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GOVERNOR

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MICHIGAN STRATEGIC FUND
STATE HISTORIC PRESERVATION OFFICE

QUENTIN L. MESSER, JR.
PRESIDENT

The Honorable Sara Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308 Washington, DC 20001
Sent via email to: program_alternatives@achp.gov

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 Advisory Council's draft *Program Comment on Accessible, Climate-resilient and Connected Communities* issued on August 8. The Michigan State Historic Preservation Office (SHPO) is in alignment with comments previously issued by the National Conference of State Historic Preservation Officers (NCSHPO), Preservation Partners, the City of Detroit and the Society for American Archaeology (SAA) and numerous other SHPO counterparts nationwide.

We would like to enumerate our concerns with this draft Program Comment with the following:

Lack of Consulting Party/Stakeholder Engagement:

In its current form, the Program Comment would eliminate the involvement of the public, stakeholders, SHPOs and Tribal Historic Preservation Officers (THPOs) from the consultation process for individual projects. This part of Section 106 is core to its purpose and part of why it was established in the first place. Moreover, these entities have certain authority and responsibilities granted through the National Historic Preservation Act of 1966, as amended (NHPA) and the Section 106 regulations (36 CFR Part 800) which would be eliminated under this policy without consent.

By removing SHPOs and THPOs from project consultation almost entirely, resources will not be identified and protected until it is too late in the process. As a case in point, extensive indigenous human remains were discovered during ground disturbance for an affordable housing project in Flint, Michigan, necessitating a pause to the project and consultation with Tribes. Similarly, a routine sidewalk and streetscape improvement project in Rochester, Michigan uncovered human remains and necessitated similar work stoppages and additional consultation. These are projects that went through the standard Section 106 review process by the SHPO with pre-project consultation. We hate to think what would have happened both for the projects and the cultural resources themselves had the SHPO not been consulted in and protocols for unanticipated discoveries discussed in advance for these projects. Instead of avoiding delays, the proposed Program Comment would prompt delays in project completion.



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michigan.gov/shpo • (517) 335-9840

The Program Comment mistakenly assumes that if federal agencies run into a Section 106 issues or adverse effects that SHPO would be able to move quickly to engage in consultation. Without SHPO awareness of projects at the earliest stages, our own capacity makes it hard to move expeditiously when we must get up to speed on the whole project. Finally, the lack of local stakeholder involvement is concerning because both states and local communities, including those with established local historic district laws, should always have a say in what they value as part of their local history when it comes to the use of taxpayer dollars. Indeed, this is the fundamental reasoning behind the NHPA which this Program Comment would bypass. The proposed Program Comment, by eliminating public, SHPO and THPO consultation, will lead to negative outcomes and longer timelines.

Concern with Federal Agency Capacity and Lack of Expertise:

While the Michigan SHPO supports exempting certain types of undertakings or work items from Section 106 review (installation of water heaters or grab bars, etc.), this Program Comment takes broad strokes to exempt certain types of projects from full Section 106 review. In fact, we estimate that given the poorly defined categories subject to this policy, this proposed Program Comment could impact as many as 60-70% of the projects reviewed by the Michigan SHPO. Almost any project we see could be constructed to cover climate, housing and transportation. This would include major highway developments and lengthy oil and gas pipelines burrowed under our Great Lakes. Moreover, it does not allow for necessary expertise to identify historic properties in the first place, a necessary component of the Section 106 regulations.

This Program Comment is predicated on the ability of federal agencies to access adequate data regarding historic resources when there is no evidence to suggest that this will be widely available. In the case of Michigan, we are working to develop an online database of identified historic properties, but after years in preparation, this will not be available until 2025. Moreover, the resources listed in the database will not be exhaustive. Identification of historic resources is a continuous process, and the Michigan SHPO is constantly working with qualified professionals to identify previously unknown resources. We have serious concerns that without the aid of qualified professionals and in the absence of SHPO and THPO consultation, archaeological sites, potential Traditional Cultural Landscapes and Properties (TCL/TCPs) and buildings from the recent past, to name a few, will be overlooked and therefore inadvertently impacted if this policy is implemented. It is notable, furthermore, that reliance on existing data, as this Program Comment would do, will undermine the under-resourced, disadvantaged and underrepresented communities throughout the United States that do not have adequate resources to conduct surveys and collect data on historic properties.

In our experience, even with the Section 106 review process decades old, few federal agencies are invested in historic preservation and live up to the ideals outlined in the NHPA. The proposed Program Comment will only further weaken their engagement. For example, the U.S. Department of Housing and Urban Development (HUD) with its decentralized financing structure that filters down into local governments and non-governmental organizations, has particularly struggled with Section 106 compliance over the years. Without expertise in the historic preservation arena, how will the varied agencies and responsible entities comprehend what they are looking at in terms of historic significance? As noted, existing data is frequently not sufficient to guide them.

Similarly, the process for determining exemptions appears to be complicated and hard to understand. Federal agencies will likely not know how to clearly interpret these guidelines and will cause confusion and misunderstandings. It is also not clear how the Program Comment will engage with state and local laws, such as local historic district ordinances, that are intended to protect historic properties. In the case of HUD, an especially “hands-off” agency, who will interpret these guidelines? The central agency? The local government? How will this impact HUD’s entitlement communities that statutorily act on behalf the federal agency? With the ongoing compliance issues we regularly see in Michigan, we find it hard to believe that small local governments or local housing agencies will be able to fully understand these proposed new guidelines. Just at a time when we have created strong relationships with housing partners and instituted efficient processes, now we must introduce a whole new layer of confusing bureaucracy to analyze, interpret, and implement. We foresee that this is bound to result in conflict, mistakes and likely delays.

The proposed Program Comment will create additional confusion about how, when, and where Section 106 is required. Confusion will ultimately result in longer review times. To echo NCSHPO’s comments, this Program Comment should have more precise definitions and a more focused scope. There also needs to be increased accountability on the part of federal agencies in the form of broader reporting obligations and better-defined qualifications standards.

State and Regional Differences in Approach:

This Program Comment does not account for state and regional differences in the challenges projects face. Flooding from hurricanes along the United States coastlines is wholly different than flooding around the Great Lakes for example. Michigan alone has weather extremes, with heavy snows in the Upper Peninsula and flash flooding around the numerous rivers across the state. A one-size-fits-all approach does not account for these differences. The use of a Programmatic Agreement at the state or even regional level would help to account for those differences and create review pathways that are clear and tailored to those conditions.

Overlooking Archaeology:

The proposed Program Comment fails to recognize that ground “disturbance” is highly contextual and requires archaeological and tribal expertise to determine if disturbances have the potential to compromise the integrity of buried sites or traditional cultural landscapes and places (TCL/TCP). Eliminating the subject matter experts from consultation will result in significant negative affects to below-ground archaeological resources and traditional cultural landscapes and places (TCL/TCP).

As written, the Program Comment does not acknowledge TCL/TCPs and could result in unmitigated destruction, and devastation to elements that often comprise TCL/TCPs such as water, shorelines, archaeological sites and other cultural resources, flora and fauna, and natural features. If implemented, we also anticipate a significant increase in the number of inadvertent discoveries along with the destruction of archaeological sites.

SHPOs, THPOs, and descendant communities are the regional experts and repositories of data for our respective states and Tribal Nations, and as such are aware of essential contextual information for understanding the nature and complexity of archaeological resources and TCL/TCPs. The proposed Program Comment has a top-down and ethnocentric perspective that fails to recognize the localized and community-based nature of heritage knowledge that SHPOs have accumulated from decades of stakeholder collaboration.

The exemptions for ground disturbance in the proposed Program Comment impose a one-size fits all approach that does not recognize the importance of situational contexts in predicting the archaeological and cultural sensitivity of an undertaking. For example, conventional wisdom suggests that urban settings and previously disturbed rights-of-way have highly disturbed soils and lack archaeological integrity. However, we can cite numerous significant examples, within the last decade, of how this perspective is misleading and is often proven incorrect when an unanticipated discovery of human remains or archaeological sites occur.

Unfortunately, archaeological sites and human remains are relatively routinely uncovered in “previously disturbed” areas and rights-of-way throughout Michigan and elsewhere in the U.S. Likewise, our urban communities have a rich and important history that would be ignored without careful assessment of local contexts that might otherwise be deemed “disturbed”. Whether or not an undertaking occurs in “previously disturbed” ground is often best defined and assessed by archaeologists and tribal knowledge keepers. The bottom line is, that only through the knowledge and expertise of SHPOs and THPOs, can ground disturbance and cultural sensitivity be appropriately evaluated.

To illustrate our perspective, we would like to share the recent revitalization of the Douglass Homes Project in Detroit. In brief, in 2012 the Detroit Housing Commission sought to demolish the Douglass Homes towers and redevelop the land using Department of Housing and Urban Development (HUD) funds. The Brewster-Douglas housing projects were the first example of urban renewal in the United States, which meant that they were historically significant, in their own right. However, the Douglass housing project was built on top of the late nineteenth century Jewish and African American neighborhood known as Paradise Valley. Due to this complex history of underrepresented communities, the redevelopment project required careful assessment and consultation with numerous stakeholders to ensure an appropriate level of identification and evaluation of historic properties. The resulting archaeological project recorded 11 archaeological sites that tell the stories of both Jewish and African American communities in Detroit. This project illustrates the role, and importance of consultation in the Section 106 process to create a successful balance between preservation and development. This project is just one of many examples that demonstrates that urban spaces traditionally considered low sensitivity or disturbed have the potential for significant cultural resources

Conflicts with Federal and State Tax Credit Projects:

The proposed Program Comment conflicts with the Secretary of the Interior’s *Standards for*

Rehabilitation required for tax credit programs. This will be particularly problematic for tax credit projects that are also using federal funds. Moreover, we foresee the possibility of extensive federally-funded work on historic properties that would have to be undone in the course of executing a tax credit project. This would ultimately create confusion and a tremendous waste of taxpayer funding. The *Standards* have been effective for decades and should be uniformly applied.

Lack of Push for Federal Agencies to use Programmatic Agreements:

The ACHP has stated that review timelines have been an issue for federal agencies working through the Section 106 process. From our perspective there are other ways to address timeline concerns if the ACHP would push for federal agencies to establish Programmatic Agreements (PA) with SHPOs across the country. Our office has invested thousands of hours into developing PAs that work for our state, federal agencies, local agencies, and communities. PAs have proven to be extremely successful at streamlining Section 106 review and promoting responsible development in harmony with historic preservation. The Michigan SHPO has successfully executed many PAs which work well for transportation projects and housing. These PAs allow federal agencies and their delegated authorities to complete 90% of project reviews internally. It has also allowed these agencies to prioritize reviews as priorities shift and change.

For example, our 2022 PA with the Michigan Department of Transportation (MDOT) and Federal Highway Administration (FHWA) included all 12 of Michigan's federally recognized Tribal nations and 38 Federally recognized Tribes from other states outside Michigan, as well as the public in the consultation process. The PA established excepted projects, developed an early coordination process with tribal governments, established protocols for inadvertent discoveries, and established cultural resource staff within MDOT to conduct reviews for both trunkline and local area projects. This PA took more than two years to negotiate with these numerous stakeholders and in the two years since its implementation it has proven to streamline FHWA projects in the state of Michigan.

Another extremely successful PA was signed in 2022 with the Housing & Revitalization Department for the City of Detroit and the U.S. Department of Housing and Urban Development (HUD) for housing projects within the City of Detroit. This PA included the public, numerous state and local stakeholders, and seven Tribal nations in the consultation process. The PA has streamlined Section 106 review for all federal, state, and local agencies involved and is responsible for, in part, why the Housing Resources Department for the City of Detroit hired a fulltime archaeologist earlier this year.

The proposed Program Comment attempts to supersede existing PAs and will undermine the relationships that our office has cultivated with federal agencies, THPOs, local governments, and organizations in the negotiation of successful PAs. Moreover, it does not provide any mitigation for adverse effects to historic properties, whereas PAs do. We encourage the ACHP to explore ways to engage federal agencies in getting them to understand the benefits of a PA so that this tool can be better utilized.

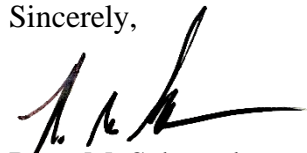
Conclusion:

While the Michigan SHPO supports building further simplicity and efficiency into the Section 106 process, this should not be at the expense of irreplaceable cultural resources. The ACHP has not built a strong case for why this proposed Program Comment is necessary. Anecdotal accounts about process delays and stoppages due to conflicts related to the Section 106 review process are no substitute for actual data that would demonstrate the need for this policy.

Moreover, we cannot forget that the NHPA was enacted in the shadow of rampant highway and so-called urban renewal development that had wiped out entire neighborhoods of historic significance. Section 106 was designed to treat all federal undertakings with the same, consistent approach, regardless of federal administrative priorities, social trends, or policies around development. This sets a very dangerous precedent whereby historic preservation concerns may be set aside for the latest administrative priority without careful consideration to impacts to irreplaceable historic resources. What may be favorable now could be overturned and subject to different priorities with another administration.

Section 106 was never intended to stop projects, but rather to adequately consult and consider alternatives to avoid impacts to historic properties. If the ACHP's goal is to streamline Section 106, we respectfully suggest that the way to accomplish this is to 1) ensure SHPOs and THPOs have appropriate funding to fully staff offices, 2) encourage agencies to work with SHPOs and THPOs to develop PAs that are appropriate for our states and regions, and 3) educate federal agencies of their responsibilities under Section 106 and ensure that they employ SOI qualified staff. We concur with NCSHPO in that this proposed Program Comment should seek to harmonize, not subvert historic preservation, with other policy goals.

Sincerely,



Ryan M. Schumaker
State Historic Preservation Officer
Michigan State Historic Preservation Office

CC: Martha MacFarlane-Faes, Michigan SHPO
Scott Slagor, Michigan SHPO