
OPERATING PROCEDURES OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

INTRODUCTION

These procedures provide guidance for the operation of the Advisory Council on Historic Preservation (“Council”). They supplement and clarify more general requirements appearing in the National Historic Preservation Act (“Act”), the Administrative Procedure Act, and the Council’s regulations. In addition, the Council follows administrative procedures of the Department of the Interior relating to finance, personnel, budget, and travel in lieu of developing its own procedures. The Council has 24 members (collectively referred to as the “Membership”), headed by a Chairman, and a staff which is overseen by an Executive Director.

I. STATEMENT OF POLICY

The law entrusts the authorities of the Council to the Membership. To carry out these authorities in an efficient and prompt manner, the Membership recognizes that the Chairman and the Executive Director, under the supervision of the Chairman, must possess the authority to act on behalf of the Membership on a daily basis, conforming to general policies and specific directives established by the Membership. Frequent and open communication among the Executive Director, the Chairman, and the Membership is necessary for proper coordination with, and conformance to, these policies and directives.

The Membership sets general policy for programs and activities, initiates or approves programs and activities, and exercises long term oversight of the Council’s policies, programs and activities. Members participate in specific programs and activities individually, in groups, and as the full Membership.

The Chairman undertakes the pursuit and oversight of the implementation of such policies, programs and activities. The Chairman ensures that the Executive Director is carrying out approved policies and conforming to them. The Chairman makes policy decisions on behalf of the Membership as needed when the Membership is unavailable to act, consulting with the Membership as appropriate. In the absence or unavailability of the Chairman, the Vice Chairman performs the functions of the Chairman.

The Executive Director undertakes the daily implementation of programs and activities, subject to the policy guidance of the Chairman and the Membership. The Executive Director oversees the staff of the Council and ensures that their individual actions and objectives are consistent with the policies established by the Membership.

II. COUNCIL ORGANIZATION

A. Council Membership

The National Historic Preservation Act specifies that the Membership shall consist of 24 members. Six members (the Secretary of the Interior, the Secretary of Agriculture, the Architect of the Capitol, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and the General Chairman of the National Association of Tribal Historic Preservation Officers) serve *ex officio*. The President appoints the remaining 18 members (four general public members, four experts, a governor, a mayor, a member of an Indian tribe or a Native Hawaiian organization, and the heads of seven Federal agencies).

B. Designees

Federal members, the Chairman of the National Trust, the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Governor may designate another officer of their department, agency, or organization to serve on the Council in their stead. In accordance with 54 U.S.C. § 304101(b), Federal agencies may only designate an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities. Appendix A to these Operating Procedures, entitled “Membership Credentials,” sets forth guidance for naming designees. A designee must provide the Chairman with a letter of designation, setting forth the basis for the designation, prior to participating in activities of the ACHP as a designee. Members should update ACHP staff in a timely fashion regarding a change of incumbents in their designated positions by sending information about such changes to designeeupdates@achp.gov. Failure to do so can result in ACHP communications, including notifications and requests for action, not reaching the relevant designees.

C. Membership Credentials

1. Qualifications. 54 U.S.C. § 304101 sets forth the criteria for members of the Council and their designees. Individual members or their designees should meet the qualifications set forth in Appendix A to these Operating Procedures, entitled “Membership Credentials.”

2. Credentials review. The Chairman will review the credentials of any designee named by an agency or organization pursuant to the Act. If the Chairman determines that a designation may be deficient, the Chairman shall consult with the member making the designation to resolve the issue. The Chairman may take such other actions as appropriate to ensure that the intent of the statute is carried out.

D. Observers

1. **Member-designated observers.** Any member, including one not authorized by statute to designate an alternate representative, may, after submitting a written request (including electronic mail) to the Chairman and with the written approval of the Chairman, designate an observer who may actively participate in any or all activities of the Membership on behalf of the specified member in the absence of the Member or such member's designee pursuant to Section II.B. of these Operating Procedures, but may not make or second any motion and may not vote. These observers shall have a fixed term not to exceed four (4) years commencing from the date of the Chairman's written approval. A Member may reappoint Member-designated observers.

2. **Chairman-designated observers.** The Chairman may invite the head of a Federal, State, Tribal, or local public agency or non-profit organization to become an observer when the Chairman determines that the participation of such agency or organization will benefit the Council. The head of such an observer's entity may designate someone else within the entity to participate with the ACHP in his or her stead so long as that designee is an official with major entity-wide responsibilities. The status of Chairman-designated observers differs from the status of individuals invited by the Chairman to participate in a specific matter before the Council. These observers shall have a fixed term not to exceed two (2) years commencing from the date of the written invitation by the Chairman to the observer. The Chairman may reappoint Chairman-designated observers. The Chairman may appoint up to five (5) observers without the concurrence of a majority of the Membership, and may appoint more than five (5) observers with the concurrence of a majority of the Membership.

3. **Participation of observers.** Observers may attend all meetings and may speak when recognized by the Chairman or the subgroup chairman, as applicable, but may not make or second any motion and may not vote. Challenges to the credentials or participation of an observer shall be resolved in accordance with Section II.C.2 of these Operating Procedures.

4. **Termination.** The Chairman, or the Membership by majority vote of those present and voting, may terminate the observer status of a Chairman-designated observer at any time. The appointing Member, or the Chairman in consultation with the appointing Member, may terminate the status of Member-designated observer at any time.

E. Council Subgroups

1. **Establishment.** The Chairman may establish standing and ad hoc subgroups to carry out the Council's business. The Chairman shall appoint to such subgroups a chairman and subgroup participants who may be chosen from the Membership or may be others, and shall notify the Membership in writing of such appointment or appointments.

2. **Non-Member Subgroup Participants.** A subgroup participant who is not selected from the Membership and is not an official designee shall be subject to the restrictions under Section II.D.3 of these Operating Procedures.

3. **Changes and Termination.** At his or her discretion, the Chairman may substitute any subgroup participant or chairman and may terminate the subgroup.

4. **Powers.** Unless given a specific delegation of authority by majority vote of the Membership, the powers of subgroups shall be limited to advising the Chairman and the Membership on the exercise of their legal authorities. When a subgroup carries out advisory functions, it is not expected to entertain motions or hold votes but, rather, have its chairman report to the Chair or Council, as appropriate, about the subgroup's discussions and advice.

5. **Alternate Participation in Subgroup.** Where a federal agency Member, the Architect of the Capitol, the Governor, the Mayor, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, or the General Chairman of the National Association of Tribal Historic Preservation Officers has been appointed to a subgroup, such entity or individual may name one alternate participant to participate in subgroup functions, and this alternate participant may make motions, second motions, and vote, when the subgroup is carrying out those limited advisory functions. The appointed participant should notify the chairman of the subgroup and the Executive Director in writing when naming such an alternate participant.

6. **Rules of Order.** Subgroups established under this section shall generally adhere to these Operating Procedures and to Robert's Rules of Order.

III. COUNCIL MEETINGS

This section of these Operating Procedures establishes general procedures that pertain to meetings of the Membership or of subgroups established under Section II.E of these Operating Procedures. Procedures governing meetings held in the course of the Section 106 process set forth in the Council's regulations are contained in Section V.

A. Types of meetings

The Membership may take formal actions at meetings of the Membership or subgroups may take formal actions in accordance with Section II.E. Meetings of the Membership or of subgroups may be held in regular session, in special session, or unassembled.

1. **Regular session.** Normally, the Membership shall conduct its business at meetings held in regular session with full adherence to these Operating Procedures. The Chairman shall schedule the regular meetings of the Membership, which will generally be held three to four times per year.

2. **Special session.** When the Chairman determines that circumstances warrant a departure from normal procedures, such as to discuss a time-sensitive proposed program alternative or to discuss legal matters outside the public view, the Chairman may call a meeting in special session.

3. **Unassembled meeting.** When the Chairman determines that the Membership or a subgroup should act on a single or limited number of issues and a regular or special meeting is not warranted, the Chairman may convene an unassembled meeting. In an unassembled meeting, business will be conducted by mail, telephone, electronic mail, facsimile, or other such methods of communications. Reasonable notice of unassembled meetings shall be given by the Executive Director. No business shall be transacted at unassembled meetings that will violate the principles of public participation adopted by the Membership.

B. Public participation and disclosure

The public may attend, either in-person or virtually as circumstances allow or require, regular and special session meetings of the Membership. However, the Council will not provide public attendance for the following: 1) unassembled meetings and 2) meetings or portions of meetings dealing with subjects properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). The public shall have access to materials transmitted to and from members in the conduct of an unassembled meeting, with the exception of materials properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). When the Chairman determines that business before the Council requires exclusion of the public, the Chairman shall limit the closing of the meeting to the time necessary to transact the confidential business.

C. Meeting place

The Council shall hold in-person regular and special session meetings of the Membership in places generally accessible to the public and to people with disabilities. However, normal Federal office building security requirements that restrict access to individuals who have made their desire to attend known beforehand shall not be considered to make a meeting place unacceptable. The Council shall broadcast virtual and hybrid regular and special session meetings of the Membership via online simulcast, webinar, or virtual meeting format.

D. Notice

The Executive Director shall notify the Membership of regular and special session meetings of the Membership at least 7 days before the meeting date. If 7 days notice of special session meetings is not possible under the circumstances, the Executive Director shall make a good faith effort to provide notice to the Membership and to the public as early as possible. The Executive Director may provide other means of notice as the Executive Director determines to be necessary. In providing such additional notice, the Executive Director shall make a good faith effort to provide actual notice to local governments, Indian tribes, the public and other interested

persons where such notice is not precluded by excessive cost or burdens on staff time. Notice of meetings of subgroups shall be given as determined appropriate by the Executive Director.

E. Quorum

Thirteen voting members shall constitute a quorum necessary for the transaction of business at a meeting of the Membership. Subgroups will only need a quorum when carrying out non-advisory authorities formally delegated by the Membership. Such a quorum shall be a simple majority of the voting members in the subgroup, namely, Members or their official designees under Sections II.A. and II.B. of these Operating Procedures.

F. Call to Order

Meetings of the Membership may be called to order by the Chairman or, in the Chairman's absence, by the Vice-Chairman. Should both be absent, a non-Federal member previously designated by the Chairman shall call the meeting to order.

Meetings of subgroups may be called to order by their respective chairmen or any subgroup participant previously designated by the subgroup's chairman.

G. Order of business

Regular meetings of the Membership shall generally adhere to the following order:

1. Adoption of the agenda.
2. Consideration of the minutes.
3. Reports of subgroups.
4. Staff reports.
5. Special or priority business.
6. Unfinished business.
7. New business.

The Chairman may make adjustments in the order of business to facilitate the purpose of such meeting and to meet other special scheduling needs.

The Chairman shall establish the order of business for special session meetings and unassembled meetings in a manner that facilitates the purpose of such meetings.

H. Agenda

Regular meetings of the Membership shall be conducted in accordance with an agenda adopted by the Membership at the beginning of each meeting. A provisional agenda shall be sent to the Membership prior to the regular meeting.

I. Recorder

The Chairman shall appoint a recorder who shall be responsible for keeping the minutes of any regular or special session meeting. The chairman of any subgroup shall appoint a person responsible for providing a summary of any subgroup meeting.

J. Minutes

The recorder of any regular or special session meeting shall keep full and accurate minutes of the meeting. Except as directed by the Chairman, transcripts shall not be required. The recorder shall prepare minutes promptly after a meeting and the Membership shall review and approve such minutes at the subsequent meeting.

K. Motions and Resolutions

Motions and resolutions made and considered in any meeting of the Membership or subgroup shall generally conform to Robert's Rules of Order. The recorder of such meeting shall accurately record all motions and resolutions in the minutes along with a record of the action taken on each at the meeting.

L. Procedural questions

The Chairman or subgroup chairman shall resolve questions of meeting procedure in accordance with Robert's Rules of Order. In the event of conflict between Robert's Rules and these procedures, the specific terms of these procedures shall take precedence.

M. Voting

Only members or duly authorized designees may vote at meetings of the Membership or subgroups. In regular or special session meetings, voting may be voice or show of hands, as determined by the Chairman or subgroup chairman, unless a roll call vote is required. Voting in unassembled meetings may be by mail, telephone, electronic mail, facsimile, or other such methods of communications, as determined by the Chairman or subgroup chairman. In any event, all votes cast in an unassembled meeting shall be recorded as a roll call vote.

Roll call votes shall be required whenever the Membership or a subgroup takes a final action on any recommendation, advice, or comment; on the adoption of any rule, procedure, or policy; or any question pertaining to budget or administration; or any other matter which the Chairman or subgroup chairman determines requires a record of how each member voted. Unless a voting member objects, the Chairman or subgroup chairman may waive the roll call requirement.

Matters voted on by the Membership or subgroups shall require a simple majority of those present and voting. Exceptions are: comments rendered under Section 106 (including program comments pursuant to 36 C.F.R. § 800.14(e)), exemptions granted under 54 U.S.C. § 304108(c), evaluations of Federal agency activities under 54 U.S.C. § 304102, specific delegations of

authority to subgroups authorizing subgroups to act on behalf of the Membership, and recommendations to the President or the Congress. These exceptions require the vote of a majority of the Membership. However, the adoption of positions on legislation, regardless of whether such positions are intended to be communicated to the President or Congress, only require a simple majority of those present and voting.

No member shall be permitted to vote on a matter in which the member or the member's agency or organization has a direct interest not common to other members, such as comments rendered under Section 106 that will be addressed to the member's agency or an action that may present a personal conflict of interest. Members abstaining from voting shall so indicate during a roll call vote or at the close of a vote by voice or by show of hands.

N. Proxies

A member or his/her duly authorized designee may give a proxy to another voting member to be cast on any number of specific issues on a meeting agenda. Voting by proxy is permitted at meetings of the Membership and subgroups unless expressly prohibited by the Chairman when the subgroup is established. No member may hold more than two proxies. Valid proxies shall be counted as members present and qualified to vote whenever a point of order is raised about the presence of a quorum.

O. Business Meeting Participation

Participation at the table in ACHP business meetings shall be limited to Members (or, in the absence of a Member, the designee for such a Member under Section II.B. of these Operating Procedures), and Chairman-designated observers duly named in accordance with the Act and these Operating Procedures. With the prior approval of the Chairman, a member-designated observer may, in the absence of the relevant Member or such member's designee under Section II.B. of these Operating Procedures, participate at the table, subject the restrictions set forth at Section II.D.1. of these Operating Procedures.

IV. COUNCIL ADMINISTRATION

A. Financial Administration

1. Budget Formulation. The Chairman shall establish the budget request level for the Council each fiscal year. The budget request shall reflect the established programs and priorities of the Council. The Executive Director, under the supervision of the Chairman, shall prepare the budget request and supporting documentation. When the budget request is formally submitted to the Office of Management and Budget (OMB) and the Congress in accordance with statute, it shall be made available to individual members on request. All members shall conform to applicable OMB directives regarding the confidentiality of budget information and materials. The Chairman or the Executive Director shall regularly report to the Membership on the progress of the budget review and appropriations process.

2. Detailed Budget. The Executive Director shall prepare the annual detailed budget in accordance with established Council programs and priorities, applicable OMB directives, and Congressional funding. The Executive Director shall submit the detailed budget to the Chairman for review to ensure conformance with Council policies. The Executive Director shall develop any necessary reprogramming of funds or personnel levels in consultation with the Chairman.

3. Donations. In accordance with 54 U.S.C. § 304105(g) (donations authority), the Executive Director shall accept and administer donations received by the Council. The Executive Director shall consult with the Chairman regarding the collection and disbursement of donations and shall report on the status of donations at each regular session meeting.

In accordance with the donations authority, the Council may use any donations in ways consistent with the Council's duties and the purposes of the Act. Such use includes, but is not limited to, funding internships in the Council, research on historic preservation issues, events encouraging public involvement in or education about historic preservation, and Council visits to historic sites.

In order to avoid any questioning of Council operations, and consistent with the federal ethics recommendations about otherwise permissible gifts at 5 C.F.R. § 2635.201(b), the Executive Director will consider declining donations that the Executive Director believes might lead a reasonable person with knowledge of the relevant factors to question his or her integrity. Factors in making this determination include whether:

- (i) The gift has a high market value;
- (ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;
- (iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and
- (iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

Accordingly, the Executive Director may consider declining donations from entities that the Executive Director knows are consulting parties in Section 106 reviews where the Council is formally involved, or from entities having or seeking contracts with the Council.

B. Personnel Management

1. Applicable Regulations and Procedures. Except in those areas where the Membership or staff has adopted its own specific regulations or procedures for the conduct of personnel management matters, the Council shall follow applicable provisions of the Department of the Interior.

2. Interim Regulations and Procedures. If a particular situation arises in which the Chairman determines that following the Department of the Interior provision is inconsistent with the policies of the Council, the Chairman, in consultation with the Membership or the Executive Director, may establish an interim procedure to supersede the Department of the Interior provision. The Chairman shall provide notice of such interim procedure to all potentially affected parties. The Chairman shall propose, within 180 days after the development of an interim procedure, for action by the Membership, an amendment to the Operating Procedures or to applicable Council regulations that would make such final.

3. Appointment and Compensation

a. Council members. The Chairman, in consultation with the Membership or an appropriate subgroup, shall establish necessary policies governing the payment of compensation and reimbursement of travel and subsistence expenses in accordance with 54 U.S.C. § 304104.

b. Council staff. The Executive Director shall appoint and fix the compensation of staff in accordance with the provisions of 54 U.S.C. § 304105(b) through (d).

c. Senior Executive Service. The selection and management of Council employees in the Senior Executive Service shall conform to the appropriate regulations and procedures established by the Department of the Interior, provided that the provisions of 54 U.S.C. § 304105(a) and (c) regarding employees in the competitive service above the highest rate for the grade GS-15 shall also govern the appointment and fixing of compensation of employees in the Senior Executive Service. The Chairman shall appoint individuals to serve on the necessary appraisal and resource boards. At least one member of each such board shall be chosen from the Membership.

4. Performance Appraisal Plans for Non-SES Employees. In accordance with applicable regulations of the Department of the Interior, the Executive Director shall establish and administer the necessary performance appraisal plans for staff that are non-SES.

5. Grievance Procedures. The Council shall follow the applicable regulations and procedures of the Department of the Interior regarding grievance proceedings.

C. Information Management

1. Notification of Council Activities. The Executive Director shall regularly provide the Membership with written or verbal reports, generally on a monthly or bi-monthly basis, which shall include information on staff activities, budget matters, pending litigation and legislation, recently concluded Section 106 cases, and other matters of general interest. Additional materials will be included as appropriate.

2. Distribution of other Council materials to members. The Executive Director shall ensure that all members are provided with copies of Council documents and publications.

3. Distribution of Council materials to the public.

a. Policy of availability. It is the policy of the Membership to make Council materials available to the public and other interested parties. Accordingly, under normal circumstances, the Executive Director shall provide documents reflecting final action on the website of the Council. When the Executive Director determines that a formal Freedom of Information Act request is necessary, the requester of Council materials shall be so informed. The Executive Director shall respond to Freedom of Information Act requests in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations.

b. Withholding documents from disclosure. The Council may withhold information and documents from public disclosure only in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations at 36 C.F.R. Part 810.

V. SECTION 106 ADMINISTRATION

This section of these Operating Procedures applies to the conduct of business under the Section 106 process set forth in the Council's regulations at 36 C.F.R. Part 800.

A. Delegation of Authority

The regulations implementing Section 106 of the Act provide for the Council to participate in the Section 106 process in various ways. The delegation of responsibilities to the Chairman and the Executive Director is set forth in the document entitled "Delegation of Authority" incorporated into these Operating Procedures as Appendix B.

B. Meeting Procedures

1. **Public Meetings.** In the course of Section 106 review of any particular case, the Membership, a subgroup, or the Executive Director, in consultation with the Chairman, may conduct a public meeting for the purpose of gathering and disseminating information on the undertaking under consideration. Such meetings shall be open to the public and be held near the site of the undertaking at a place accessible to the public. The Executive Director shall provide appropriate notice of such meetings at least 15 days in advance of the meeting. Notice shall be designed to reach the Membership and relevant representatives of national, State, or local governments, public applicants for Federal assistance, permits or licenses, Indian tribes, Native Hawaiian organizations and other interested persons.

2. **Council Comment.** When the Membership is called upon to provide comments on an undertaking when no Memorandum of Agreement is submitted or when the parties to the Section 106 consultation fail to reach agreement, the Chairman shall schedule the matter for hearing at a regular session meeting, establish a subgroup to hear the matter at a meeting of such subgroup, or provide comments without convening a meeting.

a. Meetings of the Membership. Meetings of the Membership to consider an undertaking shall be conducted in accordance with Section III of these Operating Procedures.

b. Meetings of Subgroups. Meetings of subgroups designated to consider and provide comments on a particular undertaking shall conform to the procedures set forth in the document entitled "Panel Meeting Procedures," incorporated into these Operating Procedures as Appendix C.

c. Comment Without a Meeting. The Chairman may determine that comments on a particular undertaking shall be given without convening a meeting to consider the undertaking. In such cases, the Chairman may provide comments in one of two ways:

(i) The Chairman may conduct the review of the undertaking in an unassembled meeting in accordance with Section III.A.3 of these Operating Procedures. The Chairman shall forward to the Membership the documentation submitted by the agency under Sections 800.7(c)(1) and 800.11(g) of the regulations, a report on the case from the Executive Director, and other pertinent information. The Chairman shall specify the date by which members must return their comments. The Chairman shall prepare a final comment document, taking into account the views of the Membership, and transmit that comment to the agency official; or

(ii) The Chairman may develop comments on the undertaking and then circulate these comments to the Membership for consideration. The Chairman shall consider any comments received from the Membership in preparing the final comment document, which the Chairman shall then transmit to the agency official and to the Membership.

VI. MEMBER INVOLVEMENT IN SECTION 106 CASES

A. Cases Pending at the Staff Level

It is the policy of the Council to encourage member participation wherever appropriate and in accordance with the applicable federal rules of ethics, with the understanding that the Membership will need to maintain impartiality should there be a termination of the Section 106 process, leading to a formal Council comment. Participation of a Member shall not supersede the specific authorities for Section 106 case management delegated to the Chairman or the Executive Director under these Operating Procedures.

B. Cases Pending Before the Chairman

When a Section 106 case is being reviewed by the Chairman for the determination on the method of rendering comment in the event of a termination of consultation or a request for comments without submission of a Memorandum of Agreement, the Chairman shall notify the Membership of the case at the beginning of the Chairman's review period.

VII. LEGISLATIVE MATTERS

A. Formulation of Policy and Positions

Policy and positions on federal, state, and local legislative proposals shall be established by action of the Membership. In those situations where the need for timely action precludes formal approval by the Membership, the Chairman and the Executive Director may establish and convey as appropriate an interim position by consulting with the Membership or an appropriate subgroup. The Chairman or the Executive Director shall notify the Membership when such action is to be taken, invite the views of members on the issue, and report to the Membership on any legislative positions taken or testimony delivered in a timely manner. The Membership shall be provided an opportunity to ratify or revise that interim position at the next meeting of the Membership. In the event a Member questions the consistency of a proposed interim legislative position with Administration policy, the Chairman will convene an unassembled meeting and take a vote of the full Membership on the proposed position or defer consideration of the position to the next meeting of the Membership.

B. Authority to Testify

The Chairman, or another member or staff designated by the Chairman, is authorized to testify on federal, state, or local legislative matters on behalf of the Membership. Where time permits, testimony should be developed in consultation with the Membership or an appropriate subgroup. The Chairman may provide other testimony as may be consistent with policy and positions on legislative proposals established by the Council in accordance with Section VII.A. of these Operating Procedures. Absent extraordinary circumstances, the Council and its Chairman may provide testimony and advice on state or local draft legislation only if requested to do so by a legislator, senior executive branch staff, state historic preservation office, tribal historic preservation office, representative of a municipality or local agency, or representative of a nonprofit organization.

C. Conduct of Legislative Liaison Activities

The Executive Director is responsible for the monitoring of legislative matters affecting the Council, overseeing liaison with members and committees of Congress, and representing the Membership in legislative activities conducted at the professional staff level in the Congress and within the Administration. The Executive Director shall discharge these duties in consultation with the Chairman and the Membership or an appropriate subgroup.

VIII. AMENDMENTS

These procedures may be amended, revised, or repealed by vote of a two-thirds majority of the Membership (16).

Adopted August 1987

Amended July 2001, May 2012, July 2015, March 2017, and July 12, 2023.

APPENDIX A: MEMBERSHIP CREDENTIALS

INTRODUCTION

The National Historic Preservation Act Amendments of 1980 reconstituted the Membership of the Council with the objective of providing “a more balanced forum where representatives of various interests can deliberate on policy questions and reach true ‘public interest’ decisions on historic preservation matters” (House Report, p. 40). The legislation, as further amended in 1992, 2006, and 2016, goes on to name the representation to the Council leaving some discretion to the President in the appointment of agency heads, expert members, general public members, a governor, a mayor, and a member of an Indian tribe or Native Hawaiian organization. The amendments also permit certain institutional members of the Council to designate representatives to the Council. In the President’s exercise of the appointments authority and in the selection of designees for institutional members, care must be taken to ensure that the intent of the statute is fulfilled. The purpose of this document is to provide the decision makers with guidance from the Council on these matters. Furthermore, this document establishes a process of review for credentials questions and decisions.

STATEMENT OF POLICY

The National Historic Preservation Act, as amended, clearly indicates the intent of Congress to establish a Council comprised of individuals who possess the authority and expertise that is inherent in the top-level policymaking positions of Government and the private sector. It is the objective of the Council, through this document on credentials, to carry out this Congressional intent. Each member who participates in the activities of the Council should possess the level of authority or expertise that the Congress envisioned for the respective Membership category which that member represents. The objective of this policy is to ensure that members of the Council are peers, occupying comparable positions within their organizations or fields.

1. Federal members. The statute specifies that the Secretary of the Interior, the Secretary of Agriculture, and the heads of seven other agencies whose activities affect historic preservation appointed by the President shall sit on the Council. The Architect of the Capitol also is named as an *ex officio* member. The statute further allows each agency head to designate another officer of the agency to sit in his/her stead. A limitation on this authority for executive branch members was added in the 1980 amendments: no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated. (54 U.S.C. § 304101(b)).

A designee need not be an Assistant Secretary *per se*. In agencies where the title of Assistant Secretary does not exist, the level at which the approximate equivalent of assistant secretarial powers are exercised is appropriate. In all cases, the alternative designation may be used when

the officer to be designated has responsibilities that are agency-wide in that they extend to the full scope of activities of the member agency and not just one subdivision, office, division, or bureau within the member agency. For example, an officer that has been appointed the Senior Policy Official of the member department or agency (not a bureau or other component of the member's department or agency) under Section 3(e) of Executive Order 13287 meets the statutory standard for a designee by the inherent definition of the officer's duties under the Executive Order. Factors for the agency head to consider for other officials include the scope of their responsibilities, the level at which they sit in the department or agency, the official to whom they report, and the nature of their duties and authorities as they relate to the department or agency's historic preservation responsibilities.

The Architect of the Capitol is not subject to the specific limitations that 54 U.S.C. § 304101(b) places on designees. However, the principles articulated in this document for Executive Branch agencies should guide any designations made by the Architect.

2. Non-Federal *ex officio* members. The statute names the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Chairman of the National Trust for Historic Preservation as *ex officio* Council members. The authority of 54 U.S.C. § 304101(b) to name designees is extended to these three members, but the restrictions applied to Federal members do not pertain. The policies inherent in the provisions relating to Federal designees should guide designations in these cases. Designees should be in a policymaking position within the organization and have major, organization-wide responsibilities. Recognizing the corporate nature of these organizations, designations should generally be restricted to officers of the board or corporation and the chief executive officer.

3. Expert members. The statute directs the President to appoint four experts in the field of historic preservation to be selected from the disciplines of architecture, history, archeology, and other appropriate disciplines. These are specified in the legislative history to include, but not be limited to, urban planning, engineering, recreation, landscape architecture, anthropology, economics, human geography, or law, when the practice of the discipline "directly or primarily" involves historic preservation (House Report, p. 41).

Professional criteria for historians, architects, and archeologists have been established by the Secretary of the Interior to set standards for professional representation on State Review Boards (36 C.F.R. 61.5). These standards may serve as guidance for threshold qualifications for expert Council members. However, noting the level of other Council members as well as the Council's role in setting Government-wide and national policies, an added dimension of national recognition or accomplishment within a member's discipline might well be considered when these appointments to the Council are made. This could be evidenced by a demonstrated record of professional achievement, through research, publication, practice, or academic activity, that reflects a recognized national stature within the discipline.

The statute does not permit an expert member to designate an alternate representative.

4. Governor and Mayor. The statute requires the President to appoint a governor and a mayor to the Council. The purpose is “to better represent the concerns of State and local government in the Council’s deliberations” (House Report, p. 44). The statute permits the governor to have a designee. While the Act does not provide restrictions for the appointment of a governor designee other than needing to be “another officer of his department, agency, or organization,” it would be appropriate for such a designee to meet standards comparable to those set forth for federal Member Designees. The Council believes the elected nature of these officials precludes recommending further criteria for this class of member. The statute does not permit a mayor to designate an alternate representative.

5. General public members. The statute requires the President to appoint three at-large members from the general public. In addition, the Chairman is appointed from the general public. This class of member is intended “to provide a voice for the citizens whose daily lives are affected by historic preservation activities.” They may be appointed as representatives of a group “such as civic associations or labor unions or as individual citizens” (House Report, p. 41). Because of the broad range of suitable representatives of the public, the Council believes that any specific criteria on individual members’ credentials would be inappropriate. However, due consideration should be given to the contribution a general public member can make to the Council’s activities, either in a representational or individual capacity. The statute does not permit a general public member to designate an alternate representative.

6. Indian Tribe or Native Hawaiian organization member. The statute requires the President to appoint “one member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member.” (54 U.S.C. § 304101(a)(12)). Due to the broad range of suitable representatives of Indian tribes or Native Hawaiian organizations, the Council believes that any specific criteria on individual members’ credentials would be inappropriate. The statute does not permit the Indian tribe or Native Hawaiian organization member to designate an alternate representative.

APPENDIX B: DELEGATION OF COUNCIL FUNCTIONS UNDER 36 C.F.R. PART 800

BACKGROUND

The regulations implementing Section 106 of the Act are codified at 36 C.F.R. part 800.

These regulations give the Membership the responsibility to carry out its purposes.

However, the Membership delegates some of its responsibilities under the regulations to the Chairman and to the Executive Director, as set forth in this Appendix.

In some cases, the Council intends to delegate a responsibility to both the Chairman and the Executive Director. When that is the case, this document will either describe those circumstances in which each party shall take responsibility or authorize the Chairman to redelegate responsibility to the Executive Director for a particular matter or situation.

This delegation will go into effect immediately upon adoption by the Membership.

POLICY

This document allocates the Council's responsibilities under the regulations between the policymaking parts of the agency, represented by the Chairman and the members, and the professional staff of the agency, represented by the Executive Director. Generally, the Council, in the form of the Chairman and the members, retains final decision-making authority in those areas where there are conflicts between historic preservation values and Federal project needs requiring a resolution that reflects the public interest. Delegation to the professional staff is made for the areas of routine administration and resolution of cases that do not present significant controversy or questions of policy.

Nothing in this delegation of authority shall prohibit the Executive Director from seeking advice or guidance from the Chairman or prohibit the Chairman from seeking advice or guidance from the members when carrying out the responsibilities duly delegated to them.

DEFINITIONS

Chairman. The term “Chairman” refers to the Chairman of the Council appointed by the President, or another individual member of the Council designated by the Chairman to act on behalf of the Chairman in a particular matter or for a particular time.

Executive Director. The term “Executive Director” means the Executive Director of the Council, or an individual Council employee designated by the Executive Director to act in the Executive Director’s behalf on a particular matter or for a particular time.

Members. The term “Members” refers to the members of the Council and their official designees.

NHPA. The term “NHPA” means the National Historic Preservation Act as amended. (54 U.S.C. §§ 300101 et seq.)

Unless otherwise noted, the term “Section” refers to sections within 36 C.F.R. part 800.

SECTION BY SECTION DELEGATIONS

Section 800.2(b)(1). The general responsibilities of the Council, mentioned by Section 800.2(b), in deciding whether to enter the Section 106 process, as well as the documentation and notification requirements under this decision, is delegated as detailed below on the specific portions of the regulations concerning such determinations and decisions.

Section 800.2(c)(2)(ii)(E). The Council hereby delegates to the Executive Director its responsibility under Section 800.2(c)(2)(ii)(E) to receive copies of agreements whereby an Agency Official grants Indian tribes or Native Hawaiian organizations additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in subpart B of the revised regulations.

Section 800.3(c)(4). The Council hereby delegates to the Executive Director its responsibility under Section 800.3(c)(4) to consult with the Agency Official when the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination and the Agency Official decides to consult with the Council, in lieu of the SHPO/THPO, instead of proceeding to the next step in the process based on the finding or determination.

Section 800.3(d). The Council hereby delegates to the Executive Director its responsibility under Section 800.3(d), regarding consultation on tribal land, to complete the Section 106 process with the Agency Official and Indian tribe when the SHPO has withdrawn from the process and as appropriate.

Section 800.4(c)(2). The Council hereby delegates to the Executive Director its responsibility under the third sentence of Section 800.4(c)(2) to request the Agency Official to obtain a determination of eligibility pursuant to 36 C.F.R. Part 63.

The Council hereby delegates to the Executive Director its responsibility under the last sentence of Section 800.4(c)(2) to receive and, where appropriate, to grant a petition asking that the Council request the Agency Official to obtain a determination of eligibility of a property off tribal lands, where the petition is received from an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the property and that does not agree with an Agency Official's determination of its eligibility.

Section 800.4(d)(1). The Council hereby delegates to the Executive Director its responsibility under Section 800.4(d)(1) to object within 30 days of receipt of an adequately documented finding of "no historic properties affected."

Section 800.5(c)(2)(i). The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(i) to receive, and respond to, a request from an Agency Official to review a finding of no adverse effect pursuant to Section 800.5(c)(3) (see below), where the SHPO/THPO or any consulting party disagree with the Agency Official's finding within the 30-day review period.

Section 800.5(c)(2)(ii). The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(ii) to: (1) receive, from an Indian tribe or Native Hawaiian organization that has made known to an Agency Official that it attaches religious and cultural significance to a historic property subject to the finding of no adverse effect and that disagrees with such finding by the Agency Official, a request to review such finding pursuant to Section 800.5(c)(3) (see below), and (2) respond to such a request.

Section 800.5(c)(2)(iii). The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(iii) to decide and request, guided by Appendix A, the Agency Official to submit to it the no adverse effect finding along with the required documentation, for the Council's review pursuant to Section 800.5(c)(3) (see below).

Section 800.5(c)(3). The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(3) to review findings of adverse effects and to notify the Agency Official as to the determination on whether the adverse effect criteria have been correctly applied.

Section 800.6(a)(1). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to receive notifications of adverse effect findings.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to: (1) receive any invitations or requests, from an Agency Official, the SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party, to participate in the consultation for the resolution of adverse effects, (2) notify in writing to the Agency Official and all consulting parties as to whether the Council will participate in such consultation and, if it does decide to participate, that its decision to participate meets the criteria under Appendix A, (3) advise the head of the agency of its decision to enter the process, and (4) actually participate in such consultation.

Section 800.6(a)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(2) to invite other individuals or organizations to become consulting parties when the Council is participating in the consultation to resolve adverse effects.

Section 800.6(b)(1)(iv). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(iv) to receive copies of executed Memoranda of Agreement, along with the required documentation.

Section 800.6(b)(1)(v). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(v) to: (1) receive a request to join consultation where the Agency Official and SHPO/THPO fail to agree on terms of a Memorandum of Agreement, (2) decide whether to accept such a request, and (3) notify the agency when such a request is declined.

Section 800.6(b)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(2) to participate in consultation regarding ways to avoid, minimize or mitigate adverse effects and its responsibilities under Section 800.6(b)(2) to execute Memoranda of Agreement. The Executive Director is hereby authorized to redelegate this responsibility to execute a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

Section 800.6(c)(1). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(1) to execute, amend, or terminate a Memorandum of Agreement to which the Council is a signatory. The Executive Director is hereby authorized to redelegate this responsibility to execute, amend or terminate a Memorandum of Agreement to the Chairman when the Executive Director so recommends due to the specific nature of the case.

Section 800.6(c)(7). The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(7) to receive amended Memoranda of Agreement to which the Council is not a signatory.

Section 800.7(a). The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a) to determine that further consultation will not be productive and terminate consultation, and to notify other consulting parties, providing them the reasons for terminating in writing.

Section 800.7(a)(1). The Council hereby delegates to the Chairman its responsibilities under Section 800.7(a)(1) to receive a request for Council comment, pursuant to Section 800.7(c), from the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities, when the Agency Official terminates consultation.

Section 800.7(a)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(2) to execute a Memorandum of Agreement with the Agency Official when the SHPO terminates consultation. The Executive Director is hereby authorized to

redelegate this responsibility to execute such a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

Section 800.7(a)(4). The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(4) to notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of a termination, when the Council has terminated consultation (see Section 800.7(a) above), and to consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

Section 800.7(b). The Council hereby delegates to the Chairman its responsibilities under Section 800.7(b) to determine whether it is appropriate for the Council to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed.

Section 800.7(c)(1). The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(c)(1) to request the Agency Official to provide additional information on an undertaking and provide assistance to the Council in arranging an onsite inspection and an opportunity for public participation (this subsection relates to occasions where the Council is to provide comment without a memorandum of agreement).

Section 800.7(c)(2). The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(2) to transmit the Council's comments in accordance with Section 800.7(c)(3).

Section 800.7(c)(4)(i). The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(4)(i) to receive the summary of a decision from an agency head that has taken Council comments into account.

Section 800.8(c). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c) to receive advance notification from an Agency Official that it intends to use the NEPA process and documentation to comply with Section 106 in lieu of the procedures under Sections 800.3 through 800.6.

Section 800.8(c)(1)(iii). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(1)(iii) to engage in consultation regarding effects, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents.

Section 800.8(c)(2)(i). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(i) to receive the DEIS or EIS, when such documents are being prepared, from the Agency Official.

Section 800.8(c)(2)(ii). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standards set forth in Section 800.8(c)(1) or that the

substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to receive, and resolve, objection referrals from the Agency Official.

Section 800.8(c)(3). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(3) to review objections, and to notify the Agency Official as to whether it agrees or disagrees with the objection.

Section 800.8(c)(5). The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(5) to receive notification from the Agency Official that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Sections 800.3 through 800.6 will be followed as necessary.

Section 800.9(a). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(a) to receive, and respond to, requests for the Council's advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the Council's regulations, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

Section 800.9(c)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2) to receive notification and documentation from an Agency Official that it (the Agency Official) has determined that 54 U.S.C. § 306113 is applicable and that circumstances may justify granting the assistance at issue.

Section 800.9(c)(2)(i). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(i) to formulate its opinion, and provide it to the Agency Official, as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects (see Section 800.9(c)(2) above).

Section 800.9(c)(2)(ii). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(ii) to receive notification from the Agency Official as to its consideration of the Council's opinion on whether to grant assistance to the applicant (see Section 800.9(c)(2) above).

Section 800.9(d). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d) to evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the NHPA.

Section 800.9(d)(1). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(1) to request, and receive, from Agency Officials documentation of agency policies, operating procedures and actions taken to comply with Section 106, and to request and receive from other participants in the Section 106 process available information and documentation.

Section 800.9(d)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(2) to make recommendations to participants, the heads of Federal agencies, and the Secretary of the Interior on actions to improve the efficiency and effectiveness of the Section 106 process, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

Section 800.10(b). The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(b) to receive requests from Agency Officials to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Section 800.6.

Section 800.10(c). The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(c) to request a report from the Secretary of the Interior under 54 U.S.C. § 304110 to assist in a consultation involving a National Historic Landmark.

Section 800.10(d). The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(d) to report the outcome of the Section 106 process (regarding National Historic Landmarks under Section 800.10) to the Secretary of the Interior and the head of the agency responsible for the undertaking.

Section 800.11(a). The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(a) to: (1) determine whether applicable documentation standards are not met, (2) notify the Agency Official as to such determination and specify the information needed to meet the standard, (3) receive requests to review, and actually review, disputes regarding whether documentation standards are met, and (4) provide its views to the Agency Official and the consulting parties as to such disputes.

Section 800.11(c)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(c)(2) to: (1) consult with the Secretary of the Interior in reaching determinations on the withholding and release of information due to confidentiality issues under 54 U.S.C. § 307103, (2) receive from the relevant Federal agency, available information related to the confidentiality concern, and (3) advise the Secretary of the Interior and the relevant Federal agency as to the confidentiality issue.

Section 800.12(a). The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(a) to engage in consultation regarding the development of emergency procedures.

Section 800.12(b)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to receive notification from an Agency Official whose agency has not developed emergency procedures, that it proposes an emergency undertaking as an essential and immediate response to a disaster or emergency.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to comment on such emergency undertakings within the timeframe available.

Section 800.12(c). The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(c) to object to a proposed emergency action by a local government (acting as Agency Official) regarding an imminent threat to public health or safety declared by the local government.

Section 800.12(d). The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(d) to receive, decide, and respond to, a request for an extension of the 30-day period within which emergency undertakings must be implemented in order for the emergency procedures under Section 800.12 to apply.

Section 800.13(b)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(2) to receive a report from the Agency Official on its actions to mitigate effects on subsequently discovered historic properties or unanticipated effects.

Section 800.13(b)(3). The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(3) to receive, and respond to, notifications from the Agency Official as to actions taken to resolve adverse effects after subsequent discoveries, and to receive reports of the actions when they are completed.

Section 800.14(a)(1). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(1) to consult with the Agency Official and others during the development of alternate procedures.

Nevertheless, the Council retains for the members its responsibility under Section 800.14(a)(2) to review proposed alternate procedures, determine whether they are consistent with the Council's regulations and, if so, notify the Agency Official of this determination.

Section 800.14(a)(4). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(4) to provide Federal agencies notice and opportunity to comment on proposed alternate procedures under 54 U.S.C. § 302705.

Section 800.14(b). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b) to negotiate a Programmatic Agreement with an Agency Official.

Section 800.14(b)(2)(iii). The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(2)(iii) to execute and terminate program Programmatic Agreements. The Chairman has the discretion to further delegate, in writing, these responsibilities to the Executive Director.

Section 800.14(b)(2)(v). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b)(2)(v) to determine whether the terms of a Programmatic Agreement are not being carried out.

Section 800.14(b)(4). The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(4) to designate an agreement document as a prototype programmatic agreement.

Section 800.14(c)(5). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(5) to receive requests for exempted categories.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(c)(5) to review such requests and decide whether to approve or reject the proposed exemption based on the consistency of the exemption with the purposes of the NHPA, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with 54 U.S.C. § 304108(c).

Section 800.14(c)(6). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(6) to determine that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of the Council's regulations.

The Council retains for its members its responsibilities under Section 800.14(c)(7) to terminate an exemption and to notify the Agency Official 30 days before the termination becomes effective.

Section 800.14(d). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(d) to: (1) establish standard treatments, (2) publish notice of standard treatments in the Federal Register, (3) arrange for public participation in the development of standard treatments, (4) request an Agency Official to arrange for public involvement when the Agency Official has proposed the standard treatment, (5) notify and consider the views of SHPO/THPOs on the proposed standard treatment, (6) follow the consultation requirements under Section 800.14(f) with regard to proposed standard treatments that may affect historic properties on tribal lands or those of religious and cultural significance to tribes, and (7) terminate standard treatments by publication of a notice in the Federal Register 30 days before the termination takes effect.

Section 800.14(e). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(e) to receive requests for program comments.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(e)(3) through (5) to: (1) notify and consider the views of SHPO/THPOs on the proposed program comments, (2) follow the consultation requirements under Section 800.14(f) as required, (3) request additional information, (4) seek the consent of the Agency Official to extend the period for providing comment, (5) provide, or decline to provide, program comments, (6) notify the Agency Official when it decides to decline to comment, and (7) determine to withdraw a program comment.

Section 800.14(f)(2). The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(f)(2) to receive from Agency Officials summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations as part of the documentation for the proposed program alternative.

APPENDIX C: PANEL MEETING PROCEDURES

INTRODUCTION

The Council membership is called upon to issue formal comments in the rare instances where an adverse effect to a historic property is not resolved pursuant to the Section 106 regulations. The Council's Operating Procedures, at Section V.B.2.b., provide for subgroups of Council members ('panels') to meet with the purpose of considering and providing such formal comments. This Appendix sets forth the procedures for conducting such panel meetings.

A. ORGANIZATION

1. **Chairman.** The Chairman of the Council shall designate the panel chairman from the non-Federal membership of Council. The panel chairman may designate a member of the panel to sit in his/her stead during temporary absence from a panel meeting or other panel functions. Should the designated panel chairman be unable to complete his/her assignment as panel chairman, the Chairman of the Council shall designate a successor from those non-Federal members already serving on the panel.

2. **Panel Membership.** The Chairman of the Council shall designate panel members. A panel shall consist of three non-Federal members and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking at issue. The Chairman of the Council may designate substitute members at any time. Consistent with the federal rules of ethics, panel members will not include those with a conflict of interest or an impartiality issue regarding the undertaking at issue.

B. CONDUCT OF PUBLIC PANEL MEETINGS

1. **Notice.** Generally, the Executive Director shall provide 10 days notice of all public meetings involving Council review of undertakings by publication in media reasonably determined to reach interested members of the public. In exceptional cases, no less than 7 days notice shall be given by such publication. The Executive Director will make reasonable efforts to directly provide such notification to known consulting parties through electronic mail.

2. **Agenda.** The public panel meeting shall be conducted in accordance with a provisional agenda that is adopted by the panel. Copies of the agenda shall be made available to the public prior to the meeting.

3. **Order of Business.** Unless the panel chairman determines otherwise, the agenda shall provide for the taking of public testimony, a site visit, reports from the consulting parties and any others deemed necessary by the panel chairman, and a commenting session.

4. **Public Testimony and Reports.** Unless otherwise specified by the panel chairman, public testimony and reports shall conform to general guidelines established by the Council for presentations at meetings.

5. **Written Statements.** Written statements may be submitted to the panel. The panel chairman may extend the period for submission of written statements beyond the meeting, provided such extension is consistent with the comment period under 36 CFR Section 800.7(c)(2). The panel will fully consider written statements only if statements are received by the deadline established by the panel chairman.

6. **Required Reports.** Unless the panel chairman determines otherwise, reports to the panel shall conform to general guidelines established by the Council for presentations at meetings.

7. **Onsite Inspections.** The panel chairman may schedule an onsite inspection as part of the panel meeting or incidental to the meeting. The Agency Official, the State Historic Preservation Officer / Tribal Historic Preservation Officer, and the Executive Director, or their designated representatives, shall be invited to attend. Other parties may attend as the panel Chairman deems appropriate.

8. **Open Meetings.** The Council will provide reasonable facilities for attendance of interested members of the public to the public panel meeting.

9. **Minutes.** A recorder designated by the panel chairman will keep minutes of public panel meetings and make such minutes readily available to the public within a reasonable time after the public panel meeting. The Executive Director shall send any such minutes to all members of the Council as soon as they are available.

C. PANEL COMMENTS

1. **Deliberations.** The Council will maintain records of the deliberations of the panel in formulating its comments and will make such available to the public upon request, subject to exceptions permissible only by the Freedom of Information Act.

2. **Voting.** All members of the panel must vote on the panel's final comments. Panel members may vote by proxy given to the panel chairman. All final votes on panel comments shall be on record. All actions relating to panel comments shall require a simple majority for passage.

3. **Form of Comments.** Once adopted, and within the timeframe established by 36 C.F.R. § 800.7, the Executive Director shall transmit written comments to the head of the

Federal agency requesting comment or having responsibility for the undertaking and to all members of the Council. The comments shall have three parts: an introduction; a finding of facts; and conclusion and recommendations.

4. Distribution of Comments. The Council shall not release written comments of the panel until they have been received by the relevant head of the Federal agency. Comments transmitted via electronic mail are considered to be received at the moment they are sent by the Council. As soon as reasonably possible after the comments are received by the relevant Federal agency, the Executive Director will make available the comments of the Council to the State Historic Preservation Officer / Tribal Historic Preservation Officer and other consulting parties, and posted on the website and/or social media of the Council. The Council recommends that comments of the Council should be included in the final environmental impact statement (FEIS) or Record of Decision (ROD) prepared pursuant to the National Environmental Policy Act, if such an FEIS or ROD was prepared.

5. Report to Full Council. The panel chairman, the Chairman, or the Executive Director shall report the actions taken by the panel to the Membership via electronic mail. The Council may issue a final report to the President and Congress under authority of 54 U.S.C. § 304102(b) describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

APPENDIX D: POLICY GUIDANCE REGARDING ACHP ADVISING ON STATE AND LOCAL LEGISLATION

Policy Guidance Regarding Advisory Council on Historic Preservation Advising on State and Local Legislation

A. Background

The National Historic Preservation Act tasks the Advisory Council on Historic Preservation (ACHP) with several duties. Among them is that the ACHP must “advise” as to state and local legislation related to historic preservation. *See* 54 U.S.C. § 304102(a)(4). Both state and local governments have specified roles in the federal historic preservation framework, including through State Historic Preservation Offices and the Certified Local Government program, which tie these smaller political subdivisions more closely to the federal government than may be the case in other areas of federal influence. For the purposes of this policy, “local government” is deemed to include any political subdivision of a state, as articulated in that state’s general statutes or other relevant law.

B. General Policy

The ACHP may choose to exercise its authority under the National Historic Preservation Act to advise on state and local legislation, though it will not always choose to do so. This policy sets forth the criteria that will be used by the ACHP to determine whether to advise on state or local legislation.

C. Determinations Regarding Advising

1. Reasons the ACHP May Not Advise

The ACHP has no obligation to advise on each and every state or local legislation, and it will not always elect to do so, even though one or more of the criteria may be met. This is due both to the sheer volume of preservation-related state and local legislation and concern that lack of localized knowledge and insight could result in inadvertently overlooking controversial situations or relying on faulty second-hand information. Moreover, it will most often be the case that those representing views consistent with the ACHP’s views on any particular state or local legislation will capably and effectively communicate those views whether or not the ACHP participates.

Despite these issues, and as further described in Section C.2. below, there are scenarios where the ACHP advice to state and local governments may be warranted and desirable.

2. Factors to Consider in Deciding Whether to Advise

The ACHP may choose to advise on state or local legislation when one or more of the following criteria is met:

- a. *The legislation has substantial positive or adverse effects on historic properties.*
These impacts may include effects on: properties that possess a national level of significance or on properties that are of noteworthy importance or are a rare property type; large numbers of historic properties, such as impacts to historic properties throughout the state or local jurisdiction or to multiple properties within a historic district; or properties associated with marginalized or underserved communities. *The legislation could advance or hinder an established ACHP policy or guidance goal.* These goals may be stated in the ACHP strategic plan, guidance documents, legislative priorities, or policy statements and have included topics such as workforce development, heritage tourism, climate change, building a more inclusive preservation program, and supporting the participation of Indian Tribes in the national preservation program.
- b. *The legislation may set a precedent for the treatment of historic properties that may be adopted by other states.* Precedents may include proposals for innovative strategies that promote the preservation of historic properties, or, conversely, novel legislation inconsistent with the National Historic Preservation Act. Precedents may also include changes to established components of state or local preservation programs, such as designation, design review, demolition review, and economic hardship provisions, among others.
- c. *The legislation attempts to interpret or change legal frameworks related to the National Historic Preservation Act or its implementing regulations.* These frameworks may include the relationships between State or Tribal Historic Preservation Offices and the federal government, the duties of State or Tribal Historic Preservation Offices or Certified Local Governments, the process under Section 106 of the National Historic Preservation Act (Section 106), or state-delegated authority related to Section 106.
- d. *The legislation presents issues of concern to Indian Tribes or Native Hawaiian organizations, where such issues are related to federal preservation law or policy.* These issues of concern may include the identification or evaluation of, or assessment of effects on, historic properties to which an Indian Tribe or Native Hawaiian organization attaches religious and cultural significance; or the interpretation of Section 106 or preservation-related authorities, such as the Native American Graves Protection and Repatriation Act.

3. Issues Likely Deserving of Favorable ACHP Advising

In establishing this guidance, the ACHP recognizes that some state or local legislation will not require review on a case-by-case basis by the entire ACHP membership because its subject matter is clearly consistent with long-established ACHP positions. With that in mind, the ACHP hereby authorizes the chair to advise favorably on draft state and local legislation that proposes to:

- a. Expand or create a rehabilitation tax credit program;
- b. Increase or provide funding to State or Tribal Historic Preservation Office(s), and/or programs affiliated with such office(s);
- c. Increase or provide funding to preserve or rehabilitate a building, structure, object, site, or district, listed or eligible for listing on a register of historic places;
- d. Increase or provide funding for a public or publicly supported conservation or preservation easement program; and/or
- e. Increase or provide funding for an existing education program focused on historic preservation or cultural heritage or authorize the creation of such a program.

4. Issues Likely Deserving of Unfavorable ACHP Advising

In establishing this policy, the ACHP recognizes that some state or local legislation will not require review on a case-by-case basis by the entire ACHP membership because its subject matter is clearly inconsistent with long-established ACHP positions. With that in mind, the ACHP hereby authorizes the chair to advise negatively on draft state and local legislation that proposes to:

- a. Diminish or eliminate a rehabilitation tax credit program;
- b. Reduce or eliminate funding to State or Tribal Historic Preservation Office(s), and/or programs affiliated with such office(s);
- c. Reduce or eliminate funding to preserve or rehabilitate a building, structure, object, site, or district, listed or eligible for listing on a register of historic places;
- d. Reduce or eliminate funding for a public or publicly supported conservation or preservation easement program; and/or
- e. Reduce or eliminate funding for an existing education program focused on historic preservation or cultural heritage or authorize the creation of such a program.

D. Process Regarding Advising

1. Reference to Operating Procedures

The formulation of positions on state or local legislative matters and any testimony related thereto shall be formulated in accordance with Section VII of the Operating Procedures of the ACHP.

2. Third Party Requests

Absent extraordinary circumstances, the ACHP will provide testimony and advice on state or local draft legislation only if requested to do so by any of the following individuals:

- a. A member of the ACHP or that member's designee;
- b. A Member of Congress;
- c. A state legislator;
- d. Senior state executive branch staff;
- e. State Historic Preservation Officer or appropriate deputy;
- f. Tribal Historic Preservation Officer or appropriate Tribal representative;
- g. Representative of a local government (such as a mayor or other local elected official) or a local agency (such as a historic commission chair); or
- h. Representative of a nonprofit organization with expertise in historic preservation and based in the geographic area in question.

3. Reporting to the ACHP

The chair will report to the ACHP members on any actions taken pursuant to Sections C.3. or C.4. at the next ACHP business meeting.

Adopted July 28, 2023

APPENDIX E: POLICY GUIDANCE FOR ACHP COMMENTS TO CONGRESS ON SITE-SPECIFIC LEGISLATION

Policy Guidance for ACHP Comments to Congress on Site-Specific Legislation

Background. When tracking pending legislation and providing advice to Congress on selected bills, the ACHP generally avoids addressing site-specific legislation. This is due both to the sheer volume of such bills and concern that lack of localized knowledge and insight could result in inadvertently overlooking controversial situations or relying on faulty second-hand information. Despite these problematic issues, however, there are scenarios where ACHP advice to Congress on site-specific legislation may be warranted.

Factors to Consider in Decision Making. The ACHP may choose to offer comments on site-specific legislation when one or more of the following criteria is met:

- **The legislation addresses a highly significant historic property.** The exceptional significance of the property may already be recognized, for example, through its designation as a National Historic Landmark, as part of a National Park Service unit, or as a World Heritage Site. This criterion could also apply in cases involving a newly discovered or newly evaluated property that is of great significance.
- **The legislation is site-specific but also addresses a broader range of historic properties or advances an innovative preservation strategy.** Site-specific bills occasionally address the preservation or protection of multiple historic properties, often thematically related, making the impact of the legislation significantly broader than a single site. Likewise, the treatment of a specific historic property in a bill may provide an innovative model of a preservation approach that has broader applicability.
- **The legislation could advance an established ACHP policy goal.** Consistent with its strategic plan, the ACHP adopts various preservation policy goals, addressing issues such as heritage tourism, sustainability, building a more inclusive preservation program, and supporting the participation of Indian Tribes in the national preservation program. Site-specific bills often can promote such goals.
- **The legislation would set a damaging precedent for treatment of historic properties.** Occasionally legislation is introduced that could negatively impact the preservation of specific historic properties or establish legal principles that are inconsistent with the policies of the National Historic Preservation Act.

Adopted November 26, 2018