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September 27, 2024

Sara C. Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001-2637

Dear Chair Bronin:

Thank you for the opportunity to comment on the Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities [Program Comment].

The need to create affordable housing and to adapt to a changing climate are pressing national needs. No one – and certainly not State Historic Preservation Offices [SHPOs] that are at the front lines confronting these issues on a daily basis – would dispute this. However, the proposed Program Comment fails to balance the pursuit of these policy goals with the values and benefits of historic preservation. In fact, it implies that historic preservation and the Section 106 process are a hindrance to achieving these broad policy goals without any evidence to support it. The Maine Historic Preservation Commission takes exception to this assertion. We also submit that the Program Comment fundamentally undermines important principles of the National Historic Preservation Act.

Sweeping in its scope, the proposed Program Comment exempts from Section 106 review a broad range of activities that are carried out by multiple federal entities and their designees with little to no consultation with or involvement from SHPOs or the public. It permits a decision-making process among federal entities and their designees that lacks transparency; establishes reporting requirements that are limited in scope and duration; and severely constrains the ability of SHPOs and other interested parties to raise concerns or seek recourse.

Among other shortcomings, the Program Comment focuses on the preservation of the primary facades of buildings, while largely dismissing the architectural relevance of secondary elevations. In addition, the Program Comment introduces the concept of “minimal adverse effects” which is not defined here and does not exist in the Advisory Council on Historic Preservation’s [ACHP] regulations; it does not discuss mitigation; and it has a duration that is not consistent with guidance provided by the ACHP for other program alternatives that the Maine SHPO has recently been party to.

Maine’s inventory of historic properties (both archaeological and above ground) is not by any means comprehensive. In addition, other potential sources of information such as town assessor’s records are – at least in Maine – notoriously inaccurate in the dating of older buildings. Since most federal agencies and designees with whom we interact (particularly those

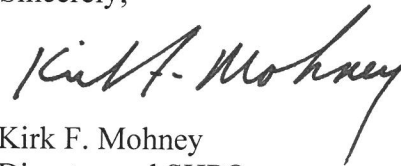
engaged in housing related activities and climate smart building related activities) lack the professionally qualified staff to determine if an historic property is present in a project's area of potential effect, they rely on our staff to do that. Furthermore, in our experience very few federal agencies (let alone its designees) have access to a "qualified authority" who possesses the knowledge of local and statewide patterns of history and architectural history to make decisions about significance without consulting the SHPO. In Maine, if the SHPO is removed from the consultation process, it is highly likely that historic properties will be adversely impacted by well-meaning but ill-equipped agencies and individuals.

Maine's programmatic agreement (PA) for transportation related activities and the supporting standard operating procedures prepared by the Maine DOT lay out a detailed and predictable process for implementing Section 106 that involves the SHPO pursuant to Section 101(b)(3) of the National Historic Preservation Act and the Council's regulations in 36 CFR Part 800. This PA has streamlined the Section 106 process for a broader group of transportation related activities than those identified in the proposed program comment. Allowing the Program Comment to be used at the federal agency's discretion instead of the existing PA will introduce confusion and inconsistency in the planning of transportation projects in Maine. For this reason, we urge the ACHP to eliminate the program comment's applicability to so-called climate friendly transportation related activities.

The Maine SHPO supports efforts to reduce its Section 106 workload by entering into agreements in accordance with the provisions of 36 CFR Part 800.14. However, we also believe that the statutory role of the SHPO to represent a state's interests in protecting its historic properties must be acknowledged and respected. The proposed Program Comment does not do that. Therefore, we recommend that the ACHP step back from its proposed action, and initiate the process outlined in its own regulations to engage with SHPOs, the NCSHPO and other interested parties to develop a program alternative that balances the goals of historic preservation with those of addressing housing and climate resiliency.

In closing, it is ironic that the ACHP would characterize the work of SHPOs and THPOs as "the backbone of preservation activity in the nation..." (Letter to Chairs and Ranking Members of the Senate and House committees on appropriations regarding the FY 2025 HPF appropriation dated August 24, 2024) and yet propose a Program Comment that largely sidelines us.

Sincerely,



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Director and SHPO
Maine Historic Preservation Commission