~~icatinny Arsenal CRM will be responsible for creating and keeping a record of each project review.

1. ~~Picatinny Arsenal Communities~~, LLC will submit to the Picatinny Arsenal CRM all proposed construction, rehabilitation, and improvement projects, prior to the project proceeding. The CRM will review the project plans and respond to Picatinny Arsenal Communities, LLC within 30 working days with a determination regarding the potential for an adverse effect on historic properties. If a determination of no adverse effect is made by the Picatinny Arsenal CRM, the project may proceed as planned. If a determination of adverse effect or potential adverse effect is made by the Picatinny Arsenal CRM, the CRM will recommend alterations to the project plans to avoid or minimize the adverse effect. These recommendations will be made in accordance with the *Treatment Standards*. If ~~Picatinny Arsenal Communities~~, LLC, does not accept these recommendations, the CRM will consult the SHPO to initiate the process to resolve the adverse effect pursuant to 36 CFR 800.6.

2. After its review of the project and to expedite the review of routine activities, the Picatinny Arsenal CRM may determine that certain actions, as outlined in IV.A, are exempt from the project review process outlined in C.1, above.

3. In the case of an emergency, ~~Picatinny Arsenal Communities~~, LLC will perform only actions necessary for the protection of the historic properties with on-site monitoring by "Qualified Staff" is (defined as an individual who meets 36 CFR 61, Appendix A, Professional Qualification Standards for Architectural History, Historical Architect, or other appropriate profession). ~~Picatinny Arsenal Communities~~, LLC is required to consult with Picatinny Arsenal CRM in advance of emergency actions affecting historic properties. Emergency measures will be undertaken in a manner that is consistent with the *Treatment Standards*. ~~Picatinny Arsenal Communities~~, LLC will notify Picatinny Arsenal CRM, who will notify the New Jersey SHPO, following

execution of all emergency measures affecting historic properties. This emergency provision is limited to Undertakings initiated within two working days of the emergency. If the response to emergency conditions requires no Ground Lease modification, ~~Picatinny Arsenal Communities~~ CMPC, LLC must act in conformance with contract terms previously reviewed by the New Jersey SHPO and there is no new Federal Undertaking as defined in this Agreement.

4. If ~~Picatinny Arsenal Communities~~ CMPC, LLC proposes substantial alteration or demolition of a historic property, ~~Picatinny Arsenal Communities~~ CMPC, LLC shall perform an alternative analysis report to evaluate the economic feasibility for ~~Picatinny Arsenal~~ CMPC ~~Communities~~, LLC to preserve or maintain specific historic properties in accordance with the *Treatment Standards*. ~~Picatinny Arsenal Communities~~ CMPC, LLC will prepare an alternative analysis report which will include an economic analysis and the recommended course of action for the historic properties in question to the Picatinny Arsenal CRM for review and consultation with the New Jersey SHPO. The New Jersey SHPO will be given 30 business days to review and comment on the alternative analysis report. This will include the economic analysis and recommended course of action. If the New Jersey SHPO agrees in writing with the economic analysis findings and the treatment recommendation, the Picatinny Arsenal CRM will inform ~~Picatinny Arsenal~~ CMPC ~~Communities~~, LLC that they may proceed with the action. If the New Jersey SHPO disagrees with the recommended course of action and an acceptable compromise cannot be reached between the Picatinny Arsenal CRM and the New Jersey SHPO, or a determination of adverse effect is made, Picatinny Arsenal will consult to initiate the process to resolve the adverse effect pursuant to 36 CFR 800.6, and work with the National Park Service to determine level of documentation if HABS is agreed to as part of mitigation.

5. The New Jersey SHPO may at any time request to review and comment on a project submitted to the Picatinny Arsenal CRM, pursuant to Stipulation III.C.1 above, if it has reason to believe that a historic property may be adversely affected by a proposed Undertaking,

D. The CRM will report to the New Jersey SHPO and the ACHP on the status of the Picatinny Arsenal historic housing properties using the annual asset management report prepared by ~~Picatinny Arsenal Communities~~ CMPC, LLC annually in a month to be agreed upon by the New Jersey SHPO and Picatinny Arsenal CRM. This report will include information on the current condition of the historic properties, actions taken by the ~~Picatinny Arsenal Communities~~ CMPC, LLC to maintain the properties in accordance with the *Treatment Standards* and descriptions of unanticipated problems that could affect the integrity or upkeep of the historic properties, or any other activities or policies that affect or may affect the historic properties, including the documentation of project reviews carried out under Stipulation III.C, above.

E. Tax Credits

1.Picatinny Arsenal shall encourage ~~Picatinny Arsenal Communities~~ CMPC, LLC to explore Federal and State historic preservation tax credit benefits via the established application process with the New Jersey SHPO and National Park Service (NPS) before the start of rehabilitation projects involving historic buildings.

2. In the event ~~Picatinny Arsenal Communities~~ CMPC, LLC determines to seek the historic preservation tax credits, the proposed project will, upon receipt of an approved Part II certification from the NPS, be exempt from Stipulation III.C, above for the five year recapture period of the tax credit. However, ~~Picatinny Arsenal~~ CMPC ~~Communities~~, LLC will be required to follow the NPS review requirements during this time. After the five year tax credit recapture period is complete ~~Picatinny Arsenal~~ CMPC ~~Communities~~, LLC will again be subject to stipulation IIIC.

IV. EXEMPT ACTIVITIES

A. The following activities will be carried out consistent with *Treatment Standards* and the Picatinny Arsenal CRM may determine them to be exempt from New Jersey SHPO consultations (this is contingent upon Picatinny Arsenal CRM and the NJ SHPO receiving and agreeing to the long term maintaince plan for the historic buildings which is included in the Community Development Management Plan (CDMP):

1. General operation and maintenance, **(Preservation)** is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the **limited** and **sensitive** upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project and new construction outside the historic district, provided such construction is not visible from historic properties.

2. Temporary (less than 5 years) installation of facilities to provide access to historic properties by disabled persons provided these changes make no permanent modification to contributing (NRHP eligible) architectural or landscape elements.

B. Activities not listed above shall be completed as directed in Stipulation III.C, above. The replacement of existing windows is not exempt and must be reviewed using the process outlined in Stipulation III.C, above.

C. In the event that the parties to this Agreement concur in writing that additional exemptions are appropriate, such exemptions may be enacted in accordance with Stipulation VIII of this Agreement.

V. ARCHEOLOGICAL RESOURCES

A. Prior to any new construction on previously undeveloped land, Picatinny Arsenal will consult with the New Jersey SHPO to determine the need for an archaeological survey. If a survey is recommended, the ~~Picatinny Arsenal Communities~~ CMPC LLC will undertake a survey of the Area of Potential Effect sufficient to determine the presence or absence of any National Register-eligible historic properties. The eligibility of the properties will be evaluated for National Register eligibility in accordance with Section 36 CFR 800.4.

B. If National Register-eligible properties will be affected by the Undertaking, Picatinny Arsenal will consult with the New Jersey SHPO, any appropriate Federally recognized Native American Tribes and the ACHP, if participating, to determine how to avoid or resolve an adverse effect on the property, in accordance with 36 CFR 800.6.

C. In the event of discovery of archeological materials during any of its activities, ~~Picatinny Arsenal Communities~~ LLC shall immediately stop work in the area of discovery and notify the Picatinny Arsenal CRM. ~~Picatinny Arsenal Communities~~, LLC, shall protect the discovery until Picatinny Arsenal has complied with 36 CFR 800.13(b) and any other legal requirements.

VI. CONSULTATION WITH INDIAN TRIBES

Tribes interested in developing consultation procedures for projects resulting from the RCI may consult with Picatinny Arsenal to develop such procedures pursuant to 36 CFR 800.2(c) (2) (ii) (E).

VII. FISCAL REQUIREMENTS AND SOURCES

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs Picatinny Arsenal's ability to implement the stipulations of this Agreement, Picatinny Arsenal will consult in accordance with the dispute resolution and amendment stipulations as specified in Stipulations VIII and IX below.

VIII. DISPUTE RESOLUTION

A. Should the New Jersey SHPO, the ACHP, an Indian tribe or a member of the public object within 30 days to any plans or other documents provided by Picatinny Arsenal or others for review pursuant to this Agreement, Picatinny Arsenal will consult with the objecting party to resolve the objection. If Picatinny Arsenal determines it cannot resolve the objection, Picatinny Arsenal shall forward to the ACHP all dispute-relevant documentation and a recommended course of action. Within 30 days after receipt of documentation, the ACHP will either:

1. Provide Picatinny Arsenal with recommendations, which Picatinny Arsenal will take into account in reaching a final decision regarding the dispute; or

2. Notify Picatinny Arsenal that it will or will not comment pursuant to 36 CFR 800.7(c). Picatinny Arsenal will take into account any comment the ACHP provides in response to such request and do so in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

B. Any recommendation or comment that the ACHP provides pertains only to the subject of the dispute. Picatinny Arsenal's responsibility to carry out all other actions under this Agreement, other than those disputed, will not change.

IX. AMENDMENT AND TERMINATION

A. If a change occurs in the Undertaking that creates new circumstances that Picatinny Arsenal must address, or, if Picatinny Arsenal is unable to carry out the terms of this Agreement, any party to this Agreement may request an amendment in accordance with 36 CFR Part 800.6(c)(7).

B. Should the parties to this Agreement not agree on an amendment or in the event of Picatinny Arsenal's failure to comply with the stipulations of this Agreement prior to execution of a Ground Lease, this Agreement shall be terminated. In such an event, Picatinny Arsenal shall not execute a Ground Lease that has the potential to adversely affect historic properties until applicable stipulations of the Agreement are met or it obtains alternative documentation from the ACHP that it has met the requirements of NHPA.

X. EFFECTIVE DATE, END DATE, APPLICABILITY

A. This Programmatic Agreement is effective on the last date that all signatories sign. All parties will comply with all terms and stipulations from that date forward.

B. This Programmatic Agreement will be incorporated into the ground lease as an exhibit and will become an integral part of the ground lease. The Programmatic Agreement will become applicable to ~~Picatinny Arsenal Communities~~ CMPC, LLC after ~~Picatinny Arsenal Communities,~~ CMPC LLC is formed and upon their execution of the ground lease. The Ground lease is expected to be a 50 year lease, with an option to renew that lease for 25 more years upon mutual agreement with the parties.

C. This Agreement will be in effect for 10 years and renewable upon agreement by both parties, unless previously terminated under the provisions of I (f) or IX, above. If the parties consent to renew this Agreement the parties will consult on the need to either renew or amend this agreement.

Execution of this Programmatic Agreement and implementation of its terms evidence that Picatinny Arsenal has afforded the ACHP an opportunity to comment on the Undertaking to privatize family housing at Picatinny Arsenal, and its effects on

historic properties, and that Picatinny Arsenal has taken into account the effects of the Undertaking on historic properties.

Picatinny Arsenal, New Jersey

By: _____ Date: 9/13/04

Paul T. Seitz
Lieutenant Colonel, U.S. Army
Garrison Commander

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 9/10/04

Dorothy Guzzo
State Historic Preservation Officer

American Eagle ~~Military Housing~~ COMMUNITIES, LLC

COMMUNITIES

American Eagle ~~Military Housing~~, LLC has reviewed the above terms and stipulations of the Programmatic Agreement. We acknowledge that the terms and stipulations will become a part of the ground lease and that they will become binding on ~~Picatinny~~ CARLISLE MONMOUTH PICATINNY ~~Arsenal~~ Communities, LLC, a limited liability corporation that American Eagle ~~Military Housing~~, LLC and the Army will form after the RCI project at Picatinny Arsenal is approved by Congress. COMMUNITIES

By _____ Date:

SCOTT W LOWE, PE
PROJECT DIRECTOR

Table 4-14

Housing Quarters Inventory at Picatinny Arsenal

Housing Neighborhoods and Road Frontage	Quarters	Type of Heat	Electric Meter Installed
	100	Propane	No
	102	Propane	Yes
	104	Propane	Yes
	105	Propane	Yes
	106	Propane	Yes
	108	Propane	Yes
	109	Propane	Yes
Farley Avenue Area	112	Steam	Yes
Farley Avenue, Farley Lane, Joyes Lane	113	Steam	Yes
	114	Steam	Yes
	115	Steam	Yes
	117A	Steam	No
	117B	Steam	No
	117C	Steam	No
	126	Steam	Yes
	127	Propane	No
	3204A-E	Heat pump	Yes
	3205	Heat pump	Yes
Spicer Village West	3207A-D	Heat pump	Yes
Caisson Court (new road off Main Road)	3209A-E	Heat pump	Yes
	3210	Heat pump	Yes
	3212A-C	Heat pump	Yes
Spicer Village East	3232A-E	Heat pump	Yes
Coghlan Road between Main and Gately	3233A-E	Heat pump	Yes
	3256A&C	Oil	No
	3256B	Oil	No
	3257A&C	Oil	No
	3257B	Oil	No
	3258A-D	Oil	No
Lenape Place	3259A-D	Oil	No
Belt, Coghlan and Gately Roads	3260A-D	Oil	No
	3261A-D	Oil	No
	3262A-D	Oil	No
	3263A-D	Oil	No
	3264A-D	Oil	No
	3265A-D	Oil	No

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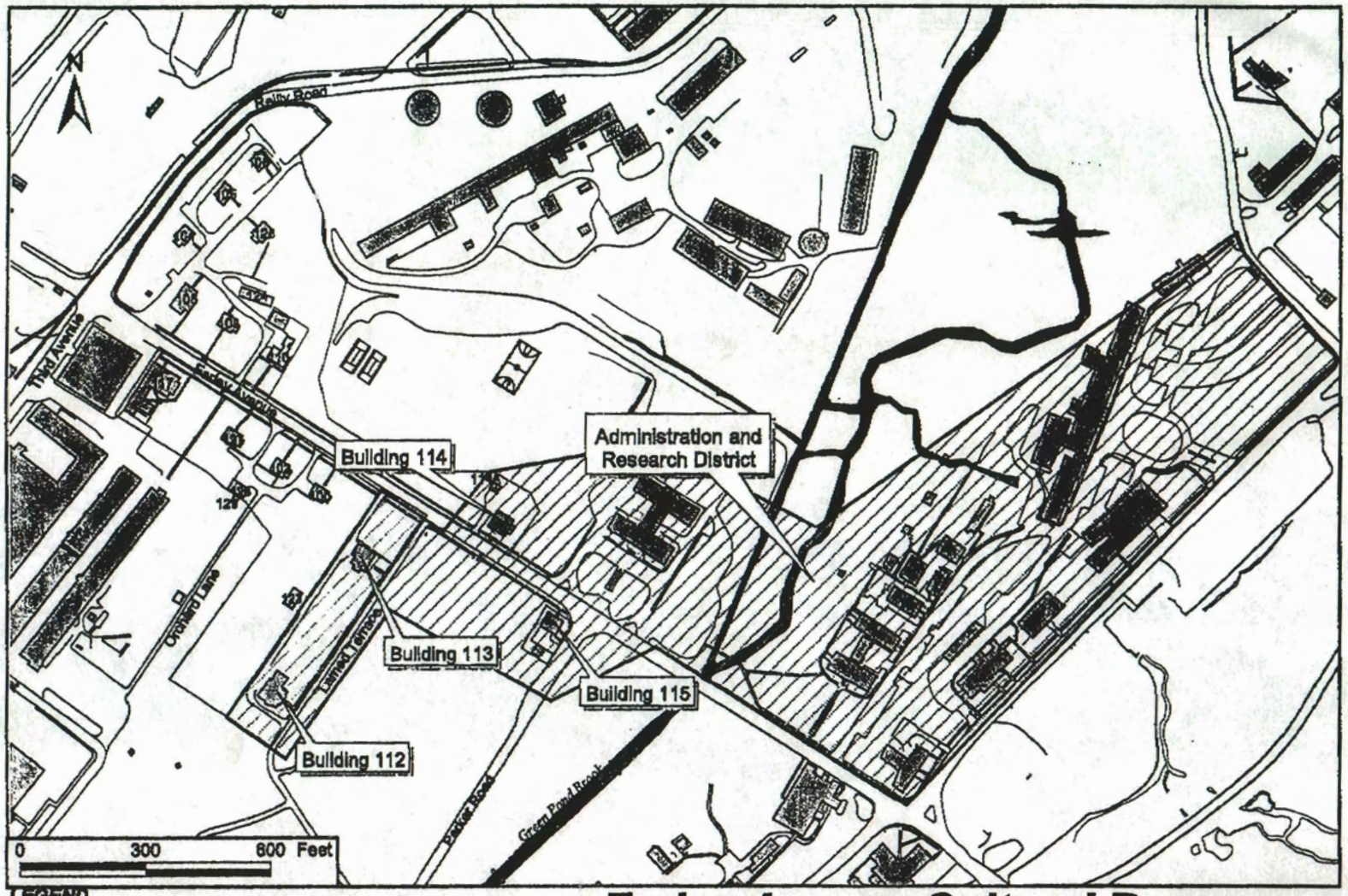
Table 4-14

Housing Quarters Inventory at Picatinny Arsenal (continued)

Housing Neighborhoods Road Frontage	Quarters	Type of Heat	Electric Meter Installed
	3238A-D	Heat pump	Yes
	3239A-D	Heat pump	Yes
Middle Forge Apartments	3240A-D	Heat pump	Yes
Brown Road & Harris Court	3241A-D	Heat pump	Yes
	3247A-E	Heat pump	Yes
	3248A-E	Heat pump	Yes
	3119	Oil	No
Navy Hill	3244A	Oil	No
Main and Brown Roads	3244B	Oil	No
	3250	Oil	No

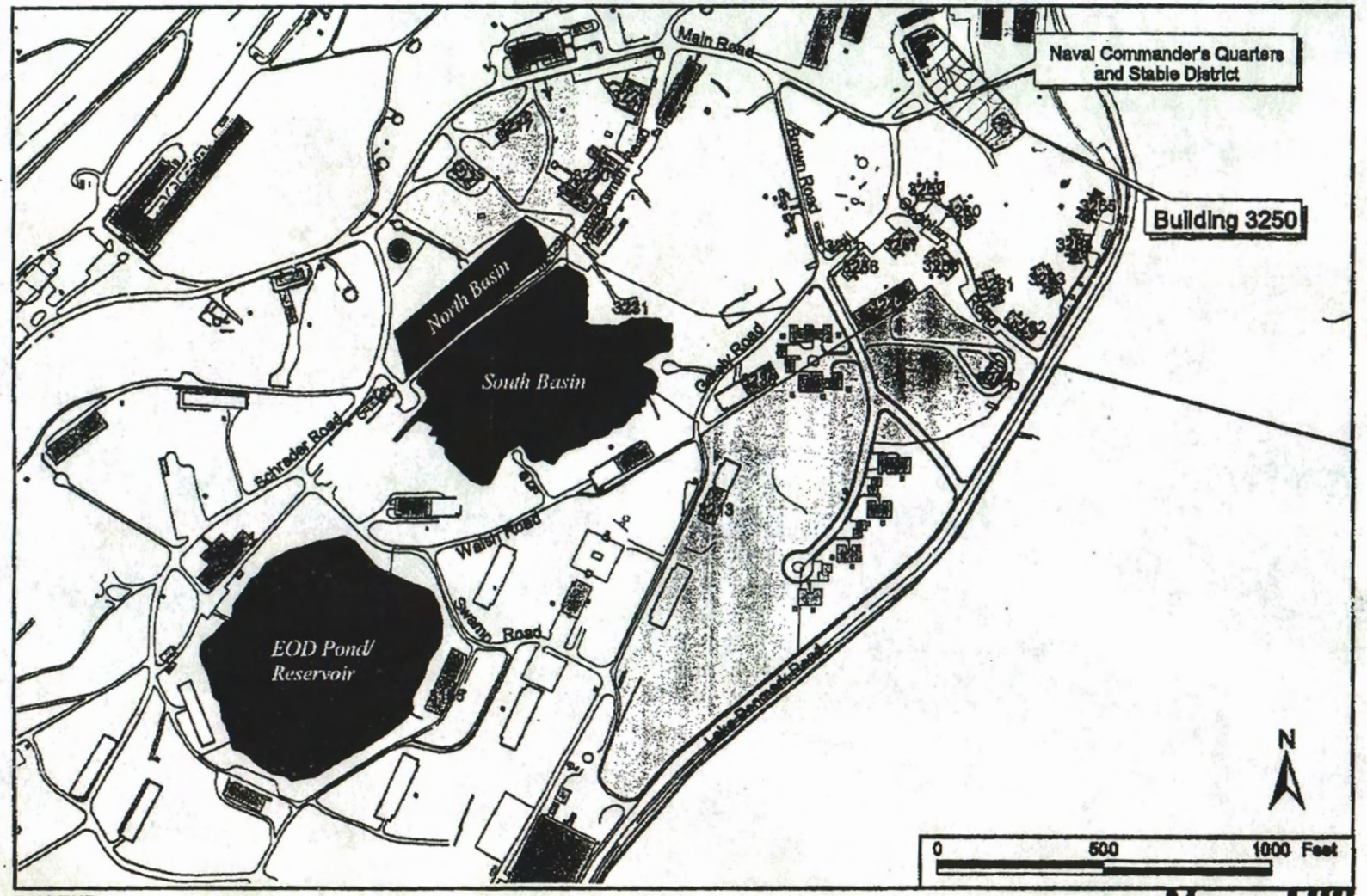


Farley Avenue Cultural Resources

Picatinny Arsenal, New Jersey

Source: Schleppati, et.al., 2001; Picatinny Arsenal, 2002.

Figure 4-3



LEGEND

- Installation Boundary
- Road
- Stream/Surface Water
- Building
- RCI Footprint
- Historic District
- NRHP-Eligible Housing
- Archeologically Sensitive Area (within RCI Footprint)
- Archeologically Sensitive, but Possibly Disturbed Area (within RCI Footprint)

Source: Schleppati, et.al., 2001; Picatinny Arsenal, 2002.

Navy Hill
Cultural Resources
Picatinny Arsenal, New Jersey
Figure 4-4

Check Copy Final Environmental Assessment

STANDING OPERATING PROCEDURES

These Standing operating procedures (SOPs) were developed to address the cultural resources concerns relevant to proposed or planned installation activities. These include provisions for the management of archaeological resources and historical structures and documents in accordance with (IAW) 36 CFR 79, as well as procedures to ensure Native American access to sacred sites within the Arsenal and consultation with Native American groups if adverse effects to the physical integrity of sacred sites cannot be avoided.

Standing Operating Procedure #1

National Historic Preservation Act, Section 106 Review

The U.S. Army, as a Federal agency, has management responsibilities concerning the protection and preservation of cultural resources on land it controls or uses. Federal statutes require the Army to identify, evaluate and protect significant cultural resources on these properties. Primary among these statutes is the National Historic Preservation Act (NHPA) of 1966, as amended, and the Section 106 implementing regulation 36 CFR 800. Failure to take the effects of an undertaking on historic properties into account in accordance with NHPA Section 106 and 36 CFR Part 800 can be used by litigants against the Army in a manner that can halt or delay critical mission activities (AR-200-4, 2-3b[2]). Whenever practical, Section 106 review should be incorporated into any reviews being conducted under the National Environmental Policy Act (NEPA) [see SOP #12].

The procedures outlined below are drawn from 36 CFR Part 800 (December 12, 2000) and Army Regulation 200-4, "Cultural Resources Management". Additional useful information is presented in the Advisory Council on Historic Preservation guidelines "Identification of Historic Properties: A Decision-making Guide for Managers." The actual implementation of these steps by Picatinny may vary if a Programmatic Agreement (PA) or other arrangements are made between the New Jersey SHPO and the Arsenal.

The Picatinny CRM must carry out Section 106 review if the proposed action is an undertaking and if it has the potential to affect historic properties.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. Examples of undertakings include construction, demolition, rehabilitation and/or renovation of buildings, and land transfers (including leasing).

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties.

Area of potential effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic

properties, if any such properties exist.

Generically, the process is as follows:

1. Before any undertaking can take place on or near any historic structure or cultural resource on Picatinny, it must be brought to the immediate attention of the CRM. That is eligible for listing on the National Register of Historic Places (NRHP) and therefore must be treated as if they are listed.

2. The CRM should be provided with full documentation including drawings, specifications, detailed descriptions, sketches and a written report of what the proposed action entails. Picatinny Communities, LLC, will notify the CRM who will then coordinate with the New Jersey SHPO if deemed appropriate, will forward the information to them. The New Jersey SHPO is entitled to a 30-day period to review the information of the proposed action. If the New Jersey SHPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the CRM may either proceed to the next step in the process based on the finding or determination or consult with the Advisory Council on Historic Preservation (Council) in lieu of the New Jersey SHPO. The CRM shall also identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with 36 CFR 800.2(d).

3. The CRM shall take the steps necessary to identify historic properties within the area of potential effects. As noted, NRHP-eligible structures at the installation are known. However, little archaeological investigation has taken place. If the undertaking has the potential to penetrate fill, an investigation may be required to determine if the undertaking will affect NRHP eligible archaeological resources.

4. If previously unevaluated cultural resources are discovered, the CRM will then apply the National Register criteria (36 CFR 63) to properties identified within the area of potential effects. If no cultural resources are identified within the APE or if cultural resources are identified but not NRHP eligible (with New Jersey SHPO concurrence), the Picatinny CRM can notify the NJSHPO and (provided the Council is not reviewing the finding) proceed with the undertaking.

5. If NRHP-eligible resources are within the APE of the undertaking, the CRM applies the criteria of adverse effect.

   An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

   Examples of adverse effects include physical destruction, alteration or neglect of the property, removal of the property from its historic location,

change of the character of the property's use or of physical features, introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features, or transfer, lease, or sale of property out of Federal ownership or control.

6. If there is no adverse effects to historic properties and the New Jersey SHPO agrees, then Picatinny may proceed with the undertaking unless the Council is reviewing the finding pursuant to 36 CFR 800.5 (c)(3).

If the NJSHPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The CRM shall either consult with the party to resolve the disagreement, or request the Council to review the finding.

7. If it is found that the undertaking will have an adverse effect, then the CRM shall consult with the New Jersey SHPO and other consulting parties to seek ways to avoid minimize or mitigate the adverse effects. For this purpose, the CRM may use standard treatments outlined in the ICRMP and other sources.

If the CRM and the New Jersey SHPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement (MOA) and provide the documentation to the Council and interested parties prior to approving the undertaking. An MOA executed and implemented evidences the Arsenal's compliance with Section 106 and shall govern the undertaking and all of its parts.

If the CRM and the NJSHPO fail to agree on the terms of an MOA, then the CRM will work with the NJSHPO to seek ways to avoid or reduce the effects of the proposed action on the historic property. Failing this, the CRM shall request the Council to join the consultation and provide the Council with the documentation specified in 36 CFR 800 (11).

8. If neither the CRM nor the New Jersey SHPO can agree on resolving adverse effects [i.e., the NJSHPO terminates consultation per 36 CFR 800 (7)], then Picatinny may execute the MOA with the Council and without NJSHPO's involvement.

If the installation and the Council cannot agree, the Council then renders advisory comments to Picatinny, which must be considered when the final decision on the undertaking is made. The Council may recommend further consultation to attempt to resolve the matter. In all cases where termination of consultation occurs, Picatinny must document the process and consider comments before approving the undertaking. Any major change to the proposed action after the MOA is final shall require resubmission of another proposed action package to the New Jersey SHPO.

The point of contact for this SOP is Ms Kelly Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil

Standing Operating Procedure #2

Unexpected Cultural Resources Discoveries during Construction

Unanticipated discoveries happen most often with projects that involve ground-disturbing activities, although sometimes they involve unforeseen effects on a known historic property. In all cases of unanticipated discovery, the CRM should initiate consultation in accordance with 36 CFR Part 800.13. If the unexpected discovery involves a Native American cultural item as defined by the Native American Graves Protection and Repatriation Act (NAGPRA), see SOP #9. The accidental discoveries of cultural resources during an undertaking can include but are not limited to:

Undiscovered/undocumented structural and engineering features; and
Undiscovered/undocumented archaeological resources such as foundation remains, burials, artifacts, or other evidence of human occupation

When such cultural resources are discovered during an undertaking, the CRM will proceed with the treatment of such properties in accordance with the following Discovery Plan.

All work shall cease in the area of the discovery

- The property is to be treated as eligible and avoided until an eligibility determination is made. The CRM will continue to make reasonable efforts to avoid or minimize harm to the property until the NHPA, Archeological Resources Protection Act (ARPA) or NAGPRA requirements are met.

- The contractor or project manager shall notify the installation CRM immediately of the discovery, who will then notify the New Jersey SHPO (and the Council) within 48 hours. The CRM will provide assessments of NRHP eligibility and actions to resolve adverse effects. The New Jersey SHPO and Council shall respond with comments within 48 hours.

- The CRM will develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and any comments provided by the New Jersey SHPO (and Council) pursuant to 36 CFR Part 800.13(b).

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil

Standing Operating Procedure #3

Unintentional Partial Damage to an NRHP-eligible Building

1. The CRM should be notified of the damage immediately and all work in the immediate area of the damage should cease.

2. The CRM will document any damage both photographically and in a written summary report.

3. The CRM, in consultation with a qualified historic architect, will determine whether repair or reconstruction can be accomplished in accordance with the Secretary of the Interior's Standards for Rehabilitation and thereby have no adverse effect.

4 The project manager and a qualified historic architect, under the direction of the CRM, will develop a plan for repair or rehabilitation, including architectural specifications and photographs.

5. The CRM will submit this plan for review by and concurrence of the New Jersey that the plan meets the Secretary of the Interior's Standards. If the New Jersey SHPO concurs, then the plan shall be implemented. If the NJSHPO does not concur, then the Section 106 compliance procedures should be followed.

6. The CRM will inform the project manager and contracting officer of the appropriate specifications that must be included within the contract.

7. The project manager will familiarize the contractor with significant features of historic property and protection measures.

8. The project manager and/or the CRM will monitor the contractor's activities to ensure the integrity of the historic property.

9. The CRM shall submit photographs of the property taken upon completion of the rehabilitation to the New Jersey SHPO to document compliance with the Secretary of the Interior's Standards for Rehabilitation.

10. The CRM shall retain documentation of rehabilitation, including work write ups and photographs, as part of the permanent project records.

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email kridgel@pica.army.mil

Standing Operating Procedure #4

Unintentional Partial Damage to an Archaeological Site that is Eligible or of Unknown Eligibility for Listing to the NRHP

1. The CRM will be notified of any damage immediately.

2. The CRM will document any damage both photographically and in a written summary report.

3. The CRM, in consultation with a qualified prehistoric or historic archaeologist (dependent upon the type of site), will determine if limited excavation should be conducted to collect available data or if the site context may be stabilized. If disturbance was the result of construction plans that did not account for a known site and such construction will further damage the site, the CRM will ensure that no further damage occurs until consultation with the New Jersey SHPO is completed concerning appropriate mitigation actions.

4. The CRM and a qualified archaeologist will develop a plan for the limited data recovery and/or stabilization.

5. The CRM shall submit the plan for review and concurrence by the New Jersey SHPO. If the NJSHPO agrees, then the plan may be implemented. If the NJSHPO does not agree, then Section 106 compliance procedures shall be followed.

6. If stabilization only is planned, then the CRM will inform the project manager and contracting officer of the appropriate specifications that must be included within the contract.

7. The project manager will familiarize the contractor with significant features of the historic property and protection measures.

8. The project manager and/or the CRM will monitor the contractor's activities to ensure the integrity of the historic property.

9. The CRM will submit photographs of the property taken upon completion of the project to the New Jersey SHPO to document compliance.

10. The CRM shall retain all documentation of the stabilization, including work write-ups and photographs, as part of the permanent project records.

11. If data recovery is recommended, then the CRM shall retain a qualified archaeologist to implement the data recovery plan. All work in the immediate area of the discovery shall cease until the archaeological investigations are completed.

12. The archaeologist should submit a thorough report of the investigation upon completion of the fieldwork and the analysis of any artifacts recovered.

13. The CRM should submit this report to the New Jersey SHPO for comment and concurrence.

14. The CRM should make sure the artifact collection is retained and properly curated in accordance with 36 CFR Part 79.

15. The CRM shall retain all documentation of the data recovery project, including work write-ups, field reports, and photographs, as part of the permanent project records.

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email kridgel@pica.army.mil

Standing Operating Procedure #5

Procedures for the Recovery of Human Remains

1. In the event that human remains are encountered, the project manager, construction supervisor or project archaeologist will

   - Cease activities in the immediate area of discovery,
   - Make an effort to protect the resources, and
   - Notify the CRM who will inform the security office,

2. The CRM, with the help of a coroner or physical or forensic anthropologist will determine if the remains are human, and whether or not they are associated with an archaeological deposit. If the remains are not human and are not associated with an archaeological deposit, the work may continue.

3. If the remains are human, the appropriate law enforcement officials should be notified. These officials will visit the site with the CRM and determine, with the aid of a coroner or physical/forensic anthropologist, if the remains are recent or ancient.

4. If the remains are recent, then the matter becomes the responsibility of law enforcement officials who will determine when project activities will resume.

5. If the remains are not modern and not Native American, then the provisions described above for inadvertently discovered archaeological remains are to be followed (see SOPs #2 and #4).

6. If the remains are determined to be of Native American origin, specific NAGPRA regulations must be followed pursuant to 43 CFR 10.4. NAGPRA requires that, upon an unexpected discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, further construction or archaeological activities in the area of discovery should cease for 30 days after the appropriate federally recognized tribes and/or lineal descendants have been

officially notified (see SOP #9).

7. The removal of the Native American human remains may proceed when:

    1. The consent of the appropriate Federally recognized tribal group is obtained,
    2. Ownership and right-of-control of such items is not in dispute, and
    3. Proof of consultation and notification is documented.

The CRM will be responsible for the security of the site pending resumption of the testing operations or resolution of site mitigation.

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Standing Operating Procedure #6

Compliance with the Archeological Resources Protection Act of 1979 (ARPA)

The purpose of this act is to prevent vandalism and unregulated excavation and removal of archaeological resources on publicly owned and Indian lands. Typically, a permit is required for the excavation and removal of artifacts from Federal lands, if the activity is not sponsored by a Federal agency. This permit-granting authority resides with the land manager responsible for the property; permits for Army installations are granted by U.S. Army Corps of Engineers District, Real Estate Division (AR 405-80). Obtaining an ARPA permit does not constitute compliance with Section 106 of the NHPA, however. For ARPA compliance, Picatinny should coordinate with the New York District Planning and Real Estate Divisions to meet permit granting requirements.

All archaeological sites and cultural resources are protected under this act, and include sites both known and eligible for listing in the NRHP as well as those properties not yet known or evaluated. As a result, land managers must balance site protection with the needs of the installation (established policies and plans). Archaeological investigations provide a means for identifying and potentially avoiding site impacts. If project actions have the potential to harm or destroy any Native American tribal, religious or cultural sites, the installation must notify and consult with the appropriate tribes before issuing ARPA permits. If projects or individuals impact archaeological resources, care must be taken to ensure that qualified individuals or institutions conduct the necessary archaeological investigations or evaluations, and that subsequent archaeological material receives adequate curatorial care.

If it appears that individuals or institutions fail to meet or violate the conditions of the permit, Federal land managers must suspend the permit and investigate the reputed violation. Violations of ARPA can result in financial penalties or jail.

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil

Standing Operating Procedure #7

Mothballing Eligible Historic Properties

When all means of finding a productive use for an eligible historic building have been exhausted or funds are not currently available to render a deteriorated structure into a usable building, it may be necessary to close the building temporarily to protect it from the weather as well as to secure it from vandalism. Mothballing, as the process is known, is a necessary and effective way to protect a building while its future is being determined.

The proper mothballing of a building includes:

1. Documentation of the architectural and historical significance of the building.

2. Prepare a condition assessment of the building

3. Stabilization

   Structurally stabilize the buildings, based on a professional condition assessment.
   Exterminate or control pests, including termites and rodents.
   Protect the exterior from moisture penetration.

4. Mothballing

   Secure the building and its component features to reduce vandalism or break-ins.
   Provide adequate ventilation to the interior.
   Secure or modify utilities and mechanical systems.
   Develop and implement maintenance and monitoring plan for protection.

Mothballing measures should not result in damage and each treatment should be weighed in terms of its reversibility and its overall benefit. Providing temporary protection and stabilization for vacant historic buildings can arrest deterioration while a compatible use for the building is found.

The three highest priorities for a structure while it is mothballed are:

To protect it from sudden loss
To weatherize and protect the building to stop moisture penetration
To control the humidity levels inside once the building has been secured.

Reference: Preservation Brief No. 31: Mothballing Historic Buildings.

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil

Standing Operating Procedure #8

Native American Graves Protection and Repatriation Act (NAGPRA)

This procedure implements the provisions of the NAGPRA (PL 101-601; 25 USC 3001-3013); U.S. Army Guidelines for Consultation with Native Americans, Native Alaskans, and Native Hawaiians; and as amended, 43 CFR Part 10, NAGPRA Regulations. NAGPRA mandates that Federal land managers must consult with federally recognized Indian tribes regarding planned excavations on Federal lands, and establishes procedures that Federal agencies must follow in the event of inadvertent discovery of Native American human remains and cultural items. It is important to note that NAGPRA applies only to human remains that can be culturally associated with a modern Native American group, and that are not identified as the remains of a historic settler, murder victim, or like individual. The statute provides a mechanism for determining the disposition for such human remains or cultural items. NAGPRA also forbids the sale of Native American human remains or of cultural items obtained in violations of the statute.

Thus far, Picatinny has not initiated consultation with any federally recognized Native American tribes who are recognized as possible aboriginal people culturally affiliated with the lands now occupied by the installation. Some prehistoric material has been identified at Picatinny but the likelihood of uncovering Native American burials at the installation is low.

However, if burials are uncovered, AR 200-4 states that the Installation Commander must ensure that intentional excavation and response to any inadvertent discovery of NAGPRA-related cultural items be carried out in compliance with all applicable statutory and regulatory requirements of NAGPRA, ARPA, and the NHPA. Compliance with one statutory requirement, therefore, may not satisfy other applicable requirements. All Picatinny activities will strictly avoid the disturbance of human burials, whether marked or unmarked. In all instances where avoidance is not possible, the installation shall consult, as outlined by NAGPRA, with the Native American tribes that may be culturally affiliated with the remains or items, on a case-by-case basis. Under no circumstances will any Arsenal activity be allowed to proceed if it will intentionally disturb a known burial site until such time as consultation between Picatinny and the Native American tribes is completed in accordance with 25 USC 3002(d) Sec. 3.

In accordance with 43 CFR Part 10.3 and AR 200-4, the Installation Commander shall take reasonable steps to determine whether a planned activity may result in the intentional excavation or inadvertent discovery of cultural items from the installation. When it is determined that these cultural items, which are covered under NAGPRA as determined by Picatinny in consultation with Native American representatives, may be encountered, and, prior to issuing approval to proceed with the activity, the Commander shall carry out the consultation procedures and planning requirements at 43 CFR Parts 10.3, 10.4, and 10.5 as part of the intentional excavation or inadvertent discovery of cultural items, a written Plan of Action must be prepared in accordance with 43 CFR Part 10.5(e).

In accordance with 43 CFR Part 10.3(b), the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands (after November 16, 1990) is permitted only if:

1. The objects are excavated or removed following the requirements of ARPA and its implementing regulations.

2. The objects are excavated after consultation with, or in the case of tribal lands, with the consent of, the appropriate Native American tribe or Native Hawaiian organization pursuant to CFR Part 10. The disposition of the objects is consistent with their custody as described in CFR Part 10.6.

3. Proof of the consultation or consent is shown to the Federal agency official (i.e., Installation Commander) or other official (the CRM) responsible for the issuance of the required permit.

The Picatinny employee or contractor who inadvertently discovers human remains must notify the responsible Federal official (i.e., the Installation Commander or Cultural Resources Manager, in accordance with 43 CFR Part 10.4[b]; see SOP#5). Certification of receipt of notification by the Installation Commander or his/her designated representative (the CRM) initiates the 30-day waiting period.

If the inadvertent discovery occurred in connection with an ongoing activity at the installation, the person providing the initial notice described above must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, or objects of cultural patrimony.

Upon having received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, Picatinny shall, as soon as possible, but no later than three (3) working days after receipt of the notification: Report the receipt of such notification by telephone, with written confirmation, to the appropriate Native American tribal contact and the New Jersey SHPO. The notification shall include pertinent information as to the kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony inadvertently discovered, their condition, and the circumstances of their inadvertent discovery (see attachments 1, 2 and 3 for samples of a notification letter and inventories).

In the event that Picatinny or the coroner's duly designated representative, has reason to suspect that the burial contains a victim of a recent prosecutable crime or accidental death, the proper military authorities (Security Police) and the Arsenal TJAG office will be notified.

Repatriation

In accordance with the NAGPRA, Section 7:

1. If, pursuant to Section 5 (of NAGPRA), the cultural affiliation of Native American human remains and associated funerary objects with a particular Native American tribe is established, Picatinny, upon the request of a known lineal descendant of the Native American, or of the tribe or organization, shall expeditiously return such remains and associated funerary objects

2. If, pursuant to Section 6, the cultural affiliation with a particular Native American tribe is shown with respect to unassociated funerary objects, sacred objects or objects, of cultural patrimony, Picatinny, upon the request of the Native American tribe, shall expeditiously return such objects.

If a recognized Native American group is identified that will have an on-going interest in Arsenal activities that may affect Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, then the Arsenal may choose to execute a Comprehensive Agreement (CA) with the tribe. A draft CA is included as Attachment 4 to this SOP.

The point of contact for this SOP is Ms. Kelly Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil

Standing Operating Procedure #9

Curation of Cultural Materials (36 CFR 79)

All cultural materials that have been collected during archaeological inventory within Picatinny should be curated in compliance with 36 CFR Part 79 (Curation of Federally Owned and Administered Archaeological Collections). Picatinny should develop a curation agreement with a facility meeting the standards cited in 36 CFR Part 79. Assistance in preparing a curation agreement and evaluating the appropriateness of a repository can be obtained from the HQDA Federal Preservation Officer (FPO), the New Jersey SHPO, the New Jersey State Museum, or the National Park Service.

A curation facility is specifically designed to serve as a physical repository where artifacts are sorted, repackaged, assessed for conservation needs, and then placed in an appropriate, environmentally controlled storage area. Proper curation also includes a review and update of all paper records. An important component of artifact curation is the selection of artifacts for site-specific reference collections. Artifact data is entered into a database, which is an important management and research tool. The overall goal of the Federal curation program, as set forth in 36 CFR Part 79, is to ensure the preservation and accessibility of artifacts for use by members of the public interested in the archaeology of the region.

Archaeological material has been collected at Picatinny and the possibility exists that artifacts will be collected in the future. AR 200-4 requires the Installation Commander to ensure that all archaeological collections and associated records, as defined in 36 CFR Part 79.4(a), are processed, maintained, and preserved in accordance with the requirements of 36 CFR Part 79. Currently, the installation does not have an artifact repository that meets the standards specified by 36 CFR Part 79.

The point of contact for this SOP is Ms. Kelly J Ridgel, Tel. (973) 724-8014, email: kridgel@pica.army.mil