

October 9, 2024

Honorable Sara Bronin  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001  
*(sent only via email to program\_alternatives@achp.gov)*

Re: Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin:

The Connecticut State Historic Preservation Office (CT SHPO) attended the webinar hosted by the Advisory Council on Historic Preservation (ACHP) dedicated to developing the referenced Program Comment, as well as the previous four webinars that served as a precursor to its development and were based on broad policy statements promulgated by the ACHP. Unfortunately, it does not appear that the ACHP considered our prior comments regarding the use of the Program Comment to achieve the broad policy goals of the current Chair. Our office does not have the staff time to provide line by line comments on the proposed language, but we do support suggestions and edits provided by the National Conference of State Historic Preservation Officers. Alternatively, we offer the following broad observations.

- The proposed Program Comment undermines one of the most elegantly written regulations, 36 CFR part 800 or Section 106. The cornerstone of this legislation, as taught and advocated by the ACHP, is consultation. A fact that has been lost in the development of the referenced Program Comment and a fact that will be eliminated from the process if this Program Comment is adopted. As an agency that has regular communication with its constituents actively concerned about the historic character of their communities, as well as those that become activated by federal agency actions, our office is deeply dissatisfied that consultation is being removed from a broad set of undertakings covered by the Program Comment without meaningful prior consultation.
- As daily practitioners of Section 106 and an office that frequently provides guidance to our federal partners, the language of the Program Comment is confusing. All too often, federal agencies defer to our office for their own compliance. Our office guides them and helps them through the process in a legally defensible manner. The reality, however, is that most agencies struggle with sufficient levels of staffing in general. Without any training requirements and lack of subject matter experts on staff to efficiently process the range of undertakings covered by the Program Comment, CTSHPO is concerned with its appropriate application and questions the level of

support that the ACHP will provide. Particularly concerning areas of confusion are the following broad observations.

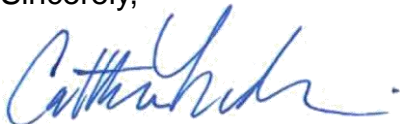
- In several instances, the Program Comment uses the phrase “components of an undertaking.” It is unclear if the Program Comment is allowing for projects to be segmented and, if so, how will that decision be made and who will make it? And, how will the Area of Potential Effect for the “components of an undertaking” be delineated and how will that be differentiated from the Area of Potential Effect for presumably the remainder of the undertaking that is not included in the Program Comment.
- The Program Comment states that a federal agency does not need to determine if an “affected property is a historic property except where explicitly stated,” but the Appendices reference project exemptions 38 times if there are no impacts to character defining features or will not otherwise have an adverse effect on historic properties. How will the ACHP or the agency reconcile not having to make property eligibility determinations with understanding when or how the Program Comment can be used.
- Similarly, the Unanticipated Discoveries section is intended to accommodate unforeseen impacts to previously unidentified historic properties. If there are no mechanisms in place for making determinations of eligibility by the federal agency, who or how will historic properties be evaluated as part of the Immediate Response Requirements. Further, the Unanticipated Discoveries section suggests that only historic properties with tribal interests would be given additional consideration. For example, if a septic system being installed under the Program Comment encountered evidence of the Roanoke settlement, could work could unfettered?
- Connecticut’s tribal historic preservation programs generally are at a disadvantage for nationwide program alternatives that are limited to tribal lands. As an area of early European settlement and displacement of indigenous communities, the areas that meet the definition of Tribal Lands do not adequately represent the extent to which federally recognized tribes have a documented relationship with the landscape and areas where they typically express an interest in federal undertakings.
- The Appendices allow for a variety of activities within areas described as “previously disturbed ground.” Although this term is defined in the Program Comment, the concept of previously disturbed is highly variable and there are no assurances that qualified individuals will make this determination. Although the Program Comment acknowledges a consideration of the “three-dimensional area of potential effects,” there is no guidance as to how the depth of disturbances will be determined and evaluated relative to the project impacts. Because archaeological sites in our region are rarely visible on the surface, significant archaeological deposits beneath superficially disturbed soils only would be encountered during construction, prohibiting opportunities for

avoidance or minimization of harm. In fact, this likely would result in costly delays that would impact the “economic feasibility” of a project.

- CT SHPO is perplexed by many of the activities listed in the appendices. A large number of them are activities that our office rarely, if ever, review because in following the standard Section 106 process, the agency determines that the activities do not have the to cause effects to historic properties (e.g. applying fertilizer or paint to already painted surfaces). In addition, the Program Comment explicitly states that it was drafted to alleviate “the nation’s pressing needs to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce its energy use and greenhouse gas emissions, improve climate resilience, and cut energy costs; and to decarbonize its transportation sector.” CT SHPO does not understand how activities such as water features and fountains achieve this goal and, in fact, seem counter to it.
- Normally, CT SHPO prefers a shorter duration when a program alternative is first adopted to provide an opportunity for sooner reflection to correct unforeseen consequences or improve intended outcomes. It is our opinion that a shorter duration is even more appropriate for this Program Comment that is driven by policy goals which can change with every administration. Therefore, CT SHPO recommends a duration of no greater than eight years.
- Finally, because our office has put so much effort into streamlining Section 106 for a larger and more comprehensive set of undertakings with agencies with whom we currently have executed Programmatic Agreements, we request, at a minimum, that those program alternatives supersede the proposed Program Comment to “more effectively and efficiently address the nation’s needs.”

CT SHPO appreciates the opportunity to share these remarks on the proposed Program Comment. We encourage the ACHP to foster open dialogue with all parties to distinguish perceived obstructions from objective project delays that can be resolved through program alternatives. For additional information, please contact me at (860) 500-2329 or [catherine.labadia@ct.gov](mailto:catherine.labadia@ct.gov).

Sincerely,



Catherine Labadia  
Deputy State Historic Preservation Officer

Cc (via email): Hein, NCSHPO