



October 8, 2024

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

Subject: Comments from the South Carolina State Historic Preservation Office on the
Draft Program Comment on Accessible, Climate-Resilient, and Connected
Communities

Dear Sara Bronin:

Our office is providing comments on the Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities dated 8-8-2024 proposed by the Advisory Council on Historic Preservation (ACHP) to cover multiple agencies and funding programs. Our office participated in the online public engagement meeting held September 11, 2024 and appreciate the overview and background provided.

As previously stated, our office supports efforts to streamline Section 106 review for undertakings where there is little likelihood to affect historic properties, and to standardize treatment measures when adverse effects are present for certain classes of undertakings. However, we find the process outlined in the draft to raise a number of questions that we have outlined below. General observations and questions on the overall concept of the Program Comment are followed by more technical comments.

General Observations

Are other federal project reviews for these type of projects, such as the National Environmental Policy Act, being similarly revised concurrent with this effort? Modifying Section 106 review, without similar streamlining of other reviews may not provide for faster project delivery times, and could have the effect of removing preservation's input to improve project outcomes. For example transit projects can have significant footprints and with Section 106 review these would be compatibly designed. Without it, these projects have the potential to disrupt historic neighborhoods and districts. We support the suggestion by others to remove transportation projects from the Program Comment and focus on housing projects.

If historic preservation advocates are relinquishing reviews with the goal of streamlining, what are we negotiating to gain? For example, our office too often sees federal funds (CDBG, other HUD funding, etc.) used to demolish older buildings, often in a scatter shot fashion. Over time these neighborhoods lose significant numbers of what could have been viable housing units. As you recently said in a recent Chicago Tribune opinion piece “from an environmental perspective, demolition of existing buildings is among the most carbon-intensive things we can do”. Tying use of the Program Comment to an agency’s commitment to not fund demolitions of older (50 years, 75 years) buildings could be a positive gain. Without this type of commitment, we are concerned that the pattern of demolition of older buildings will continue, along with an accelerating loss of historic building materials (see next paragraph).

The exemptions in the Appendices allow for the removal of a significant amount of historic interior and exterior building material. The more historic materials removed and the more new materials introduced, the less are the benefits of the “embodied carbon” in historic buildings. For example, the energy efficiency building envelope projects could allow replacement of millions of repairable historic windows with new units made of vinyl or other unsustainable materials of incompatible design and less durability, significantly altering the character of historic buildings.

If the Advisory Council hopes to prioritize faster review times for Section 106, we urge advocacy for better funding for federal agencies and SHPOs to have adequate staffing levels to handle consultation. (For example, a funding agreement with our state department of transportation allows us to hire dedicated staff for those reviews, resulting in much shorter review times for transportation projects.) Our average response time for all requests last year was 18.2 days, up from the previous year because of an increase of nearly 400 projects and no additional staffing resources.

Oversight and monitoring of the Program Comment will be critical to ensure that agencies and applicants are using as intended. We noted several mechanisms for raising concerns and offer the following comments.

- VI. Dispute Resolution states that any person may file a dispute by filing notice with relevant federal agency including the FPO, THPO, SHPO and that the federal agency is required to consult for not more than 60 days. Placing the burden of enforcement on members of the public can be problematic, as they often don’t know when a federal agency or funding is involved in a project. How would they or even SHPOs know about the federal involvement? We have limited staff capacity to research projects and to file disputes. And for the public, how would they know to follow this process? This dispute process also has the potential to be a burden for agency Federal Preservation Officers, will they get more staff?
- If disputes are not resolved then federal agency “may” forward to ACHP for advice, take comments into account. We believe “may” should be “shall”. Also, in our experience we don’t always get resolutions when we have raised concerns with federal agencies, again likely due to their significant workloads.
- X. Reports and Meetings requires federal agencies using the Program Comment to provide annual reports. In addition to examples of projects, we recommend that agencies track and provide numbers of projects that were exempted from review. Ideally each

project would have a name, address, type of project, source of federal funding (program and/or agency), and date of decision to apply the Program Comment. This would allow the ACHP to document the scope and effectiveness of the Program Comment rather than relying on anecdotal stories. And if agencies don't provide appropriately detailed annual reports by the due date, should that mean they can no longer use the Program Comment? The ACHP should make the annual reports available to the public, SHPOs, THPOs, and the public on the ACHP website.

To help with ACHP's oversight, we recommend that agencies proactively sign on to the Program Comment. This would serve at several purposes:

- Provide an opportunity for the ACHP to provide training to the agency FPO and other agency staff on how to apply use the Program Comment (see next paragraph).
- Let ACHP know who to expect annual reports from.
- Make a list of the federal agencies publicly available on ACHP website with contact information.

Finally, we urge the ACHP have a much more robust ability to provide training and support to federal agencies and their staff on how to apply and use the Program Comment if adopted. In our experience the existing ACHP training, while excellent, only reaches a small number of individuals who are involved in Section 106 review. Online, on-demand training that is widely accessible and required would be critical to the implementation and use of the Program Comment. Does the ACHP plan to hire staff to focus on helping federal agencies implement the Program Comment?

Technical Comments

We concur with the observation provided by the National Conference of State Historic Preservation Officers that the title of the agreement should focus on types of projects rather than policy goals. Otherwise could someone building a new subdivision use the Program Comment claiming that that the development is providing an accessible, climate-resilient and connected community?

Please provide examples and data to support the statements on page 3 that other program comments "facilitated the preservation and reuse of existing buildings" and "facilitated such projects while upholding historic preservation values". If these are not available please revise the language to make it clear that these are assumptions.

How will agencies treat a project that has some aspects exempted, for example installation of solar panels, but other work that isn't? We assume Section II.E Standard Section 106 Review would be followed, but the language does not make this clear.

Records check – who will do the search and when? The term is used in Appendix A-1 and Appendix B-1, which do not reference a *qualified authority*, which implies anyone could do the records check. The definition does not state who will conduct. Is it the federal agency, applicant, hired contractor or other entity and their staff? Regardless, individuals without cultural resources experience will need training in how to do these searches (and each state has different sources

and levels of available online information), what to look for and how to understand the information. Ideally, a *qualified authority* or qualified professional would be handling these types of searches and determinations.

Character-defining feature - who will define these? The term is used in Appendices A-1 and B-1, which do not reference use of *qualified authority* or *qualified professional*. The use suggests that an agency has someone qualified to determine first, is there a historic property, and second is it character-defining? If it hasn't been previously evaluated, who is to seek a consensus determination with the SHPO?

Qualified authority – while we appreciate the emphasis on including individuals with appropriate expertise in the decision making processes, we have a number of questions about the roles of the qualified authority, how they will interact with the federal agencies, and who has oversight over decisions made by a qualified authority? Is it anticipated that the qualified authority is someone outside of the federal agency? Agency staff? CRM consultants? Others? Appendix B-2, section 2.c requires the assistance of a qualified professional as needed, who decides if needed?

Determinations of eligibility (DOE) - how would agencies deal with properties in SHPO inventories where DOEs have been made by SHPO and did not involve a federal agency, i.e. determinations made by SHPOs during grant funded surveys, due diligence reviews, federal and/or state tax reviews, or through responding to a constituent? Can the federal agency include these or not? (See Appendix A-1, Section 2.a for an example.) The language in the Program Comment suggests not, and that determinations must have been made by the federal agency or another federal agency. (Note: our online database/GIS system does not indicate whether a federal agency was involved in the DOE or not, so it would require research in SHPO files for this answer.)

We are concerned that not requiring determinations of eligibility and limiting the agencies to known historic properties has the potential to allow significant changes to buildings that may be eligible for the National Register, particularly modest vernacular buildings whose appearance belies the importance of the events or individual(s) associated with the building. Without research or connecting to the local community this significance will remain unknown.

What does the term “historic *housing*” mean? *Historic property* is defined, and *housing* is defined....but historic housing is not. Does this mean older? Does this mean NRHP eligible? We note this phrase used 11 times throughout document. Please add a definition.

Minimal adverse effects – This term is used in Appendices A-2 and B-2. This category is not defined in the Section 106 regulations or the draft Program Comment. We encounter projects where the effects are borderline, but have to make a decision about whether they fit into the no adverse effect category or adverse category. Often through consultation we arrive at a no adverse effect finding with a project modification. If a project causes a “minimal” adverse effect, what will the mitigation be? Some programmatic agreements we have with agencies such as FEMA set forth standard treatment measures for mitigation of adverse effects that do not require the separate MOAs, which help streamline reviews. Has the ACHP considered adding standard

treatment measures to the Program Comment to further help with streamlining when a project has adverse effects?

Appendix A-1 Section 5.d states transfer, lease or sale out of federal ownership with adequate and legally enforceable restrictions or conditions (such as a deed covenant) does not require Section 106 review. Our office has experienced discovering that a deed covenant includes our office, but we had not received prior notification. We strongly encourage federal agencies to identify a local entity to hold these covenants. Please require consultation and notification in these situations whether or not a SHPO will hold the covenant.

Appendix A-1, 2.c.ii – some of these activities have the potential to disturb ground to a greater depth than previous ground disturbance. For example drainage improvements could include excavating an underground stormwater storage system to hold thousands of gallons of stormwater to a depth far below previous disturbance. In urban areas in particular this could disturb important archaeological resources.

Thank you for the opportunity to provide these comments on the draft Program Comment. If you have any questions or would like more information please contact me at ejohnson@scdah.sc.gov.

Cordially,



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