



**TENNESSEE HISTORICAL COMMISSION**  
STATE HISTORIC PRESERVATION OFFICE  
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October 8, 2024

Hon. Sara Bronin  
Chair  
Advisory Council on Historic Preservation  
[program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)  
Washington, DC

Dear Chair Bronin:

**SUBJECT: Tennessee SHPO Comments on Proposed Program Comment for Program Comment on Accessible, Climate-Resilient, and Connected Communities**

The Tennessee State Historic Preservation Office (TN SHPO) has reviewed the Advisory Council on Historic Preservation's (ACHP) proposed draft Program Comment on Accessible, Climate-Resilient, and Connected Communities (PC). The TN SHPO finds this PC deeply concerning and strongly opposes its implementation for reasons stated within this letter. We urge the ACHP to reconsider this PC as it is against the spirit of Section 106 regulations and the National Historic Preservation Act.

The ACHP's mission is to "promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advise the President and Congress on national historic preservation policy." This PC

- does not promote preservation, treating it as a hinderance to be avoided, rather than a vital planning tool
- dismantles rather than enhances the spirit of 36CFR800 by eliminating consultation and
- promotes the opposite of sustainable use by treating character defining features as ready for the landfill.

The PC does not address the highly successful ways that streamlining efforts have worked in many states like ours. It would effectively undo years of work and consultation that SHPOs, tribes, and federal agencies have used to generate efficient and effective Programmatic Agreements within the framework of Section 106 to address housing and transportation needs. Our SHPO already has PAs with local governments and HUD to streamline reviews for housing that has eliminated the need for review of many projects. In Knoxville/Knox County alone over half of the total HUD projects since 2021 have been excluded from review. We also have effective PAs with FHWA/Tennessee DOT for transportation and the TVA for infrastructure that includes most excluded efforts in the proposed PC and more due to the detailed and specialized focus of each document. The overall efficiency of these documents has allowed the agencies to avoid nearly 3000 reviews in the last two years. Consultation and direct relationships between SHPOs and Federal Agencies foster a greater understanding of the types of local historic resources present in a community (and therefore the types of undertakings that may affect them), allows for consultation with local stakeholders so their input can be considered, and incorporates local voices with specific mitigation that benefits their community when it is determined that some adverse effects are unavoidable.

Rather than working with SHPOs, THPOs, and consulting parties, the proposed PC instead treats Section 106 as a hindrance and strips away the fundamentals of Section 106 consultation. It is harmful and false to paint Section

106 regulations in this light. Our office has made great strides in recent years to improve efficiency in the Section 106 process through the implementation of an e106 system with an internal office workflow and external agency tracking system. For regular Section 106 reviews our average response time is around 48 hours. Section 106 is not the problem that is prohibiting or holding up “our infrastructure and clean energy future.” SHPOs will be glad to work with the ACHP to find areas for improvement and ways to streamline to meet environmental goals, but this PC goes too far without providing clear preservation or environmental benefits.

As you should be aware, Section 106 is a consultative process between federal agencies, SHPOs/THPOs, tribes, local governments, the public, and potential other consulting parties to identify historic resources and assess effects of federal undertakings to historic resources. This PC strips away consultation with SHPOs and others to determine eligibility and assess effects by designating this responsibility to “qualified authorities” without consultation. Who is this “qualified authority”? Is it federal agency staff or a consultant? Pushing the SHPO/THPOs out of the process directly opposes Section 106 regulations. Additionally, this PC allows for “minimal” adverse effects to historic resources without proposing mitigation measures, which again is counter to the spirit of Section 106 regulations and eliminates Step 4 of the Section 106 process. Further “minimal” is a subjective term that could be defined a myriad of ways to fit undertakings under this PC. This is too vague and subjective to be included. Eligibility and effects assessments must be consulted on through the Section 106 process. We are opposed to allowing any activities that may adversely affect a historic resource to be exempted from consultation.

This proposed PC attempts to do too many things within a single document and is both vague and confusingly written. Combining transportation initiatives with the building related initiatives will make this PC more difficult to implement. Additionally, within the building initiatives, Appendix A focuses on a set of resources while Appendix B on a policy goal. The Appendices, the Part 2 Appendices in particular, have so many conditions for undertakings being excluded that is hard to figure out what falls under these exclusions. This confusion will lead to undertakings being excluded under this PC that do not actually fall under it. Additionally, the Appendices use vague phrasing such as “adjacent to” and “near” which are subjective and could be defined in different ways. In trying to fit too much into this document, it is difficult to interpret and would be ineffective and hard to use. We have found that PAs and PCs work best when they are focused and meet specific outcomes.

The TN SHPO strongly advises the ACHP to withdraw this Program Comment as it does not follow Section 106 regulations. Ultimately, the PC completely ignores the role of the SHPO to, “... reflect the interests of the State and its citizens in the preservation of their cultural heritage.” 800.2(c)(1)(i). We have other comments listed below that provide further justification that this PC should be withdrawn and started again with serious consideration of the ACHP’s mission. As the nation’s preservation advocate, the ACHP should only consider a revised PC with

- very clear and explicit exclusions that clearly have no potential to affect historic resources, and
- that the PC be divided to not include such drastically different types of resources and undertakings.

We would be glad to work with your office to develop an effective PC that uses the spirit and existing language of Section 106.

Sincerely,



E. Patrick McIntyre, Jr.  
Executive Director and  
State Historic Preservation Officer

## **Other General Comments on the Body of the PC:**

- The PC lacks almost all of the legal specifying language that is standard for agreement documents.
- This PC appears to allow for the segmentation of undertakings which is typically not permitted in Section 106 as effects must be considered holistically and cumulatively.
- The PC ignores the basic preservation language of the Secretary of the Interior's Standards.
- It is extremely short sighted to treat all federal buildings as if they exist within a downtown commercial block and are only being reviewed by a historic zoning commission. It is not sustainable historic preservation to allow federal agencies to not preserve any historic features of three-quarters of all federal buildings.
- The PC has multiple exemptions for undertakings that include ground-disturbance provided that they occur within previously disturbed areas, however the process laid out in the document allows for the assumption of an area to be previously disturbed without any mechanism or provision for identifying the depth or areal extent of ground disturbance. Arbitrary distances (10 feet or 40 feet) from existing features such as buildings and pathways are given as free zones for construction without considering that both historic and prehistoric archaeological features or deposits may be present in these areas. In particular, the document dismisses the possible presence of significant urban archaeological deposits or historic construction related features such as builder's trenches.
- The section on Tribal consultation is confusing in the middle of the document and seems unrelated to the PC as the goal appears to be to eliminate SHPO/THPO consultation as much as possible.
- The 20-year duration period too long for such a broad and unprecedented document.
- ACHP should not be able to amend the document without consulting with SHPOs and THPOs.
- Annual reports should include locational information.
- Annual reports should remain annual and not change to triennial after five years.

## **TN SHPO Comments on the Appendices:**

Overall Comments: Please note that these may not be comprehensive but are our initial comments after our first look at the draft document.

The part 2s of Appendices A-C are convoluted and confusing and allow eligibility and effects determinations to be made outside of consultation which directly opposes Section 106 regulations. None of the Appendices should include work that could potentially adversely affect a historic resource.

### Appendix A-1:

1. Site Work:
  - In-kind replacement of concrete or asphalt ground surfaces would be more appropriate. We have historic roads that are concrete and asphalt.
  - The installation of new elements throughout this section does not take into account potential effects to historic landscapes or districts or to the setting of other historic resources.
  - There is an issue here with using "adjacent to." This is too broad as someone could consider an entire parcel adjacent to a housing unit as adjacent which may be farmland, a large empty lot, a park, etc. This section allows for the installation of new elements so this could be a concern.
2. Work on the Building Exterior: The main issue with this section is it not considering individually eligible buildings as if focuses on non-primary facades and views from primary rights-of-way to exclude work. It completely ignores the Secretary of the Interior's Standards, again counter to 36CFR800. If something is individually eligible, the entire building will need to be looked at and removing 3/4s of the building's exterior character defining features (windows, doors, siding). Further, since this Appendix of the PC does not require someone with professional qualifications reviewing the work, how will someone not qualified identify if a historic building has more than one

primary façade or determine character defining features? This should be done in consultation with SHPO. Being able to install some of these elements as brand-new elements on the buildings is very concerning.

- Being able to replace or install new doors or windows is very concerning as there are not enough parameters considered here. It does not matter that the section specifies for non-primary facades on historic buildings. Some buildings may have multiple primary facades and who is to determine this? Some buildings that are individually eligible may have important features on non-primary facades. This should stick to buildings less than 50 years old or previously determined not eligible. Also, it should add that this pertains to buildings NOT in a historic district.
- Solar energy systems could be a problem in historic districts depending where they are placed on a house. This needs to be more specific.
- Elevator systems is too broad here. The way this is written, it appears that you can install an elevator on or within any building as long as it is not on the primary façade? If a building is individually eligible, installing a new elevator within the interior could drastically affect eligibility. Replacement of an existing elevator could be okay as long as the elevator is not historic and the new elevator fits in the existing space.
- Chimneys is too broad an activity. What size of a chimney? How is it being installed. This could really affect an individually eligible property. Especially if it required a new opening within a building or a new fireplace.
- Siding is too broad. This would allow the replacement of a historic siding material with a new material as long as it is not on the primary façade of a historic building. For individually eligible buildings, this is a major concern. This could also be a concern in historic district. For either type of listing this is not an environmentally friendly or preservation friendly outcome.
- Should not allow for replacement of historic light fixtures that are character defining.
- New mortar should match composition. Similar is not good enough here.
- For 2.e.iii of this section, views from the front of a building should be avoided. Typically, in historic districts or on individually eligible buildings, it is considered an adverse effect if the solar panels on a roof are on visible from the front. This could drastically change the character of historic buildings and districts and in many cases.
- Community solar system seems too broad with too many variables.
- 2.g is confusing. Does this mean that no windows 45 years or older can be replaced even if they are not on the primary façade of a historic house?

### 3. Work on the Building Interior

- We would be more comfortable with this applying to interior of historic housing as long as it is not in a primary space. Since this Appendix does not require someone with professional qualifications to see if the work qualifies under it, this will lead to work that does not align with the Secretary of the Interior's Standards. We are particularly concerned with new walls, new flooring, and new ceilings. The way 3a is written could potentially gut the interior of a historic building which would not be appropriate or sustainable when alternatives to wholesale demolition exists.
- Installation of a new skylight, atrium, courtyard, or lightwell could be a alter the historic character even within the set parameters.
- Should not allow for replacement of historic light fixtures that are character defining.

### 4. Emergency Work:

- If is truly emergency work is this not covered by 36 CFR 800.12? Is this needed?

### 5. Other Activities:

- The first two items do not appear to be undertakings.

## Appendix A-2:

### 1. Site Work:

- This provides authority to make effects determinations without consultation with SHPO or Consulting Parties on things that could potentially affect historic properties and landscapes, counter to the spirit of 36CFR800.
  - The way this is set up is very confusing with all the conditions.
  - 1.a.i allows for the replacement or removal of character defining features which is not sustainable or suitable.
2. Work on the Building Exterior: The main issue with this section is it allows effects determinations to be made outside of consultation with SHPOs and/or THPOs and tribes on known historic properties. In our experience, those that meet qualifications standards are not always qualified to make these determinations, particularly if their specific expertise is not historic preservation. This is completely outside the spirit of 106. Our office has run into many instances where we have received projects that the applicant or even qualified personnel thought were no adverse effect that we did not concur with and could have majorly impacted the historic integrity, and thus, eligibility of a historic resource. SHPOs/THPOs need to be consulted on such projects.
- It is against the spirit of Section 106 to allow effects determinations without consultation with SHPO/THPO on activities that could affect historic properties. This even allows for minimal adverse effects (2.a).
  - For 2.c, we would be okay with in-kind, but allowing the okay of substitute materials without consulting with SHPO is not okay. This could have major ramifications not only on the historic integrity of historic properties but could cause the project to not align with or receive the federal historic tax credit.
3. Work on Building Interiors: The main issue with this section is it allows effects determinations to be made outside of consultation with SHPOs and/or THPOs and tribes on known historic properties. In our experience, those that meet qualifications standards are not always qualified to make these determinations, particularly if their specific expertise is not historic preservation. This is outside the spirit of 106.

Appendix B-1:

1. Site Work:

- How do some of these activities relate to climate-smart building related activities (such as fencing)? Many are similar to the activities in the same section in Appendix A (at least in subpart a), could they not be covered there?

2. Work Related to the Building Exterior:

- Many of these are covered under Appendix A and are problems/comments apply to this section as well. The only difference is this section specifies the work is to reduce energy use or greenhouse gas emissions. Is that not what the entire Program Comment is supposed to be for? It is not clear how these activities help with energy efficiency. The ACHP

3. Work Related to the Building Interior:

- No comments.

Appendix B-2:

1. Site Work:

- Counter to 36CFR800, there is authority to make effects determinations without consultation with SHPO on things that could potentially affect historic properties and landscapes. We are not comfortable with this.
- Same Comments as A-2, this is very confusing with all the different conditions for approval.

2. Work Related to the Building Exterior:

- Same comments as in Appendix A-2. It is not appropriate for effects determinations to be made on historic properties outside of consultation with SHPOs/THPOs.
- Federal agencies cannot do anything they want to the exterior of a building in the name of energy efficiency.
- Activities with the potential for adverse effects should not be included as exemptions. Consultation must be done.

3. Work Related to the Building Interior:

- Same comments as in Appendix A-2.

Appendix C-1: This section needs to consider historic roads, which are not necessarily limited to the definition of *potentially historic ground surface materials* as this appendix lays out. Many of the elements could adversely affect historic roads that have very intact settings (example: the Natchez Trace Parkway). I think this needs to be more specific about the types of roads you are talking about and not include historic roadways.

1. Work on Ground Surfaces:

- *Potentially historic ground surface materials* only considers materials such as pavers, cobblestones, Belgian blocks, bricks, or wood. In TN, we have listed and eligible roads that are concrete and asphalt.

2. Work Involving Fixtures and Equipment:

- Once again, the definition of *potentially historic ground surface materials* does not match all historic roads in our state. Additionally, how many posts, bollards, etc. are we talking about here? One might not be a concern, but if they go all along a section of a historic road, it could disturb the setting.
- Streetlights on certain historic roads could be an issue.

3. Work Relating to Vegetation and Landscapes:

- No Comments

4. Work on Bridges:

- The way the conditions is written is a little confusing.

5. Other Activities:

- No Comments

Appendix C-2:

1. Work on Ground Surfaces:

- This is giving a lot of authority to make effects determinations without consultation with SHPO on things that could potentially affect historic properties and landscapes. We are not comfortable with this. This is also potentially an adverse effect.

2. Work Involving Fixtures and Equipment:

- Same Comment as above and in other #2 appendices from this document. This is not in the spirit of 106. It also allows for potential adverse effects.

3. Work Relating to Vegetation and Landscapes:

- Same comments as above.
- Planting new trees along a street with no trees could be an adverse effect.
- Work here could be an adverse effect.

4. Work on Bridges:

- This is giving a lot of authority to make effects determinations without consultation with SHPO on things that could potentially affect historic properties and landscapes.
- We would want to review work on eligible and listed bridges.
- Installing a brand-new bridge? No. This would always need review.
- Does this allow for the replacement of any bridge just for transit use. Seems very problematic. This allows eligibility determinations to be made outside of consultation with SHPO.