



October 9, 2024

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

Dear Chair Bronin:

Preservation Action (PA) welcomes the opportunity to provide comments on the Advisory Council for Historic Preservation's (ACHP) proposed "Program Comment on Accessible, Climate Resilient, Connected Communities" (PC). Founded in 1974, Preservation Action is a 501(c)4 nonprofit organization created to serve as the national grassroots advocacy organization for historic preservation. We represent an active and engaged grassroots constituency from across the country, including thousands of members and supporters from nearly every state.

PA appreciates the goals expressed in the PC of making communities more accessible, climate resilient, and connected, and fully shares the desire for historic preservation to be an active partner in solving the pressing issues of creating more affordable housing and enhancing energy efficiency in buildings. However, PA has serious concerns about some aspects of the PC's content and the process by which it was introduced. At this time we cannot support the PC as proposed, and strongly recommend the ACHP withdraw the PC and consider alternative approaches.

### **Background**

In 1966, in response to historic places being lost or irreversibly altered, the National Historic Preservation Act (NHPA) was enacted to coordinate federal and state efforts to preserve historic properties and cultural resources nationwide. Section 106 of the NHPA requires federal agencies to consider the impact federal undertakings have on historic properties and helps ensure states, Tribes, and the public have a meaningful voice in federal undertakings. The NHPA and this vital consultation process has been an unequivocal success, assuring historic and cultural resources are identified and considered as part of the federal planning process. Of course, nothing is without its flaws, and PA recognizes that the processes by which NHPA is upheld have imperfections that must be corrected over time.

Part of the success of the Section 106 process is due to its inherent flexibility, allowing for Programmatic Agreements and other program alternatives that provide a more expedited process for certain routine undertakings. Historically, usage of alternatives has rightfully been limited, only provided at the request of the agency, when appropriate; narrow in scope; and after a careful and thoughtful process that ensures the consideration of historic resources.

Acknowledging that Section 106 and other processes addressed by the PC have their faults, and that the PC's intention is, in part, to address these limitations, streamline processes, and – in concept – prepare historic preservation to be an active part of progressive movements, we believe the PC as proposed will ultimately cause more harm than good.

Unique in its conception, design, and scope, the PC would have a far larger reach and apply more broadly than any program-specific or agency-specific program alternatives previously developed. We feel this PC would likely set a precedent for future ACHP and federal agency actions. The PC development process thus far has not allowed for adequate consultation with impacted stakeholders – especially considering the unprecedented nature of the proposal, the broad scope, and the number of state and local level agreements that would be impacted. Further, the PC fails to identify – using supporting data – how the projects and undertakings covered by the PC are being delayed by the current Section 106 process.

A rushed process will lead to more negative impacts and outcomes for preservation that cannot be undone. As stated in our letter to ACHP council members alongside other national preservation organizations, we strongly encourage the ACHP to follow their [own guidelines](#) crafted for other agencies to utilize when seeking program alternatives as well as to fully engage with interested parties prior to further consideration.

Below are some of our concerns about the PC as proposed:

**The PC, as proposed, completely eliminates consultation with State and Tribal Historic Preservation Officers (SHPOs/THPOs) and the public at large.**

This elimination of consultation would apply to virtually any federal undertaking related to housing or energy efficiency. Consultation with interested parties to identify and consider historic and cultural resources is part of the fundamental intent of the NHPA. Public consultation provides an invaluable perspective to the process that would otherwise be lost. SHPOs and THPOs have a far better understanding of historic resources in their jurisdictions and are best positioned to engage with local stakeholders. Additionally, eliminating SHPOs and THPOs from the process contradicts the statutory requirements under the NHPA.

Removing SHPOs, THPOs, and public consultation would actually slow down the process, leading to more negative outcomes and delays. Carefully consulting with interested parties earlier in the process helps to avoid potential conflicts.

Internal delays from SHPOs and THPOs are largely due to understaffed and overworked departments whose intentions are to ensure development happens with respect to and protection of historic sites. Properly funding and staffing these departments is key to expediency and efficiency.

**The Program Comment, as proposed, conflicts with numerous local preservation ordinances and state programmatic agreements.**

SHPOs across the country have negotiated their own state-specific programmatic agreements to help streamline federal undertakings at the state level. These agreements have already gone through substantial consultation with federal agencies, tribes, and local governments and are tailored to the unique characteristics of each state. Superseding carefully crafted state agreements with a very broad PC – whose own process lacks the consultation and specificity of these agreements – would lead to more inconsistent compliance and outcomes.

The PC also conflicts with numerous local preservation ordinances and local review processes. In many cases, federal agencies would still need to comply with these local ordinances which would lead to more complexity and confusion in the process, therefore causing further project delays.

**The PC, as proposed, would conflict with the Secretary of the Interior's Standards for Rehabilitation, impacting the Federal Rehabilitation Tax Credit program.**

While the PC applies to the Section 106 process, it would create a conflict with the Secretary of the Interior's Standards. This could lead to a disincentive for federal programs that rely on the Standards, like the Federal Rehabilitation Tax Credit (HTC). Or create a situation where a user unknowingly misses out on taking advantage of the HTC.

**The PC, as proposed, does not require mitigation for adverse effects.**

The Section 106 process requires federal agencies to consider adverse effects to historic resources and evaluate alternatives to avoid or mitigate these adverse effects. The PC would eliminate mitigation for projects that have “minimal” adverse effects. This is a very subjective term that could easily be abused to suit a federal agency's needs. Furthermore, the PC does not identify who makes that determination and, without consultation, it is assumed to be left up to the federal agency and/or a “qualified authority.” The mitigation of adverse effects is a foundational component of the Section 106 process. The PC, as proposed, essentially allows for this key requirement to be sidestepped for an extensive number of undertakings.

**The PC, as proposed, gives too much power to federal agencies to make decisions.**

The PC gives too much leeway to federal agencies to make their own determinations on how historic resources will be impacted. Consultation with states, tribes, and the public at large is removed from the process and instead the PC relies on qualified professionals or qualified authorities, which are poorly defined.

For instance, the PC does not include a qualified archaeologist in the definition of qualified authority. This is especially important when considering exemptions for ground disturbances. Not properly considering impacts to archaeological remains would harm important sites and lead to costly project delays.

### **Conclusion**

Preservation Action believes that historic preservation has an important role to play in addressing the climate crisis and expanding the use of historic rehabilitation to create more housing, and that overall there is a need for greater efficiency for all parties involved. PA stands ready to work with the ACHP on these shared goals. However, for the reasons stated above, we have serious concerns about the PC as currently proposed and the process in which the PC was initiated. Respectfully, we urge the ACHP to withdraw the PC and consider alternative approaches.

Sincerely,



Russ Carnahan, President  
Preservation Action



Briana Paxton, Chairwoman  
Preservation Action