



STATE OF RHODE ISLAND

HISTORICAL PRESERVATION & HERITAGE COMMISSION

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October 9, 2024

Sent via email to: program_alternatives@achp.gov

The Honorable Sara Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: ACHP's Draft *Program Comment on Accessible, Climate-Resilient and Connected Communities*

Dear Chair Bronin:

Thank you for the opportunity to comment on the ACHP's proposed *Program Comment on Accessible, Climate-Resilient and Connected Communities*. The Rhode Island Historical Preservation & Heritage Commission (RIHPHC), Rhode Island's State Historic Preservation Office, has reviewed the proposed Program Comment (PC). While we support streamlining Section 106 consultation for certain types of undertakings that have no or minimal potential to affect historic properties, we are concerned about the breadth of the proposed PC.

At its core, the PC eliminates consultation with SHPOs and other defined consulting parties under Section 106 for a broad range of undertakings in the fields of housing, clean energy, and climate-friendly transportation infrastructure undertakings. This is inconsistent with the basic tenets of the National Historic Preservation Act. The elimination of consultation will remove local governments, local organizations, and the public from the decision-making process. This will reduce, if not eliminate, transparency in the federal government's actions that fall under the PC. Further compounding the concern about transparency is the requirement that annual reporting include only "examples of undertakings," without any quantifying information. The PC does not present any checks and balances and there is no clear avenue for SHPOs or any member of the public to be notified of the undertakings that utilized the PC.

RIHPHC endorses the comments and detailed edits on the PC provided by NCSHPO in Erik Hein's letter dated September 27, 2024. We have specific comments on the following sections:

III.A. Both clauses in this section refer to "components of *undertakings*" and seem to indicate that federal agencies can subdivide an undertaking. Is dividing undertakings into components not the definition of "segmentation," which we reviewers continually fight against? This is confusing, deeply concerning and seems to have no legal precedent in the

Section 106 regulations. If this is permitted within the PC, would it be permitted in general practice? It is also unclear how Section II.E.A.2 and this section correlate.

III.C. We recommend that this section be amended to include SHPOs as qualified authorities.

III.D. The PC effectively removes any efforts to identify historic properties except “where explicitly stated,” which is perplexing. It is unclear how some of the principles of the PC can be applied if federal agencies do not know if a property is considered a *historic property*. This is also inconsistent with Section 106 regulations. Sections III C and D also devalue the importance of professional qualifications in the Section 106 process.

V.A. The PC states “if previously unidentified *historic properties* or unanticipated *effects*...are discovered during implementation of the *undertaking*, the *federal agency* must immediately halt all activity...” Since this PC removes the survey and identification of historic properties, we fail to see how this could be applied to previously unidentified historic properties.

VI. It is unclear how any person will be able to file a dispute “for any particular undertaking” with the relevant “federal agency” as the consultation process will be eliminated and no one other than the federal agency will be aware of the undertaking (see also comments on annual reporting).

X. The annual reporting only requires that examples of undertakings be submitted; there does not seem to be any requirement for federal agencies to submit a comprehensive and detailed list of undertakings to SHPOs or the public. If this is put into effect, how will anyone beyond the federal agency know what has occurred? In addition, project reviews are an annual reporting metric from the SHPO programs to the National Park Service. This would decrease the numbers reported and devalue the work of our staff.

XI. Definitions

- Overall, there are existing and accepted definitions for some of these terms which are not applied and apparently disregarded. We suggest amending this to include definitions accepted by the ACHP and the National Park Service.
- We have concerns with the definition of “primary façade,” which is difficult to understand and will be difficult to apply; it is also not consistent with accepted treatments of historic properties. It is ill-defined who would make the determination of what constitutes the primary façade and since identification of historic properties is not required, what would form the basis for this determination? It is our opinion that this term should not be applied to properties individually listed or eligible to be individually listed in the National Register of Historic Places (however, we note that there is limited opportunity for determinations of eligibility as presented in the PC). Additionally, for these properties, interior spaces are also character-defining. Replacing windows on a non “primary façade” could affect historic interiors and have an adverse effect. Elevations not visible from the public-right-of-way could be considered secondary

elevations for buildings within historic districts, but they may be as architecturally significant as the street-facing side of the building.

- Records check – It is unclear who would be conducting this work and if sensitive information (such as archaeological sites) could be released to them. This definition also refers to a “search of...other sources recommended by such parties.” These parties include SHPOs and THPOs, but since consultation has been eliminated, it begs the question if these *records checks* would be carried out. Additionally, this definition includes an area of potential effect (APE), however the PC removes identification and consultation for these undertakings, thus eliminating the opportunity to define and implement an APE.
- For Rehabilitation, substitute materials, etc. – these definitions are not consistent with the National Park Service’s definitions.

The broad scope of the PC means that there are various, unrelated activities listed in the Appendices. It is difficult to understand the various activities, especially as activities to historic and non-historic properties are integrated. We are also concerned that some of the proposed exemptions do not meet the Secretary of the Interior’s Standards. This could negatively impact housing projects that intend to utilize historic tax credit incentive programs which require that projects meet the Standards. Additionally, some of the exempted activities will create tension with state historic preservation laws, which were modelled on the National Historic Preservation Act, and with local historic preservation ordinances. For projects that use both state and federal funding, applying this PC could create enormous confusion, especially for delegated authorities/responsible entities. Further discussion, incorporation of feedback, and consultation with all involved parties is needed to produce a clear list of activities that all agree will not affect historic properties. To this end, as mentioned by others, we suggest removing transportation-related activities/items from this PC and addressing those separately.

Many consulting parties, including federal agencies that comply with Section 106, have provided extensive and thoughtful comments on this PC. We are hopeful that these comments can be incorporated into a revised draft PC, for additional review, and lead to the creation of a final document that continues to consider historic resources and is useful for all consulting parties.

Sincerely,



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