

Dear Chair Bronin:

The Department of the Interior appreciates the opportunity to provide input on the Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. We value the initiative that the Advisory Council on Historic Preservation (ACHP) is taking and support your efforts to advance Administration priorities. In an effort to achieve the ACHP goals, while best managing and preserving diverse historic resources, we offer the following comments from the Department and the National Park Service on the August 8, 2024 “Draft for Public Comment.”

General observations are followed by specific comments

### **Tailoring Section 106 Recommendations to Specific Articulated Needs**

A statement of need is important to define the full scope of the challenges and ensure that “solutions” developed are the most appropriate in scale and content. Meaningful improvements to Section 106 practice are typically need based. Relying on the ACHP policy statements, alone, as justification for Section 106 program alternatives is narrowly focused, foregoing the opportunity to examine actual concerns and consider tailored solutions. Moreover, federal agencies have their own policy frameworks which may, in some cases, not fully align with the policy statements of the ACHP.

Seemingly absent is consideration of what other efforts could be made to address the broader goals. For example, effective and efficient Section 106 review is reliant on the knowledge of all participants in the process. This includes not only the federal agencies, but states, local governments, contractors, the public etc. Many “impediments” identified in the Section 106 process result from the lack of knowledge or experience of the participants. Consideration should be given to the extent to which training and guidance, targeting specific project/program areas, could improve the Section 106 process for all participants, negating the need to recreate the process through wide-sweeping program alternatives.

There also seems to be an overall assumption (without supporting data) that Section 106 review, in its current form, is an impediment to implementation of other policy priorities. The scale of this proposed Program Comment, initiated by the ACHP itself and with potential applicability to vast numbers of resources and programs, seems to imply that the ACHP believes that the Section 106 compliance process is an impediment to project and program implementation. As the “regulatory agency” for the Section 106 process, the ACHP risks sending a message that undermines the validity of its own regulations. If the ACHP believes its regulations are problematic when applied to numerous types of programs and resource types, then the ACHP could undertake revision of its regulations through standard procedure, rather than contriving workarounds.

### **Program Alternative Recommendations**

Program alternatives are tied to agencies with repetitive management actions with a large inventory of similar historic properties or that have programs that generate a large number of similar undertakings. In contrast, the proposed program alternative is not tied to a specific agency, action, or property type. As a result, the proposed document attempts to cover broad topics that span multiple federal agencies, thus lacking in cohesion. Streamlined compliance could be more effective when tailored to specific funding programs. Adaptation of compliance mechanisms could be more impactful when responsive to identified procedural, resource, or undertaking needs. Many federal agencies and states have developed strong working relationships that have resulted in program alternatives that provide for efficient compliance and program management. Many existing program alternatives already apply to project, program and/or resource types covered by this proposed Program Comment, making this new effort somewhat duplicative. A wide-sweeping nationwide approach could create unintended conflicts with existing program alternatives (project-specific memoranda of agreement, programmatic agreements, Program Comments, etc.).

### **Detailed Comments**

- The Program Comment should include a list of programs and/or agencies to which it applies, perhaps as an appendix. The Program Comment does not currently include sufficient information on applicability.
- The Program Comment’s two “Alternative Compliance Approaches” appear to conflict with each other: the first exempts actions with “no or minimal potential to adversely affect historic properties”, while the second exempts activities that “adversely affect historic properties but whose potential adverse effects can be avoided, minimized, or mitigated.”
- The proposed Integrated Program Comment’s 45-year-old age exemption ignores the fact that a property may be eligible for listing in the National Register as a property that has achieved significance within the last fifty for its exceptional importance. The proposal appears to assume activities (ground disturbances, building modifications) done within the past 45 years were done as part of a Federal undertaking and thus reviewed in a 106 consultation, however, this is often not the case. Is the 45-year-old age exemption premised on the typical federal agency practice of not considering a property potentially historic until it reaches the age of 50-years-old? Clarification is needed.
- The enumerated site activities, primarily addressing site furnishings and transportation surfaces, are assumed to have limited ground disturbing affect. This assumption may be, however, flawed. For example, removal of

playground equipment is not a simple construction project when heavy equipment is involved to remove building materials and dirt below grade.

- The following comments relate to the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOI Standards) and the proposed Program Comment's intersection with them:
  - The draft Program Comment definition of *primary space* as it relates to character-defining features and historic character is much more restrictive/narrow than what is used in guidance produced by the National Park Service's National Register of Historic Places and Technical Preservation Services.
  - *Primary view* is, it seems, a new term introduced in the draft program comment. It is important to note that some buildings are meant to be seen "in the round," meaning that they have equally important façades on the front, sides, and rear, for example, related to their historic significance (e.g., a county courthouse sitting in a public square that is surrounded by commercial buildings on all four sides, or a Midcentury tract house with little fenestration on the front and all glass on the back). The historic use of a building could make multiple façades important (e.g., an industrial building with a loading dock for trucks on one side and loading dock for train spur on another).
  - *In-kind building materials* are defined as matching "in all possible respects, including their composition, design, color, texture, and other physical and visual properties," but not specifically material or size/dimensions. In the context of the SOI Standards, the word "design" includes dimensions; however, the definition of *replacement* in the Program Comment allows for a change in "size, dimension, location, and configuration." Further clarification in the definition of *in-kind replacement* would be useful. (For example, should it also need to closely match, including in terms of size, dimension, location, and configuration? In the SOI Standards, replacement is defined as the "substitution of a new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part.")
  - The Program Comment defines *substitute building materials* as "modern, industry standard, natural, composite, and synthetic materials that simulate the appearance, physical properties, and related attributes of historic materials

well enough to make them alternatives for use when historic building materials require replacement." There's no requirement for how closely they need to match the historic material or what aspects need to match (e.g., design, color, texture, visual appearance, etc.). For example, asphalt shingle manufactured with a brick pattern was meant to be a substitute for the look of brick but would not be considered an appropriate substitute material. A substitute *industry standard* for wood siding would mean cement board, regardless of dimensions, lap/exposure, finish, trim/end board details, etc.

- The following comments relate to Appendix A-1: Housing-Related Activities Not Requiring Further Review:
  - This appendix is confusing in parts due to mixing/matching of non-historic and historic properties, and character-defining features and non-character-defining features. Is the intent for the draft program comment to provide a compliance path for buildings with undetermined National Register-eligibility status? And further, to avoid submittal of so-called “consensus determinations of eligibility” to the SHPO? Clarification is needed.
  - Sitework: All the items listed in Subsection a, relative to properties less than 45 years old, could be character-defining features of a historic property less than 45 years old.
  - Exterior: Some of the treatments listed in Subsection a could negatively affect historic features, character, and appearance. Further, some of the individual treatments like seismic and foundation work, should only pertain to minor repairs, as some foundation work and seismic work can be quite extensive and intrusive.
  - Exterior: Subsection e(iii) allows placement of solar panels anywhere, even visible from the public right of way, regardless of visibility, significance of the property, or if there are other, less prominent locations on the building that would be suitable. In addition, this section should distinguish between solar panels and solar roof shingles (which are much larger than regular shingles and are highly reflective).
  - Exterior: Subsection g addresses abatement; the effects of this work on historic properties is unclear. In addition, windows

can be character-defining features in buildings less than 45-years old.

- Interior: The definitions/descriptions in Subsection a are inconsistent with guidance provided by the National Register of Historic Places and the National Park Service Technical Preservation Services. Consistency in requirements and expectations is important across preservation programs to ensure clear understanding by users.
  - Interior: Subsection b and c allows installation of new systems related to HVAC (ducts, pipes, etc.), sprinklers, etc. in any location of historic properties, including primary spaces, without regard for character-defining spaces and features. Taken together, this seems excessive to include in a blanket exclusion from Section 106 review/consultation.
  - Interior: Subsection d appears to allow such activities as furring out and other changes to primary spaces and exterior walls for insulation without regard to the impact on historic character, trim, wainscot, decorative plaster, etc. Further, this section allows changes for abatement and ADA compliance without regard to the impact to character-defining features or spaces, or, significantly, consideration of alternatives to minimize impacts. This seems excessive to include in a blanket exclusion from Section 106 review/consultation.
  - Mobile and Manufactured Homes: For those properties determined eligible for the National Register of Historic Places, the treatments listed in this section may be inconsistent with preserving character-defining features (e.g., exterior insulation).
- We recommend the duration of the Program Comment be no more than 10 years.
  - Annual reporting requirements are described in detail for agencies using the Program Comment. However, the Program Comment does not describe how the ACHP will use this data to assess the effectiveness/usefulness of the Program Comment or inform a process for proposed revisions.
  - We recommend program comment definition of terms not commonly used or understood, such as “transit infrastructure”, “green infrastructure” and “clean energy technologies”.
  - The term “minimal potential” to adversely affect historic properties warrants definition?

While we appreciate the opportunity to offer improvements to this draft Program Comment, the ACHP has given short notice and turnaround time for comments on drafts. We encourage the ACHP to allow ample time for all partners to respond thoroughly to the proposed Program Comment drafts.

We look forward to the opportunity to study the comments of other ACHP Members and stakeholders following public review and consultation. This novel use of a Program Alternative has the potential to provide improvement in the Section 106 compliance process and prioritize important initiatives. The Department of the Interior looks forward to future collaboration with the ACHP and offers the expertise of our staff to assist in this effort.

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