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Update on Major Activities

Please see the following paper in Tab 1 for the Federal Agency Programs Committee discussion:

ACHP Strategic Plan Update



MEETING
FEDERAL AGENCY PROGRAMS COMMITTEE
Tuesday, December 14, 2021
1 p.m.-2:30 p.m. EST

Join ZoomGov Meeting
<https://achp.zoomgov.com/j/1614864234?pwd=TU9HUmplMUFUbkFaVzZlZGcrQytKdz09>

Meeting ID: 161 486 4234
Passcode: 947975
or
Dial by phone
+1 646 828 7666 US
Meeting ID: 161 486 4234
Passcode: 947975

PROVISIONAL AGENDA

- I. Call to Order and Introductions
- II. Implementation of Program Comment Review Panel Recommendations
- III. Strategic Planning Preparation
- IV. Section 106 and the Infrastructure Investment and Jobs Act Update
- V. Updates:
 - A. Program Alternatives
 - B. Training
- VI. Adjourn



IMPLEMENTATION OF PROGRAM COMMENT REVIEW PANEL RECOMMENDATIONS Office of Federal Agency Programs

Background. A panel of ACHP members delivered recommendations regarding Program Comments and the Section 106 process to Vice Chairman Jordan Tannenbaum in September. The group had been charged with considering the successes and challenges key stakeholders have had in developing and using Program Comments (36 CFR § 800.14(e)) and identifying actions the ACHP can take to improve their use as a tool for Section 106 review efficiency. The vice chairman directed staff to begin implementing these recommendations.

The recommendations outline a series of actions the ACHP will take to develop enhanced guidance and best practices for the development of Program Comments and to facilitate communication between proposing federal agencies and the ACHP on draft proposals so they may be refined prior to an agency making its formal request to the ACHP, starting the 45-day review period. The recommendations do not alter any of the requirements in the regulations but do encourage enhanced planning approaches that can assist the federal agency in development of successful Program Comment proposals.

Update. The Office of Federal Agency Programs has formed a staff working group to coordinate implementation of the panel's recommendations. Staff members are currently revising an internal staff procedural checklist to ensure it reflects steps for member coordination in accordance with the recommendations. The group is also reviewing the content of the ACHP's existing Program Comment guidance and information on www.achp.gov to identify where updates and amplification are needed. As a part of these two efforts, staff is also identifying aspects of the Program Comment development process where examples and best practices would be helpful for agencies that are planning to seek the input of key stakeholders (including State Historic Preservation Officers, Tribal Historic Preservation Officers, Federal Preservation Officers, and other partners). The information will populate the ACHP's enhanced and expanded Program Comment web page once complete and provide the basis for new webinar content on program alternatives planned for release during the 2022 training year.

At the same time, staff members are working with federal agencies that may be in the process of or considering the development of Program Comments. They are advising and listening to agency staff to ensure the goals of the panel's recommendations are integrated into current development processes.

Next Steps. Staff will contact stakeholders in the coming weeks to seek suggestions for examples and best practices to illustrate revised ACHP guidance on Program Comments and training materials.

Action Needed. Members are encouraged to recommend potential best practice examples to staff.

December 6, 2021



SECTION 106 AND THE INFRASTRUCTURE INVESTMENT AND JOBS ACT UPDATE **Office of Federal Agency Programs**

Introduction. Improving and expanding the nation’s infrastructure is the focus of the recently enacted Infrastructure Investment and Jobs Act (IIJA). In July 2021, the Federal Agency Programs (FAP) Committee discussed potential Section 106 workload and program management implications of infrastructure funding proposals circulating in draft bills at the time. Passage of the legislation offers an opportunity to revisit that discussion and consider how the ACHP should work with federal agencies and preservation partners to ensure consideration of historic properties occurs as new infrastructure projects are planned and carried out under the programs funded in the new law.

Status. Congress passed the IIJA on November 4, 2021, and President Joe Biden signed it on November 15. The bill includes programs for infrastructure projects in the transportation, energy, broadband, and water resources sectors, among others. Further information on preservation-related components of the law is provided in the Proposed ACHP Action on Pending Legislation paper in Tab 1. A brief summary of some of the sectors along with information about relevant existing Section 106 program management tools follows.

Transportation: The IIJA funds the Federal-Aid Highway Program and also creates new programs, such as competitive grants for bridge rehabilitation and replacement. Highway projects are among the infrastructure types most thoroughly covered by existing Section 106 programmatic approaches, including the Interstate Highway System Exemption, the Program Comment for Actions Affecting Post-1945 Concrete and Steel Bridges, and by statewide Programmatic Agreements in place in 41 states. These tools initially position state Departments of Transportation well for addressing programs within the bill. New programs focused on the resilience of transportation facilities or reducing carbon emissions could generate new undertaking scenarios. Rail and transit programs will continue to be able to use the Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way. The Department of Transportation is also directed to codify the One Federal Decision policy approach by publishing a proposed rule within one year.

Energy: The IIJA creates several new programs focused on energy grid resilience. A new program in the Department of the Interior will provide funding for the remediation of orphaned wells on federal, state, and tribal lands. A number of programs focused on energy efficiency received funding. The ACHP’s work with the Department of Energy to develop a Prototype Programmatic Agreement for energy efficiency programs funded under the 2009 American Recovery and Reinvestment Act (ARRA) may serve as a useful precedent for how efficiencies can be adopted on a state-by-state basis.

Broadband: Grants to states and other programs address the expansion of broadband in unserved and underserved areas. Telecommunications projects are extensively covered by existing Section 106 program alternatives, including two Federal Communications Commission nationwide Programmatic Agreements and the Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification, as well as the U.S. Department of Agriculture Rural Development Nationwide Programmatic Agreement for Sequencing Section 106. The ACHP has past experience in assisting agencies with the expansion of broadband programs under ARRA.

Other: Other notable provisions of the IJA address Bureau of Reclamation programs for western water infrastructure and make the Federal Permitting Improvement Steering Council, of which the ACHP is a member, and the FAST-41 permitting coordination process permanent.

Action Needed. Now that specific program funding commitments are known, federal agency members are asked to supplement or correct the summary above with information from their agencies about where the volume of undertakings is likely to increase and which programs may raise Section 106 questions. Members can revisit the questions initially posed in July 2021 regarding how this level of investment will have an impact on Section 106 workloads. Specifically:

- What do ACHP members, especially those federal members engaged in infrastructure project planning and approvals, see as the greatest challenges with Section 106 reviews? Are program alternatives or other improvements specific to certain sectors of infrastructure development that will be expanded needed?
- How could the ACHP help encourage support for digital tools and resources, including those managed by states and tribes, to facilitate the identification of historic properties and assessment of effects to them?
- Do federal agencies have the resources and capacity to consult with affected and interested communities about effects to historic properties from the infrastructure programs included in the IJA? Are there steps that the ACHP can take to assist agencies and communities?
- In recent years, the ACHP has provided enhanced and focused information regarding the Section 106 process for infrastructure projects to practitioners and applicants such as dedicated web pages and the lead federal agencies FAQ. How can this information be improved?

December 6, 2021



UPDATE ON MAJOR ACTIVITIES
Office of Federal Agency Programs
July—December 2021

Program Alternatives Updates. The Office of Federal Agency Programs is working on a number of program alternatives of interest to members at this time.

Forest Service Nationwide Programmatic Agreement (nPA) for Phasing Large-Scale and Multi-Year Undertakings: The Forest Service’s proposed nPA provides an alternative process that better sequences the Section 106 compliance processes for large-scale, multi-year undertakings. These undertakings involve various landscape treatments to combat wildfires and climate change and are so large in acreage that it would be impossible for Forest staff to complete identification of historic properties, which could take several years, before the National Environmental Policy Act (NEPA) decision. Consequently, the Forest Service seeks to employ an nPA to allow phasing of National Historic Preservation Act compliance after the NEPA decision. The nPA requires the Forest Service to consult parties earlier and thus provide them more opportunities to engage in the design of multi-year undertakings, and for the Forest Service to develop a plan in consultation with these parties for how it will complete the Section 106 review process after the project’s NEPA decision. The Forest Service has addressed and incorporated comments from two consultation periods, the first of which began in fall 2019 and the second in fall 2020. The Forest Service has shared the proposed final nPA and supporting documentation for parties’ awareness and has received no comments. The National Conference of State Historic Preservation Officers has signed the nPA, which is now awaiting the Forest Service chief’s signature. The Forest Service will request the ACHP’s signature to execute the nPA this winter.

Army Program Comment for Vietnam War Era Housing: On October 8, 2021, the Army notified the ACHP of its intent to request a Program Comment for Army Vietnam War Era (1963-1975) Historic Housing, Associated Buildings and Structures, and Landscape Features. Army housing constructed in this period consists of about 7,500 housing units, out of about 31,000 total historic housing units, and is located on 22 Army installations in 16 states.

The Army developed a Program Comment Plan and published a Notice of Availability in the *Federal Register* on November 15, 2021. The plan provides information on the category of undertakings (management actions), prior National Register of Historic Places inventories and evaluations of this property type, a description of the property types, their locations and numbers, potential effects of the management actions on the historic properties, and proposed mitigation measures. The category of undertakings addressed in the proposed Program Comment, also referred to as management actions, includes the following: maintenance, repair, rehabilitation, renovation, abatement of hazardous materials, mothballing, cessation of maintenance, demolition, new construction, lease, transfer, conveyance, and the use of modern readily available industry standard building materials and methods. The Army will conduct consultation with stakeholders during a six-month period, from January to June 2022, with the goal of formally submitting a request to the ACHP around August 2022.

Other program alternatives: The Office of Federal Agency Programs continues to work with several other federal agencies on developing program alternatives. Status summaries and current information on

the program alternatives described above and others are always accessible to members at the program alternatives OneDrive folder: https://achp-my.sharepoint.com/:f:/g/personal/bsemmer_achp_gov/EtqHzsQvUa5Moi_A9DckA60B-bLJzgi495AzOuTVBSKBkA.

Section 106 Training. The ACHP's Section 106 virtual classroom courses continue into FY 2022 with offerings of the eight-hour, two-day Section 106 Essentials and the four-hour, one-day Section 106 Agreements Seminar. Registration for 2022 course dates has recently opened. New and updated webinars will also be offered with a nominal registration fee (\$50/login). A three-webinar series is scheduled for January, and another three-webinar series will run in May. The training program is continuing to work with agencies and others to address requests for virtual classroom and webinar offerings. In addition, new and updated free eLearning courses are in the works, including an overview of Section 106 for federal agencies, opportunities for Certified Local Governments to participate in Section 106, and an overview of program alternatives.

December 6, 2021