



3330 Pacific Ave. Suite 202C  
P.O. Box 1011  
Virginia Beach, VA  
Phone (757) 802-4141  
[director@napcommissions.org](mailto:director@napcommissions.org)  
[www.napcommissions.org](http://www.napcommissions.org)

October 4, 2024

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

Re: Comments on ACHP's Draft Program Comment on Accessible, Climate Resilient,  
Connected Communities

Dear Chair Bronin,

The National Alliance of Preservation Commissions (NAPC) appreciates the opportunity to provide comments on ACHP's draft Program Comment on Accessible, Climate Resilient, Connected Communities. [NAPC's Core Values and Principles](#) Statement recognizes that preservation policy must adapt and respond to change. Our previous participation in the development of the ACHP policy statements underscores the critical role that historic resources and existing buildings play in meeting affordable housing and climate action goals.

We also want to extend our thanks for your participation in our webinar on September 19 to discuss the draft Program Comment. This issue is clearly of interest to our members, as the webinar received 300 registrations and 190 participants.

The NHPA was enacted in recognition that historic places were being lost or irreversibly altered, and to ensure that preservation serves the public interest. For this reason, the establishment of SHPOs, CLGs and local government engagement in Section 106 is specifically designed to provide the public and the historic preservation community with a meaningful voice in federal undertakings. This balance— between addressing societal needs and ensuring those most directly affected by federal actions have input—is fundamental to the intent of the NHPA.

Generally, local commissions and staff participate in the Section 106 process by applying local knowledge and data to help identify historic or eligible cultural resources, communicating any additional requirements for the project as a result of local regulations, and participating in the development of mitigation strategies when applicable. The process also fosters collaboration among stakeholders, including local preservation program staff, commissions, and advocacy groups.

We appreciate the initiative that ACHP has taken to evaluate policies and practices in the areas of housing, clean energy, energy efficiency, and climate-friendly transportation. These projects often impact communities that have been underrepresented and marginalized, and who have witnessed the loss or adverse impacts to historic resources that represent their history and heritage. One of the critical roles of local stakeholders in the Section 106 process is to ensure that the voices of these underrepresented and marginalized communities are heard. In some instances, Section 106 is their only opportunity to engage in projects that impact cultural resources within their community. Granting federal agencies the authority to unilaterally make decisions on broad categories of federal undertakings without the input of these local voices risks undermining the foundation on which historic preservation is built – public interest and the public’s trust that they are guaranteed a voice through the process.

Furthermore, in listening to concerns from our members, we do believe the proposed Program Comment will likely have the unintended consequence of creating conflict with the local review processes. For example, while most local preservation programs allow for flexibility for non-visible facades, they are often still subject to local review and approval. There may still be requirements to preserve character-defining features on non-primary facades. Federalized projects that are also subject to local review are often coordinated between cities and SHPOs. Without the combined guidance from SHPOs, local governments may be pressured to approve certain scopes that go against locally adopted policy.

These conversations are critical to ensuring that the Section 106 process results in timely and predictable outcomes. However, the Program Comment, in its draft form, is far-reaching and will exempt an unknown volume of undertakings from the Section 106 process altogether.

### General Comments / Concerns

- More broadly, NAPC is concerned that the proposed Program Comment sends a message that historic resources and regulatory processes designed to inform decision-making about the treatment of historic resources are an obstacle to achieving the common goals we all share around affordable housing, climate action, and sustainable growth in our communities.
- NAPC shares concerns about the process of developing this Program Comment. These concerns about the process are referenced in a letter submitted to the Council on behalf of a Preservation Partners cohort group of national preservation organizations. This proposed Program Comment is unique in its conception, design, and scope, and will likely set a precedent for future ACHP actions
- Program alternatives are recommended for routine projects that are not likely to adversely impact historic resources and go through a vetting process with identified stakeholders prior to execution. The scale and scope of this nationwide Program Comment, which will be applied to a wide range of property types in different regions, presents a high potential for adverse effects. This is contrary to the purpose and spirit of program alternatives.
- The proposed Program Comment would authorize federal agencies to determine their applicability to a project without any further consultation or notification to SHPOs or stakeholders. This includes alterations to non-primary facades which would normally be subject to Section 106 review. There would be no process to ensure that alterations

conform to the SOI Standards, including the removal or demolition of character defining features.

- Local stakeholders would not be engaged in undertakings that are permitted under the Program Comment and that historic resources, especially those that are not yet identified or listed in the NRHP, could be adversely impacted. Because there is no notification requirement in the Program Comment, irreversible damage or destruction of cultural resources could occur. Potentially, this could have a proportionately larger impact on historic resources in underrepresented communities and other areas where prior survey and designations have not been done.
- Local preservation programs and policies have been developed over time to reflect community values and goals. In most cases, local policy follows the general guidance provided at the federal level. Despite the fact that case history has long upheld the regulations enforced by local governments, local staff, commissions, and other stakeholders are often left to defend their programs and face accusations of NIMBYism and obstruction. While sound preservation policy is proven to support the common goals of housing and climate action, preservation is too often cited by developers as yet another regulatory barrier to achieving those goals. NAPC is extremely concerned that the proposed Program Comment perpetuates rhetoric that historic preservation is somehow a barrier to smart growth and sustainable development.
- Identification of cultural resources and formation of determinations of eligibility for potentially impacted properties is fundamental to the Section 106 process. This also provides an opportunity for local communities to gain critical survey data which informs their own programs. Local designations likewise often support eligibility determinations and those properties are treated as historic resources under Section 106. Lack of identified cultural resources is common in underrepresented communities that have historically experienced disinvestment, so elimination of determinations of eligibility creates a missed opportunity as new, federally-funded projects come forward in these communities.
- Studies show that investing in our historic and existing building stock plays a critical role in achieving climate readiness by reducing embodied carbon emissions and reliance on new materials. The Secretary of the Interior's Standards include guidelines for energy retrofit and weatherization that allow for smart, proven strategies that reduce the operational load of older buildings and offer solutions that are both environmentally sustainable and respectful of our heritage resources. Instead of eliminating reviews for certain scopes, a new policy from the ACHP should streamline the process for employing recommended energy retrofit and weatherization strategies. Local communities should adopt similar guidance for the treatment of locally-designated properties.
- In 2023, ACHP released its policy statement on Housing and Historic Preservation. The policy states: "Federal, state, Tribal, and local governments to expedite development of housing projects through efficient and effective permitting processes and environmental reviews while still ensuring full consideration of potential impacts to historic properties... However, potential adverse effects to historic properties must be carefully addressed, whether they be physical or visual impacts to historic properties from new housing construction or effects to the historic qualities of historic buildings that are being rehabilitated. It also is important that actions not be taken that result in the damage or destruction of historic properties prior to applicants seeking tax credits and government

funding, and prior to agencies completing environmental review.” NAPC supports the development of program alternatives that provide for informed flexibility in the treatment of historic properties related to housing projects. The proposed Program Comment does not ensure that adverse effects are avoided.

### Specific Recommendations to Draft

- NAPC generally supports the inclusion of the majority of the identified scopes including solar installation. NAPC does not support the following scopes to be permitted under the Program Comment:
  - SITE WORK – Any ground-disturbing activity unless the definition for Qualified Authority is updated to include expertise in archaeology consistent with the SOI Professional Qualification Standards.
  - BUILDING EXTERIORS – Entire building exteriors should remain subject to Section 106. If the ACHP continues to include non-primary facades in the Program Comment, we do not support window / door weatherization and substitute materials that involve removal or replacement of original or character-defining features or materials regardless of facade location or visibility. The Program Comment should be updated to eliminate potential conflict with the SOI Standards for Rehabilitation and applicable guidance from NPS.
  - WORK ON GROUND SURFACES – Any activity unless the definition for Qualified Authority is updated to include expertise in archaeology consistent with the SOI Professional Qualification Standards. This is necessary to understand the extent of previous ground disturbance and likelihood of adverse effects on significant below-grade features.
  
- NAPC strongly recommends a revision to the definition of housing in order to support the preservation and production of affordable housing. The current definition makes no mention of affordability and allows the Program Comment to potentially apply to any undertaking that involves at least one unit of housing, regardless of ownership or affordability. NAPC recommends that the Program Comment be revised to apply only to low-income housing as defined by HUD (affordable to households with income levels that are at or below 80% of the area median income of the project area.)
  
- NAPC strongly recommends the incorporation of a notification by the relevant federal agency to SHPOs and relevant local government staff or commissions of any intent to utilize the Program Comment for a project at the beginning of the process. This would give the local government an opportunity to identify and communicate any local requirements or adopted policies that must also be considered in the project scoping. It would also provide the basis for potential dispute resolution as provided for in the draft Program Comment.
  
- NAPC strongly recommends that the proposed annual reporting requirement be expanded and made publicly available for review and comment to understand how the Program Comment is being applied. This will also give stakeholders a chance to understand whether outcomes have resulted in unmitigated adverse effects to historic resources. This information should be organized by state / region / county / municipality and should be made available to relevant SHPOs and local government staff or commissions. Otherwise, individuals would need to sort through the entirety of a federal agency’s report to find undertakings pertinent to their specific region or location. Instead of example projects, all

scopes (and their outcomes) permitted under the Program Comment should be included in the reports.

- NACP asks that more clarity is provided regarding the installation of *Clean Energy Technologies* and *Community Solar Systems*. It is unclear how supporting infrastructure, such as power lines or substations, would be considered. These types of infrastructure projects have the potential to adversely affect cultural landscapes and the scenic quality of historic sites. NACP asks that language be added so that such systems would be excluded from the Program Comment when located in local historic districts, which are often considered eligible for NRHP listing, or in locations where a setting or viewshed is a defining characteristic to a listed or eligible resource.
- Due to the unprecedented nature of this endeavor, NACP strongly recommends the policy be treated as a limited pilot with a much shorter term to allow for frequent evaluation and improvement. Annual meetings, reporting, and coordination with SHPOs are critical to implementing the program comment in the long term.

Thank you for considering these comments. Because of the volume of comments that ACHP will receive, NACP recommends that a subsequent draft be made available for public comment. We also ask that comments and ACHP responses are accessible to the public and that ACHP allow time for additional stakeholder engagement prior to potential implementation.

Sincerely,

A handwritten signature in black ink, reading "Abbey Christman". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Abbey Christman  
Chair, National Alliance of Preservation Commissions