



October 2, 2024

The Honorable Sara Bronin, Chair  
Advisory Council on Historic Preservation  
401 F. Street, NW, Suite 308  
Washington, D.C. 20001

**Re: Proposed Advisory Council on Historic Preservation Program Comment for Accessible, Climate-Resilient, and Connected Communities**

The Society for Historical Archaeology (SHA) appreciates the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) proposed program comment for Accessible, Climate-Resilient, and Connected Communities (August 8, 2024). Formed in 1967, the Society for Historical Archaeology is the largest scholarly group concerned with the archaeology of the modern world (A.D. 1400-present). The main focus of the Society is the era since the beginning of European exploration. SHA promotes scholarly research and the dissemination of knowledge concerning historical archaeology. The Society is specifically concerned with the identification, excavation, interpretation, and conservation of sites and materials on land and underwater.

The SHA agrees with the ACHP's effort to streamline Section 106 compliance for undertakings related to making communities accessible, climate-resilient, and connected. The SHA, however, has major concerns about the proposed program comment. First, many of the listed activities that require no further review have the potential to impact significant archaeological resources. Second, statements on the qualifications of agency personnel making decisions about which of the listed activities are not subjected to further review are extremely problematic. Finally, because of all of the problems and issues associated with the proposed program comment, we strongly recommend that the ACHP withdraw this program comment and consider alternative approaches to streamline reviews of undertakings associated with making communities accessible, climate-resilient, and connected communities. These alternative approaches, which we discuss below, are more in keeping with the consultative mandate of the National Historic Preservation Act (NHPA) and Section 106 of the Act. The following are our specific comments on these concerns.

**Page 6, Section II E.3.a**

This section appears to suggest that the Section 106 review process must be followed when an activity only involves the listed units of the National Park system. The requirement to follow the standard Section 106 review process, however, should be applied to all units, such as those designated as National Parks, National Seashores, National Recreation Areas, and units that are national trails. As all National Park units contain cultural resources, especially archaeological resources, the distinction currently listed in the program comment appears arbitrary and will introduce complications in the application of the program comment.



**Page 8, Section III C**

This section of the program comment should have explicitly referenced Secretary of Interior (SOI) professional qualification standards for archaeology given the number of times the program comment includes statements on assessing whether or not there is previous ground disturbance within the location of an activity. Decisions on whether or not there is previous ground disturbance must be made by an SOI-qualified archaeologist.

**Page 10, Section V A. Immediate Response Requirements**

This section on Immediate Response Requirements references 36 CFR § 800.13(b) only in the context of sites with potential religious and cultural significance to Indian Tribes or Native Hawaiian organizations (NHOs). There is no reference to inadvertent discoveries of archaeological sites that are not of potential religious and cultural significance to Tribes or NHOs.

**Page 21, Appendix A-1.1.a**

No. 1. Site Work states:

The following activities do not require further Section 106 review when conducted in areas adjacent to or on the same lot as *housing*..”

Followed by:

a. *Rehabilitation, replacement, installation, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance...*”

This statement is very problematic. There is no discussion on who is qualified to determine if an activity exclusively affects previously disturbed ground. This lack of specific reference to the qualifications of a decision maker is also lacking throughout the list of activities included in this appendix and subsequent appendices. All decisions on whether or not an activity is located within previously disturbed ground must be made by a “qualified authority” that meets the SOI professional qualifications standards for archaeology. If a non-qualified individual is making these decisions, there is the potential that archaeological resources will be discovered during project implementation, which will result in stopping work in the area of the discovery, delaying the project, and also increasing project costs.

**Page 22, 1.c**

This section states:

vi. *Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.*

The inclusion of the last two “or” statements is problematic. Depending on the location and context, there is the potential for archaeological resources within 10 feet of existing paved areas and within 10 feet of a building no matter the age of the building. Again, a decision as to whether or not these types of activities should be exempt from further review must be made by a qualified authority who is an SOI-qualified archaeologist.



**Page 24, 3**

Item “b” under No. 3 states:

“b. *Rehabilitation, replacement and installation* of any of the following elements, in any location other than the locations identified in Section 3.a. of this Appendix, if such activity does not result..”

Does this statement mean no review is required if an activity is within the interior of a historic building and involves the elements listed below this statement? If these elements occur below the flooring of a historic building, there is the potential for significant historic archaeological deposits and there may be no way of knowing if the soils below a floor are previously disturbed or if intact archaeological deposits are present without a review, again, by an SOI-qualified archaeologist.

**Page 28, Appendix A-2**

Under No. 1 Site work, are the following statements:

The following activities do not require further Section 106 review when conducted in areas adjacent to *housing* or on the same lot as *housing*, after the satisfaction of the identified conditions, exclusions, or requirements:

a. *Replacement, installation, or removal* of any of the following elements which are either less than 45 years old and create new *ground disturbance* in previously undisturbed soils, or 45 years or older; if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*; or if the *area of potential effects* has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with *Indian Tribes* and *Native Hawaiian Organizations* without such survey or consultation identifying any *historic properties*:

Again, what are the specific qualifications of the “qualified authority” referenced here? If decisions involve assessing the presence of disturbed or undisturbed soils, these decisions must be made by an SOI-qualified archaeologist. Further, what type of “written determination” needs to be prepared? Is this written determination based on research and consultation of an agency’s and/or state’s archaeological and/or historic site records/files? What happens to the written determination? Who determines if past work in an APE is acceptable – an appropriate SOI-qualified professional? These comments/questions are applicable to all of the sections in this and subsequent appendices that include these types of statements.

**Page 39, Appendix C-1**

No. 4 on Work on Bridges states the following:

The following activities related to a bridge built to serve pedestrian, bicycle, *micromobility vehicle*, or *transit* use do not require further Section 106 review, provided they do not result in the demolition or removal of *potentially historic ground surface materials*; further provided that they exclusively affect *previously disturbed ground* or create no new *ground disturbance*; and further provided that the bridge is: either less than 45 years old and not known after a *records check* to be a *historic property*, or has been determined by the *federal*



agency or another *federal agency* to not be a *historic property* within the preceding ten years:

Our previous comments also apply to the above statement. In particular, the specific statement "...or has been determined by the *federal agency* or another *federal agency*" is too open-ended. Again, these determinations need to be made by the appropriate SOI-qualified professional within a federal agency.

### **Alternative Approaches to the Proposed Program Comment**

The sweeping nature of the proposed program comment ignores the different missions and capacities of federal agencies whose programs would fund, permit, or license undertakings that make communities accessible, climate-resilient, and connected. The majority of past program comments were advanced by a federal agency to address specific issues associated with one or more of their programs. These program comments were customized to the structure, staffing and resources of the federal agency, and balanced the needs of the agency program(s) with historic preservation goals and objectives. This is not the case for the proposed ACHP program comment. As a result, the proposed program comment will result in scattered, uneven, and poorly monitored implementation which will impact significant archaeological resources. Further, the ACHP's top-down approach to advancing the proposed program comment undercuts the fundamental consultation requirements of NHPA and Section 106.

To more effectively streamline these federal undertakings, while also complying with the consultation requirements of NHPA, the ACHP should work with specific federal agencies to develop nationwide or state-specific programmatic agreements that are customized to an agency's program or programs. These agreements would take into account the staffing and resource capacities of each agency. These agreements would also be tailored to regional and state conditions and circumstances. More importantly, the preparation of these programmatic agreements requires consultation and negotiation with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federal recognized Tribes, and other consulting parties, and also the public. This is a collaborative effort among all parties, as opposed to a top-down approach to Section 106 compliance.

In conclusion, we strongly recommend that the ACHP withdraw the proposed program comment. The SHA would be glad to work with the ACHP to advance a more effective approach to streamlining the review process associated with federal undertakings that make communities accessible, climate-resilient, and connected; an approach that more fully considers input from states, Tribes, and local communities.

Thank you for the opportunity to comment on the ACHP's proposed program comment.

Sincerely,



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President, Society for Historical Archaeology