



October 9, 2024

Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Dear Members of the Advisory Council:

On behalf of the <u>Archaeology Division</u> of the <u>American Anthropological Association</u>, we write in strong support of the letter to you on September 30, 2024, from Preservation Partners, signed by the Society for American Archaeology, the Society for Historical Archaeology, and other important organizations in the field of historic preservation about your "Program Comment on Accessible, Climate-Resilient, and Connected Communities." We join with our sister organizations to respectfully ask that you withdraw this program comment.

Current protocols for reviews under Section 106 of the National Historic Preservation Act (NHPA) are effective and efficient. We are concerned that your program comment will diminish this system and will put our irreplaceable archaeological and historical sites at risk.

We especially want to emphasize the importance of the consultation process, including the participation of State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices (THPOs), descendant groups, local communities, and other stakeholders. Archaeological and historic sites, and the landscapes in which they are situated, are nonrenewable cultural resources that deserve the protections they have by law. Furthermore, they are fundamental to heritage and community identity in the present.

We believe strongly that stewardship of cultural resources and historic sites is essential for building resilient and connected communities and infrastructure for the future, and that this stewardship is compatible with—not a hindrance to—smart growth and infrastructure development.

Sincerely,

Whitney Battle-Baptiste, Ph.D.

President, American Anthropological Association

Ruth M. Van Dyke

Ruth M. Van Dyke, Ph.D.

President, Archaeology Division, American Anthropological Association

Chris Rodning, Ph.D.

President-elect, Archaeology Division, American Anthropological Association



October 8, 2024

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

Re: Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities

Dear Chair Bronin:

The American Cultural Resources Association (ACRA), the trade association for private firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Advisory Council on Historic Preservation's (Council) Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities (Program Comment).

ACRA-member firms undertake many of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialog where every stakeholder has a voice.

ACRA respectfully offers the following comments about the Program Comment.

Overview

The Section 106 process was enacted in the National Historic Preservation Act of 1966 and implemented through Council regulations at 36 CFR 800. It is an American success story, enabling the government and the private sector to build the infrastructure on which our society depends while ensuring that we do not compromise our historic and cultural heritage. More critically, the Section 106 process ensures that states, Tribes and the public have the ability to comment on undertakings.

For certain routine undertakings that may warrant an expedited process, the Council has worked with stakeholders to develop tools like memoranda of agreement (MOA), programmatic agreements (PA), program alternatives, and – where appropriate and when requested by federal agencies – program comments. ACRA believes such approaches, when carefully and thoughtfully developed, are consistent with the intent of the Section 106 process to balance the twin goals of development and heritage protection.

We are deeply concerned, however, that this proposed Program Comment is so broad and allencompassing that it will undermine significant work conducted over decades by Council members, state and Tribal preservation officers, cultural resource management firms and professionals, and many others to strike an appropriate balance between those goals. ACRA also is concerned that the process by which this Program Comment is being developed has not allowed for the thoughtful consultation, review, and feedback that such a far-reaching document demands. Worse, by proposing that the Program Comment will be in effect for two decades, and allowing it to be unilaterally extended by whomever holds the position of Chair, the Council could very well allow the Section 106 process to be further undermined by exempting broad categories of undertakings from review for virtually any policy goal.

ACRA fully supports the intended policy goals of this Program Comment, including construction of more affordable housing and the development of buildings and transportation systems that address the impacts of climate change. We also agree that these issues demand urgent attention from the federal government. However, the core mission of the Council is to balance worthy policy goals like these with the equally vital goal of avoiding irreparable harm to historic, archaeological, and traditional cultural places and properties. This Program Comment simply does not strike that balance.

ACRA's specific concerns with the Program Comment are summarized below.

• It is Unprecedented for the Council to Issue a Program Comment on Its Own Initiative.

Section 36 CFR 800.14 addresses program alternatives, including program comments. Although the Council may initiate a program comment (36 CFR 800.14(e)), the regulations' focus is on an agency requesting the Council to comment. Program comments traditionally have been initiated by a single agency (not a group of agencies) asking the Council to approve alternate processes for compliance with Section 106. This proposed Program Comment would represent the first time in its history that the Council has issued such a comment without a request from an agency, and the first time that it has contemplated one that applies to all agencies.

Furthermore, 36 CFR 800.14(f) requires that "[w]henever an agency official proposes a program alternative [including program comments], the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations." There is no evidence that this requirement was followed in the development of this Program Comment.

Considering the unprecedented nature of this Program Comment – coupled with its expansive scope in terms of agencies covered and undertakings affected – it is particularly essential that the Council adhere to a careful and deliberative consultation process which provides stakeholders and the public ample time to consider and provide input on its potentially far-reaching impacts. It is not lost on ACRA that this Program Comment, if adopted, may become a template for expansive actions by future Council members whose commitment to protection of the nation's cultural heritage is not known.

¹ For example, 36 CFR 800.14(e)(1) requires the agency to "identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public;" 36 CFR 800.14(e)(2) requires agencies to "arrange for public participation appropriate to the subject matter and the scope of the category," and so on.

• The Justification for the Program Comment Does Not Adequately Explain the Need for It.

The Program Comment states, under "D. Justification," that it "enables federal agencies to focus on other undertakings with greater potential for adverse effects on historic properties, reducing taxpayer costs and facilitating project delivery. . . ."

ACRA agrees that the policy goals enumerated in the Program Comment are both worthy and necessary for the public good. However, the Program Comment's assertion that such undertakings have a lower potential for adverse effects on historic properties than other undertakings lacks evidence. By what metrics does the Council demonstrate that the undertakings described in the Program Comment – as worthy as they may be – have less potential for harm to our nation's cultural and historical heritage?

This fundamental question is particularly important since this Program Comment represents the first time that the Council is issuing such a comment without an agency request – and furthermore, is proposing to allow this Program Comment to apply to all federal agencies.

The Program Comment Will Give Agencies Unchecked Power to Make Decisions.

ACRA is concerned that the Program Comment would leave considerable decision-making authority in the hands of federal agencies with no guardrails to ensure they consult with states, Tribes, and the public.

For example, the Program Comment states that agencies can choose to use the Program Comment, even if they already have a Section 106 MOA or PA in effect which addresses covered undertakings. While the Program Comment states that agencies must first consult with the MOA or PA signatories, the nature of such consultation is not defined. ACRA is concerned that this will allow agencies to abandon existing MOAs and PAs with only token signatory consultation, and without providing any recourse for stakeholders, especially the public, to weigh in.

Another example is in the requirement that a federal agency must follow the Section 106 process under 36 CFR 800 if the undertaking "would occur on or have the potential to affect" certain historic properties. This would include treatment of National Historic Landmarks (NHLs). The Program Comment is silent on properties that are potential NHLs. Again, the agency would appear to have complete authority to make such a determination without any stakeholder consultation.

• The Program Comment Will Undermine Public Consultation.

State, Tribal and public consultation is the linchpin on which the Section 106 review process rests; it is precisely through the task of engaging with public stakeholders that agencies and others build the necessary support which enables an undertaking to progress without controversy and court-case delay.

While certain undertakings, due to their limited scope and size, do not require extensive consultation, ACRA is concerned that the Program Comment would allow agencies to bypass public consultation that Section 106 requires even for undertakings where such engagement may be

necessary. Furthermore, the Program Comment would leave it to the agencies themselves to determine when and whether public consultation is even needed.

• The Program Comment Would Allow Agencies to Act on Undertakings Without Use of Qualified Professionals.

ACRA is deeply concerned that the Program Comment would enable agencies to make decisions without the use of qualified professionals. "C. The Use of Qualified Authorities" states that:

"Undertakings covered by this Program Comment do not require the use of a qualified authority except where explicitly stated, or except where, in the reasonable judgment of the federal agency, in consideration of various factors, the use of a qualified authority is necessary to fulfill the intent of the [NHPA] or necessary or useful to inform the federal agency's decision making."

This Program Comment effectively gives agencies carte blanche to make decisions on whether specific undertakings affect historic properties without consulting qualified authorities and provides no guardrails – beyond the vague qualifier of an agency's "reasonable judgement" in "consideration of various factors" – to ensure agencies use qualified professionals where appropriate and necessary for the protection of cultural resources. As for "qualified professionals," the only mention of them is in reference to historic architecture; there is no mention of their use with respect to archaeological or Tribal resources.

With respect to archaeological resources, the Program Comment apparently does not take into consideration that archaeological sites may extend below disturbed ground. In numerous places, the Program Comment requires a "qualified authority" to determine whether an area has been disturbed. However, the Program Comment fails to specify that the "qualified authority" must have the requisite knowledge and experience to determine whether a disturbed area has a potential for archaeological remains. Moreover, ACRA members are well aware that not all agency personnel who would be making these decisions meet the Secretary of the Interior (SOI) professional qualification standards.

The Program Comment Will Introduce More Confusion and Conflict into the Section 106 Process.

CRM firms routinely report that one of the biggest challenges to the effective execution of Section 106 reviews is inconsistency of regulatory implementation among federal agencies, and between state and federal agencies. At times, even different regional offices of the same agency use dissimilar and conflicting procedures in implementing Section 106. This lack of consistency causes unneeded delays in the process, undermining the public's trust in Section 106.

ACRA is concerned that the introduction of this Program Comment will make a complex interagency environment even worse by adding an untested process (one that, as noted above, was not requested by any agency) with vague definitions of covered undertakings. This is compounded by the fact that many projects must comply with federal, state, Tribal, and/or local preservation ordinances. Federal agencies, States, Tribes, and others have worked hard to align the federal 106

process with state and local requirements; ACRA believes that introducing a broad Program Comment like this will lead to confusion and difficulty in aligning compliance measures.

To make matters worse, a federal agency would be allowed to "incorporate use of this Program Comment in its review of [an] entire undertaking" in situations where components of the undertaking "include activities not listed."

In essence, the Program Comment allows for a "choose your own adventure" approach to Section 106 review, whereby agencies could arbitrarily exempt certain activities in an undertaking from review while requiring it for others. ACRA is deeply concerned that this approach will inevitably lead to confusion, delays, and inconsistent and incomplete reviews of undertakings with potential historic and cultural resource significance.

• The Program Comment Effectively Removes S/THPOs from the Review Process.

The Section 106 process as outlined in statute and regulation ensures that state and Tribal historic preservation officers (S/THPOs) play an important role in both the evaluation of the effects of federal undertakings on historic properties under their jurisdiction, and in identifying alternatives and mitigation strategies. S/THPOs best understand the cultural and historic significance of properties in their respective jurisdictions and therefore are best positioned to engage with local stakeholders.

By offering all federal agencies, for a wide range of undertakings, the chance to bypass the Section 106 process and regulations, the Program Comment will severely limit the ability of S/THPOs to comment on and be engaged in individual undertakings in their states and on Tribal lands. This not only inhibits local consultation on a wide variety of undertakings; it contradicts S/THPO legal responsibilities under the NHPA.

• The Program Comment Leaves Unclear Who Determines Whether Effects to a Historic Property Are Adverse.

The Program Comment authorizes federal agencies to use alternative compliance approaches "for undertakings [defined in Appendixes A-1, B-1 or C-1] with no or minimal potential to adversely affect historic properties," without further review under Section 106.

However, the Program Comment does not specify who determines whether there is the potential to adversely affect historic properties. The implication is that this, too, is a determination that federal agencies can make under the Program Comment without consultation with stakeholders, experts or the public.

In a similar vein, the Program Comment requires, under "V. Unanticipated Discoveries," that an agency must halt all activity and follow the 800 regulations "[i]f previously unidentified historic properties or unanticipated effects . . to historic properties are discovered during implementation of the undertaking." Again, it appears that the determination of what constitutes an unanticipated discovery would be solely under the purview of the agency, and there does not appear to be any mechanism to provide disclosure of such a discovery to the public and others. ACRA is deeply

concerned that an agency could theoretically identify an unanticipated discovery and choose to continue work without any provision for public input or agreement.

The Program Comment Fails to Ensure Transparency.

The Program Comment requires federal agencies to "provide annual reports regarding the use of this Program Comment during the previous reporting period, ending June 30 annually, to the ACHP." The report must provide "examples of undertakings covered by Section III.A.2" and other information. Under the Program Comment, after 2029 agencies must provide reports only once every three years. These reporting provisions present a number of concerns.

First, there is no requirement for agencies to report on their use of the Program Comment until after the fact, in some cases a full 12 months after the decision to use the Program Comment. After 2029, agencies would not need to report on their use of the Program Comment for up to three years. This would, in essence, allow agencies to utilize the Program Comment without giving the public the opportunity to know about its use until long after the undertaking has been completed – and, potentially, historic properties irrevocably damaged or destroyed.

Second, the wording of the provisions suggests that agencies need only provide examples of use of the Program Comment for undertakings covered by Section III.A.2, as opposed to all uses of the Program Comment.

These provisions become all the more troubling when considering the provision on "Dispute Resolution (Section VI)," which allows any person to "file a dispute over the implementation of this Program Comment or its use for any particular undertaking." Without timely notification by agencies of their use of the Program Comment, how will members of the public even know that it has been used?

• The Program Comment Does Not Require Mitigation for Adverse Effects.

A core component of the Section 106 process is the identification of alternatives and modifications to the undertaking that, as expressed in the regulations at 36 CFR 800.6, "could avoid, minimize, or mitigate adverse effects on historic properties." This process recognizes there are instances where adverse effects to historic properties and assets are unavoidable, yet an obligation remains to find ways to mitigate such damage. The Program Comment would enable federal agencies to elude any responsibility to identify alternatives or mitigation measures to undertakings allowed under it.

• The Program Comment's Duration and Extension Process Give Too Much Power to Future Chairs and Make It Difficult, if Not Impossible, to Institute Potential Reforms.

The Program Comment is proposed to remain in effect for two decades. Although Section IX provides that the Council *may* terminate the Program Comment prior to 2044 and that the Council *may* amend the Comment, there is no requirement that the Council review the effectiveness or worthiness of the Comment during its lifespan and make requisite changes.

In addition, ACRA is concerned about the fact that the ability to extend the duration of the Program Comment beyond 2044 lies solely with the Chair and not the full Council. This provision puts too much power in the hands of future Chairs whose positions on the importance of preservation cannot possibly be known.

Conclusion

ACRA and its members are committed to maintaining and strengthening the Section 106 process so that infrastructure undertakings move forward with proper consideration for their impacts on all types of cultural resources, as well as with the active consultation with all affected parties.

For the reasons stated above, we are deeply concerned that the Program Comment moves federal preservation policy in the wrong direction. ARCA respectfully urges the Council to withdraw this Program Comment.

ACRA offers its assistance in working with the Council and other stakeholders to develop tools which help federal agencies deliver undertakings in a timely manner while striking the right balance between progress and heritage protection.

ACRA appreciates this opportunity to comment on the proposed Program Comment.

Sincerely,

Amanda Stratton
Executive Director



Written Comment on Draft Program Comment on Accessibility, Climate-Resilient, and Connected Communities

Advisory Council on Historic Preservation

Submission by Amtrak

October 9, 2024

The National Railroad Passenger Corporation (Amtrak) appreciates the opportunity to respond to the Advisory Council on Historic Preservation (ACHP)'s Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities (ACCC Program Comment).

ACHP states that the purpose of this draft is to adopt policies that "reflect increasing public awareness that historic preservation strategies — and historic properties themselves — can play an important role in addressing the three interrelated sectors covered in this Program Comment." Amtrak works closely with federal agencies with involvement in our company's projects, typically through grant funding but also permitting and licensing, to ensure compliance with Section 106 of the National Historic Preservation Act (as amended, now codified under 54 USC 306108) and its implementing regulations under 36 CFR 800 (collectively Section 106). Amtrak is pleased to provide comments on the proposed draft ACCC Program Comment.

Amtrak is a proud steward of cherished historic railroad stations, bridges, and other railroad assets. The special experience of rail travel often begins and ends at historic stations, and we value the role of historic preservation in communities we serve. Amtrak's comments on the draft ACCC Program Comment are intended to inform strategies to further streamline the Section 106 process, particularly for activities related to Amtrak's capital program and future operational goals. These activities often maintain the essential historic character of the railroad while adapting to today's demands, ensuring the continued use of existing infrastructure to provide intercity passenger rail service throughout the United States. Comments are also offered regarding the practicalities of day-to-day use of this proposed Program Comment, such as opportunities to clarify terms and language for consistent, clear application of the proposed ACCC Program Comment.

As an organization with projects subject to Section 106 in 46 states and the District of Columbia, Amtrak fully supports measures to streamline the Section 106 process. Delivering projects on schedule and staying within budgets funded by taxpayers are critical to advancing the nation's transportation and climate goals, and Amtrak has consistently highlighted regulatory compliance impacts to project schedule and budget in response to requests for comments regarding prior ACHP Program Comments and other regulatory programs. Unpredictability and delays in project schedule are among the most significant drivers of increased project costs. Improving predictability in the Section 106 process through adoption of streamlining tools such as the proposed ACCC Program Comment could reduce delays and allow Amtrak to invest in infrastructure improvements more efficiently.



Agency and other stakeholder resource constraints can impact project timelines as State Historic Preservation Offices (SHPO), Indian Tribes (Tribes), and even federal agencies struggle to keep up with the volume of requests for participation in the Section 106 processes. Using Section 106 program alternatives such as Program Comments to streamline the Section 106 process for activities that are unlikely to cause adverse effects on historic properties, can offset resource constraints and allow federal agencies, SHPOs, and other stakeholders to focus more on projects that have greater potential to cause adverse effects.

Amtrak is grateful for the steps that ACHP has taken, in coordination with federal agencies, SHPOs, Tribes, and industry and other stakeholders, over the last several years to streamline the Section 106 process by utilizing program alternatives. Amtrak worked closely with the Federal Railroad Administration to successfully implement the ACHP's Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way (Rail ROW Program Comment), fully or partially exempting activities from Section 106 consultation for hundreds of rail projects since the Rail ROW Program Comment's adoption in 2018, enhancing the capacity for record investments in rail infrastructure. While the Rail ROW Program Comment exempts many common activities from Section 106 consultation, Amtrak supports the inclusion of climate-friendly activities related to transportation in the draft ACCC Program Comment that are not in the existing Rail ROW Program Comment. The ACCC Program Comment will support Amtrak's Net Zero Strategy, which includes sourcing 100% of the company's electricity from non-carbon sources by 2030, among other initiatives to improve rail travel's already significant sustainability advantage over personal vehicle and air travel. The replacement and renewal of electrification systems and other electrified elements of the railroad (e.g., signals), as well as opportunities for implementing additional non-carbon energy sources, in a streamlined regulatory environment, supports these goals.

Specific comments are as follows and as documented in the enclosed markup of the draft ACCC Program Comment.

- 1. Section III.B.2 seems to state that the outreach to Tribes to determine whether the proposed ACCC Program Comment may be used is considered Section 106 consultation. Per ACHP's handbook on consultation with Tribes, applicants can coordinate with and seek information from Tribes without agency involvement, prior to formal Section 106 consultation. It is not clear whether that type of outreach has a place in this process. Also, it is not clear whether the timelines associated with Section 106 consultation would apply to the process to determine whether this program alternative applies, and whether additional efforts are required if a Tribe or NHO does not respond to the request for consultation and determination of applicability of the ACCC Program Comment. Establishing certainty of next steps would add predictability in the process.
- 2. The draft ACCC Program Comment relies on consultation with Tribes and NHOs and a new type of individual a "Qualified Authority" in several circumstances to determine whether the ACCC Program Comment can be used. While the term is defined here, the draft is inconsistent in referencing this role (e.g., missing from Section II.E.3.c, where we



assume this role would apply), and there are some areas where use of Qualified Authority and Qualified Professional are confusing (see Appendix B-2, 3.a). The draft is also silent on how such authorities would be known to agencies and project sponsors. Reliable, upto-date Tribal contact information and Tribal consultation submission protocols are currently often difficult and time-consuming to find and verify. Amtrak supports the creation of a centralized repository, such as a nationwide GIS-based tool, for this information that is *actively maintained*, inclusive of Tribes that do not have a Tribal Historic Preservation Officer (THPO). It is critical to be able to respectfully and efficiently contact Tribes to consult with appropriate Tribal representatives to implement the draft ACCC Program Comment, as well as to support typical Section 106 consultation. The identification and availability of recognized Qualified Authorities (or confirmation that there are none beyond the typical Tribal contacts) is another area that may require support for Tribes to identify and recognize such individuals.

- 3. Amtrak recognizes and appreciates the ongoing and extensive contributions of SHPOs and THPOs in support of our activities and the challenges that they face on a daily basis to satisfy their responsibilities under Section 106. Amtrak supports the provision of increased funding or the allocation of other resources to these organizations so that they can more readily respond and engage in the process. Investment in staff and technological tools for centralized intake/response (rather than person-specific), for example, would simplify processes and improve predictability for everyone.
- 4. General comment throughout: The language overall seems repetitive and can be confusing, particularly with long, compound sentences. Consider using abbreviations for specific polices, concepts, and certain defined terms, or other ways to simplify the language of the document.
- 5. Section VI, Dispute resolution: Once the federal agency makes a decision, Amtrak suggests that the agency notify all parties initially copied on the objection of its decision, in addition to the objector and affected SHPO/THPO.
- 6. Definitions:
 - a. Definitions do not account for infrastructure, materials, etc. related to activities and asset types considered in Appendix C.
 - b. Definitions in this ACCC Program Comment should account for materials (historic or otherwise) that aren't specific to buildings (e.g., bridges, catenary, etc.).
 - c. Some italicized words in the document are not included in the definitions, including "right-of-way." Verify whether they should be and rectify in text or definitions section, as appropriate.
 - d. Amtrak is enclosing some comments and questions to assist ACHP with considering improvements to definitions.
- 7. Appendices A and B include exemptions for, "Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact ground surface materials 45 years or older or known historic properties" (e.g., Appendix B-1, 1.e). Amtrak requests that this exemption also be included in Appendix C to facilitate geotechnical borings and similar testing to inform project designs and evaluations of



- potential archaeological sensitivity. These activities are critical to Amtrak's capital program.
- 8. Appendix B-2, 2.a states that the exemption applies even if an activity will have "minimal adverse effects" if it accomplishes the other stated goals, if a Qualified Professional makes the decision. "Minimal adverse effects" is left up to interpretation, which provides flexibility, but also uncertainty. Application of this principle may result in disputes over the Program Comment's use.
- 9. Appendix C: Amtrak supports the inclusion of "transit"-related activities that are not already in the Rail ROW Program Comment such as catenary system replacement, consideration of certain ground disturbing activities and acquisitions. Additional activities could be included that directly relate to the climate-friendly goals of the proposed ACCC Program Comment. Amtrak suggests including installation of renewable energy systems and related components for railroad use along the right-of-way (e.g., small-scale solar panel & related infrastructure) and installation of renewable energy systems (e.g., solar, geothermal, etc.), where appropriate. Installations at historic properties should meet the Secretary of the Interior's Standards for the Treatment of Historic Properties and related guidelines, such as those for sustainability. The ACCC Program Comment includes activities that are already in the Rail ROW Program Comment, which may cause confusion for users of these program comments in determining which to apply to a project.
- 10. Appendix C-1, 2.a.vii: Clarify whether inclusion of "signals" here is intended to include all kinds of signals on the rail ROW, including replacement of signal bridges.
- 11. Appendix C-1, 2.a.viii: Does "cross-section area" refer to surface area of the sign?
- 12. Appendix C-1: Amtrak supports inclusion of replacement of catenary systems in the proposed ACCC Program Comment. Amtrak's aging electrification system is subject to failures and must be systematically replaced in the coming years. In addition to catenary structures that support the wires along the rail line, the electrification system includes other supporting elements such as high-voltage yards at substations. We encourage you to consider including replacement and reconfiguration of these elements in the proposed ACCC Program Comment, as these must also be replaced or upgraded. Replacement of some other elements of these facilities, such as transformers, breakers, switches, and other components are already included in the Rail ROW Program Comment. The ACCC Program Comment should also include replacement of transmission lines that carry electricity for railroads/transit use, either as overbuilds above the catenary (often – but not always – carried on the same structures) or off the rail right-of-way connecting points of railroad electrification/substations, assuming they are replaced along the same line. Replacing the electrification system is critical to the continued use of electrified trains where they operate and maintains the historic electrified character and use of these railroads and transit lines.
 - a. Appendix C-1, 2.c.: "In-kind replacement" definition focuses on materials. Clarify whether compatibility of other aspects of the design would be important for activities related to non-building elements like those in this stipulation, rather than specifically materials, to use the proposed ACCC Program Comment.



13. Appendix C-1, 5.a: Amtrak suggests that the exemption for leasing, refinancing, acquisition or purchase of stated assets include purchases, lease, etc. by a recipient of federal funds for the purpose of the action that fulfill the same conditions as the federal agency.

To summarize Amtrak's comments, as a federal grantee, Amtrak seeks to balance the maintenance, renewal, and improvement of railroad infrastructure, prudent use of taxpayer funds, and sensitive treatment of historic properties and other environmental resources. Amtrak supports the use of Section 106 program alternatives such as the ACCC Program Comment to improve predictability of project schedule and budgets in keeping with Section 106 and its implementing regulations. This will support project delivery so that our valued historic infrastructure can support current and future transportation demands.

Amtrak appreciates the opportunity to comment on the draft ACCC Program Comment, as well as ACHP's consideration of Amtrak's interests as the nation's primary intercity passenger railroad. Thank you for your attention. Please feel free to contact Amtrak at regulatoryaffairs@Amtrak.com if you have any questions.

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<u>DRAFT</u> PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND CONNECTED COMMUNITIES

This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on [date of adoption], on its own initiative pursuant to 36 C.F.R. § 800.14(e), and went into effect on that date. It provides all *federal agencies* with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. part 800 (Section 106), regarding the *effects* of certain *housing*-related, *climate-smart building*-related, and *climate-friendly transportation infrastructure*-related activities.

I. INTRODUCTION

A. Background

The development of this Program Comment is driven by the nation's pressing needs to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce its energy use and greenhouse gas emissions, improve climate resilience, and cut energy costs; and to decarbonize its transportation sector — needs that have received high levels of attention from Congress, as well as state, local, and Tribal governments and private parties.

Recognizing these needs, in 2023, the ACHP adopted its Housing and Historic Preservation Policy Statement (Housing Policy Statement) and its Climate Change and Historic Preservation Policy Statement (Climate Change Policy Statement), which commit the ACHP to explore new opportunities to use program alternatives to enable federal agencies to advance historic preservation while meeting the nation's housing and climate goals. These policy statements reflect increasing public awareness that historic preservation strategies — and historic properties themselves — can play an important role in addressing the three interrelated sectors covered in this Program Comment.

Following these policy statements, the ACHP developed this government-wide Program Comment to help accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs in response to climate concerns, and to rehabilitate or develop new climate-friendly transportation infrastructure.

B. Current Federal Agency Action

Every day, federal agencies propose to carry out, permit, license, fund, assist, or approve undertakings covered by this Program Comment, and when they do, they must comply with Section 106 of the National Historic Preservation Act. While the federal government's role in supporting housing rehabilitation and production, climate-smart buildings, and climate-friendly transportation is difficult to quantify, an overview of current federal agency actions and investments offers insight into the scope and scale of undertakings covered by this Program Comment.

In the area of housing, federal agencies support housing for millions of Americans and preserve the viability and affordability, upgrade the energy efficiency, and enhance the climate resiliency of the nation's housing stock. The Department of Housing and Urban Development (HUD), for example, supports 1 million housing units across 190,000 public housing buildings, with HUD spending nearly \$9 billion annually in capital and operating funds on these units, over half of which were

built before 1975. HUD also provides billions annually through the Community Development Block Grant and HOME Investments Partnership programs. In addition, the Department of Defense provides over one million units to Military Service members, including 846,000 units in military-owned barracks, while the Rural Housing Service of the Department of Agriculture provides loans to support affordable multifamily developments in rural areas and currently has over 400,000 units in its portfolio, including 17,000 units that support farm laborers. Thousands of projects are funded by other federal agencies working to ensure all Americans have safe, habitable, and affordable housing.

In the area of climate-smart buildings, federal agencies have long undertaken projects that seek to reduce energy cost burdens, cut climate pollution, and boost climate resilience of the nation's building stock. The Inflation Reduction Act — the largest climate bill in history — and the Bipartisan Infrastructure Law have accelerated these efforts. The Environmental Protection Agency \$27 billion Greenhouse Gas Reduction Fund, for example, finances zero emissions building projects and clean technology deployment nationally, including in low-income and disadvantaged communities. The Climate Smart Buildings Initiative is catalyzing more than \$8 billion of private sector investments by 2030 to perform energy efficiency upgrades in federal buildings. The \$1 billion HUD Green and Resilient Retrofit Program invests in energy efficiency, electrification, clean energy generation, climate resilience, and low-embodied-carbon materials in HUD-assisted multifamily housing. And the Department of Energy Efficiency and Conservation Block Grant Program is assisting states, local governments, and Tribes in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency, including for residential and commercial buildings.

In the area of climate-friendly transportation, the federal government's project portfolio - from sidewalks and bike lanes, to bus shelters and light rail - spans multiple Department of Transportation operating administrations as well as other federal agencies, including those that might fund such projects (such as HUD and the Environmental Protection Agency) or build such projects (such as the Department of Agriculture and the Department of Interior). Through the Bipartisan Infrastructure Law and other recent actions, the federal government is currently making significant investments to reduce greenhouse gas emissions and bolster the resilience of America's transportation infrastructure. This includes \$91 billion over five years for public transportation projects, including for transit accessibility, transit-oriented development, and expanded transit service. It also includes \$66 billion to improve the nation's rail systems, representing the largest investment in passenger rail since the creation of Amtrak, and additional funding for pedestrian and bike infrastructure, recreational trails, Safe Routes to School, and more. Other funding includes billions \$7.5 billion over five years for electric vehicle charging infrastructure, \$8.7 billion over five years for transportation infrastructure resilience, and \$2 billion to reduce the lifecycle emissions of transportation construction projects by investing in materials with lower levels of embodied carbon emissions compared to industry averages.

Many types of activities relating to these and other federal agency programs and investments require Section 106 review.

C. Prior ACHP Action

The ACHP's statutory duties under the National Historic Preservation Act include advising the President, Congress, and state and local governments on historic preservation policy issues and overseeing the Section 106 process.

In its advising capacity, the ACHP has formally advised the President, Congress, and state and local governments on housing since at least 1995, when it issued its first policy statement on affordable housing. It updated this policy statement in 2006, and again in 2023. The Housing Policy Statement states that Section 106 reviews must "be grounded in a flexible yet consistent approach to ensure that housing can be developed expeditiously while still preserving the historic qualities of affected historic properties." Also in 2023, the ACHP advised on climate change and historic preservation through its Climate Change Policy Statement. It urges action on building reuse and energy-and-emissions-saving retrofits of older and historic buildings (including enhanced electrification and increased energy efficiency standards). It also supports expediting Section 106 review of projects addressing climate change, including clean energy and climate-friendly transportation projects.

In its oversight of the Section 106 process, the ACHP has also issued or participated in other program alternatives to create tailored review processes for certain programs and undertakings relevant to this Program Comment. At the request of Department of Defense, for example, the ACHP has issued six program comments specifically related to housing, which cover housing developed under specific congressionally appropriated programs, housing constructed during specific eras, and housing designed and built with similar form, style, and materials. The ACHP has also recently been a signatory to several statewide programmatic agreements with HUD related to projects and programs subject to 24 C.F.R. Parts 50 and 58. Prior program comments addressing housing have reduced the operational and maintenance costs of historic housing, made homes more comfortable for occupants, and facilitated the preservation and reuse of existing buildings.

With regard to climate-smart buildings, ACHP has issued several program comments, along with an exemption for the General Services Administration's routine operations and maintenance. The ACHP has also signed a Department of Energy Prototype Programmatic Agreement for weatherization activities and a Nationwide Programmatic Agreement Regarding Climate Resiliency and Sustainability Undertakings on Department of Homeland Security Owned Facilities, which cover a broad range of energy efficiency, water efficiency, and climate adaptation- related undertakings. Prior program alternatives incorporating climate-smart building strategies have reduced the operational and maintenance costs of historic buildings, made such buildings more comfortable for occupants, and facilitated the preservation and reuse of historic buildings.

With regard to climate-friendly transportation, the ACHP has issued two program comments specifically related to transportation projects, along with a government-wide exemption for certain electric vehicle supply equipment. In addition, the ACHP has been a signatory to statewide programmatic agreements with the Federal Highway Administration, state historic preservation offices, and state departments of transportation, covering a range of transportation-related activities. To the extent prior program alternatives have addressed climate-friendly transportation projects, they have facilitated such projects while upholding historic preservation values.

This Program Comment is guided in part by the mechanisms, provisions, and approaches in prior program alternatives that are most consistent with the ACHP's recently adopted Housing Policy Statement and Climate Change Policy Statement. In expanding beyond the scope of these prior program alternatives, this Program Comment creates a consistent and holistic approach for Section 106 review across the federal government for certain undertakings, reducing complexity and equipping federal agencies to more effectively and efficiently address the nation's needs.

D. Justification

Many types of activities relating to the programs identified in Section I.B. of this Program Comment, and other similar programs, require review under Section 106 of the National Historic Preservation Act. Recognizing the extent, and in some cases the increasing extent, of federal action in the housing, building, and transportation sectors, and the volume and repetitive nature of such action, the ACHP has issued this Program Comment to clarify preferred approaches to reviewing these covered undertakings. In doing so, this Program Comment enables federal agencies to focus on other undertakings with greater potential for adverse effects on historic properties, reducing taxpayer costs and facilitating project delivery — while enabling the production and rehabilitation of housing, the preparation of buildings to be climate-resilient, and the reduction of energy use and greenhouse gas emissions in the building and transportation sectors.

E. Goals

This Program Comment aims to promote actions that, consistent with the National Historic Preservation Act, 54 U.S.C. § 300101(1), "foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations."

More specifically, this Program Comment aims to achieve objectives laid out in ACHP policy statements, to advance historic preservation goals, and to help satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation. It does so in recognition of three critical facts: that the United States has an aging housing stock, with half of existing housing units built before 1979; that more than a third of greenhouse emissions comes from the building sector, and buildings use 75% of the electricity generated annually; and that transportation sector is the largest source of greenhouse gas emissions in the United States, responsible for about one-third of all emissions.

This Program Comment also aims to leverage the embodied carbon in existing buildings and other built infrastructure by facilitating reuse and thereby avoiding the need for new construction and for construction materials that currently account for more than 15 percent of annual global greenhouse gas emissions, and in turn slowing down climate change and its impacts on our most cherished places.

Ultimately, this Program Comment aims to benefit the people who live in the housing, work in the buildings, and move using the climate-friendly transportation infrastructure projects being carried out, permitted, licensed, funded, assisted, or approved by federal agencies.

II. SCOPE

A. Overall Effect

This Program Comment provides an alternative way for *federal agencies* to comply with their Section 106 responsibility to take into account the *effects* on *historic properties* of their covered *undertakings*. The Program Comment also provides the ACHP a reasonable opportunity to comment regarding covered *undertakings*.

B. Effect on Other Applicable Laws

This Program Comment does not modify, preempt, or replace any other federal laws, or any applicable state, local, or Tribal laws or regulations.

C. Effect on Existing Agreements

A federal agency that already has a Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) in effect that addresses covered undertakings must either:

- 1. Follow this Program Comment, rather than such MOA or PA for a class of covered *undertakings* for the life of this Program Comment. Before making a decision to do so, the *federal agency* must first consult with the signatories of such MOA or PA and then provide them written notice of the decision to apply this Program Comment to a class of covered *undertakings*; or
- 2. Continue to implement the existing MOA or PA regarding such covered *undertakings*, rather than this Program Comment.

Federal agencies may pursue amendments to such MOAs or PAs per their stipulations, to incorporate, in whole or in part, the terms of this Program Comment. Federal agencies may also consider terminating such MOA or PA and follow this Program Comment to satisfy their Section 106 responsibility for the covered undertakings.

A *federal agency* that already has a Section 106 program comment or program comments in effect for covered *undertakings* must follow the terms of those program comments to the extent those program comments address the *undertakings* covered by this Program Comment. This Program Comment does not in any way supersede, replace, or change the terms of other program comments. *Federal agencies* may propose to the ACHP amendments to existing program comments following the amendment procedures in those program comments, to incorporate, in whole or in part, the terms of this Program Comment.

D. Effect on Tribal Lands

This Program Comment does not apply on *Tribal lands*, or to activities that may affect *historic properties* located on *Tribal lands*, unless the *Indian Tribe*, *Tribal historic preservation officer*, or a designated representative of the *Indian Tribe* has provided prior written notification to the Executive Director of the ACHP that the Tribe allows the use of the Program Comment on the Tribe's lands. *Indian Tribes* can agree to such use of the Program Comment by issuing an authorization for such use in a format substantially similar to the format contained in Appendix D to this Program Comment, and by submitting the completed authorization to the Executive Director of the ACHP. This Program Comment is applicable on those *Tribal lands* on the date of receipt by the Executive Director of the ACHP, who must ensure notice on such authorization is included on the website of the ACHP. The *Indian Tribe*, *Tribal historic preservation officer*, or designated representative of the *Indian Tribe* may terminate the *Indian Tribe*'s authorization to use this Program Comment by notifying the Executive Director of the ACHP in writing. Such a termination will be limited to the Program Comment's applicability to *undertakings* that would occur on or affect *historic properties* on the *Tribal lands* under the jurisdiction of the *Indian Tribe*.

E. Standard Section 106 Review

A *federal agency* must follow the Section 106 review process under 36 C.F.R. §§ 800.3 through 800.7 or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative, if:

- 1. The *federal agency* elects, for any reason, not to utilize this Program Comment for an *undertaking* for which alternative compliance approaches are prescribed in Section III of this Program Comment.
- 2. The *undertaking* or components of an *undertaking* include activities not listed in the Appendices, meaning the undertaking would be subject to the Section 106 review process, but the *federal agency* could incorporate use of this Program Comment in its review of the entire *undertaking*.
- 3. The *undertaking* would occur on or have the potential to affect the following *historic* properties:
 - a. Any National Monument, National Historic Site, National Historic Trail, National Historical Park, National Military Park, National Battlefield, National Battlefield Park, or National Battlefield Site.
 - b. Any site, object, *building*, or structure individually designated as a *National Historic Landmark* or designated as a *contributing property* to a *National Historic Landmark* district, or found within the boundaries of a *National Historic Landmark* archaeological district.
 - c. Sites of religious and cultural significance to *Indian Tribes* and *Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*.

III. ALTERNATIVE COMPLIANCE APPROACHES

A. Available Alternative Compliance Approaches

This Program Comment authorizes alternative compliance approaches for covered *undertakings*, as follows:

- 1. For *undertakings* or components of *undertakings* with no or minimal potential to adversely affect *historic properties*, as set forth in Appendix A-1, B-1, or C-1 of this Program Comment, a *federal agency* may proceed with the *undertaking* without conducting further review under Section 106.
- 2. For *undertakings* or components of *undertakings* for which the *federal agency* satisfies certain conditions, exclusions, or requirements, as set forth in Appendix A-2, B-2, or C-2 of this Program Comment, a *federal agency* may proceed with the *undertaking* if it satisfies the conditions, exclusions, or requirements prescribed in those Appendices, and it documents the manner in which it has satisfied such conditions, exclusions, or requirements.

B. Consultation with Indian Tribes and Native Hawaiian Organizations

The United States government has a unique legal and political relationship with *Indian Tribes* as set forth in the Constitution of the United States, treaties, statutes, court decisions, and Executive Orders. The United States recognizes the right of *Indian Tribes* to self-government. Tribes exercise inherent sovereign powers over their members and territories. The ACHP drafted this Program Comment with a commitment to strengthening the government-to-government relationship between the United States and *Indian Tribes*.

1. Potential Effects on Properties of Significance to Indian Tribes and Native Hawaiian Organizations

It is important to recognize that while this Program Comment was drafted to limit impacts on historic properties, such as sites with traditional religious and cultural significance to an Indian Tribe or Native Hawaiian Organization, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of Indian Tribes or Native Hawaiian Organizations, covered undertakings could directly or indirectly affect such properties.

2. Consultation-Related Obligations

If the federal agency, based on the location of the undertaking and the area of potential effects, determines that an effect on the historic properties of religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of Indian Tribes or Native Hawaiian Organizations, may occur, it must make a reasonable and good faith effort to identify potentially interested Indian Tribes and Native Hawaiian Organizations and invite them to consult to assess whether use of the Program Comment for the subject undertaking is appropriate. The federal agency's consultation effort should be informed by and be conducted in accordance with the National Historic Preservation Act, the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects, including by recognizing the special expertise of holders of Indigenous Knowledge.

The federal agency's effort to identify potentially interested Indian Tribes and Native Hawaiian Organizations should be informed by, but not limited to the following: the knowledge and expertise of agency Tribal liaison staff, historic maps, information gathered from previous consultations pursuant to Section 106, databases of Indian Tribes and Native Hawaiian Organizations where accessible and appropriate, the Bureau of Indian Affairs Tribal Leader List, U.S. Department of the Interior Native Hawaiian Organization List, the National Park Service Tribal Historic Preservation Program contact database, National Association of Tribal Historic Preservation Officers, the U.S. Housing and Urban Development Tribal Directory Assistance Tool, state historic preservation officer databases, and other resources.

3. Effect of Finding of Potential Effect on Certain Properties

Should it be determined through consultation with *Indian Tribes* or *Native Hawaiian Organizations* or otherwise that a proposed *undertaking* covered in this Program Comment could potentially result in an *effect* on a *historic property* with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, including a

Tribal identified sacred site or a site identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, the *federal agency* may not use this Program Comment and must instead follow the Section 106 review process under 36 C.F.R. § 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative.

4. Confidentiality-Related Obligations

Consistent with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, federal agencies should consider information regarding historic properties with traditional religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, Tribal identified sacred sites, and Indigenous Knowledge shared with the federal agency by Indian Tribes or Native Hawaiian Organizations as sensitive, unless otherwise indicated by the Indian Tribe or Native Hawaiian Organization. Federal agencies should clearly inform Indian Tribes and Native Hawaiian Organizations of any limitations on the agency's ability to keep sensitive information confidential. Federal agencies must keep sensitive information provided by Indian Tribes or Native Hawaiian Organizations confidential to the extent authorized by applicable federal laws, such as Section 304 of the National Historic Preservation Act. Federal agencies are encouraged to use best practices on confidentiality delineated in the 2023 Interagency Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites when implementing this Program Comment.

C. The Use of Qualified Authorities

Undertakings covered by this Program Comment do not require the use of a qualified authority except where explicitly stated, or except where, in the reasonable judgment of the federal agency in consideration of various factors, the use of a qualified authority is necessary to fulfill the intent of the National Historic Preservation Act or necessary or useful to inform the federal agency's decision-making.

When the *federal agency* chooses to use a *qualified authority*, the type of *qualified authority* must be appropriate to the circumstances. For example, a person recognized by the relevant *Indian Tribe* or *Native Hawaiian Organization*, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of *effect*, and treatment of *effects* to *historic properties* of religious and cultural significance to the Tribe or to *Native Hawaiians*, respectively, should be consulted to inform the identification, *effects* determination, and other matters involving *historic properties* significant to that *Indian Tribe* or *Native Hawaiian Organization*. As another example, determinations regarding architectural resources and structures must be made by a *qualified professional* meeting such professional standards for historic architecture or architectural history established by the Secretary of the Interior.

D. Determinations of Eligibility

Undertakings covered by this Program Comment, due to their nature and potential *effects*, do not require a *federal agency* to determine whether an involved or affected property is a *historic property* except where explicitly stated.

Commented [DJ1]: ACHP: Rather than an example, this is analogous to the requirement under 36 CFR 800.2(a)(1)

IV.ASSISTANCE TO CONSULTING PARTIES

This Program Comment does not require a *federal agency* to pay any consulting party for providing its views or comments in response to 36 C.F.R. part 800 responsibilities, including invitations to consult in a Section 106 review; to respond to the proposed *area of potential effects*, scope of identification efforts, eligibility findings, assessment of *effect*; or to consult to seek ways to resolve any *adverse effects* or to develop a memorandum of agreement or programmatic agreement to conclude the Section 106 review finding or determination. If, however, a *federal agency* asks an *Indian Tribe*, *Native Hawaiian Organization*, or any consulting party to do more than the activities listed in the preceding sentence in connection with this Program Comment, the *federal agency* or its applicant, grantee, or permittee, if applicable, must enter into an appropriate arrangement to provide the *Indian Tribe*, *Native Hawaiian Organization*, or consulting party reasonable payment for such services, if and to the fullest extent the *federal agency* has the authority to enter into such an arrangement and pursuant to its policies and procedures. Examples of services include requests to:

- **A.** Conduct an archaeological, ethnographic, or other inventory or field survey to identify *historic properties* that may be affected by the *undertaking*.
- **B.** Perform a *records check* on behalf of the *federal agency*.
- **C.** Conduct research and make preliminary assessments of National Register eligibility on behalf of a *federal agency*, as opposed to responding to determination of eligibility.
- **D.** Provide an assessment of the potential *effects* of the *undertaking* on *historic properties*, as opposed to responding to such an assessment.
- **E.** Carry out *mitigation measures*, including conducting additional research or monitoring ground disturbing activities as part of a mitigation plan.
- **F.** Curate artifacts or records recovered or made as part of *historic property* identification, evaluation, or mitigation efforts.
- **G.** Design or develop a specific plan or specifications for an *undertaking* that would meet the Secretary of the Interior's Standards for Rehabilitation or otherwise avoid, minimize, or mitigate *effects* to *historic properties*.
- **H.** Monitor ground disturbing activities or *federal agency* treatment of unanticipated discoveries.
- I. Contribute substantially to any of the above activities carried out by a third party.

A request during consultation by an *Indian Tribe* or *Native Hawaiian Organization* to conduct such services itself does not preclude reasonable payment for services simply because the request was made during consultation. A *federal agency* or its applicant, grantee, or permittee, if applicable, must consider entering into an arrangement, in accordance with this Section, with any *Indian Tribe* or *Native Hawaiian Organization* making such a request.

V. UNANTICIPATED DISCOVERIES

A. Immediate Response Requirements

If previously unidentified historic properties or unanticipated effects, including visual, audible, atmospheric, and cumulative effects, to historic properties are discovered during implementation of the undertaking, the federal agency must immediately halt all activity that could affect the discovery and institute interim measures to protect the discovery from looting, vandalism, weather, and other threats. The federal agency must then follow the procedures set forth in 36 C.F.R. § 800.13(b); for sites with potential religious and cultural significance to Indian Tribes or Native Hawaiian organizations, the federal agency must request, and incorporate, if provided, the special expertise of Tribes or Native Hawaiian Organizations and the information provided by designated holders of Indigenous Knowledge and must follow those procedures in accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and for sites involving burial sites, human remains, or funerary objects, the federal agency must follow these procedures in accordance with the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. A federal agency that has historic property discovery procedures in existing management plans pertaining to historic properties should follow such existing procedures.

B. Response to the Discovery of Human Remains, Funerary Objects, Sacred Objects, or Items of Cultural Patrimony

The *federal agency* must ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an *undertaking*, all work within 50 feet of the discovery must cease, the area must be secured, and the *federal agency*'s authorized official, local law enforcement, and coroner/medical examiner in accordance with any applicable state statute(s) must be immediately contacted. The *federal agency* must be guided by the principles within the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. The *federal agency* must comply with Section 3 of the Native American Graves, Protection and Repatriation Act and its implementing regulations, 43 C.F.R. part 10, in regard to any human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or Tribal land.

VI. DISPUTE RESOLUTION

Any person may file a dispute over the implementation of this Program Comment or its use for any particular *undertaking*, by filing a notice with the relevant *federal agency*, including the *federal agency's* federal preservation officer, with a copy to the consulting parties involved in the *undertaking* and any relevant *Tribal historic preservation officer* or *state historic preservation officer*. Objecting parties may include but are not limited to *Indian Tribes*, *Tribal historic preservation officers*, *state historic preservation officers*, *Native Hawaiian Organizations*, local governments, preservation organizations, owners of historic properties, and members of the public. The *federal agency* must consult with the objecting party to resolve the dispute for not more than 60 *days*. Any disputes over the evaluation of unanticipated discoveries must be resolved in accordance with the requirements of 36 C.F.R. § 800.4(c)(2) and Section V of this Program Comment, as appropriate.

Should resolution not be reached within 60 days, the federal agency may forward to the ACHP all documentation relevant to the objection, including the federal agency's proposed resolution if any, request

the ACHP to provide within 30 days its advisory comments to resolve the dispute, and take the ACHP's comments into account before finalizing its approach to complying with Section 106. The federal agency must notify the objecting party and any relevant Tribal historic preservation officer or state historic preservation officer regarding its approach to complying with Section 106 for an undertaking that is the subject of a dispute. The federal agency's decision regarding the resolution will be final. Following the issuance of its final decision, the federal agency may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

The ACHP must monitor such disputes, and from time to time, the Executive Director of the ACHP may issue advisory opinions about the use of this Program Comment to guide *federal agencies*.

VII. DURATION

This Program Comment will remain in effect from the date of adoption by the ACHP through December 31, 2044, unless prior to that time the ACHP withdraws the Program Comment in accordance with Section IX of this Program Comment. On any date during the six-month period preceding the expiration date, the ACHP Chair may amend the Program Comment to extend its duration in accordance with Section VIII.A. of this Program Comment. If an *Indian Tribe* authorizes the use of this Program Comment on its *Tribal lands* in accordance with Section II.D. of this Program Comment, such authorization will be in effect from the date of the issuance of the authorization until the termination of such authorization by the *Indian Tribe* or the expiration or withdrawal of this Program Comment, whichever is earlier.

VIII. AMENDMENT

The ACHP may amend this Program Comment after consulting with *federal agencies* and other parties as it deems appropriate and as set forth below.

A. Amendment by the Chair, ACHP

The Chair of the ACHP, after notice to the rest of the ACHP membership and *federal agencies* may amend this Program Comment to extend its duration. The ACHP must notify *federal agencies* and publish notice in the Federal Register regarding such amendment within 30 *days* after its issuance.

B. Amendment by the Executive Director, ACHP

The Executive Director of the ACHP, after notice to the ACHP membership and other *federal agencies* may amend this Program Comment to adjust due dates and make corrections of grammatical and typographical errors. The ACHP must notify *federal agencies* and publish notice in the Federal Register regarding such amendments within 30 *days* after their issuance.

C. All Other Amendments

Amendments to this Program Comment not covered by Sections VIII.A. or VIII.B. of this Program Comment will be subject to ACHP membership approval.

IX. WITHDRAWAL

If the ACHP determines that the consideration of historic properties is not being carried out in a manner consistent with this Program Comment, the ACHP may withdraw this Program Comment. The Chair of the ACHP must then notify federal agencies and publish notice in the Federal Register regarding withdrawal of the Program Comment within 30 days of the decision to withdraw. If this Program Comment is withdrawn, federal agencies must comply with the Section 106 review process under 36 C.F.R. § 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative for individual undertakings covered by this Program Comment.

X. REPORTS AND MEETINGS

A. Federal Agency Annual Reports

The *federal agencies* that use this Program Comment must provide annual reports regarding the use of this Program Comment during the previous reporting period, ending June 30 annually, to the ACHP, as provided in this Section. Each agency's annual report must: provide examples of *undertakings* covered by Section III.A.1. of this Program Comment; provide information about the manner or extent to which the agency satisfied the conditions, exclusions, and requirements to proceed with the *undertakings* covered by Section III.A.2.; identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; include an assessment of the overall effectiveness of the Program Comment in meeting its intent; and summarize professional assistance and compliance monitoring activities. Annual reports are due on September 30 of each year, starting September 30, 2025 and ending September 30, 2029.

For the remaining duration of this Program Comment, the *federal agencies* that use this Program Comment must provide reports regarding the use of this Program Comment during the previous reporting period, ending June 30 triennially, to the ACHP, as provided in this Section. Each agency's triennial report must be submitted either as part of *federal agencies*' report to the ACHP pursuant to Executive Order (EO) 13287, "Preserve America," or, for *federal agencies* not otherwise required to submit such report to the ACHP, as a stand-alone triennial report. Each agency's triennial report must: identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; and include an assessment of the overall effectiveness of the Program Comment in meeting its intent. Triennial reports are due on September 30 of every third year, starting September 30, 2032.

In any report required by this Section, the ACHP encourages *federal agencies* to also propose for ACHP consideration amendments and refinements to this Program Comment based on their experience implementing it.

In any report required by this Section, a *federal agency* must include in its report the activities, if any, of entities to which it has delegated legal responsibility for compliance with Section 106 in accordance with federal law.

B. Annual Meetings

By January 31, 2026 and for four years thereafter, the ACHP must schedule an annual meeting and invite federal agencies, Indian Tribes, state historic preservation officers, Tribal historic preservation officers, Native Hawaiian Organizations and others it deems appropriate, to discuss implementation of the Program Comment. At the meeting, attendees will have an opportunity to provide their views on the overall effectiveness of the Program Comment in meeting its intent and purpose. Such views may inform decisions such as those regarding amendments to the Program Comment. Annual meetings may take place in-person, by phone, virtually using electronic meeting platforms, or any combination of such means.

C. ACHP Reports

At any time, but at least once during the initial three-year period during which this Program Comment is being used, and every three years thereafter, ACHP staff must provide a written or oral summary of information received from *federal agency* reports, annual meetings, or other sources about the utility of this Program Comment and make any recommendations for amendments to the ACHP membership.

XI. DEFINITIONS

For purposes of this Program Comment, the following definitions apply, and beginning in Section II of this Program Comment, such words are *italicized* for convenience:

Abatement means acting or actions to eliminate, lessen, reduce, or remove.

Adverse effect, as provided in 36 C.F.R. § 800.5(a)(1), means an action that may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association; and it includes reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of potential effects, as provided in 36 C.F.R. § 800.16(d), means the geographic area or areas within which an *undertaking* may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, and is influenced by the scale and nature of an *undertaking* and may be different for different kinds of *effects* caused by the *undertaking*.

Bicycle lane means a portion of a roadway that has been designated by striping, signage, and pavement markings for the exclusive use by and increased safety of bicyclists.

Bicycle parking means a designated area to store a bicycle, whether personal or shared, including bicycle racks and dedicated bicycle docks used in a shared system.

Bicycle rack means a rack for a personal or shared bicycle, e-bicycle, or scooter that is typically ushaped.

Bicycle rail means a traffic control device that provides a protective barrier between motor vehicle travel lanes and protected bicycle lanes or cycle tracks.

Commented [DJ2]: ACHP: and is NOT physically separated from the roadway? Need to distinguish or consolidate definitions.

Commented [DJ3]: ACHP: Is this relevant? Many locations have racks of varied shapes.

DRAFT FOR PUBLIC COMMENT - DATED 8/8/2024

Bulb out means feature that extends the line of the curb into the traveled way, reducing the width of the street, also known as curb extensions or bump-outs.

Building means a constructed work created principally to shelter any form of human activity, including mobile and manufactured homes and *climate-friendly transportation facilities* that are buildings.

Building energy control system means a mechanical system enabling a building occupant to manage or monitor energy use and all components of such system, including but not limited to programmable thermostats, digital outdoor reset controls, occupancy sensors, Underwriters Laboratories listed energy management systems or building automation systems, demand response and virtual power plant technologies, smoke and carbon monoxide detectors, and related technologies.

Character-defining feature means an element of a historic property that demonstrates or includes the characteristics of a historic property that qualify the historic property for inclusion in the National Register of Historic Places, including elements that contribute to the historic property's overall shape, style, design, and decorative details.

Clean energy technologies means solar energy systems, wind energy systems, battery energy storage systems, geothermal systems, and microgrids serving a building or buildings, or serving a climate-friendly transportation facility.

Climate-friendly transportation infrastructure means pedestrian, bicycle, micromobility vehicle, bus (including bus rapid transit), and rail infrastructure.

Climate-friendly transportation facility means a building or structure used for bicycle parking, micromobility parking, a bus station, a bus rapid transit station, or a rail station.

Climate-smart building means a building that is energy efficient, electric, uses clean energy, and is resilient.

Climate resilience is defined as the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

Community solar system means a solar photovoltaic installation with up to 5 megawatts nameplate capacity and delivering at least 50% of the power generated from the system to buildings within the same utility territory as the facility.

Cool pavement means paving materials that reflect more solar energy, enhance water evaporation, or have been otherwise modified to remain cooler than conventional pavements.

Contributing property, as provided in National Register Bulletin 16A, "How to Complete the National Register Registration Form," means a building, structure, object, or site, as applicable, within the boundaries of a historic district that adds to the historic associations, historic architectural qualities, or archaeological values for which a property is significant because it was present during the period of significance, relates to the documented significance of the property, and possesses historic integrity or is capable of yielding important information about the period; or it independently meets the criteria for the National Register of Historic Places.

Cycle track means a bicycle facility that is physically separated from motor vehicle traffic, distinct from the sidewalk, and for the exclusive use of bicyclists.

Commented [DJ4]: ACHP: If defined elsewhere in another source, reference here.

Commented [DJ5]: ACHP: What does this mean? Not served by fossil fuels (e.g. heating oil, gas)?

Commented [DJ6]: ACHP: It has to be ALL of these things? What is the measure of "energy efficient?"

Commented [DJ7]: ACHP: Adverse weather conditions?

Commented [DJ8]: ACHP: Does this matter if it's one- or two-way? Cycle track sometimes refers specifically to two-way traffic in the same facility.

Day means calendar day, taking place from one midnight to the following midnight.

Economic feasibility means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including estimated construction costs (including the cost of *building* material and labor), estimated operational costs, available budget, and timelines for compliance review processes to the extent they impact financial conditions for the *undertaking*.

Effect, as provided in 36 C.F.R. §§ 800.5(a)(1) and 800.16(i), means a direct, indirect, reasonably foreseeable, or cumulative alteration to the characteristics of a *historic property* qualifying it for inclusion in or eligibility for the National Register of Historic Places.

Electrification means the *replacement* or conversion of an energy-consuming device or system from non-electric sources of energy to electricity; or the *replacement* or conversion of an inefficient electric appliance to an efficient electric appliance.

Electric vehicle supply equipment or EVSE means conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle (EV) connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE: i. Level 1: Refers to a freestanding or wall mounted charging structure that delivers a 110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle's battery. ii. Level 2: Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle's battery. iii. Level 3 (also known as Direct Current (DC) Fast Charging): Refers to a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output ranging between 40 kW-500 kW delivering 50-1000 volts of direct current to the EV battery. Converts AC power to DC within the charging station and delivers DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 200 miles of range per 30 minutes of charging time.

Emergency situation means any of the following: occurrence of a natural catastrophe, such as a hurricane, wildfire, flood, or excessive heat; declaration of emergency by the President, an *Indian Tribe*, governor, or a chief elected official of a territory or city; or recognition or report of a sudden, serious, and imminent threat to life, health, safety, or property.

EVSE criteria means (1) take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable; (2) use reversible, minimally invasive, non-permanent techniques to affix the infrastructure; (3) minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance; (4) use the lowest profile equipment reasonably available that provides the necessary charging capacity; (5) place the EVSE in a minimally visibly intrusive area; and (6) use colors complementary to surrounding environment, where possible.

Federal agency means an agency as defined by 5 U.S.C. § 551(1), and includes state, local, or Tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

Commented [DJ9]: ACHP: As defined elsewhere? Or consistent with the EVSE Program Comment?

Flex post means flexible bollards or delineators used to separate motor vehicle traffic from a bicycle lane, protected bicycle lane, or cycle track, and designed to withstand being hit or run over by motor vehicles.

Green infrastructure means the range of measures that use plant or soil systems, permeable ground surface materials, stormwater harvest and reuse, or landscaping to store, infiltrate, and evapotranspirate stormwater and reduce flows to sewer systems or to surface waters, including but not limited to rain gardens, bioswales, bioretention facilities, and other ecosystem services and nature-based solutions used to treat stormwater as close to the source as possible and improve resiliency.

Greenhouse gas means gas that traps heat in the atmosphere, including but not limited to carbon dioxide, methane, nitrous oxide, and fluorinated gases (such as hydrofluorocarbons).

Ground disturbance means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of any soils that are not previously disturbed ground.

Ground surface material means any hard material typically used to cover soils for transportation purposes, including but not limited to asphalt, concrete, pavers, cobblestones, Belgian blocks, bricks, gravel surface or base, or wood.

Hazardous material means lead, lead-containing material (including lead-based paint), asbestos, asbestos-containing material (including floor tile, plaster, insulation, glazing putty, roofing material, and flashing material), radon, and other similar materials detrimental to human health and safety.

High friction surface treatment means application of very high-quality aggregate to the pavement using a polymer binder to restore or maintain pavement friction at existing or potentially high crash

Historic building means a building included in, or eligible for inclusion in, the National Register of Historic Places, as an individually listed property or as a contributing property to a historic district.

Historic building material means material used in the construction of a historic building and installed during the period of significance, and any pre-existing in-kind replacement of same.

Historic district means a geographically definable area that possesses a significant concentration of historic buildings, associated buildings and structures, and objects united historically by plan or physical development that are historic properties.

Historic property, as provided in 36 C.F.R. § 800.16(1), means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization that meet the National Register of Historic Places criteria.

Housing means any building containing one or more dwelling units, including but not limited to multi-unit apartment buildings, single-family homes, administrative and employee dwelling units, and recreation residences, in a variety of building types and configurations, including but not

Commented [DJ10]: ACHP: Consider definition for historic material not associated with a building or ground surface, which is particularly relevant to Appendix C infrastructure. Does "historic" need to be defined to cover its use regardless of material/asset type? (e.g. bridge, lights, catenary poles, etc.)?

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limited to *buildings* served by an elevator or elevators, "walk-up" *buildings*, rowhouses, semi-detached homes, mobile and manufactured homes, and freestanding homes.

Indian Tribe, as provided in 36 C.F.R. § 800.16(m), means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-kind building materials means new *building* materials that are identical to *historic building materials* in all possible respects, including their composition, design, color, texture, and other physical and visual properties.

In-kind replacement means replacement of historic or existing building materials with in-kind building materials.

Installation means the action or process of placing or fixing something, including but not limited to materials, *mechanical systems* and components, appliances, and equipment, or of being installed, in a particular location.

Lowest profile equipment means EVSE that is the smallest height and width possible that meets the EV charging needs.

Maintenance and repair means activities required to maintain in an operational state, or to bring back to operating condition by *repair* or *replacement* of obsolete, broken, damaged, or deteriorated features, elements, materials, and systems.

Mechanical system means any heating, cooling, indoor air quality, ventilation, dehumidification, air conditioning, plumbing, or electrical system, and the individual elements and components of each system.

Micromobility vehicle means small, lightweight vehicles such as e-bicycles and scooters, which can be human-powered or electronic, privately owned or shared, and operate at low to moderate speeds of 15 to 30 miles per hour.

Micromobility parking means an area to store for micromobility vehicles, whether private vehicles or shared vehicles, including dedicated bicycle docks used in a shared system.

Minimally visibly intrusive means that the EVSE is partially visible but does not detract from the views from or to historic properties.

Mitigation measures means any existing, new, or updated materials or actions that serve to address, compensate for, or otherwise resolve adverse effects on historic properties, and may include research reports, historical documentation, recordation, and other materials and activities.

National Historic Landmark, as provided in 36 C.F.R. § 800.16(p), means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

Native Hawaiian, as provided in 36 C.F.R. § 800.16(s)(2), means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Commented [DJ11]: ACHP: Consider using a definition for in-kind like that of the Rail ROW Program Comment, which would allow for substitute materials, as allowed for in the SOI Standards and guidelines.

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Native Hawaiian Organization, as provided in 36 C.F.R. § 800.16(s)(1), means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

Parking facilities mean buildings, structures, land, rights-of-way, facilities, or areas used for parking of motor vehicles.

Permeable ground surface materials means permeable pavement, permeable pavers, porous flexible pavement, or other material or system that provides a hard surface, while allowing water to flow through to the underlying soils instead of into the storm sewer.

Potentially historic ground surface materials means any ground surface material comprised of pavers, cobblestones, Belgian blocks, bricks, or wood that are 45 years or older.

Previously disturbed ground means soils not likely to possess intact and distinct soil horizons and have a reduced likelihood of possessing *historic properties* within their original depositional contexts in the area and to the depth to be excavated, and does not mean plowed soils or historic urban deposits, including *previously disturbed right-of-way*.

Previously disturbed right-of-way means areas where previous construction or other activities have physically altered soils within the three-dimensional area of potential effects to the point where there is likely no potential for an archaeologically significant property to remain, including but not limited to: the entire curb-to-curb roadway, existing sidewalks, existing drains, and parking areas, including the prepared substrate constructed to support the infrastructure down to undisturbed or intact soil or subsoil. As-built drawings and plans can be used to determine the vertical and horizontal dimensions of the previously disturbed areas.

Primary façade means the exterior façade of a building which serves as the front or the major entry point of the building, provided that a determination of the primary façade depends on a variety of factors, and one building may have more than one primary façade.

Primary right-of-way means the corridor, open to the public for transportation purposes, from which a person may best view the *primary façade* of a *building* or, if the *primary façade* is not visible from the public *right-of-way*, the corridor nearest the façade through which people enter the *building*.

Primary space means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other space that contains a *character-defining feature* of a *historic building* or historic *climate-friendly transportation facility*.

Protected bicycle lane means a bicycle facility that is physically separated from motor vehicle traffic and is distinct from the sidewalk for the exclusive use by and increased safety of bicyclists.

Qualified authority means a qualified professional or a person recognized by the relevant Indian Tribe or Native Hawaiian Organization, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of effect, and treatment of effects to historic properties of religious and cultural significance to their Indian Tribe or to Native Hawaiians, respectively.

Qualified professional means a person who meets the relevant standards outlined in the Secretary of the Interior's Professional Qualifications Standards, as amended and annotated.

Commented [DJ13]: ACHP: or historically served?

Commented [DJ14]: ACHP: The phrase "and increased safety" is the only difference between this definition and "cycle track." Are they really the same thing? They are both for increased safety of cyclists. Consider consolidating, or putting the definition in one place and reference the user there at the other term, if appropriate.

Rail infrastructure means structures, building, land, and equipment that supports land lines, including both the infrastructure that is in the rail right-of-way (such as ballast, ties, tracks, bridges, and tunnels) and the infrastructure that is adjacent to the right-of-way such as signs, signals, mileposts or switches.

Recognized design manual means one of the following: Federal Highway Administration Manual on Uniform Traffic Control Devices, American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets, National Association of City Transportation Officials (NACTO) Urban Street Design Guide, NACTO Urban Bikeway Design Guide, NACTO transit Street Design Guide, NACTO Bike Share Station Siting Guide, or NACTO Urban Street Stormwater.

Records check means a search of relevant Indian Tribe, state historic preservation office, Tribal historic preservation office, Native Hawaiian Organization, and federal agency files, records, inventories, and databases, or other sources recommended by such parties, for information about whether historic properties, including properties with traditional religious and cultural significance to one or more Indian Tribes or Native Hawaiian Organizations, are known to exist within an area of potential effects.

Reduce energy use or greenhouse gas emissions means to take an action that: lessens either the amount of energy used or greenhouse gas emitted to perform the same task or produce the same result; replaces an energy production source reliant on fossil fuels with a clean energy technology or upgrades a clean energy technology; or achieves electrification.

Rehabilitation means the act or process of making possible an efficient compatible use for a property through *repair*, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

Replacement means substitution of new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part.

Solar energy system means any addition, alteration, or improvement which is designed to utilize solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer, or some combination of these types to reduce the energy requirements of that building or structure from other energy sources, including but not limited solar hot water equipment, community solar systems, and solar photovoltaic equipment and all components.

State historic preservation officer, as provided in 36 C.F.R. § 800.16(v), means the official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act to administer the state historic preservation program or a representative designated to act for the state historic preservation officer.

Substitute building materials means modern, industry standard, natural, composite, and synthetic materials that simulate the appearance, physical properties, and related attributes of historic materials well enough to make them alternatives for use when historic building materials require replacement.

Technical feasibility means the viability, suitability, and practicality of a proposed undertaking in light of a range of considerations, including health, safety, energy efficiency, climate resiliency,

Commented [DJ15]: ACHP: What does "land lines" refer to here?

Commented [DJ16]: ACHP: Right of way is not a defined term here. Based on this mention, it appears to conflict with the definition under the rail ROW program comment. This could cause confusion.

Commented [DJ17]: ACHP: This conflicts with the definition under Section 4(f). Could that be an issue or cause confusion?

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durability of materials, and sound professional judgment (including architectural, archaeological, or engineering judgment).

Transit means mass transportation by a conveyance (including a bus, railcar, locomotive, trolley car, or light rail vehicle) that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.

Transit-oriented development building means a building within one half mile of an existing or planned transit stop to be developed or redeveloped as part of a federal program or project to promote transit-oriented development.

Tribal historic preservation officer, as provided in 36 C.F.R. § 800.16(w), means the Tribal official appointed by the *Indian Tribe's* chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the *state historic preservation officer* for purposes of Section 106 compliance on *Tribal lands* in accordance with Section 101(d)(2) of the National Historic Preservation Act.

Tribal lands, as provided in 36 C.F.R. § 800.16(x), means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking, as provided in 36 C.F.R. § 800.16(y), means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a *federal agency*, including those carried out by or on behalf of a *federal agency*; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.

Zero emissions building means a building that is highly energy efficient, does not emit greenhouse gases directly from energy use, and is powered solely by clean energy, as further defined in the National Definition of a Zero Emissions Building.

APPENDIX A-1: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW

1. Site Work

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

- a. *Rehabilitation*, *replacement*, *installation*, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*:
 - i. Concrete and asphalt ground surfaces such as streets, parking areas, driveways, and walkways, including repaving, restriping, replacing such surfaces with *permeable ground surface materials*, and reducing surface size, but not changing vertical alignment or expanding surface size.
 - ii. Park, playground, and sports equipment such as platforms, guardrails, handrails, climbers, ramps, stairways, ladders, balance beams, fitness equipment, rings, rolls, unmechanized merry-go-rounds, seesaws, slides, swings, benches, netting, basketball hoops, drinking fountains, and *ground surface materials*, but not *buildings*.
 - iii. Fencing, but not *replacement* or removal of fencing that is a *character-defining feature* of a *historic property*.
 - iv. Wayfinding, address, and identification signage.
 - v. Lighting, such as *building*-mounted lighting and freestanding lighting in parking areas, along driveways or walkways, or in park and playground areas, and including relamping and rewiring, but not including *replacement* or removal of lighting that is a *character-defining feature* of a *historic property*.
 - vi. Water feature, such as decorative fountains, including replumbing, but not *replacement* or removal of a water feature that is a *character-defining feature* of a *historic property*.
 - vii. Curb, gutter, steps, ramp, and retaining wall, but not a retaining wall that is a *character-defining feature* of a *historic property*.
- b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.
- c. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of grass, shrubs, and other plants, and xeriscaping.
 - iii. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.
 - iv. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.

- v. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
- vi. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.
- d. *Maintenance*, *repair*, *rehabilitation*, *replacement*, and removal of the following elements serving *housing*, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, or other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Vault toilets.
- e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact *ground surface materials* 45 years or older or known *historic properties*.
- f. *Installation* and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on or near the exterior of *housing*:

- a. Rehabilitation, replacement, and installation of the following elements: on a building less than 45 years old and not known after a records check to be a historic property; on a building the federal agency or another federal agency has determined to not be a historic property within the preceding ten years; or on the non-primary façade of a historic building or on the non-primary façade of a building whose eligibility for inclusion in the National Register is not known and in a location not otherwise visible from the primary right-of-way:
 - i. Doors, including insulated exterior doors and basement bulkhead doors.
 - ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings or window louvers.
 - iii. Canopies, awnings, and solar shades.
 - iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs on flat roofs; and green, sod, or grass roofs on flat roofs.
 - v. Improvements that address the requirements of the Americans with Disabilities Act, such as ramps and railings.
 - vi. Mechanical systems and fire alarm, fire suppression, and security systems and equipment.

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- vii. Solar energy systems.
- viii. Elevator systems.
- ix. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
- x. Foundations and seismic and structural *repairs*, with *ground disturbance* limited to areas within 10 feet of the *building*.
- xi. Chimneys.
- xii. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, or frieze board vents.
- xiii. Siding.
- xiv. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement activities on any building, including:
 - i. any element listed in Section 2.a. of this Appendix.
 - ii. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
 - iii. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.
 - iv. Removal of exterior paint or graffiti using non-destructive means, limited to hand scraping, low-pressure water wash of less than 500 psi, heat plates, hot air guns, and chemical paint removal.
- c. *Maintenance*, *repair*, *rehabilitation*, *replacement*, *installation* and removal of any of the following elements on or near a *building*, provided that such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Foundation vents, if painted or finished to match the existing foundation material.
 - iv. Green infrastructure.
 - v. Gray water systems.
- d. Paint on previously painted exterior surfaces.

- e. Rehabilitation, replacement, and installation of clean energy technologies, provided that:
 - i. Such technology is located either outside the boundaries of a *historic district*, or on the non-primary façade side of historic *housing*, or in a location not otherwise visible from the *primary right-of-way*; and is located on the same lot as or on an adjacent lot to that *housing*, or in the case of a *community solar system*, in a lot within two blocks or two thousand feet (whichever is longer) of the *housing* served;
 - ii. Such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*;
 - iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted *solar energy system* may be visible from the *primary right-of-way* if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.
- f. Maintenance, repair, or in-kind replacement of clean energy technologies.
- g. Abatement of hazardous materials where effects of the abatement are reversible or temporary or not visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of historic housing or housing whose eligibility for inclusion in the National Register is not known; or windows 45 years or older.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of *housing*, and do not result in physical changes visible from the *primary right-of-way*:

- a. *Maintenance, repair, rehabilitation, replacement,* and *installation,* and *abatement* of *hazardous materials*, that take place entirely within the interior of the *housing* and: in an individual *housing* unit; in any interior location of *housing* less than 45 years old and not known after a *records check* to be a *historic property*; on *housing* the *federal agency* or another *federal agency* has determined to be not a *historic property* within the preceding ten years; or in any interior space within historic *housing* that is not a *primary space*. Example activities covered by this Section 3.a. include: removal, alteration (including of width, height, and location), and construction of interior walls; alteration of floors and flooring (including of material, pattern, and texture); alteration of ceilings (including of material, lighting, and height); *installation* of *mechanical systems* and fire alarm, fire suppression, and security systems and equipment; insulation and air sealing; removal and *installation* of equipment and fixtures (including bathroom, kitchen, and lighting equipment and fixtures); *replacement* and refurbishment of elevator cabs, system-wide upgrades to elevator *mechanical systems*, *installation* of *building energy control systems*; and *installation* of coderequired signage; removal, alteration, and construction of stairs; cosmetic improvements; and improvements to address the requirements of the Americans with Disabilities Act.
- b. Rehabilitation, replacement and installation of any of the following elements, in any location other than the locations identified in Section 3.a. of this Appendix, if such activity does not result

Commented [JD18]: ACHP: Maintenance, repair, rehabilitation, replacement and installation of what?

in physical changes visible from the *primary right-of-way* and has no visual *effect* on the *primary spaces* of historic *housing*:

- i. *Mechanical systems*, including but not limited to heating, ventilating, and cooling components such as heat pumps, electric furnaces and boilers, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, ventilation systems, and refrigeration lines; and fire alarm, fire suppression, and security systems and equipment.
- ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
- iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.
- iv. Electronic ignition devices.
- v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.
- vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.
- vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- viii. Building energy control systems.
- ix. EnergyStar (or similarly rated) appliances.
- x. Battery energy storage systems.
- xi. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where such insulation can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
- xii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials* and can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
- xiii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- c. *Maintenance*, *repair*, and *in-kind replacement* of any of the elements listed in Section 3.b., any *building* element, any improvement that addresses the requirements of the Americans with Disabilities Act, and any cosmetic or decorative features of the *housing*.
- d. *Maintenance*, *repair*, *in-kind replacement*, and *rehabilitation* of a skylight, atrium, courtyard, or lightwell; and *installation* of a new skylight, atrium, courtyard, or lightwell that will not be visible

from the *primary right-of-way* and will not result in interior reconfigurations to *primary spaces* or removal of *historic building materials* in *primary spaces*.

e. Abatement of hazardous materials where effects of the abatement are reversible or temporary or not visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of historic housing or housing whose eligibility for inclusion in the National Register is not known; or windows 45 years or older.

4. Emergency Work

The following activities related to the exterior or interior of any historic *housing* do not require further Section 106 review when such work relates to an *emergency situation* and takes place within 30 *days* of the occurrence of the *emergency situation* and otherwise complies with 36 C.F.R. § 800.12:

- a. Temporary stabilization that causes no permanent damage to historic *housing* or any other *historic property*, including *installation* of temporary bracing, shoring and tarps.
- b. Emergency repair of masonry, concrete, or building façade cracks or falling elements.
- c. Emergency *repair* of falling plaster or other elements that pose an immediate and imminent health and safety hazard.
- d. Abatement of hazardous materials required to address an emergency situation.
- e. Replacement and demolition of a deteriorated or damaged mobile or manufactured home.

5. Other Activities

The following activities do not require Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of *housing*.
- b. Feasibility studies related to energy efficiency improvements, *electrification*, improvements incorporating *clean energy technologies*, and other topics relating to *building* energy use.
- c. Leasing, refinancing, acquisition, or purchase by the *federal agency* of *housing*, provided that any changes in use or access, or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- d. Transfer, lease, or sale of a federal government-owned *housing* from one *federal agency* to another *federal agency*, provided that any changes in use or access, or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- e. Transfer, lease, or sale out of federal ownership or out of federal control of historic *housing*, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed

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covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. $\S~800.5(a)(2)(vii)$.

f. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

APPENDIX A-2: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1 Site Work

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

- a. Replacement, installation, or removal of any of the following elements which are either less than 45 years old and create new ground disturbance in previously undisturbed soils, or 45 years or older; if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property; or if the area of potential effects has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with Indian Tribes and Native Hawaiian Organizations without such survey or consultation identifying any historic properties:
 - i. Any of the elements listed in Sections 1.a. and 1.d. of Appendix A-1, including *character-defining features* of such elements.
 - ii. Test borings, soil sampling, well drilling, or perc tests more than eight inches in diameter, or that impact *ground surface materials* 45 years or older or known *historic properties*.
- b. Planting of a new tree 40 feet or more from a building or replacement or installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building, if a qualified authority has made a written determination that such planting will have no adverse effects on any historic property.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of *housing*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, and installation of the following elements on the exterior of: buildings 45 years or older if a qualified authority determines that the building is not a historic property; or buildings 45 years or older determined by a qualified authority to be a historic property, if a qualified professional makes a written determination that such installation or replacement will have no or minimal adverse effects on any character-defining feature of a historic building:
 - i. Any of the elements listed in Section 2.a. of Appendix A-1, including elements in locations other than those identified in that Section.
- b. Rehabilitation, replacement, or installation of any of the following elements on, or in the case of clean energy technologies near (as further provided below), a building, which create new ground disturbance on previously undisturbed ground, if a qualified authority makes a written determination that such activities will have no adverse effects on any historic property:
 - i. Any of the elements listed in Section 2.c. of Appendix A-1, including elements in locations other than those identified in that Section.

- ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix A-1.
- c. Replacement of exterior historic building materials of historic housing with in-kind or substitute building materials after the federal agency, with the assistance of a qualified authority, conducts the following selection procedure:
 - i. Characterize existing *historic building materials* in terms of condition, design, material properties, performance (including insulation and air sealing value), safety, and presence of hazards such as lead-based paint, asbestos, or other *hazardous materials*;
 - ii. Next, determine, based on an evaluation of *technical feasibility* and *economic feasibility*, if *historic building materials* can be *repaired* or if they must be replaced;
 - iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical feasibility and economic feasibility;
 - iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute *building* material;

provided, however, that a *federal agency* may only utilize this selection procedure if such *replacement* or demolition does not create *ground disturbance*, creates *ground disturbance* exclusively on *previously disturbed ground*, or, in the opinion of a *qualified authority*, has no *adverse effects* on any *historic property*.

d. The *abatement* of *hazardous materials*, where such activity is irreversible or permanent or will be visible from the *primary right-of-way*, create new *ground disturbance*, or result in the permanent removal or *replacement* of: windows on the primary façade of a historic *building* or a *building* whose eligibility for inclusion in the National Register is not known; or windows 45 years or older, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of *housing*, after the satisfaction of the identified conditions, exclusions, and requirements:

a. In addition to those activities listed in Section 3 of Appendix A-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such activity results in physical changes to a historic building visible from the primary right-of-way or has a visual effect on the primary spaces of a historic building, if a qualified authority makes a written determination that such activity has no adverse effects on any historic property.

APPENDIX B-1: CLIMATE-SMART BUILDING-RELATED ACTIVITES NOT REQUIRING FURTHER REVIEW

1. Site Work

The following activities do not require further Section 106 review when they are conducted in areas adjacent to a *building* or on the same lot as a *building*, and when conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*:

a. Rehabilitation, replacement, installation, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance, and not including replacement or removal of any element that is a character-defining feature of a historic property:

i. Fencing.

- ii. Lighting, such as *building*-mounted lighting and freestanding lighting in parking areas, along driveways and walkways, in park and playground areas, and in other areas, and including relamping and rewiring.
- iii. Water feature, such as decorative fountains, including replumbing.
- iv. Curb, gutter, steps, ramp, and retaining wall.
- b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.
- c. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of any of the following that are native, naturalized, drought-adapted, drought-resistant, drought-tolerant, water-wise, or xeric: grass, shrubs, and other plants; and xeriscaping.
 - iv. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.
 - v. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
 - vi. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
 - vii. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.
 - viii. Removal of concrete or asphalt ground surfaces or *replacement* of such surfaces with *permeable ground surface materials*.
 - ix. The following activities conducted to address fire threats within 200 feet of a *building* or auxiliary structure:

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- a. Disposal of heavy accumulations of ground litter and debris.
- b. Removal of small conifers growing between mature trees, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*.
- d. *Maintenance*, *repair*, *rehabilitation*, *replacement* and removal of the following elements, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Vault toilets.
- e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact *ground surface materials* 45 years or older or known historic properties.
- f. *Installation* and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when they are conducted on or near the exterior of a *building* and when they are conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building*, or to enhance the *climate resilience* of the *building*:

- a. *Rehabilitation*, *replacement*, and *installation* of any of the following elements: on a *building* less than 45 years old and not known after a *records check* to be a *historic property*; on a *building* the *federal agency* or another *federal agency* has determined to not be a *historic property* within the preceding ten years; or on the non-*primary façade* of a historic *building* or on the non-*primary façade* of a *building* whose eligibility for inclusion in the National Register is not known and in a location not otherwise visible from the *primary right-of-way*:
 - i. Doors, including insulated exterior doors.
 - ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings, and window louvers.
 - iii. Canopies, awnings, and solar shades.
 - iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs; and green, sod, or grass roofs.
 - v. Mechanical systems and fire alarm, fire suppression, and security systems and equipment.
 - vi. Solar energy systems.

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- vii. Elevator systems.
- viii. Chimneys.
- ix. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, and frieze board vents.
- x. Siding.
- xi. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement of the following elements on, or in the case of clean energy technologies near (as further provided below), any building:
 - i. Any element listed in Section 2.a. of this Appendix.
 - ii. Clean energy technologies.
 - iii. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
 - iv. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.
- c. *Maintenance*, *repair*, *rehabilitation*, *replacement*, *installation*, and removal of any of the following elements on or near a *building*, provided that such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Foundation vents, if painted or finished to match the existing foundation material.
 - iv. Green infrastructure.
 - v. Gray water systems.
- d. Paint on previously painted exterior surfaces.
- e. Rehabilitation, replacement, and installation of clean energy technologies, provided that:
 - i. Such technology is located either outside the boundaries of a *historic district*, or on the non-primary façade side of a historic *building*, or in a location not otherwise visible from the *primary right-of-way*; and is located on the same lot as or on an adjacent lot to that *building* or *buildings*, or in the case of a *community solar system*, in a lot within two blocks or two thousand feet (whichever is longer) of the *building* or *buildings* served;
 - ii. Such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*;

iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted *solar energy system* may be visible from the *primary right-of-way* if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when they are conducted in the interior of a *building* and when they are conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building*, or to enhance the *climate resilience* of the *building*:

- a. Maintenance, repair, rehabilitation, replacement, and installation of any of the following elements:
 - i. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where such insulation can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
 - ii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials*, and can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
 - iii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- b. *Maintenance*, *repair*, *rehabilitation*, *replacement* and *installation* of any of the following elements, if such activity does not result in physical changes visible from the *primary right-of-way*, and has no visual *effect* on the *primary spaces* of a historic *building*:
 - i. *Mechanical systems*, including but not limited to heating, ventilating, and cooling components such as furnaces, heat pumps, electric furnaces, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, heat pumps, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, and refrigeration lines.
 - ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
 - iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.
 - iv. Electronic ignition devices.
 - v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.
 - vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.

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- vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- viii. Building energy control systems.
- ix. EnergyStar (or similarly rated) appliances.
- x. Battery energy storage systems.

4. Other Activities

The following activities do not require Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of *buildings*.
- b. Feasibility studies related to energy efficiency improvements, *electrification*, improvements incorporating *clean energy technologies*, and other topics relating to *building* energy use.
- c. Leasing, refinancing, acquisition, or purchase by the *federal agency* of energy efficiency, *electrification*, and *clean energy technologies*, provided that any changes in use or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such technologies must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- d. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

APPENDIX B-2: CLIMATE-SMART BUILDING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1. Site Work

The following activities do not require further Section 106 review when conducted in areas adjacent to a *building* or on the same lot as a *building*, and when conducted primarily to *reduce energy use or greenhouse* gas emissions of the *building* or to enhance *climate resilience* of the *building*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, installation, and removal of any of the following elements which are either less than 45 years old and create new ground disturbance in previously undisturbed soils, or 45 years or older, if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property; or if the area of potential effects has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with Indian Tribes and Native Hawaiian organizations without such survey or consultation identifying any historic properties
 - i. Any element listed in Section 1.a. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
 - ii. Any element listed in Section 1.d. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
- b. Planting of a new tree 40 feet or more from a building, or replacement or installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building, if a qualified authority makes a written determination that such planting will have no adverse effects on any historic property.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of a *building*, and when conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, and installation of the following elements visible from the primary right-of-way and on the exterior of: buildings 45 years or older if a qualified professional determines that the building is not a historic property; or buildings 45 years or older determined by a qualified professional to be a historic property, if a qualified professional makes a written determination that such installation or replacement will have no or minimal adverse effects on any character-defining feature of a historic building; provided, however, that an analysis of adverse effects must consider technical feasibility and economic feasibility, including long-term operational costs and climate resilience of the building upon which elements are installed or replaced:
 - i. Any element listed in Section 2.a. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
- b. Rehabilitation, replacement, or installation of any of the following elements on or near a building, which create new ground disturbance on previously undisturbed ground, if a qualified

authority makes a written determination that such activities will have no adverse effects on any historic property:

- i. Any of the elements listed in Section 2.c. of Appendix B-1.
- ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix B-1.
- c. Replacement of historic building materials of historic housing with in-kind or substitute building materials to improve energy efficiency after the federal agency, with the assistance of a qualified professional as needed, conducts the following selection procedure:
 - i. Characterize existing historic building materials in terms of condition, design, material properties, performance, safety, and presence of hazards such as lead-based paint, asbestos, or other hazardous materials:
 - ii. Next, determine, based on an evaluation of technical feasibility and economic feasibility, if historic building materials can be repaired or if they must be replaced;
 - iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical feasibility and economic feasibility;
 - iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute *building* material;

provided, however, that a *federal agency* may only utilize this selection procedure if such *replacement* or demolition does not create *ground disturbance*, exclusively affects *previously disturbed ground*, or, in the opinion of a *qualified authority*, has no *adverse effects* on any *historic property*.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of a *building*, and when conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*, after the satisfaction of the identified conditions, exclusions, or requirements:

a. In addition to those activities listed in Section 3 of Appendix B-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such activity results in physical changes to a historic building visible from the primary right-of-way or has a visual effect on the primary spaces of a historic building, if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property.

APPENDIX C-1: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITES NOT REQUIRING FURTHER REVIEW

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of *potentially historic ground surface materials*, and they are located entirely within the *previously disturbed right-of-way*:

- a. *Maintenance*, *repair*, *rehabilitation*, *replacement*, and *installation* of the following elements when used for or incorporated into pedestrian, bicycle, *micromobility vehicle*, or *transit* infrastructure:
 - i. Ground surface material, including installation of slurry seals, overlays, and seal coatings; sealing and repairing cracks; milling and re-paving; repair of potholes; and restoration after utility installation.
 - ii. Curb.
 - iii. Sidewalk.
 - iv. Bulb out.
 - v. Ramp.
 - vi. Crosswalk, including a raised crosswalk across a roadway and a raised intersection.
 - vii. Mark on the ground surface for visibility and delineation, including striping for *bicycle lanes*, thermoplastic striping and paint, painted sidewalk extensions, sidewalk stencils, *bicycle parking*, *micromobility parking*, and paint in zones of potential conflict between bicyclists and motor vehicle drivers.
 - viii. Detectable warning on or before a curb, entry point, crosswalk, or accessible facility.
 - ix. Island, including a pedestrian island to reduce crossing distance or improve visibility, and a corner island to separate bicycles from motor vehicles or enable a protected bicycle queuing area or motor vehicle waiting zone.
- b. Maintenance, repair, rehabilitation, replacement, and installation of the following ground surface materials and elements:
 - i. High friction surface treatment.
 - ii. Cool pavement.
 - iii. Permeable ground surface materials.
 - iv. Rumble strip.
 - vii. Traffic calming device, such as speed hump, speed table, raised crosswalk, and raised intersections.
- c. Elevation of no more than 10 inches of the existing ground surface to maintain, create, or connect pathways for pedestrians, bicyclists, or *micromobility vehicle* users, or to facilitate boarding and disembarking at *transit* facilities.

2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of *potentially historic ground surface materials* or *historic building materials*, they are located entirely within the *previously disturbed right-of-way*, and they follow the specifications of a *recognized design manual* (if and to the extent covered in any such manual):

- a. *Maintenance*, *repair*, *rehabilitation*, *replacement*, and *installation* of the following elements when used for or incorporated into pedestrian, bicycle, *micromobility vehicle*, or *transit* infrastructure:
 - i. Bicycle rack.
 - ii. Micromobility parking corral.
 - iii. Bicycle rail or wheel stop no taller than 6 inches.
 - iv. Flex post no taller than 36 inches and no larger in circumference than 22 inches.
 - v. Bollard no taller than 48 inches and no larger in diameter than 12 inches.
 - vi. Concrete or stone block no taller than 24 inches and no wider than 6 inches, to protect *bicycle parking* or *micromobility parking* or to delineate a pedestrian pathway.
 - vii. Sign, signal, traffic control device, and signalization, including any such elements that address the requirements of the Americans with Disabilities Act.
 - viii. Ticket dispensing structure, fee collection structure, interpretive wayside exhibit structure, and single-post metal or wooden sign 5 feet or less in height and 2 square feet or less in cross-section area, not including provisions for solar power.
 - ix. Camera, intelligent transportation systems, and other technological equipment limiting, removing, or identifying unauthorized traffic from pathways dedicated to walking, biking, *micromobility vehicle* use, or *transit* use.
 - x. Temporary construction fencing, but not grading, creating a soil borrow pit, or other significant excavation.
- b. *Maintenance*, *repair*, *rehabilitation*, *replacement*, and *installation* of street furniture, including the following elements, provided that such activity does not result in the removal of historic street furniture:
 - i. Bench.
 - ii. Table.
 - iii. Freestanding planter.
 - iv. Street light.
 - v. Shelter for *transit* users with a combined dimension (length plus width plus height) less than 30 linear feet and with advertising space no greater than 24 square feet visible at any one time; and *maintenance*, *repair*, and *in-kind replacement* of any other such shelter.

- c. Maintenance, repair, rehabilitation, and in-kind replacement of the following elements:
 - i. Catenary system.
 - ii. Tracks, including ballasts and ties.
 - iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, tolling, monitoring of motor vehicle traffic, or security purposes.

3. Work Relating to Vegetation and Landscapes

The following activities occurring within the same *right-of-way* or on the same lot as *climate-friendly* transportation infrastructure do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials, and further provided that they exclusively affect previously disturbed ground or create no new ground disturbance:

- a. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of any of the following that are native, naturalized, drought-adapted, drought-resistant, drought-tolerant, water-wise, or xeric: grass, shrubs, and other plants; and xeriscaping.
 - iii. Replacement of a tree in its existing location and planting of a new tree on, along, or within a street that already has street trees.
 - iv. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
 - v. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
- b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure or landscaping to delineate pedestrian pathways or bicycle lanes, provided such green infrastructure or landscaping follows the specifications of a recognized design manual (if and to the extent covered in any such manual).

4. Work on Bridges

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

- a. *Maintenance*, *repair*, *rehabilitation*, and *in-kind replacement* of drains, joints, joint seals, concrete decks, parapet, rail, concrete, steel elements, bearings, retaining walls, and bridge machinery.
- b. Cleaning and washing.

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- c. Conducting electrochemical extraction and cathodic protection.
- d. Mitigating cracks, including pin-and-hanger replacement and other retrofits.
- e. Implementing countermeasures against scour.

5. Other Activities

The following activities do not require Section 106 review:

- a. Leasing, refinancing, acquisition, or purchase by the federal agency of:
 - i. A railway *right-of-way* for the *maintenance*, development, or expansion of either rail-to-trail pathways or passenger rail service;
 - ii. A transit-oriented development building; or
 - iii. Fleets of bicycles, hybrid or electric vehicles, or electric locomotives,

provided that any physical activities related to such properties must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

- b. Transfer, lease, or sale of a federal government-owned *climate-friendly transportation facility* or *transit-oriented development building* from one *federal agency* to another *federal agency*, provided that any changes in use or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such facility must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- c. Transfer, lease, or sale out of federal ownership or out of federal control of a historic *climate-friendly transportation facility* or *transit-oriented development building*, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).
- d. A decision to limit motor vehicle access to, through, or on streets that remain available for walking, bicycling, *micromobility vehicle*, or *transit* uses, including "play streets," "school streets," "safe route to school" streets, or "open streets," provided that any physical activities related to such decisions, including but not limited to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of streets for the purpose of limiting motor vehicle access, must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- e. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

APPENDIX C-2: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

The following activities do not require further Section 106 review after the satisfaction of the identified conditions, exclusions, or requirements:

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

a. Elevation of the existing ground surface by more than 10 inches, or that will result in the demolition or removal of *potentially historic ground surface materials*: to maintain, create, or connect pathways for pedestrians, bicyclists, or *micromobility vehicle* users, or to facilitate boarding and disembarking at *transit* facilities.

2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

- a. Any activities listed in Section 2.a. of Appendix C-1 that will result in the demolition or removal of *potentially historic ground surface materials* or *historic building materials*, or create new *ground disturbance* in previously undisturbed soils, or result in the removal of historic street furniture.
- b. *Rehabilitation*, *replacement*, and *installation* of a shelter for *transit* users with a combined dimension (length plus width plus height) 30 linear feet or more, or with advertising space more than 24 square feet visible at any one time.
- c. *Installation* of the following new elements that will result in the demolition or removal of *potentially historic ground surface materials* or *historic building materials* or that create new *ground disturbance* in previously undisturbed soils:
 - i. Catenary system.
 - ii. Tracks, including ballasts and ties.
 - iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, to monitor motor vehicle traffic, or for security purposes.

3. Work Relating to Vegetation and Landscapes

The following activities do not require further Section 106 review, even if they create new *ground disturbance* in previously undisturbed soils, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

- a. Planting of a new tree on, along, or within a street that has not previously had street trees, or in other locations where such planting is intended to improve the experience for pedestrians, bicyclists, *micromobility vehicle* users, or *transit* users.
- b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure and landscaping related to pedestrian pathway or bicycle lane delineation that will result in the

DRAFT FOR PUBLIC COMMENT - DATED 8/8/2024

demolition or removal of potentially historic ground surface materials or will create new ground disturbance.

4. Work on Bridges

The following activities do not require further Section 106 review, even if they create new *ground disturbance* in previously undisturbed soils, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

- a. Activities listed in Section 4 of Appendix C-1 and conducted on historic bridges.
- b. Rehabilitation, replacement, or installation of a bridge built to serve pedestrian, bicycle, micromobility vehicle, or transit use.

APPENDIX D: FORMAT FOR AUTHORIZATION BY AN INDIAN TRIBE FOR USE OF THIS PROGRAM COMMENT ON ITS TRIBAL LANDS

On behalf of [NAME OF INDIAN TRIBE] and as a duly authorized representative of such Tribe, I authorize federal agencies to utilize the Program Comment on Housing on the Tribal Lands of the [NAME OF INDIAN TRIBE]. This authorization is in effect until the withdrawal or termination of the Program Comment or on the date of receipt by the Executive Director of the Advisory Council on Historic Preservation that [NAME OF INDIAN TRIBE] has rescinded its authorization, which it may do at any time.

For further information, please contact: [Tribal Contact; Name and Contact Information].

Signed by:
[Signature]
Name:
Title:
Date:
Acknowledged and accepted by the ACHP:
[Signature – leave blank]
Name:
Title:
Date:



October 7, 2024

The Honorable Sarah C. Bronin Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Dear Chair Bronin:

The Archaeological Society of Delaware, Inc., established in 1933 and representing professional and avocational archaeologists, has reviewed the proposed Program Comment by the Advisory Council on Historic Preservation dated August 8, 2024. We understand that the purpose of the proposed Program Comment is to streamline the Section 106 process for certain classes of proposed Housing and Transportation activities. While the nature of listed activities is typically addressed in state initiated Programmatic Agreements, we understand the value of making this approach nationwide. However, Program Comments are best used to address specific agency programs rather than attempt to cover all aspects and agencies involved in a policy initiative.

The proposed document is cumbersome and may be confusing to agency personnel adversely affecting the ability to implement. One concern is the way consultation between "qualified authorities" and the respective State Historic Preservation Offices is managed. When "qualified authorities" reach a decision, the written documentation of that decision should be shared with the SHPO "qualified professional" prior to the agency authorization to proceed on a project and allowed five business days for SHPO reply or concurrence. Additionally, when there is a potential for buried archaeological sites, we recommend that the determination of "previously disturbed" soils be part of the consultation process with "qualified professionals" in the SHPO. Another concern is the potential loss of true consultation – the backbone of the Section 106 process – robbing projects of the important participation of parties with specific local knowledge and perspective that enhances historic preservation.

We appreciate the opportunity to comment on this Program Comment and look forward to seeing an updated draft.

Sincerely,

Daniel R. Griffith; Chair Public Policy Committee

cc. Suzanne Savery; Delaware SHPO



[External] Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

From Shanon Shea Miller (OHP) <Shanon.Miller@sanantonio.gov>

Date Wed 09-Oct-24 9:48 AM

Cc Ken Bernstein < ken.bernstein@lacity.org >

ACHP --

We are the co-chairs of the Big Cities Preservation Network which is a coordinating network of the historic preservation officers in the nation's 25 largest cities. We have reviewed the program comment and the National Alliance of Preservation Commissions letter and are writing to echo/endorse those comments. The NAPC letter is linked below. Please understand that this does not represent an official or adopted policy position of our individual city governments but a general point of consensus among our group.

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Thank you for considering our comments. Please don't hesitate to reach out to Ken or me with any questions.

Shanon Miller



Ken Bernstein, AICP

Principal City Planner, Office of Historic Resources and Urban Design Studio

Los Angeles City Planning

221 N. Figueroa St., #1350

Los Angeles, CA 90012

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E-NEWS

AND

Shanon Shea Miller, AICP
Director/Historic Preservation Officer



City of San Antonio · Office of Historic Preservation City Tower, 100 W Houston St, San Antonio, TX 78205 direct: 210.207.8316 · main office: 210.207.0035 shanon@sapreservation.com · www.sapreservation.com







October 9, 2024

Hon. Sara C. Bronin, Chair Advisory Council on Historic Preservation 401F. Stret NW, Suite 308 Washington, D.C. 20001 program alternatives@achp.gov

Re: Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin,

The undersigned agencies appreciate the opportunity to provide input on the Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. We applaud the initiative that the Advisory Council on Historic Preservation (ACHP) is taking and strongly support your efforts to advance two critical policy goals – the production and preservation of affordable, accessible, energy-efficient, and hazard-free housing, and the reduction of energy use and greenhouse gas emissions, improve climate resilience, and cut energy costs – through accelerated review of projects with federal approvals or assistance involving the rehabilitation of existing housing or the creation of new housing in existing buildings.

Background

Nationwide, homeowners and renters are facing a housing affordability crisis. Across the country, average home prices increased by roughly 47% between early 2020 and early 2024. Census data from 2022 showed that nearly one-quarter of homeowners were cost burdened (paying more than 30% of income for housing and utilities), including more than a quarter of homeowners aged 65 and over. Renter households have been hit even harder. More than half of all renter households across the country were cost burdened as of 2022, and 65% of those earning less than \$30,000 annually were severely cost-burdened (paying more than 60% of income for housing and utility costs). In 2024, there is not a single state, metropolitan area, or county in the United States where a full-time worker earning the prevailing minimum wage (federal, state or local) can afford a two-bedroom apartment at the rent level designated by the United States Department of Housing and Urban Development (HUD) as the 'fair market rent' – the cost to rent a moderately-priced dwelling unit in the local housing market. At the same time, the cost to produce and operate affordable housing has skyrocketed, driven in part by global supply chain issues.

At the same time, we are facing an environmental crisis that requires immediate action to curtail greenhouse gas emissions and reliance on fossil fuels. Data from the Environmental Protection Agency (EPA) shows that greenhouse gas emissions from the commercial and residential sectors account for a substantial share of overall U.S. greenhouse gas emissions. Homes as well as commercial buildings use large amounts of energy for heating, hot water, cooling, lighting and other functions. Energy-efficient building retrofits are an important component of reducing emissions from the residential sector.

Chair Sara Bronin, Advisory Council on Historic Preservation October 9, 2024

Addressing these crises simultaneously will require an all-of-government effort. In Massachusetts, an ambitious <u>Clean Energy and Climate Plan for 2025 and 2030</u> calls for achieving a 28% reduction in 2025 and 47% in 2030 for building heat. Toward that end, the recently-passed <u>Affordable Homes Act</u> not only provides unprecedented levels of funding authorization to support production and preservation of affordable housing in Massachusetts, but also requires prioritization of both new construction and retrofit projects that include energy efficiency and electrification decarbonization measures (with stricter standards for new construction). Our environmental, energy and housing agencies are working closely together to align information and resources to support "green" retrofit projects that will reduce emissions from existing housing as well as new housing developed through adaptive reuse of other existing structures.

Alignment with Historic Preservation

Massachusetts has a proud history of preserving historic structures. These structures are particularly abundant in our state, which lists more than 4,300 properties on the National Register of Historic Places, the second-highest number in the country. Most recently, the Affordable Homes Act dramatically expanded the Massachusetts Historic Rehabilitation Tax Credit, increasing to \$110 million the annual cap on credits that can be awarded to support substantial rehabilitation of qualified historic structures. Among its many achievements, this credit has supported the creation of thousands of affordable housing units across the Commonwealth through historic rehabilitation projects.

Massachusetts also has some of the oldest housing stock in the nation – much of which has *not* been designated historic property. Based on data from the 2023 American Community Survey more than 46% of the occupied housing units in Massachusetts were built before 1980, and nearly 30% was built in 1939 or earlier. Another 18% of the occupied housing units in Massachusetts were built between 1980-1999.

Given the age of the state's housing stock – as well as the substantial number of older and historic buildings that are suitable for adaptive reuse – rehabilitation of existing buildings is essential to meeting the Commonwealth's housing needs. At the same time, installation of energy-efficient building systems, windows, doors and roofs, electrification, insulation, and other measures are essential to ensure that historic rehabilitation projects can also serve climate goals. As the ACHP has recognized, action is urgently needed, consistent with the National Historic Preservation Act, 54 U.S.C. §300101(1), to "foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations."

ACHP Program Comment

We applaud the ACHP's efforts to create tailored review processes in keeping with the ACHP's Housing Policy Statement and Climate Change Policy Statement. The designation of housing-related activities not requiring further Section 106 review listed in Appendix A-1, and the designation of climate-smart building-related activities not requiring further review in Appendices B-1 and B-2, will be instrumental in streamlining Section 106 review and assuring consistent treatment of site improvements and building elements that promote energy efficiency, use of clean-energy technologies, and accessibility for persons with disabilities.

Chair Sara Bronin, Advisory Council on Historic Preservation October 9, 2024

The Program Comment appropriately distinguishes between activities that warrant Section 106 review, such as exterior work resulting in physical changes to the primary façade of a designated historic property that are visible from the primary right of way, and those that do not warrant Section 106 review, such as installation of clean energy mechanical systems not visible from the primary right of way and having no visual effect on the primary spaces of a historic building. The emphasis on primary space and primary view offers protection for truly character-defining features designated structures, while recognizing the need to limit review of critical housing- and climate-related activities that will not have adverse effects on historic properties.

In particular, the Program Comment strikes a careful balance between protection of the historic character of historic buildings or other buildings within the boundaries of a historic district, and the urgent need for installation of clean energy technologies, including roof-mounted solar energy systems, and other climate-smart building-related activities. In addition, we applaud the proposed exemption of work at historic properties where the activities are conducted primarily to reduce energy use or greenhouse gas emissions or to enhance climate resilience, and a qualified professional has made a written determination that such work will have no or minimal adverse effects on any character-defining feature of an historic building.

We urge ACHP to consider other measures to assure efficient completion of the Section 106 compliance process, including expedited National Park Service review of Historic Preservation Certification Applications relating to housing or climate related activities. Often, timely review is essential not only to assure that proposed physical changes are acceptable, but also to utilize historic tax credits in projects that are also subject to complex IRS rules under the Low Income Housing Tax Credit Program. If a project that will depend on historic tax credits for financial feasibility suffers lengthy delays in the Section 106 review process, that can create a domino effect of delays, resulting cost increases, budgetary gaps and further delays. The exigencies of the current housing crisis and climate crisis necessitate rapid review across all project dimensions, including Section 106 review.

Thank you for your consideration of our comments.

COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION

By: Roberta L. Rubin, Director of Housing Development and Preservation

MASSACHUSETTS COMMUNITY CLIMATE BANK

By: Maggie Super Church Director of Policies and Programs COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

By: Amy Stitely, Undersecretary For Strategy and Climate



October 9, 2024 By Email

To the Advisory Council on Historic Preservation:

Cultural Heritage Partners, PLLC writes to express our profound concerns about the ACHP's draft Program Comment on Accessible, Climate-Resilient, and Connected Communities. As the only law firm in the country with an exclusive focus on historic preservation and cultural heritage law—and that routinely advocates within the Section 106 regulatory framework on sustainability and equity issues before administrative agencies and in federal court—we welcome the opportunity to share our perspectives. We share the ACHP's goals to promote accessibility, climate resiliency, and historic preservation, but this Program Comment is not the right vehicle for achieving these goals.

First, it is significant to us that federal agencies, Tribes, and national preservation advocacy organizations oppose the Program Comment, including the U.S. Department of the Interior, Snoqualmie Indian Tribe, National Association of Tribal Historic Preservation Officers, National Conference of State Historic Preservation Officers, American Anthropological Association Archaeology Division, American Cultural Resources Association, National Alliance of Preservation Commissions, Society for American Archaeology, Society for Historical Archaeology, and individual State Historic Preservation Officers in Arizona, Colorado, Georgia, Idaho, Kansas, Maine, Maryland, New Jersey, North Carolina, Oregon, Rhode Island, Tennessee, Utah, Washington, and Wisconsin. A common thread throughout these comments is the observation that the Program Comment conflicts with and undermines Section 106, harms Tribal sovereignty, and disregards the shared authority and role of State Historic Preservation Officers in the Section 106 process. We share these concerns and incorporate them herein by reference.

Second, the need for the Program Comment is not based on comprehensive study or data other than atypical anecdotes about "grab bars," "bus shelters," or "striping on cross walks" that have nothing to do with the typical Section 106 consultation process. In our experience, major infrastructure projects—including clean energy projects— speed through Section 106 in a matter of months when the steps of the Section 106 process are followed in order. Rather than "grab bars" or "bus shelters" holding up projects, the undertakings that we have observed experience the most challenges are ones that confuse the process and start consultation with a draft Memorandum of Agreement before historic properties have been identified, adopt so-called "historic preservation treatment plans" that do not require developers to resolve adverse effects prior to issuing a permit, and propose mitigation plans designed by consultants who have never visited the historic sites these plans are supposed to support. When consultation fails and projects are delayed, it is almost always the result of federal agencies skipping steps to avoid Section 106 for the benefit of developers and thereby making decisions that are arbitrary, capricious, and contrary to law.

Similarly, we are concerned that the Program Comment reveals a lack of practical know-how with Section 106's application, and is strangely disconnected from Section 106's legislative history, Section 106's plain language, and the requirements of Section 106's implementing regulations and how they work in sequence—and seems to confuse Section 106 outcomes with non-Section 106 disagreements that might arise, for example, in a historic rehabilitation tax credit project that has nothing to do with Section 106.

In addition, the Program Comment undermines efficient and effective application of the Section 106 process. Rather than "streamlining" Section 106, the Program Comment creates more risk—not only for the ACHP, but for all other federal agencies that are required to apply it, and developers who will be required to guess to what extent the Program Comment may or not apply to their particular situation.

For example, the Program Comment, without providing legal analysis or considering its legal effect on dozens of existing Programmatic Agreements (PAs) across the nation, makes the extraordinary claim that federal agencies can either "follow this Program Comment, rather than such MOA or PA . . . for the life of this Program Comment" or "terminate such MOA or PA to follow this Program Comment to satisfy their Section 106 responsibility." Or not follow the Program Comment. § II.C.

This approach is not consistent with the law because once MOAs and PAs are executed, they become binding contracts that memorialize the resolution of adverse effects and guide conduct based on prior expectations, meaning they cannot be set aside at will. The ACHP does not have the authority to preempt contractual obligations with this Program Comment. And even if it did, the uncertainty the Program Comment would create if adopted will provide a glide path to litigation against the ACHP (for adopting the Program Comment) and federal agencies (for applying it or not applying it) in violation of the Administrative Procedure Act and National Historic Preservation Act's Section 106 and its implementing regulations. Finally, the confusion that the Program Comment creates calls out to federal courts to disregard the ACHP's interpretation of Section 106 in the new legal landscape of *Loper Bright* in a post-*Chevron* deference world.

Third, we are concerned about the Program Comment's omission of visual effects at various places throughout the document that creates a conflict with 36 C.F.R. § 800(5)(a)(2)(v), which requires consideration of all direct, indirect, and cumulative effects on historic properties. This omission also conflicts and creates confusion with established legal precedent, including that of the U.S. Court of Appeals for the D.C. Circuit, which has held specifically that visual effects are adverse effects for purposes of the National Historic Preservation Act long after recognition of adverse visual effects were well established for purposes of Section 106.

Fourth, in addition to creating confusion within established federal law, the Program Comment creates unnecessary conflict with local historic preservation ordinances and illegally circumscribes the jurisdiction of local historic preservation commissions by purporting to exempt the replacement of all windows, doors, canopies, and other architectural features—on all sides other than the front—for known historic buildings. Many local governments already have replacement window and other architectural design guidelines that housing developers navigate successfully every day in addition to federal law, yet the Program Comment would create unnecessary questions about the continued validity of local historic preservation ordinances and guidelines if the Program Comment is adopted.

In conclusion, while we commend the ACHP's intentions to advance accessibility, climate resilience, and historic preservation, we strongly believe that the draft Program Comment is fundamentally flawed, inconsistent with well-established law, and counterproductive. We remain committed to collaborating with the ACHP and all parties involved to ensure that our nation's historic preservation efforts are both effective and respectful of the values they seek to uphold.

Respectfully submitted,

William J. Cook, Partner

William Cool





October 9, 2024

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

Attn: ACHP Program Alternatives

program alternatives@achp.gov

PUBLIC COMMENT ON THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND CONNECTED COMMUNITIES

Dear Chair Bronin,

Please find the following comment submitted on behalf of The Community Preservation Corporation (CPC), a nonprofit community development financial institution (CDFI) and sole member of CPC Climate Capital LLC, which is anticipated to be a sub-recipient of grant funds from the Environmental Protection Agency (EPA)'s Greenhouse Gas Reduction Fund (GGRF) specializing in multifamily housing finance. Currently in our fiftieth year, CPC was founded in 1974 as a direct response to the chronic issues of property abandonment and blight facing New York City's multifamily housing stock, when we began to provide financial and technical resources to stabilize and revitalize underserved communities. Since its founding, CPC has invested over \$14 billion to finance the creation, preservation, and adaptive reuse of more than 230,000 units of housing.

As a certified carbon neutral company, CPC is committed to climate resiliency and sustainability in its multifamily housing finance work. CPC launched its sustainability platform in 2008 to promote energy and water efficiency measures in the built environment, create green capital products, and advise on best practices in the green economy. CPC Climate Capital, a new subsidiary of CPC, will be a subrecipient of Climate United Fund (CUF) and leads Climate United's strategy for decarbonizing multifamily housing across the United States. The Climate United coalition is comprised of three nonprofits — with CUF as the recipient and CPC Climate Capital, and Self-Help Climate Capital as the subrecipients — committed to building a clean energy future that all Americans can access equitably. CUF was awarded \$6.97 billion from the National Clean





Investment Fund (NCIF), a program under the EPA's GGRF, one of the largest and most significant direct spending programs within the Inflation Reduction Act (IRA). CPC Climate Capital's subgrant is anticipated to be \$2.42 billion to finance carbon reducing improvements to multifamily housing nationwide.

Over its 50-year history of lending in support of affordable housing projects, including adaptive reuse and preservation projects, CPC has gained significant experience navigating historic review processes and financing climate-smart homes. Now, as a GGRF subrecipient, CPC Climate Capital is committed to facilitating the federal government's response to climate change and delivering the deep decarbonization needed in multifamily residential buildings across the US. To that end, we submit this response to the Advisory Council for Historic Preservation ("ACHP")'s Program Comment on Accessible, Climate-Resilient, Connected Communities ("PCACCC").

CPC applauds the ACHP's efforts to streamline Section 106 of the National Historic Preservation Act (NHPA) for climate-smart buildings and strongly supports the PCACCC's adoption. The building sector accounts for more than a third of total U.S. greenhouse gas emissions and rehabilitating existing buildings to be significantly more energy efficient and climate resilience is paramount to the health and safety of our communities. ACHP's Program Comment shows how historic preservation can be an ally rather than an adversary in the advancement of our society's dual affordable housing production and energy policy goals.

Our 50 years of experience demonstrate that decarbonization and historic preservation can successfully complement each other as we invest in our existing building stock. As an example, in the rehabilitation of Monument Square, an 89-unit historic building in CPC's portfolio in Troy, New York, the installation of heat pumps and other major system upgrades yielded \$13,000 in annual utility savings, making additional funds available to support building maintenance and tenant comfort. As government agencies, green banks, and private-sector investors begin to mobilize the IRA's historic, national investment in clean energy and climate solutions, the actions of the PCACCC to fast track affordable housing and clean energy projects will ensure that historic preservation goals are met alongside our housing and climate goals at scale and across American communities.

CPC supports the PCACCC's proposed actions to accelerate solar panel installation and other energy efficiency improvements in historic buildings, such as upgrades to insulation, building control systems, and mechanical systems, provided they enhance energy



efficiency and climate resilience. To best position the PCACCC's actions for impact, CPC suggests the following additions to the Program Comment:

- Inclusion of a flow chart diagram for Appendix B-1 and Appendix B-2: Appendix B-1, "Climate-Smart Building-Related Activities Not Requiring Further Review" and Appendix B-2, "Climate-Smart Building-Related Activities Not Requiring Further Review After the Satisfaction Of Conditions, Exclusions, Or Requirements" are complex and at times challenging to read together. It is currently difficult to tease out the limiting conditions, exclusions and requirements in Appendix B-2, and how these differ from those in Appendix B-1. To make the PCACCC more user-friendly, we suggest including a flow chart diagram, as exemplified by **Exhibit A** attached hereto, that illustrates the different pathways that do or do not trigger a full Section 106 review under the program alternative. This will make it clearer when Section 106 can in fact be streamlined for a climate-smart building.
- 2. Inclusion of a mechanism to assure a project will not require Section 106 review: Currently, the PCACCC includes guidelines for when a given project can in fact forgo Section 106 review, but does not offer a mechanism for agencies to receive assurance or confirmation that Section 106 Review will not be required before undertaking said project. While agencies and project partners should continue to store all documentation related to a decision surrounding Section 106 review, as is currently recommended in the PCACCC, the ACHP should more formally confirm that a traditional Section 106 review is not necessary through a review and assurance mechanism. This will enable and encourage project partners to pursue the PCACCC alternative process without fear of later disagreements.
- 3. Alignment between the PCACCC and HTC requirements: In CPC's experience as an affordable housing lender, projects benefitting from the Low-Income Housing Tax Credit (LIHTC), the nation's most successful financing incentive for the development and preservation of affordable housing, also frequently benefit from Historic Tax Credits (HTCs). Like the GGRF, state HTCs are an important gap filler to make affordable housing transactions more viable. 39 states currently have state HTC programs, and California, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey and Pennsylvania all include a tax credit percentage boost ranging from 20 to 35% for projects that create affordable housing. In New York, nearly 83% of HTC projects create some form of housing. However, in contrast to affordable housing, relatively few HTC programs specifically address





decarbonization and climate issues. Maryland gives a 20 to 25% tax credit boost for LEED Gold certification, and New York provides a 20% credit up to a credit value of \$50,000 for qualified rehabilitation expenditures, like the installation of solar panels. California increases its 20% tax credit to 25% for transit-oriented development projects, and Colorado, Illinois, Vermont and South Carolina all include provisions prioritizing disaster relief preparation and recovery. The list of sustainability-related provisions in HTC programs is relatively limited, however, compared to the number of affordable housing development-related provisions in state HTC programs.

Even if a state HTC program includes sustainability-related provisions, the PCACCC, as it stands, conflicts with the HTC's stricter requirements. Therefore, if a project combines LIHTC and HTC, as many developers do, the PCACCC will not be able to streamline or fast-track the preservation review process, obviating any progress made by the PCACCC for affordable housing and building decarbonization projects. CPC recommends that any of the clean energy technologies and interventions approved as fast-tracked under the PCACCC should also be fasttracked under the state HTC programs. Aligning these requirements is crucial for the alternative Section 106 process to have its intended impact in increasing the supply of affordable housing. CPC also recommends that all state HTC programs increase the credit percentage from five to 15% for projects meeting certain building performance and decarbonization standards, similar to the boosts already provided for the inclusion of affordable housing units. The PCACCC is a step in the right direction, but state HTCs also need to more closely align with policies aimed at reducing energy use and lowering carbon emissions or the benefits of the PCACCC will be lost.

In conclusion, CPC greatly supports streamlining the Section 106 review process as this will facilitate the implementation of green infrastructure and accelerate the deployment of federal investments in climate-smart buildings. As a GGRF sub-recipient, CPC Climate Capital is committed to delivering the deep decarbonization needed in multifamily housing and maximum efficiency and impact of federal funds. Adoption of the ACHP's Draft PCACCC will help historic buildings across the U.S. become climate-resilient and preserved for future generations to enjoy.

We look forward to the opportunity to contribute to the impact of the ACHP's PCACCC and continue advancing our shared missions. Thank you for this opportunity to provide





comments – do not hesitate to reach out to us directly in the event of any follow up questions or desire for more information.

Sincerely,

Sadie McKeown, President

Mour

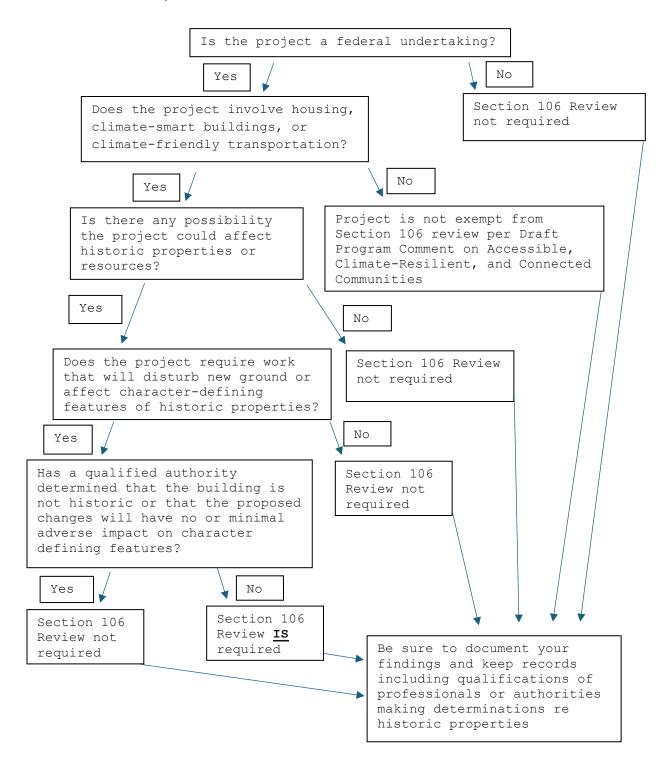
The Community Preservation Corporation

smckeown@communityp.com



Exhibit A: Example Flow Chart for Section 106 Review Under the PCACCC

Is Section 106 Review Required per Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities?



September 17, 2024

Advisory Council on Historic Preservation Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities

Dear Advisory Council:

I have read with interest the proposed Program Comment on Accessible, Climate-Resilient, Connected Communities. This document offers much that is useful and constructive for the Section 106 review process and proposes several approaches that could streamline that process while still providing community review. Specifically, the following six proposals can be implemented without impairing preservation goals:

- Exempting most interior renovation projects from the review process, including renovated living spaces for existing tenants.
- Allowing the installation of solar panels on historic buildings involved in federal government projects, without further historic preservation review.
- Facilitating the electrification of historic buildings by exempting or streamlining reviews for mechanical and electrical system upgrades, including retrofits and installations of new all-electric energy efficient appliances and building systems, including heat pumps.
- Investments in pedestrian, bicycle, and micromobility infrastructure, including new bike lanes, shared micromobility systems and accessible sidewalks
- Safety improvements and accessibility improvements across transportation modes including programs that reconnect communities separated by highway infrastructure
- Public transit projects, including bus and light rail projects.

There are three suggestions in the Proposed Program Comment that should be amended to account for actual building performance issues distinct from product claims.

• Allowing sitework and façade projects to proceed with limited or no review, simplifying routine maintenance and care of existing buildings as well as speeding climate resiliency upgrades.

Some review is needed since pre-1940 buildings often have superior window and wall performance than buildings built in the last six decades of the 20th century, as the General Services Administration has regularly reported regarding its own inventory.

• Prioritizing abatement of hazardous materials, including radon, lead, and asbestos with identified processes to enable mitigation.

This is an appropriate priority. From an economic standpoint, abatement should include encapsulation, since full elimination can treble or quadruple demolition costs.

• Broadening the scope of building envelope energy efficiency improvements, including replacement windows, doors, and insulation, without further historic preservation review.

This fails to take into account three facts. First, many historic windows and doors can perform as well as modern replacements. Restored old-growth windows are warrantied for 50-60 more years than contemporary products. Second, window and door ratings are based on the uninstalled product, yet most of the thermal leakage, even in new construction, happens at the frame. Third, while interior insulation could go without review, exterior insulated finish systems (EIFS) can significantly shorten the life of a building's skin due to the method of installation and quality of materials.

Finally, as a Board Member of the National Trust Community Investment Corporation, I am concerned that the historic preservation tax credit program be preserved and that any changes to Section 106 review processes do not create a dual system for those many projects that combine state and federal preservation tax credits with low-income, New Market, Solar and other tax incentives.

Thank you for the opportunity to comment.

Vincent L. Michael, PhD

Executive Director, Conservation Society of San Antonio

Trustee, National Trust Community Investment Corporation

Board Member, National Preservation Partners Network

Trustee Emeritus, National Trust for Historic Preservation



October 9, 2024

Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Comments of Center for Sustainable Energy® Regarding the Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

To the Advisory Council on Historic Preservation,

Center for Sustainable Energy® (CSE) is a national nonprofit that accelerates adoption of clean transportation and distributed energy through effective and equitable program design and administration. Governments, utilities and the private sector trust CSE for its data-driven and software-enabled approach, deep domain expertise and customer-focused team. CSE's fee-for-service business model frees it from the influence of shareholders, members and donors, and ensures its independence.

On August 8, 2024, the Advisory Council on Historic Preservation (ACHP) released its Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities (Program Comment) for public review. As stated in the Program Comment, "the ACHP developed this [. . .] to help accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs in response to climate concerns, and to rehabilitate or develop new climate-friendly transportation infrastructure." CSE provides the following comments in support of the Program Comment.

ACHP's Program Comment seeks to expedite reviews required for historic buildings under Section 106 of the National Historic Preservation Act. While not directly within CSE's day to day operations, we agree that Section 106 reviews may add complexity for the property owners, renters, developers, and other parties associated with historic properties that can benefit from federally funded programs that serve to, among other things, improve accessible energy-efficient housing, cut energy costs, decarbonize the transportation sector, and improve the nation's climate resilience. The Program Comment would create program alternatives and build on previously-established exemptions, which would allow for greater and quicker access to clean energy-including solar-and transportation projects for historic properties.

Given the influx of Federal funding for clean energy and transportation projects and the urgency with which we must all act to decarbonize our buildings, infrastructure, and means of transportation, the Program Comment is timely and necessary. CSE, like many clean energy project implementers, is not familiar with the Section 106 review process and, as a result, would be likely to avoid implementing projects at historic buildings. The Program Comment clarifies what types of projects would be exempted and would allow project implementers, including CSE, to move forward in review of historic properties with greater confidence and increase the likelihood of those properties' ability to participate in these exciting clean energy opportunities.

Center for Sustainable Energy Page 2 October 9, 2024

In reviewing the Program Comment, CSE believes that the proposed program alternatives would not negatively impact historic buildings, but rather, allow them to modernize in a way that ultimately preserves their use and value for years to come. The changes proposed in the Program Comment would allow for expeditious inclusion of historic properties in programs CSE administers, or may administer in the future, including Solar for All Programs, the California Equitable Building Decarbonization Program, the National Electric Vehicle Infrastructure Formula Program, the Charging and Fueling Infrastructure Grant Program and the EPA's Climate Pollution Reduction Grants Program.

CSE's incentive program projects to date generally have not included historic buildings and are designed to expedite the deployment of clean energy or transportation equipment. Given the extra time and expense it often takes to review historic properties under the current 106 process, there typically would not be funds available within current program structures to conduct these long review processes. Accordingly, entities like CSE would likely not be able to implement clean energy and transportation projects in historic buildings without program alternatives or other exemptions. This barrier could prevent historic buildings from being eligible for federal funds, putting tenants, residents, and others who live or work in a historic property and the surrounding community at a disadvantage. The proposed changes would expedite certain aspects of the Section 106 review process, which could aid in the modernization and preservation of these properties and the surrounding communities they enhance.

CSE takes pride in its mission and the work it does to support decarbonization. The Program Comment, when implemented, will reduce barriers for historic properties to access federal funds, which are critical to furthering the nation's clean energy and climate resiliency goals as well as maintaining and modernizing historic properties. Thank you for your time and consideration.

Sincerely,

Karen Glitman

Center for Sustainable Energy

Karen Glitman

Senior Director, Distributed Energy Resources



P.O. Box 3012 Poughkeepsie, NY 12603-0012

October 7, 2024

Advisory Council on Historic Preservation 401 F Street NW, suite 308 Washington, DC 20001-2637

Re: DRAFT PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND CONNECTED COMMUNITIES

Dear Advisory Council:

The Empire State Passengers Association, a statewide intercity passenger rail advocacy organization supporting faster, more reliable and more frequent Amtrak service in New York and adjoining states and provinces, enthusiastically endorses the Council's proposed Comment.

As supporters of one of the most environmentally friendly means of transportation, ESPA is continually frustrated at how implementation of the National Environmental Policy Act fails to give credit to lower carbon consuming transportation projects in the review process. A similar fault can sometimes be found in the separate Section 106 review for impact on historic properties and districts.

ESPA applauds the Advisory Council's attempt to streamline the Section 106 process with regards to de minimis installation, construction and rehabilitation actions furthering other adopted public policy such as energy conservation, housing construction and sustainability.

We support the rehabilitation and preservation of historic railroad stations and infrastructure but also wish to advance the modernization and improvement of passenger rail service. In too many cases federal agencies are not implementing the statutory changes enacted to continue to protect the environment but also to allow important projects to advance. This situation is particularly true for railroad projects within existing railroad and transportation rights of way.

Advisory Council on Historic Preservation October 7, 2024 Page 2

The Council's proposed Comment, if adopted, should pave the way for faster implementation of green transportation projects, more housing construction and hopefully more viability for adaptive reuse of historic structures. It will also lower the cost of these projects by reducing the total project duration.

Sincerely,

Steve Strauss

Executive Director

Steve Straux



DATE: 10.4.2024

Evernorth appreciates this opportunity to provide comments to the ACHP on the Proposed Program Comment on Accessible, Climate Resilient, Connected Communities. It is imperative that the federal preservation review process is adapts to the changes required to meet the nation's housing and climate goals. This Program Comment from ACHP is a commendable step towards that adaptation.

Evernorth is a regional affordable housing organization that partners with local non-profits to plan, construct, and operate affordable housing for Vermont's most vulnerable residents. Over half of Evernorth's renters earn less than 30% of Area Median Income (AMI), and over 90% of residents earn less than 60% AMI. Both Evernorth and our partners have decades of proven experience developing high-quality, innovative, and transformative projects that give not just residents, but their larger host communities, a leg up. We build sustainable, energy efficient buildings and are always working to implement creative new approaches to reducing the carbon footprint of our buildings and utility burdens on our residents. With 35 years of experience and a portfolio of 3,730 units in Vermont, we take our role as industry and climate leaders seriously.

Within the state of Vermont, Evernorth is also a proven leader in the restoration of historic buildings in our downtowns and village centers. Working closely with the Vermont Division for Historic Preservation, we have renovated over 20 historic buildings, utilizing the federal historic tax credit. Recently Evernorth was awarded the 2022 Preservation Award by Preservation Trust of Vermont for the transformative New Avenue building in downtown St. Johnsbury. Because all of our projects use federal funds, all of our projects are also subject to the Section 106 review process.

Much of Vermont and northern New England is in Climate Zone 4; with much colder temperatures during the longer winter months, compared to other parts of the country, paying attention to energy efficiency is vital to the long term sustainability of our properties. In this time of accelerating climate change, this becomes an even more important societal goal.

In every historic building renovation, we are caught in the cross hairs of the Secretary of Interiors Standards for Historic Preservation, and the need to firmly address energy efficiency and therefore reduce our greenhouse gas emissions. We are reminded often that the Secretary's standards do not include climate change or energy efficiency. iii

The time has come for that to change. In Vermont, we are experiencing the direct impact of climate change over the past two years with significant flooding events. These flooding events jeopardize not only our residents, but also many of the historic buildings that are located in our



downtowns and village centers.

<u>Specific comments on the ACHP recommendations:</u>

Comment 3.b: Work on Building Interior: rehabilitation, replacement and installation of mechanical systems. As our housing inventory responds to the need to decarbonize, and in concert with the Inflation Reduction Act, we strongly support this program comment that suggests Section 106 review should not be required if there is no visual effect from the primary right of way or on the primary spaces in the historic housing.

Appendix A-2: Housing Related Activities

This Appendix should be incorporated in its entirety into the compliance guidelines for Section 106 review.

Appendix B-2: Climate Smart Building-related activities:

This Appendix should be incorporated in its entirety into the compliance guidelines for Section 106 review.

SIGNED:

KATHY BEYER, SENIOR VICE PRESIDENT, REAL ESTATE DEVELOPMENT



[External] Public Comment on Accessible, Climate Resilient and Connected Communities

Roderick Scott < roderick.scott75@aol.com>

Mon 26-Aug-24 7:44 AM

To:Program Alternatives program_alternatives@achp.gov>

ACHP.

The Flood Mitigation Industry Association, representing the flood mitigation industry, submits the following comments on this important future looking document. The changing climate is delivering weather events/storms with increasing frequency and severity. These increases are resulting in dramatic impacts to the property and flood insurance markets due to the increasing damages and crushing policy premium rates to the historic building owners.

Our historic buildings were not built for flood hazard mitigation based on FEMA flood maps and climate science and are therefore the buildings most likely to flood, again and again. Our historic buildings roof systems construction were never built to wind velocity standards and as a result getting wind damage from the storms. Historic building owners are now faced with the very real need to adapt the buildings for flood and wind. The current trajectory of flood and wind insurance rates is not sustainable, and the banks have told our industry that we have 20 years until a 40% devaluation on buildings not adapted to this new historic era.

Therefore, it is imperative that our historic building owners be encouraged to seek adaptation of the roofing system and to either elevate or dry flood proof the buildings in order to reduce the natural hazard risk and crushing insurance premium rates.

We have flood adaptation guidelines but must have wind adaptation guidelines ASAP! Hopefully the ACHP can work to encourage the National Park Service to get this done.

Warmest regards,

Roderick Scott, CFM
Board Chair
Flood Mitigation Industry Association
Mandeville, LA
985-273.9590 c
Flood Mitigation Industry Association | flood mitigation

Flood Mitigation Industry Association | flood mitigation

FMIA has one goal; to be the driver of change by serving as the collective voice for flood mitigation. Through a...



October 8th, 2024

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

Dear Chair Bronin:

The Florida Public Archaeology Network (FPAN) is a statewide educational organization whose mission is to promote and facilitate the stewardship, public appreciation, and value of Florida's archaeological heritage through regional centers, partnerships, and community engagement. FPAN appreciates this opportunity to provide comments on the proposed Advisory Council on Historic Preservation's (ACHP) "Program Comment on Accessible, Climate Resilient, Connected Communities" (PC). Archaeological records indicate that people have been living in Florida for over 14,000 years. As Floridians, we know that creating resilient communities is vital to enjoy life here in the future. Accordingly, we appreciate the ACHP's efforts to support resilience efforts; however, we strongly disagree with aspects of the program comment and write in support of our colleagues at the National Association of Tribal Historic Preservation Officers, the National Conference of State Historic Preservation Officers (NCSHPO) (letter attached), and the Society for American Archaeology (letter attached).

We would share concerns with the NCSHPO that the elimination of consultation, particularly with the public, will negatively impact our ability to address preservation issues. Through our experience as an organization dedicated to promoting and facilitating stewardship, public appreciation, and value of Florida's archaeological heritage, we have seen firsthand how consultation that draws on the knowledge and expertise of both preservation professionals and members of impacted communities can enhance projects and build public support.

Likewise, we support SAA's statements in the attached letter, especially regarding the need for SOI-qualified archaeologists to determine ground disturbance, and the need for SHPO and THPO review of projects. A more effective path to expedite resilient projects would be to substantially increase funding for SHPOs and THPOs across the board, which will allow offices to hire and retain more staff to thoroughly review these projects without creating delays for developers.

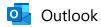


It is possible to address resiliency while supporting historic preservation. For example in Florida our state statute, 380.093 Resilient Florida, recognizes that the state is vulnerable to adverse impacts from events like flooding, storm surge, and sea level rise. This statute defines critical assets which should be prioritized for funding based on risk, and specifically includes cultural and historical resources alongside critical infrastructure.

We can only move forward to a resilient future by protecting our archaeological, historical, and cultural heritage in a new green economy that will benefit all Americans. The program comment as currently written will only destroy this shared heritage. Florida's model illustrates what is possible when resiliency professionals, state and local governments, the professional heritage community, and community stakeholders come together. We encourage the ACHP to follow Florida's example.

Sincerely,

Mary Furlong Minkoff Executive Director



[External] Proposed program comment on Accessible, Climate-Resilient, and Connected Communities

From Frank Quinn <fquinn@heritageohio.org>

Date Wed 09-Oct-24 8:03 PM

Cc Matt Wiederhold < mwiederhold@heritageohio.org >

Good evening, The staff and trustees of Heritage Ohio appreciate the opportunity to offer comments on the proposed changes to Section 106 processes focused on certain undertakings. We look forward to following the progress and continuing the dialog as opportunities arise. Heritage Ohio's statement follows. Thank you.

Heritage Ohio supports efforts by the ACHP to work collaboratively with the NPS and SHPO offices to refine the 106 process, if needed, so that it continues to preserve and protect our historic resources, while still encouraging economic development. At this point, we do not support significant changes to the program without further review and discussion to determine the potential for unintended consequences as a result of some of the proposed changes. The 106 program to date has been an important tool in preserving resources that might otherwise be lost as they were in the past

--

Frank Quinn

fquinn@heritageohio.org



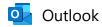
HERITAGE OHIO

Vital Places | Vibrant Communities

800 East 17th Avenue | Columbus, OH 43211

P 614.258.6200 | **C** 614.584.2441

heritageohio.org



[External] Comment: Workforce Development Concerns Regarding the Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities

From Ariel Clark <aclark@historicorps.org>

Date Wed 18-Sep-24 2:52 PM

Cc Ariel Clark <aclark@historicorps.org>

To Whom It May Concern:

As a program director dedicated to building the skilled labor workforce for historic preservation, as well as a preservation technician and program manager working directly on CCC-era structures within National Forests and other historic properties on public lands, I have significant concerns about the proposed Program Comment on Accessible, Climate-Resilient, Connected Communities. My primary concern lies in the potential negative impact this proposal could have on workforce development in the historic preservation field, which is intrinsically linked to the standards and processes that the Program Comment seeks to modify.

Threat to Workforce Development

The preservation of historic properties is a highly specialized field that requires a deep understanding of traditional building methods, materials, and the historical significance of the structures being preserved. The workforce that sustains this field is cultivated through rigorous training, hands-on experience, and adherence to the Secretary of the Interior's (SOI) Standards for the Treatment of Historic Properties. These standards serve as the foundation for teaching and practicing the craft of historic preservation.

The proposed Program Comment, by streamlining and expediting Section 106 reviews for federal undertakings, risks eroding the very processes that ensure preservation work is done to the highest standards. The current review process under Section 106, with its emphasis on careful, case-by-case evaluation and consultation, provides critical opportunities for emerging preservation professionals to develop their skills. These reviews are not merely bureaucratic hurdles; they are educational experiences that teach practitioners how to apply the SOI Standards effectively and responsibly.

By moving towards a more generalized and expedited approach, the Program Comment could reduce the need for the detailed, thoughtful preservation work that is essential to maintaining our historic properties. This shift threatens to diminish the value placed on specialized preservation skills, making it more difficult to justify the investment in training programs and apprenticeships that are crucial to developing the next generation of preservationists.

Erosion of Historic Preservation Standards

The implications of the Program Comment for workforce development are directly tied to its impact on historic preservation standards. The SOI Standards are not just guidelines—they are the framework within which preservation professionals operate. They ensure that any interventions on historic properties are done with respect for the original materials, design, and craftsmanship that define these structures.

The streamlined processes proposed in the Program Comment prioritize efficiency and modernization over the meticulous application of these standards. For example, energy retrofits or climate resilience measures that are encouraged under this proposal might involve alterations that compromise the historical integrity of buildings. These kinds of compromises undermine the educational and practical value of preservation work, as they move away from the principles that preservation professionals are trained to uphold.

If we reduce the emphasis on these rigorous standards, we risk creating a workforce that is less skilled, less knowledgeable, and less committed to the core values of historic preservation. This would have a long-term, detrimental effect on the field, as future preservationists may lack the training and experience needed to maintain the quality of work that has been the hallmark of historic preservation in the United States.

Undermining Federal Workforce Development Programs

The proposed Program Comment not only threatens workforce development but also works in direct opposition to the Federal government's own current initiatives dedicated to growing the skilled labor workforce, particularly in the field of historic preservation. Programs such as the National Park Service's Historic Preservation Training Center and other federally funded initiatives are specifically designed to cultivate a workforce capable of preserving and restoring the government's historic architectural assets.

These programs operate with a strong emphasis on adherence to the Secretary of the Interior's Standards, ensuring that federal investments in training and preservation yield the highest quality results. My own work, often funded by the Federal government, relies on strict adherence to these standards, both for the benefit of the historic assets we work to preserve and to honor the investment of our partners.

By undermining the SOI Standards and the detailed processes of Section 106, the Program Comment effectively devalues the efforts of these Federal programs. It sends a contradictory message to those who have committed their careers to preserving the nation's historic resources: while the government invests in training and developing skilled labor to maintain these assets, it simultaneously proposes a policy that could diminish the quality and integrity of the work being done.

This dissonance between the government's workforce development goals and the proposed Program Comment could lead to confusion and a potential decline in the effectiveness of both preservation training programs and the preservation work itself. The long-term consequence is not just a weakened workforce but a diminished capacity to protect and maintain the historic properties that are integral to our national heritage.

Impact on Public Lands and Cultural Heritage

The potential erosion of preservation standards and the associated impact on workforce development is particularly concerning when it comes to historic properties on public lands, such as CCC-era structures within National Forests and historic homes under the management of agencies like the National Park Service (NPS) and the Bureau of Land Management (BLM). These properties are not only significant in their own right, but they also serve as training grounds for preservation professionals.

Public lands provide unique opportunities for preservationists to engage with a wide variety of historic structures, each with its own challenges and learning opportunities. The rigorous Section 106 review process ensures that work on these sites is done with the utmost care and respect, reinforcing the skills and standards that are essential to the field. By streamlining these processes, the Program Comment could reduce the availability of these invaluable learning experiences, further hindering the development of a skilled preservation workforce.

Conclusion

The proposed Program Comment on Accessible, Climate-Resilient, Connected Communities poses a serious threat to the future of workforce development in the historic preservation field. By undermining the Section 106 process and the Secretary of the Interior's Standards, this proposal risks devaluing the specialized skills that are essential to preserving our nation's historic properties. Moreover, it works in direct opposition to Federal workforce development programs that aim to grow a skilled labor force dedicated to the preservation of the government's own historic assets.

I urge the ACHP to reconsider this proposal and to prioritize the development and maintenance of a skilled preservation workforce. The future of our historic properties depends on it.

Thank you for considering my comments.

Sincerely,

Ariel Clark

HistoriCorps Job Corps and Eastern Region Program Manager Cell: 540-797-9035

Book a Meeting

Projects | HistoriClub | Careers

Mailing: 151 Summer St. #991, Morrison, CO 80465 Physical: 300 Union Ave., Morrison, CO 80465



October 9, 2024

Sara C. Bronin Advisory Council on Historic Preservation 401F Street NW, Suite 308 Washington, DC 20001-2637

Dear Chair Bronin:

Thank you for the opportunity to comment on the Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities.

Introduction

The Historic Tax Credit Coalition (HTCC) is a diverse group of industry stakeholders that recognize the importance of the federal Historic Tax Credit (HTC) and work with Congress and the Executive Branch to improve and expand the use of this important economic development tool.

The HTCC has previously commented on the Advisory Council on Historic Preservation's (ACHP) call for comments on the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards) and its direct impact of the review and approval of HTC projects. We support the ACHPs continued efforts on the Standard and on this Program Comment that on "the nation's pressing needs to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce its energy use and greenhouse gas emissions, improve climate resilience, and cut energy costs; and to decarbonize its transportation sector". We also support the intent of the Program Comment to streamline Section 106 in relationship to undertakings that have no or minimal potential to adversely affect historic properties.

Since the inception of the HTC Program, it has incentivized the rehabilitation of 314,201 existing housing units as well as the creation of 356,267 new housing units from the conversion of existing historic structures, of which 199,138 are low and moderate-income units. The program has a long history of creating housing as well as supporting other stated goals of the Program Comment, including the reduction of energy use and greenhouse gas emission (through saving embodied carbon) as well as improving climate resilience and cutting energy costs.

Section 106

Many, if not most, HTC projects are not impacted from a timing or funding perspective on account of Section 106 of the National Historic Preservation Act. This is because they must meet the Secretary of the Interior's *Standards for Rehabilitation* and therefore have a finding of no adverse effect. Typically, this review process falls within reasonable timeframes relative to other permits required for the project. In cases where there is an adverse effect finding, which often relates to adjacent new construction or some element of demolition, the rehabilitation of the historic structure mitigates the adverse effect.



We have reviewed the Draft Program Comment as well as comments offered by the National Conference of State Historic Preservation Officers, U.S. Department of the Interior, National Alliance of Preservation Commission and several State Historic Preservation Offices/Officers. We found the comments to be thoughtful and informative. They address the need to streamline certain undertakings while expressing concerns relative to the Historic Preservation Act and the possibility of creating confusion by offering alternatives to the existing process. We hope that the ACHP will give consideration to the comments received and engage stakeholders in evaluating the potential unintended consequences before finalizing the program comment.

As an organization focused on the federal historic tax credit program our concerns extend to potential unintended consequences. For example, targeting properties that are 45 years old or less, or exempting work that may have a negative effect on a building's character defining features (whether exterior, interior, or site), may have an impact on future National Register eligibility and could also have an impact on the use of HTCs as a source of project equity.

Preservation of existing affordable housing provides a good illustration of this concept. For example, members of the Coalition have worked on many affordable housing projects with public housing authorities and others that are utilizing the Department of Housing and Urban Development's Rental Assistance Demonstration program. These projects are often not initially seen as historic by the owner or developer. However, as needs for additional sources arise, these owners or developers turn to the HTC as a source of equity. If these projects had been altered under this Program Comment they might have become no longer eligible for listing. As a result, there would be one less source of funding and more competition for other sources.

In conclusion, we are in support of streamlining Section 106 for certain projects, the acknowledgement of historic preservation as climate friendly, the need to focus on climate resilience and the other stated program goals.

Sincerely,

Forrest Milder

Chair



October 9, 2024

TO: Advisory Council on Historic Preservation

BY EMAIL: program_alternatives@achp.gov

Feedback in response to ACHP's Draft Program Comment on Accessible, Climate Resilient and Connected Communities

James Hardie Building Products Inc. (JHBP) provides the following response to the Advisory Council on Historic Preservation's *Draft Program Comment on Accessible, Climate Resilient and Connected Communities (Draft ACCC Program)* due on October 9, 2024. JHBP's comments specifically focus on

- Suggestions for streamlining and simplifying the review process, particularly as it applies to the rehabilitation, replacement and installation of exterior siding materials on historic buildings and/or contributing properties subject to the Section 106 process; and
- 2. A request for clarification on the practical application of the proposed Draft ACCC Program Comment.

Background

JHBP appreciates the intent of the Draft ACCC Program Comment to consolidate numerous Program Comments into a single government-wide Program Comment and accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies in the rehabilitation, maintenance or update of existing housing and buildings in response to climate concerns. As noted by ACHP, the Draft ACCC Program Comment will affect a wide range of buildings – both historic and/or contributing - under the purview of Housing and Urban Development (HUD), the Department of Defense (DoD), the Department of Agriculture and many other agencies.

The external cladding of a historic building is one of the most visible features and is critical to protecting the building from weather and other climate hazards, which are more frequent and severe throughout the U.S. due to climate change. In many historic districts, the original historic cladding on a building is wood, which is often less affordable than substitute cladding materials, such as fiber cement, and less resilient to climate-related weather damage.

JHBP is a leading supplier of fiber cement siding and trim for buildings and homes in the U.S. Fiber cement siding is often approved by local historic boards and commissions throughout the U.S. for application on historic or contributing properties. In fact, in 2023, the National Park Service updated *Preservation Brief 16: The Use of Substitute Materials on Historic Building Exteriors* to allow for

consideration of factors like climate resilience, affordability and ongoing maintenance when determining whether to allow for the application of substitute materials – like fiber cement siding - on historic properties or contributing properties¹.

Given the recent focus of NPS and other government agencies in identifying ways to strengthen the resiliency and durability of our infrastructure, JHBP's comments focus on bringing the Draft ACCC Program Comment in alignment with a collective effort to make our infrastructure more resilient.

1. Suggestions for streamlining and simplifying the review process, particularly as it applies to the rehabilitation, replacement and installation of exterior siding materials on historic buildings and/or contributing properties subject to the Section 106 process.

With respect to the application of external siding, the Draft ACCC Program Comment Appendices A1 and A2 establish the criteria for housing related activities that do *not* require further Section 106 review, namely, whether a building is less than 45 years old, whether external siding is located on a non-primary façade and/or a determination that the siding will have no adverse effects on historic character defining features. The proposed process to determine if a Section 106 review is applicable for external siding, though designed to be streamlined and efficient, is still rather cumbersome.

For example, Attachment 1 provides a table summarizing the Draft ACCC Program Comment in Appendices A-1 and A-2 applicable to an agency that is undertaking the rehabilitation, repair and installation of siding materials on historic or contributing properties.

Similarly, Attachment 2 summarizes the Draft Program ACCC Comment in Appendices B-1 and B-2 applicable to an agency undertaking the rehabilitation replacement and installation of siding materials as part of Climate-Smart building related activities.

Though the intent of Appendices A-1, A-2, B-1 and B-2 is noble, the Appendices result in a distinction without a practical difference. In both scenarios — as displayed in Attachment 1 and Attachment 2 — an analysis of whether the external siding has an adverse impact on the historic character is required. Thus, the division of the process into two scenarios is cumbersome and unnecessary.

In an effort to better understand the proposed process, JHBP created a flowchart to illustrate how the Appendices operate when making a determination if a Section 106 review is applicable. An example decision flowchart based on the criteria appliable to undertaking the rehabilitation replacement and installation of siding is shown in Figure 1. Please note that for simplicity, not all criteria regarding the historic status of a building are included in the decision flowchart.

The flowcharts demonstrate that the most important analysis is whether the original siding material as installed contributes to the historic character of the building, and if so, whether the installation of substitute siding material has an adverse effect on the building's historic character. It is JHBP's opinion that ultimately, neither the age of the building nor the presence of siding on a primary façade are dispositive of whether a substitute material can be used to replace siding that cannot

2

¹ Preservation Brief 16: The Use of Substitute Materials on Historic Building Exteriors (September 2023), https://www.nps.gov/orgs/1739/upload/preservation-brief-16-substitute-materials-2023.pdf.

be repaired. Adopting this logic offers an opportunity to further simplify and streamline the decision making process to determine whether Section 106 review is required. This simplified decision workflow is shown in Figure 2 below.

Element No Section 106 Listed in **Review Required** Appx A1-2a i-xiv Yes No Yes Building Age < 45 years? Appx A-22a Appx. A-1 2a Non-Historic Yes Yes No No Non-Historic Building OR No **Building OR** adverse effects Non-Primary on historic Facade? character defining features Section 106 Review NOT required Substitute Material may Section 106 Section 106 be appropriate per Appx. **Review Required** A-2 2c selection Review Required process

Figure 1: Decision Flowchart for Draft ACCC Program Comment Appendices A-1 and A-2- Housing Related Activities

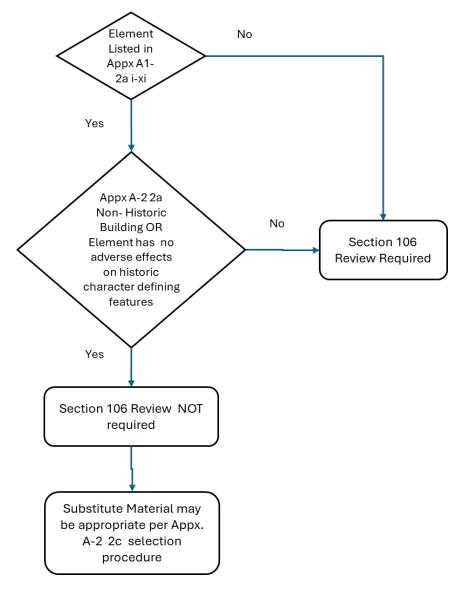
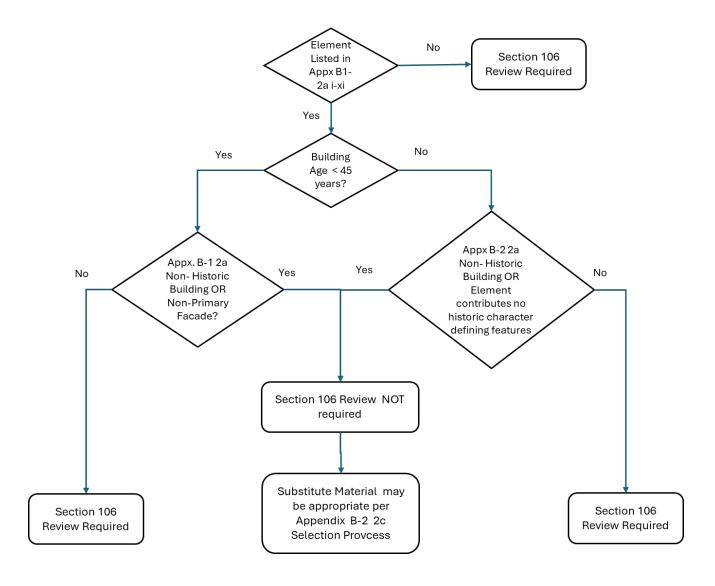


Figure 2: Streamlined Decision Flowchart for Housing Related Activities

The same approach can be taken when considering Climate Smart activities aimed at improving the climate resilience of existing historic buildings or contributing buildings. A separate flowchart for Climate Smart activities is unnecessary. Figure 3 illustrates how the proposed Draft ACCC Program Comment operates for Climate-Smart undertakings. Figure 4 reiterates that the same process and flowchart are applicable to Climate Smart activities versus Housing Related activities – two processes and flowcharts are duplicative.

It should be noted that if the simplified criteria proposed in our comments is not appropriate for all elements listed within the scope of the Draft ACCC Program Comment Appendices A-1 2a and B-1 2a, then we would propose that this simplified approach can be used as a standalone Program Comment specifically for the undertaking of rehabilitating, replacing and installing exterior siding.

Figure 3: Decision Flowchart for Draft ACCC Program Comment Appendices B-1 and B-2 - Climate Smart Activities



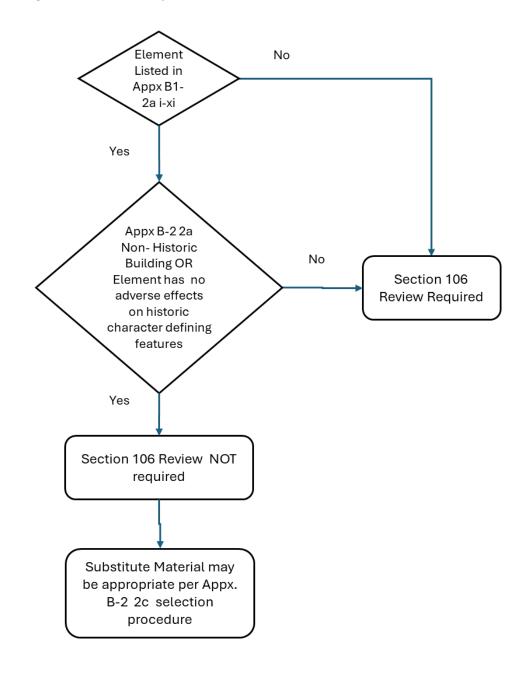


Figure 4: Decision Simplified Decision Flowchart for Climate Smart Activities

2. A request for clarification on the practical application of the proposed Draft ACCC Program Comment

JHBP believes clarification or confirmation of the following points would greatly assist agencies in interpreting the Draft ACCC Program Comment.

a. If ACHP intends to retain the specific primary façade decision criteria in Appendices A-1, A-2 and B-1 B-2, it would be helpful to provide additional detail in A1 – 2a and B-1 2a that allows an agency to make a qualified determination as to whether exterior siding contributes to the historic character-

defining features of the primary façade, and if not, then the selection criteria in A-2 2c is appropriate.

- Similarly, it would be helpful under A-2 2a and B-2 2a to state that if a qualified determination is made that siding does not have historic character-defining features, then the selection criteria in A-2 2c is appropriate.
- c. As demonstrated above, a decision flowchart for each appendix will help agencies and qualified professionals better understand how each section integrates and operates with other sections. For example, as currently drafted it is not clear if Section A-2 2c operates independently of the other sections or if it is part of a decision sequence.
- d. As published in the National Park Service (NPS) Preservation Brief 16, climate resilience, ongoing maintenance costs and affordability may now be included in the assessment of substitute material appropriateness. These attributes should be added to Appendix A-2 2c technical evaluation criteria.
- e. Similarly, as drafted Appendix B-2 2c only applies to energy efficiency enhancements. JHBP recommends adding "enhancing climate resilience of the building" to the scope of the Activity and the technical evaluation criteria.

Conclusion

In conclusion, JHBP applauds and supports ACHP's efforts to harmonize numerous Program Comments into a single government-wide Program Comment and accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies in the rehabilitation, maintenance or update of existing housing and buildings enhance affordability and climate resilience.

We have identified opportunities to further simplify the process as it pertains to the installation of exterior siding and areas requiring clarification to assist in the interpretation of Program Comments. We thank ACHP for the opportunity to participate in this process.

Kind Regards,

Marcus Kuizenga

Legal and Regulatory Affairs

James Hardie Building Products Inc.

ATTACHMENT 1: Summary of Draft ACCC Program Comment Appendices A-1 and A-2-Housing Related Activities

ACCC Program Appendix Section	Activity	Building Age	Conditions/Requirements needed to waive Section 106 Review	Program comment recommendations
A-1 2a Housing Related Activities	Rehabilitation, replacement and installation of exterior siding on housing	< 45 years	 Non historic buildings/property per qualified authority Nonprimary façades of historic building Non primary facades of buildings with unknown National Register Status 	 Remove nonprimary facade limitation for buildings < 45 years; OR Make qualified determination of whether siding contributes to the historic character- defining features of the primary façade. If not, then Section 106 review is not required. If yes, make a qualified determination of whether siding will have no/minimal adverse effects on such features. If no/minimal adverse effect, then Section 106 review not required
A-2 2a Housing Related Activities	Rehabilitation, replacement and installation of exterior siding on housing	> = 45 years	 Non historic buildings/property per qualified authority If siding has historic character-defining features, a qualified determination of no/minimal adverse effects. 	 Clarify that if a qualified determination is made that siding does not have historic character- defining features, then the selection criteria in A-2 2c is appropriate . Clarify whether A2-2a and A-2-2c are independent activities or if A2-2c analysis follows from A2-2a assessment
A-2 -2c Housing Related Activities	Replacement of historic siding	Not Stated	Qualified evaluation of technical and economic feasibility for replacement with in-kind vs substitute material siding	Include climate resilience and/or energy efficiency as part of technical feasibility evaluation.

ATTACHMENT 2: Summary of Draft ACCC Program Comment Appendices B-1 and B-2:-Climate Smart Activities

ACCC Program Appendix Section	Activity	Building Age	Conditions/Requirements needed to waive Section 106 Review	Program comment recommendations
B-1 2a Climate Smart Building Related Activities	Rehabilitation, replacement and installation of exterior siding to primarily enhance the climate resilience of the building:	< 45 years	 Non historic buildings/property per qualified authority Nonprimary façades of historic building Non primary facades of buildings with unknown National Register Status 	 Remove nonprimary facade limitation for buildings < 45 years; OR Make qualified determination of whether siding contributes to the historic character- defining features of the primary façade. If not, then substitute siding material may be appropriate If yes, make a qualified determination of whether siding will have no/minimal adverse effects on such features. If no/minimal adverse effect, then substitute siding material may be appropriate
B-2 2a Climate Smart Building Related Activities	Rehabilitation, replacement and installation of exterior siding to primarily enhance the climate resilience of the building:	> = 45 years	 Non historic buildings/property per qualified authority Nonprimary façades of historic building Non primary facades of buildings with unknown National Register Status 	 Clarify that if a qualified determination is made that siding does not have historic character-defining features, then substitute materials may be appropriate Confirm whether B2-2a and B-2-2c are independent activities or if B2-2c analysis follows from B2-2a assessment



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Richard A. Miller

30 N. Michigan Ave. Suite 2020 Chicago, IL 60602 www.Landmarks.org October 9, 2024

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

RE: Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities

Chair Bronin:

On behalf of Landmarks Illinois, thank you for the opportunity to comment on the Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities. My organization enthusiastically supports the goals of the Proposed Program Comment to expand access to housing, increase sustainability and climate-responsiveness in our building stock, and facilitate climate-friendly transportation. Housing and climate adaptation are two of the greatest needs facing our society and its built environment today, and it is essential that preservation practice in this country supports addressing those needs. We value the Advisory Council on Historic Preservation's leadership, which seeks to align the preservation field with these priorities.

As presented in the Proposed Program Comment, Landmarks Illinois is in favor of alternatives to Section 106 review under the National Historic Preservation Act for activities that enable our historic places to become more housing friendly and climate responsive. Too often as preservationists, we have been guilty of prioritizing building materials over people. When we seek to protect and celebrate historic places, we should not overlook that the best avenue for preservation is continued use—we cannot afford to divorce our historic places from the needs of the people who use them today. We see the Proposed Program Comment as a means to balance concern for historic integrity with the needs of users. While the Proposed Program Comment would apply only to Section 106, we hope that it would inspire similar changes to other historic preservation programs and regulations.

As others have pointed out in response to this Proposed Program Comment, public participation is at the heart of Section 106 consultation. We fully support open and accessible opportunities for the public to comment on undertakings affecting historic resources that are of concern to them. However, we disagree that this Proposed Program Comment will meaningfully forestall those opportunities. At Landmarks Illinois, we are a frequent party to Section 106 consultation. Our engagement as a

consulting party typically stems from a desire to prevent demolition or serious alteration of a historic resource, not from a desire to oversee specific details of design or utility. Therefore, we do not foresee that implementation of the Program Comment will significantly impact our practice of Section 106 consultation as a preservation advocacy organization. Moreover, it is not our belief that alternatives to Section 106 review described in the Proposed Program Comment will measurably erode consultation with the general public since they are at a level of detail that goes beyond what we observe the public generally wishes to opine on. When we are contacted by members of the public who are interested in understanding and participating in Section 106 review, their interest also typically stems from a general desire to protect historic places, not to adjudicate design details. Since the Proposed Program Comment does not exempt demolition or serious alteration of public facing elements from Section 106 review, Section 106 will still be an avenue for the public to consult on the scenarios that matter to them.

However, we also recognize that if the activities included in the Proposed Program Comment will no longer need to undergo Section 106 review, that calls for careful framing and monitoring to ensure that the Program Comment does not open the door for federal agencies to skirt historic preservation requirements, whether by intent or by ignorance. Below, we list several areas of the Proposed Program Comment that we believe could be improved by further clarification or prerequisite.

Adjustments to Duration

As mentioned previously, we do not believe that the implementation of this Proposed Program Comment will meaningfully forestall public consultation. However, we also recognize that there may be unforeseen outcomes. We support the recommendation made by the National Conference of State Historic Preservation Officers (NCSHPO) for a five-year probational term that will allow an opportunity to reflect on the success of the Program Comment. We also support NCSHPO's position that twenty years is too long of a time horizon for this Program Comment and that it should be reduced to ten years with the possibility of extension, which should not be decided by the Chair alone but by vote of the Council following consultation with other stakeholders. Preservation is an evolving field, and its landscape may look very different in twenty years than it does today.

Affect on Existing Agreements

The Proposed Program Comment specifies that a federal agency with an existing Section 106 Memorandum of Agreement (MOA) or Programmatic Agreement (PA) may choose to either follow this Program Comment or continue to implement the existing MOA or PA. While the federal agency is directed to consult with the signatories of the existing MOA or PA before deciding to apply this Program Comment, it does not require the consent of those signatories. We are concerned that allowing agencies to elect to use this Program Comment rather than an existing MOA or PA will disrupt undertakings already in progress and will nullify agreements that have demanded significant investment of time and good-faith negotiation between federal agencies and State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices (THPOs), and consulting parties. We disagree that a federal agency should be allowed to elect use of this program comment over an existing MOA or PA without the consent of other signatories.

Role of Qualified Professionals

The appendices of the Proposed Program Comment exempt certain activities that do not take place on the primary façade of a building or within the primary interior spaces, or that are not visible from the primary right-of-way. These terms are defined within the Proposed Program Comment, but we are concerned that the definitions do not provide sufficient guardrails for identifying primary facades, interior spaces, and rights-of-way to someone who is not trained in evaluating historic buildings. For example, regarding primary rights-of-way, it is possible for there to be more than one primary right-of-way (e.g. buildings that are situated on an intersection) or for a primary right-of-way to be one that does not go directly past a building but from which a clear view of the building is provided (e.g. if building is situated at the bottom of a hill). However, because what is a primary façade, interior space, or right-of-way can vary significantly from building to building, it is difficult to add more precision to the definitions. Therefore, we recommend the Program Comment include a requirement that a qualified professional make the determination of what is a primary façade, primary interior space, or primary right-of-way. We wish to recognize that the requirement to rely on the opinion of a qualified professional potentially places a burden on property owners of limited means if they must hire a consultant to fulfill this role. We encourage the development of corresponding grant, technical assistance, and partnership programs to help secure the services of qualified professionals.

Definition of Primary Interior Space

We find the definition of a primary interior space as any space that contains a character-defining feature of a historic building to be too broad. We recommend that the scope be limited to include spaces that are public-facing with a concentration of character-defining features. While we respect the desire to protect highly significant historic interiors that may be open to the public, we are concerned that including any area with a character-defining feature will prevent the Proposed Program Comment from achieving its goals by being overly prescriptive about private interior spaces.

Energy Study Prerequisite

Regarding climate-smart activities, Appendix B-1 and B-2 indicate that certain of these activities would be exempt from Section 106 consultation if they are conducted primarily for the purpose of reducing energy use or greenhouse gas emissions of the building or to enhance climate resilience. Regrettably, we observe that changes to historic buildings—particularly the replacement of windows and doors—are often made in the name of energy efficiency without a real understanding of how those building systems work within their environment. We recommend that exemptions under these appendices should apply to interventions where an energy audit, building systems evaluation or similar study has indicated that the proposed activities will meaningfully reduce energy use or greenhouse gas emissions or enhance climate resilience at the proposed location. We otherwise risk wasting materials that have not outlived their useful life and adding them to the construction waste stream, which would directly controvert sustainability goals. Recognizing that conducting an energy audit would also place a burden on property owners of limited means, we also encourage the development of corresponding grant, technical assistance, and partnership programs to help fulfill this requirement.

The Proposed Program Comment in several locations includes exemptions for properties less than 45 years old and not known after a records check to be a historic property. We request clarification whether the records check is to determine if the property has been listed in or found eligible for the National Register, or if the property may be eligible for National Register Criteria Consideration G. Appendix A-2 and Appendix B-2 also make certain exemptions for buildings that are 45 years or older determined by a qualified authority to be a historic property, if a qualified professional makes a written determination that such installation will have no or minimal adverse effects. We recommend removing the qualifier that the building must be 45 years or older to account for buildings that may be eligible under Criteria Consideration G, applying this provision instead to any building determined by a qualified authority to be a historic property. We recognize that the 45-year mark was likely chosen to reflect that a building may be approaching the 50-year cutoff that is typical for National Register eligibility. However, we also recognize that there are many places that are exceptionally significant to their communities that are less than 50 years old and want to ensure that the Proposed Program Comment does not exclude the possibility that they may be deserving of more consideration.

To achieve greater relevancy, preservationists must be willing to loosen our reins on material integrity and focus on how historic buildings can be part of the solution to society's challenges. We can do that by being open to lowering the barriers that prevent historic buildings from providing safe, affordable and accessible housing and that block upgrades to improve energy functionality. Landmarks Illinois believes that it is possible to make review requirements more efficient and still preserve the opportunity for the public to have input on the situations that matter to them most. We are optimistic that a refined Program Comment can be one component of moving preservation practice in a direction that balances the history of our built environment with its continued utility.

Sincerely,

Bonnie McDonald

Bonnie McDonald

President & CEO



To: Sara Bronin, Chair, Advisory Council on Historic Preservation

From: Erin Barnes, President and CEO, Main Street America

Date: October 9, 2024

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Main Street America (MSA) appreciates the opportunity to respond to the Advisory Council on Historic Preservation's (ACHP) Program Comment on Accessible, Climate-Resilient, and Connected Communities (the Program Comment). Since MSA's founding, historic preservation has been an important tenant underlying our approach, and we recognize the concerns on the Program Comment expressed by our parent organization, the National Trust for Historic Preservation, and other preservation partners. MSA believes that climate-friendly interventions like those described in the Program Comment have a symbiotic relationship with community preservation, facilitating the long-term health of Main Street communities, and we believe implementation of the Program Comment would make it more efficient and straightforward to undertake certain projects on Main Streets.

Main Street America Background and Climate-Friendly Projects

Main Street America (MSA) leads a collaborative movement with partners and grassroots leaders that advances shared prosperity, creates resilient economies, and improves quality of life through place-based economic development and community preservation in downtowns and neighborhood commercial districts across the country. As a subsidiary of the National Trust for Historic Preservation, a core element of this work is redeveloping existing buildings to bring active use back to disinvested downtowns and neighborhoods, with over 325,000 buildings rehabilitated since 1980. We do this through a network of 46 Coordinating Programs at the state, county, or metro city level, with over 1,200 neighborhood and downtown affiliates committed to a preservation-based economic development methodology.

ACHP notes that the Program Comment aims to "help satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation." MSA agrees that these are critical objectives, and our research on Main Street communities aligns with the rationale that ACHP lays forth in the Program Comment:

- As of 2020, half of the 900,000 housing units in or near Main Street districts were more than 50 years old.
- 68% of Main Street districts are in disadvantaged areas that face environmental, health, and economic challenges, as measured by the Climate and Economic Justice Screening Tool (CJEST), developed by the U.S. Council on Environmental Quality.
- Over the past five years, 218 pedestrians walking in Main Street districts have been struck by vehicles and killed.

Creating thriving Main Street districts requires a multifaceted response that combines preservation, multimodal transportation, economic development, and sustainability. These concerns were considered as part of our comments previously submitted on the ACHP Housing and Historic Preservation Policy Statement and in response to a call for comments on the Application of the Secretary of the Interior's



Standards for Historic Preservation. Those comments specifically uplifted the need to create more housing in Main Street districts through limiting Section 106 review on interior modifications.

To resolve challenges, Main Street communities seek support from numerous federal programs, from discretionary grants through the Historic Preservation Fund to a broad variety of programs of the Department of Housing and Urban Development (HUD), the Department of Transportation (DOT), and the Environmental Protection Agency (EPA). As a general observation in the Program Comment, we encourage ACHP to use established definitions for activities (from agencies such as HUD, DOT, and EDA) to further strengthen and streamline suggestions and avoid conflicts of terms. Because Main Street communities benefit from a broad spectrum of federal programs, Section 106 review may occur in a variety of different projects, with different project goals.

Main Street America is also a lead capacity builder on the DOT Thriving Communities Program, a grant program that aids local communities in securing federal dollars for infrastructure projects, including transportation, housing, and climate resilience goals. Our experience supporting a cohort of 20 rural and tribal communities indicates that the primary needs of these communities is capturing resources and building technical skills and capacity to redevelop buildings and strengthen infrastructure. Yet, many communities interested in federal funding fall through the cracks due to the immense burden of deploying federal funding, from application to compliance with federal regulations. Delays in project deployment for any reason increase costs and result in stalled or abandoned plans.

There remains a delicate balance between the urgent issues of climate change and the housing crisis and retaining physical assets in our communities that carry our stories and values. The Main Street network is diverse in its priorities, governance structures, and opinions on how to best strike this balance. Our comments below align to sections outlined starting in Appendix 1-A on specific actions covered by the Program Comment.

Housing-Related Activities Not Requiring Further Review

MSA appreciates the ACHP's efforts to help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings, and to maintain and update buildings and their immediate environs, including essential civic infrastructure, in response to climate concerns. MSA collects primary data on the condition of Main Street buildings from our network of over 1,200 programs across the country through the Building Opportunities on Main Street (BOOMS) tracker. Based on our early analysis, we estimate around 200,000 upper-story housing units, which currently sit vacant or underutilized, could be created in these Main Street districts. We support ACHP's proposal to waive Section 106 review for maintenance, repair, rehabilitation, replacement and installation of certain interior elements of buildings. By waiving Section 106 review, small-scale developers on Main Streets will have an easier time navigating the challenging process of renovating historic buildings and facilitating the adaptive reuse of upper-story space into housing units.

Work on the Building Exterior

MSA supports preserving the historic integrity of buildings, especially primary facades. We support ACHP's proposal to exempt certain activities from Section 106, but we strongly encourage ACHP to consider how it could deploy the Program Comment to ensure that any replacement windows and doors meet energy-efficiency standards. While this change can facilitate the quicker development of upper floor



housing in Main Streets, we encourage balance with sustainability goals, such as requiring that replacement windows be double-hung, energy efficient windows, rather than replacement vinyl.

Additionally, we support the addition of solar energy systems and clean energy technologies on buildings in Main Street communities. We urge ACHP to emphasize that all clean energy technologies exempted from Section 106 review be reversible, which has long been the standard for historic preservation and is achievable with most energy efficiency upgrades. We believe that these changes will allow small-scale developers on Main Streets to convert upper-story units to housing, as well as renovate and breathe new life into businesses and homes alike on Main Streets – creating a built environment that is climate-friendly and more resilient.

Climate-Friendly Transportation-Related Activities Not Requiring Further Review

We are pleased to see that ACHP is working to facilitate more streamlined processes to improve or create new climate-friendly transportation infrastructure. Working collaboratively with local, state and federal departments of transportation, Main Street communities, from rural towns of less than 5,000 to large metropolitan areas, have played an active role in promoting and building climate-friendly infrastructure, like bicycle infrastructure and road diets. With the backing of decades of evidence, Main Street America believes that transportation infrastructure that centers people creates safer, more climate-friendly communities, while also boosting economic growth for businesses on or near corridors that implement these strategies. We support ACHP's proposals to usher in a more streamlined process for communities to implement these strategies, showing that preservation can play a supportive role in climate- and business-friendly interventions. When transit infrastructure promotes walkability and safety in a Main Street district, more buildings are put into active economic use, thereby facilitating their preservation.

We also acknowledge that our understanding of the multiple levels of existing program comments with state departments of transportation is limited; other entities involved in these processes have noted that the transportation concerns addressed by the Program Comment may already be covered under existing program comments. To the extent that this is true, we encourage the program comment to not be redundant to existing program comments executed by SHPOs and State DOTs.

Main Street America believes that interventions to create access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation are desperately needed in communities, and clear design guidance about what is and is not allowable will facilitate smoother adoption of these interventions. Finally, we have heard from the network of preservationists that the program comment could have negative impacts on undisturbed ground. We defer to tribal and other historic preservation experts on those issues. This is not a primary activity of ours.

Thank you for the opportunity to offer these comments. We appreciate any questions or further information required to support our comments and look forward to future collaboration with ACHP and other public-serving institutions to support this work.

Best.

Erin Barnes, President and CEO, Main Street America



488 Madison Avenue, 19th Floor New York, NY 10022 212 935 3960 MAS.org

October 9, 2024
Advisory Council on Historic Preservation
Sarah Bronin, Chair
401 F Street NW, Suite 308
Washington, DC 20001

Dear Chair Bronin,

On behalf of the Municipal Art Society of New York, we appreciate the opportunity to comment on the proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. We support the ACHP's goals to streamline Section 106 review processes in areas like housing, climate-smart buildings, and sustainable transportation, while ensuring that historic preservation remains a key part of building resilient, accessible, and equitable communities. The effectiveness of the Program Comment should be measured by how well it incorporates preservation and adaptive reuse into achieving these goals.

We recognize that concerns have been raised by several preservation organizations, and we share their apprehension about reducing local and public input in the Section 106 review process. Robust consultation—especially with State Historic Preservation Offices (SHPOs) and local governments—remains essential to protecting cultural and historic resources in federal undertakings. The current Section 106 process is a valuable planning tool, and public participation has been key to its effectiveness. Limiting this input risks the unintended loss of significant cultural assets, particularly in historically marginalized communities. As such, we also urge ACHP to work closely with SHPOs to refine key definitions in the Program Comment, particularly around exemptions like primary façades and emergency actions. Clearer definitions will ensure a more predictable process, vital to streamlining reviews without sacrificing important protections.

To support this effort, we recommend surfacing Programmatic Agreements that have successfully implemented exemptions similar to those proposed in the Program Comment. An ACHP presenter noted in the Consultation Meetings that existing Programmatic Agreements from across the country were referenced during the drafting of the Program Comment. Identifying those Programmatic Agreements would not only promote greater transparency but may also offer a model for refining the current draft. Further, given the complexity of the Program Comment, we recommend developing educational resources and illustrative materials to help stakeholders understand the impacts of these policy changes. ACHP's leadership in providing such resources would be greatly beneficial.

Regarding the climate-smart buildings portion of the Program Comment, we stress the need for a comprehensive understanding of environmental impacts, including both embodied carbon (the carbon already stored in existing materials) and operational carbon (the emissions from building operations). The sustainability of materials over the long term is also crucial. Reusing historic buildings supports climate goals by preserving their embodied carbon and reducing the demand for new, resource-intensive materials. It is important that the Program Comment prioritizes materials with low or no embodied carbon and discourages the use of carbon-intensive options.



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We appreciate ACHP's focus on balancing complex housing, infrastructure, and climate goals with the need to preserve historic resources. As this process moves forward, we hope that these comments will contribute to a productive collaboration that streamlines federal reviews while continuing to respect the values inherent in our historic places.

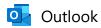
Thank you for your consideration.

Sincerely,

Elizabeth Goldstein

President

The Municipal Art Society of New York



[External] FW: ACHP Program Comment - SHPO Process Streamlining for Housing, Clean Transportation, and Energy Projects

From Abdallah, Thomas < Thomas. Abdallah@mtacd.org >

Date Wed 09-Oct-24 4:41 PM

MTA is very supportive of the proposed "Program Comment on Accessible, Climate-Resilient and Connected Communities." Building on the 2019 Program Comment, which has been extremely helpful, we believe this new Program Comment will further expedite federal review and allow MTA to obligate and spend down federal funds more quickly, delivering benefits to our customers more quickly. In particular, we appreciate the clarification that the Program Comment applies both to bus infrastructure and to rail facilities

To further streamline the federal historic preservation process and ensure consistent implementation by federal agencies, we recommend that the discussion of bus charging in the transportation section be amended to specify that exempt activities include charging equipment and associated infrastructure including pantograph dispensers, overhead charging stations, gantry, cabling, and new power supply. We also recommend that work to address safety issues (e.g., inadequate access/egress, ventilation) within an historic structure be included in the Program Comment as an exempt activity.

If you have any questions, you can contact me at 646 252 3500

Thomas Abdallah, P.E., Vice President & Chief Environmental Engineer, MTA C&D

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October 9, 2024

Advisory Council on Historic Preservation

401 F St NW #308

Washington, DC 20001

RE: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

To Whom It May Concern:

On behalf of the National Association for County Community and Economic Development (NACCED), we appreciate the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) Proposed Program on Accessible, Climate-Resilient, and Connected Communities published on August 8, 2024.

Founded in 1935, NACo is the only national organization representing America's 3,069 counties, parishes and boroughs. NACCED was established as an affiliate of the National Association of Counties in 1978 to develop the technical capacity of county government practitioners that administer federally funded affordable housing, community development and economic development programs. Our members play a fundamental role in helping safeguard the health and well-being of our nation – a mission that includes ensuring access to safe, equitable and affordable housing.

NACCED is grateful for ACHP giving an opportunity for public comment. NACCED would like to highlight for ACHP that State Historic Preservation Offices are under resourced to manage current compliance requirements. In its current form, ACHP's proposed changes would cause an increased burden on review and building management. NACCED requests ACHP take into consideration the following responses to the proposed program comment before implementing final changes:

Specific Comments

Appendix A-1

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Section 1.e

NACCED believes proposed program language would bring increased administrative burden caused by triggering Section 106 reviews for supplies just above the eight-inch measurement. What if industry standards change? NACCED recommends flexibility provided for measurement range and/or at the discretion of project reviewer in the final program decision.

Section 2.a

NACCED supports striking the 10-year requirement from the following language, "Rehabilitation, replacement, and installation of the following elements: on a building less than 45 years old and not known after a records check to be a historic property; on a building the federal agency or another federal agency has determined to not be a historic property within the preceding ten years."

Section 2.a.v

Improvements that address ADA such as ramps and railings should be allowed on a primary façade, if the proposed ramps and railings are installed in a way that they can be reversible or temporary. NACCED recommends consideration of wheelchair lift inclusion in final program decision.

Section 2.a.vi

NACCED recommends fire suppression be allowed anywhere on building due to safety concerns and thus not subjected to Section 106 review.

Section 2.a.xiv

Energy and water metering devices should be allowed anywhere on the building. NACCED stresses that local counties have no control over metering devices, risking Section 106 review over a component that is out of their control.

Page 23

Section 2.b

NACCED supports ACHP to strike "any building" from the following, "Maintenance, repair, and in-kind replacement activities on any building." By stating "any building" in the final Program Comment ACHP would risk increasing administrative burden on historic building property management.

Section 2.c

As stated the proposed language states, "Maintenance, repair, rehabilitation, replacement, installation and removal of any of the following elements on or near a building, provided that such activity exclusively affects previously disturbed ground or creates no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way." Including the following, "Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware."

NACCED requests ACHP provide more concise language stating ground utility requirements for historic buildings. As currently proposed, the language is too broad

causing confusion for administrative compliance. Further, the proposed language makes reference to maintenance of buildings in general, this should not be included due to not all buildings being considered historic, therefore not requiring Section 106 review. NACCED recommends omitting sections, or updating to match historic building definition cited in 2a.

Section 2.c.i

NACCED recommends all above ground reference should be deleted due to certified local governments (CLGs) not having control over utilities.

Page 24

Section 2.e.i.ii.iii

As stated, Section 2.e subsections i, ii and iii hold conflicting statements. For example, subsection i states, "Such technology is located either outside the boundaries of a historic district, or on the non-primary façade side of historic housing, or in a location not otherwise visible from the primary right-of-way; and is located on the same lot as or on an adjacent lot to that housing, or in the case of a community solar system, in a lot within two blocks or two thousand feet (whichever is longer) of the housing served."

Subsection iii then states, "Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted solar energy system may be visible from the primary right-of-way if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%."

NACCED recommends ACHP providing streamlined language for subsections i, ii and iii. As shown in the example of solar paneling, subsections i and iii give two different compliance requirements. Clearer language provided in the final program comment would decrease confusion for participating administrative staff.

Section 2.g

NACCED recommends striking the following language, "Abatement of hazardous materials where effects of the abatement are reversible or temporary or not visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of historic housing or housing whose eligibility for inclusion in the National Register is not known; or windows 45 years or older."

By requiring Section 106 review on abatement of hazardous material, ACHP risks increasing burden on property safety compliance.

Page 24

Section 3.a

As stated the following are examples listed as allowable activities in building interiors that would not require Section 106 review, "removal, alteration (including of width, height, and location), and construction of interior walls; alteration of floors and flooring (including of material, pattern, and texture); alteration of ceilings (including of material, lighting, and height); installation of mechanical systems and fire alarm, fire suppression, and security systems and equipment; insulation and air sealing; removal and installation of equipment and fixtures (including bathroom, kitchen, and lighting equipment and fixtures); replacement and refurbishment of elevator cabs, system-wide upgrades to elevator mechanical systems, installation of building energy control systems; and installation of code required signage; removal, alteration, and construction of stairs; cosmetic improvements; and improvements to address the requirements of the Americans with Disabilities Act."

Instead of listing allowable activities, NACCED supports final language stating if a building is not deemed to be architecturally significant or if key components are not being removed, any work should be allowed on property without Section 106 review. For example, work to make property ADA compliant allows for increased interior building flexibility.

Pages 25 - 26

Section 3.b.

NACCED supports striking language in Section 3.b from final program language related to interior physical changes. NACCED supports clarification on historic buildings and their areas of architectural significance. For example, if a historic building's significance is not related to its interior spaces, primary and secondary spaces, then it should not be included in a Section 106 review. The activities proposed in 3.b allow for a historic property to be improved to modern day standards.

Page 26

Section 3.e

NACCED recommends allowing window replacement in-kind on any elevation, including primary facades, of a historic building in the final proposed program.

Appendix B-1

Page 31

Section 1.f.

Due to the proposed language relating to temporary construction-related structures for buildings less than 45 years old, NACCED does not agree with triggering Section 106 review for said properties. Alternatively, we recommend establishing a reasonable time period for temporary construction activities to be allowed without Section 106 review for buildings less or more than 45 years of age.

Section 2.a

NACCED requests in the final program comment for increased flexibility on achieving energy efficiency. Increased flexibility will allow qualified professionals to guide site improvements and result in less Section 106 review requirements.

Page 33

Section 3

The opening statement of Section 3 only references "building". NACCED supports a clearer description of what activities are allowed for buildings less than 45 years of age, or older than 45 years of age.

Appendix C-1

Page 39

Section 4

NACCED requests increased flexibility for enhanced bridge work. Less Section 106 reviews for bridge work will allow for greater flexibility on project development. Additional Section 106 review requirements for bridge work could cause delays that cause life threatening circumstances due to material implementation time sensitive safety improvements.

General Comments

45-Year-Old Threshold

Throughout the Program Comment there are parameters for when buildings less than 45 years old do not require further Section 106 review. Although it is understood that the 45-year threshold is meant to allow the capture of buildings coming up on 50 years of age, this is creating two age standards for when buildings should be considered for Section 106 review. This will likely create confusion about when buildings should be considered for Section 106 review and could give the impression that the 50-year age threshold is ever

changing. It is recommended to keep the required age of buildings for Section 106 review to 50 years.

Most of the ACCC-Program Comment relates to buildings less than 45-years of age. It would be more helpful if the Program Comment provided activities that are allowed, or not allowed, for buildings more than 45-years of age.

APPENDIX A.1.d

Throughout the ACCC-Program Comment there are references to when activities do not require further Section 106 review as long as the activities do not occur on a primary façade of a historic building, or could be visible from the primary right-of-way. Many CLGs cannot control when certain activities may cause physical changes on a primary façade or without being visible from the primary right-of-way, such as utility systems being installed on a historic buildings. For example, CLGs cannot prevent gas, water, or electrical meters from being installed on a primary façade or if they are visible from the primary right-of-way. The Public Comment is holding to a higher standard than what is in practice or possible.

APPENDIX A.2.a

The ACCC-Program Comment references that if a federal agency has determined to not be a historic property within the preceding ten years, that specific activities do not require further Section 106 review. If a building has already been determined to not be a historic property, than that building should not be reevaluated in ten years, unless a substantial event has occurred or new research is discovered concerning a building or property. This is creating redundant review and should be omitted or determined by a qualified professional.

APPENDIX A.2.e.i., ii, iii

Many activities in the ACCC-Program Comment are focused on clean energy technologies and ADA-improvements; however, it prevents many of these improvements to historic buildings if they are located on a primary façade and/or visible from the primary right-of-way. Most of these can be appropriate for historic buildings, even if located on a primary façade, or within view of a primary right-of-way, as long as they are installed in a sensitive manner to prevent further damage to an exterior or interior, and/or if the change can be reversible. The ACCC-Program Comment should encourage these improvements to historic buildings and allow them to occur more easily without Section 106 review.

APPENDIX C.1

Many of the items listed in a-e, could be allowed for bridges that are deemed a historic property because all work relates to the maintenance, repair, rehab, and in-kind replacement to allow said bridges to be functional. More flexibility should be allowed. It

would also be more helpful to list major activities/alterations that would require section 106 review, such as replacement materials, partial demolition, or full demolition of bridge.

Definitions

"Building"

The proposed Program Comment defines "building" as, "a constructed work created principally to shelter any form of human activity, including mobile and manufactured homes and climate-friendly transportation facilities that are buildings."

NACCED requests a clearer and more consistent application of the definition to reduce confusion for compliance requirements.

"Minimal potential"

NACCED asks for ACHP to provide a clear definition of "minimal potential" in the following language on Page 6 Section III A.1, "For undertakings or components of undertakings with no or minimal potential to adversely affect historic properties, as set forth in Appendix A-1, B-1, or C-1 of this Program Comment, a federal agency may proceed with the undertaking without conducting further review under Section 106."

As currently stated, minimal potential is broadly mentioned and leaves increased confusion for interpretation. NACCED requests a more defined purpose for the term.

Conclusion

We look forward to continuing our work alongside ACHP to incorporate future historic housing program changes at the county level. NACCED additionally requests an extended period of review for further public comment participation. If you have any questions, please contact NACCED Policy Director Josh Brandwein at jbrandwein@nacced.org.

Sincerely,

Laura Petty

Executive Director

National Association for County Community and Economic Development

National Association of Housing and Redevelopment Officials



630 I Street NW, Washington DC 20001-3736

Phone: (202) 289-3500 Toll Free: (877) 866-2476 Fax: (202) 289-4961

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the Advisory Council on Historic Preservation (ACHP) Program Comment on Accessible, Climate Resilient, and Connected Communities released on August 8, 2024.

The National Association of Housing and Redevelopment Officials, which was established in 1933, is a membership organization of more than 26,000 housing and community development providers and professionals throughout the United States. The association's members create and manage affordable housing for low- and middle-income families and support vibrant communities that enhance the quality of life for all. Our members administer more than 3 million homes for more than 8 million people.

This letter of comment provides feedback as it relates to historic preservation.

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to oversee impacts to historic properties by a federal or federally-assisted project. Maintaining and preserving historic buildings and land is vitally important to culture and history. While historic preservation should not be discounted or ignored, preservation should also not overrule the ability of HUD-assisted properties to make energy efficient upgrades and help to enhance the climate resiliency of our nation's housing stock.

It is vital that public housing agencies (PHAs) and community development agencies be provided the ability to create and improve upon what existing housing stock in order to benefit the nation's most vulnerable people. Currently, the U.S. faces a national housing shortage with limited housing supply. "The Gap" report, published by the National Low Income Housing Coalition (NLIHC), notes that the "U.S. has a shortage of 7.3 million rental

George Guy, President; Sean Gilbert, SPHM, NAHRO Fellow, Senior Vice President; Renee Smith, NCC, Vice President - Commissioners; David S. Gates, CSO-PH, CSEC-PH, CMPO, C-PHM, CME, Vice President - Professional Development; Jeff du Manoir, Vice President - International Research and Global Exchange; Duane Hopkins, CME, Vice President - Budget & Administration; Shaunté Evans MBA, PHM, Vice President - Member Services; Grace Ruiz-Stepter, Vice President - Community Revitalization and Development; Lanita Hillen, Vice President - Housing; Mark Thiele, CS-PHM, CME, CMVO, NCC, Chief Executive Officer

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homes affordable and available to renters with extremely low incomes." The Joint Center for Housing Studies (JCHS) at Harvard University has also found in a recent report that an estimated 2.1 million affordable units have been lost over the past 10 years and many other affordable units that remain are getting older and need to be either repaired or improved. Climate friendly improvements to aging housing are so important in limiting greenhouse gas emissions, generating better energy savings, and providing better protection from extreme weather patterns. These improvements are greatly beneficial to PHAs, redevelopment agencies, and the residents they serve because they help save money in the long term while also providing much needed updates to outdated buildings. Historic preservation should not limit green energy improvements and retrofits, nor should it significantly add to the cost of redevelopment of affordable units. As these improvements are meant to benefit residents and the buildings they reside in, there must be solutions that promote these changes rather than obstruct them.

Providing a balance of historic preservation and addressing the needs of residents is certainly possible, however rules and policies should never put preserved history over people.

I appreciate the opportunity to comment on this topic. Thank you for your consideration of the above comments.

Sincerely,

Steven Molinari Policy Analyst

Steven Molinari

¹ https://nlihc.org/gap

² https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf



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October 4, 2024

Hon. Sara C. Bronin Chair Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Re: Comments on ACHP's Draft Program Comment on Accessible, Climate Resilient, Connected Communities

Dear Chair Bronin,

The National Alliance of Preservation Commissions (NAPC) appreciates the opportunity to provide comments on ACHP's draft Program Comment on Accessible, Climate Resilient, Connected Communities. NAPC's Core Values and Principles Statement recognizes that preservation policy must adapt and respond to change. Our previous participation in the development of the ACHP policy statements underscores the critical role that historic resources and existing buildings play in meeting affordable housing and climate action goals.

We also want to extend our thanks for your participation in our webinar on September 19 to discuss the draft Program Comment. This issue is clearly of interest to our members, as the webinar received 300 registrations and 190 participants.

The NHPA was enacted in recognition that historic places were being lost or irreversibly altered, **and to ensure that preservation serves the public interest**. For this reason, the establishment of SHPOs, CLGs and local government engagement in Section 106 is specifically designed to provide the public and the historic preservation community with a meaningful voice in federal undertakings. This balance—between addressing societal needs and ensuring those most directly affected by federal actions have input—is fundamental to the intent of the NHPA.

Generally, local commissions and staff participate in the Section 106 process by applying local knowledge and data to help identify historic or eligible cultural resources, communicating any additional requirements for the project as a result of local regulations, and participating in the development of mitigation strategies when applicable. The process also fosters collaboration among stakeholders, including local preservation program staff, commissions, and advocacy groups.

We appreciate the initiative that ACHP has taken to evaluate policies and practices in the areas of housing, clean energy, energy efficiency, and climate-friendly transportation. **These projects often impact communities that have been underrepresented and marginalized, and who have witnessed the**

loss or adverse impacts to historic resources that represent their history and heritage. One of the critical roles of local stakeholders in the Section 106 process is to ensure that the voices of these underrepresented and marginalized communities are heard. In some instances, Section 106 is their only opportunity to engage in projects that impact cultural resources within their community. Granting federal agencies the authority to unilaterally make decisions on broad categories of federal undertakings without the input of these local voices risks undermining the foundation on which historic preservation is built – public interest and the public's trust that they are guaranteed a voice through the process.

Furthermore, in listening to concerns from our members, we do believe the proposed Program Comment will likely have the unintended consequence of creating conflict with the local review processes. For example, while most local preservation programs allow for flexibility for non-visible facades, they are often still subject to local review and approval. There may still be requirements to preserve character-defining features on non-primary facades. Federalized projects that are also subject to local review are often coordinated between cities and SHPOs. Without the combined guidance from SHPOs, local governments may be pressured to approve certain scopes that go against locally adopted policy.

These conversations are critical to ensuring that the Section 106 process results in timely and predictable outcomes. However, the Program Comment, in its draft form, is far-reaching and will exempt an **unknown volume of undertakings** from the Section 106 process altogether.

General Comments / Concerns

- More broadly, NAPC is concerned that the proposed Program Comment sends a message that
 historic resources and regulatory processes designed to inform decision-making about the
 treatment of historic resources are an obstacle to achieving the common goals we all share around
 affordable housing, climate action, and sustainable growth in our communities.
- NAPC shares concerns about the process of developing this Program Comment. These concerns
 about the process are referenced in a letter submitted to the Council on behalf of a Preservation
 Partners cohort group of national preservation organizations. This proposed Program Comment is
 unique in its conception, design, and scope, and will likely set a precedent for future ACHP actions
- Program alternatives are recommended for routine projects that are not likely to adversely impact
 historic resources and go through a vetting process with identified stakeholders prior to execution.
 The scale and scope of this nationwide Program Comment, which will be applied to a wide range of
 property types in different regions, presents a high potential for adverse effects. This is contrary to
 the purpose and spirit of program alternatives.
- The proposed Program Comment would authorize federal agencies to determine their applicability
 to a project without any further consultation or notification to SHPOs or stakeholders. This includes
 alterations to non-primary facades which would normally be subject to Section 106 review. There
 would be no process to ensure that alterations conform to the SOI Standards, including the
 removal or demolition of character defining features.
- Local stakeholders would not be engaged in undertakings that are permitted under the Program
 Comment and that historic resources, especially those that are not yet identified or listed in the
 NRHP, could be adversely impacted. Because there is no notification requirement in the Program
 Comment, irreversible damage or destruction of cultural resources could occur. Potentially, this

could have a proportionately larger impact on historic resources in underrepresented communities and other areas where prior survey and designations have not been done.

- Local preservation programs and policies have been developed over time to reflect community values and goals. In most cases, local policy follows the general guidance provided at the federal level. Despite the fact that case history has long upheld the regulations enforced by local governments, local staff, commissions, and other stakeholders are often left to defend their programs and face accusations of NIMBYism and obstruction. While sound preservation policy is proven to support the common goals of housing and climate action, preservation is too often cited by developers as yet another regulatory barrier to achieving those goals. NAPC is extremely concerned that the proposed Program Comment perpetuates rhetoric that historic preservation is somehow a barrier to smart growth and sustainable development.
- Identification of cultural resources and formation of determinations of eligibility for potentially impacted properties is fundamental to the Section 106 process. This also provides an opportunity for local communities to gain critical survey data which informs their own programs. Local designations likewise often support eligibility determinations and those properties are treated as historic resources under Section 106. Lack of identified cultural resources is common in underrepresented communities that have historically experienced disinvestment, so elimination of determinations of eligibility creates a missed opportunity as new, federally-funded projects come forward in these communities.
- Studies show that investing in our historic and existing building stock plays a critical role in achieving climate readiness by reducing embodied carbon emissions and reliance on new materials. The Secretary of the Interior's Standards include guidelines for energy retrofit and weatherization that allow for smart, proven strategies that reduce the operational load of older buildings and offer solutions that are both environmentally sustainable and respectful of our heritage resources.
 Instead of eliminating reviews for certain scopes, a new policy from the ACHP should streamline the process for employing recommended energy retrofit and weatherization strategies. Local communities should adopt similar guidance for the treatment of locally-designated properties.
- In 2023, ACHP released its policy statement on Housing and Historic Preservation. The policy states: "Federal, state, Tribal, and local governments to expedite development of housing projects through efficient and effective permitting processes and environmental reviews while still ensuring full consideration of potential impacts to historic properties... However, **potential adverse effects to historic properties must be carefully addressed**, whether they be physical or visual impacts to historic properties from new housing construction or effects to the historic qualities of historic buildings that are being rehabilitated. It also is important that actions not be taken that result in the damage or destruction of historic properties prior to applicants seeking tax credits and government funding, and prior to agencies completing environmental review." NAPC **supports** the development of program alternatives that provide for informed flexibility in the treatment of historic properties related to housing projects. The proposed Program Comment **does not** ensure that adverse effects are avoided.

Specific Recommendations to Draft

 NAPC generally supports the inclusion of the majority of the identified scopes including solar installation. NAPC does not support the following scopes to be permitted under the Program Comment:

- SITE WORK Any ground-disturbing activity unless the definition for Qualified Authority is updated to include expertise in archaeology consistent with the SOI Professional Qualification Standards.
- o BUILDING EXTERIORS Entire building exteriors should remain subject to Section 106. If the ACHP continues to include non-primary facades in the Program Comment, we do not support window / door weatherization and substitute materials that involve removal or replacement of original or character-defining features or materials regardless of facade location or visibility. The Program Comment should be updated to eliminate potential conflict with the SOI Standards for Rehabilitation and applicable guidance from NPS.
- o WORK ON GROUND SURFACES Any activity unless the definition for Qualified Authority is updated to include expertise in archaeology consistent with the SOI Professional Qualification Standards. This is necessary to understand the extent of previous ground disturbance and likelihood of adverse effects on significant below-grade features.
- NAPC strongly recommends a revision to the definition of housing in order to support the preservation and production of affordable housing. The current definition makes no mention of affordability and allows the Program Comment to potentially apply to any undertaking that involves at least one unit of housing, regardless of ownership or affordability. NAPC recommends that the Program Comment be revised to apply only to low-income housing as defined by HUD (affordable to households with income levels that are at or below 80% of the area median income of the project area.)
- NAPC strongly recommends the incorporation of a notification by the relevant federal agency to SHPOs and relevant local government staff or commissions of any intent to utilize the Program Comment for a project at the beginning of the process. This would give the local government an opportunity to identify and communicate any local requirements or adopted policies that must also be considered in the project scoping. It would also provide the basis for potential dispute resolution as provided for in the draft Program Comment.
- NAPC strongly recommends that the proposed annual reporting requirement be expanded and made publicly available for review and comment to understand how the Program Comment is being applied. This will also give stakeholders a chance to understand whether outcomes have resulted in unmitigated adverse effects to historic resources. This information should be organized by state / region / county / municipality and should be made available to relevant SHPOs and local government staff or commissions. Otherwise, individuals would need to sort through the entirety of a federal agency's report to find undertakings pertinent to their specific region or location. Instead of example projects, all scopes (and their outcomes) permitted under the Program Comment should be included in the reports.
- NAPC asks that more clarity is provided regarding the installation of Clean Energy Technologies and Community Solar Systems. It is unclear how supporting infrastructure, such as power lines or substations, would be considered. These types of infrastructure projects have the potential to adversely affect cultural landscapes and the scenic quality of historic sites. NAPC asks that language be added so that such systems would be excluded from the Program Comment when located in local historic districts, which are often considered eligible for NRHP listing, or in locations where a setting or viewshed is a defining characteristic to a listed or eligible resource.
- Due to the unprecedented nature of this endeavor, NAPC strongly recommends the policy be treated as a limited pilot with a much shorter term to allow for frequent evaluation and

improvement. Annual meetings, reporting, and coordination with SHPOs are critical to implementing the program comment in the long term.

Thank you for considering these comments. Because of the volume of comments that ACHP will receive, NAPC recommends that a subsequent draft be made available for public comment. We also ask that comments and ACHP responses are accessible to the public and that ACHP allow time for additional stakeholder engagement prior to potential implementation.

Sincerely,

Abigail Christman

Chair, National Alliance of Preservation Commissions

October 9, 2024

Sara Bronin Chair, Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Dear Chair Bronin,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments regarding the Advisory Council on Historic Preservation's Program Comment on Accessible, Climate-Resilient, Connected Communities.

NATHPO is the only national organization devoted to supporting Tribal historic preservation programs. Founded in 1998, NATHPO is a 501(c)(3) non-profit membership association of Tribal government officials who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples.

We appreciate that the proposed Program Comment is a sincere effort to address climate change and the affordable housing crisis. Tribal Nations in general and THPOs specifically recognize the importance of addressing climate change. In fact, many Tribal Nations have long been on the front lines of climate change effects, which represent an existential threat to the cultural resources and sacred places THPOs are responsible for protecting and preserving. Furthermore, the affordable housing crisis is affecting Tribal members who live both on and off Tribal lands. The inability to afford housing affects all aspects of Tribal members' lives, including the preservation of their cultures.

That said, we object to the proposed Program Comment for both general and specific reasons.

1. On the most fundamental level, we are concerned about program comments in general as a tool at the ACHP's disposal.

Of all available program alternatives, it has the greatest potential to preclude Tribal consultation as well as minimize transparency and accountability in the Section 106 process. While you may currently recognize and respect the importance of Tribal sovereignty, there is no guarantee future Administrations and ACHP Chairs will share that perspective and agenda. With that in mind, we use this opportunity to request a broader discussion of the regulations and the existence of program comments as an alternative.

2. Virtual listening sessions are not true Tribal consultation, and an expedited timeline prevents robust Tribal participation in the proposal's creation.

We understand the pressure of election year timelines, but that does not justify fast-tracking a substantial policy change with far-reaching Tribal implications, regardless of intention.

Use of the proposed Program Comment will abrogate Tribal sovereignty and weaken Tribal Nations' ability to protect and preserve cultural resources and sacred places.

While we do not believe this is ACHP's intent, we are concerned that using a program comment in this manner would ultimately have those unintended consequences. Specifically, NATHPO has grave concerns that federal agencies will implement the proposed Program Comment without rigorous forethought, resulting in failure to consult with Tribal Nations and ultimately causing the destruction of cultural resources.

4. "Streamlining" has become synonymous with creating efficiencies which frequently circumvent Tribal consultation and sound project review.

Based on experience, NATHPO fears many federal agencies would use program comments to "streamline" the consultation process. For NATHPO members, far too often their experience has shown federal agencies use "streamlining" or "efficiencies" as a tool to ignore their responsibilities to Tribal Nations. Specifically, we have significant concerns this will be interpreted by agencies as a reason not to conduct a Section 106 review. While we understand the intention of the proposed Program Comment is to enable federal agencies to focus on other undertakings with greater potential for adverse effects, if there are no Section 106 reviews, it is virtually impossible to determine if a project would have an adverse effect to a Tribal cultural resource or sacred place.

Lindsey D. Bilyeu, Program Coordinator for NHPA Compliance Review for the Historic Preservation Department of the Choctaw Nation of Oklahoma, has noted, "Section 106 process is already set up to do what (ACHP) says they want the Program Comment to do." She added, "Even if it's said Tribes were allowed to submit comments, that is not actual consultation. That's sending your concerns to a generic email address, and they likely won't be read by ACHP."

5. The proposed Program Comment may be substituted for existing agreement documents.

We also oppose provisions that would allow federal agencies with an existing memorandum of agreement (MOA) or programmatic agreement (PA) to use the proposed Program Comment instead. Many of these existing MOAs and PAs explicitly state that Tribal consultation is required; federal agencies could use the Program Comment to avoid Tribal consultation. Additionally, Tribes are opt-in signatories rather than contributing drafters to many nationwide agreements, and many will not have that requisite role to be consulted as a signatory if an agency decides to substitute the Program Comment.

If ACHP proceeds with the proposed Program Comment, we request it be explicitly stated it does not usurp existing or future MOAs or PAs. As Ms. Bilyeu said, "Tribes need to be consulted on what they do and don't want to see. This isn't achieved through a Program Comment, it's achieved through consultation between the federal agency and the Tribe. This is why we have PAs with federal agencies, and they work just fine."

6. The 20-year duration of the proposed Program Comment.

If ACHP proceeds with the Program Comment, we request the length be significantly reduced, to no more than 5 years.

7. Definition of Tribal lands and effects off Tribal lands.

If ACHP proceeds with the proposed Program Comment, NATHPO believes it is incumbent on ACHP to expand the definition of Tribal lands and clarify broadly that program comments never apply to Section 106 on Tribal lands. Additionally, THPOs do not have signatory authority for places and resources located off Tribal lands, which includes the majority of Tribally significant places and resources. Furthermore, ACHP should specifically state before any program comment can be used, the federal agency must conduct robust Tribal consultation.

8. Previously disturbed areas have not necessarily undergone Section 106 review or lost their significance.

Finally, we request that ACHP reconsider application of the Program Comment to previously disturbed areas. The application of the Program Comment to previously disturbed areas makes the false assumption that these lands have already been surveyed. Much of our nation's infrastructure was completed before laws and policies existed requiring review and Tribal consultation. And as we frequently hear in Tribal

listening sessions, a Tribally important place does not necessarily lose its significance just because something was built on it in the past.

Although NATHPO has significant concerns with the proposed Program Comment, we do want to thank you for including numerous provisions and references that acknowledge the use of Indigenous Knowledge as a valid and self-supporting way of knowing. We also want to thank you for including another provision that federal agencies must compensate Tribal Nations when requesting that they conduct activities beyond basic Section 106 responsibilities. These are important provisions and should be included in all agreements and program alternative documents.

While we understand funding for THPOs is not under ACHP's purview, we would be remiss if we did not note that the "burst of new activities" you mentioned during your meeting with Tribal members on September 9 has not been matched with an increase in funding for THPOs. The Bipartisan Infrastructure Law (BIL) authorized \$1.2 trillion in funding and the full cost of Inflation Reduction Act (IRA)-authorized programs is estimated to be \$800 billion. THPOs consult on the impact federally funded or permitted projects have on Tribal Nations' cultural resources and sacred places. Before the BIL and IRA were passed, total THPO funding was \$15 million. It is now \$23 million. With that total increase for all THPOs, the average amount each THPO receives has increased from \$75,000 per year to \$104,000 per year. This amount also does not keep pace with the growing number of THPOs each year.

The federal funding THPOs receive must match the role Tribal Nations play in consulting on projects with a federal nexus. We urge ACHP to join us in calling on the Administration to propose budgets and Congress to pass appropriations and authorization bills that reflect the important role THPOs play in protecting the places that tell the stories of Tribal Nations.

NATHPO strongly supports a reauthorization of the HPF that would:

- require THPOs receive a minimum of 20 percent of the HPF each year, and;
- direct the National Park Service to review if THPO funding is keeping pace with THPO growth and adjust funding to reflect the annual increase in the number of THPOs.

Increasing funding for THPOs would go a long way toward increasing efficiency in the permitting process for climate change and affordable housing related projects and would significantly negate the need for "streamlining" the permitting process for projects that could have an impact on Tribal Nations' cultural resources and sacred places.

NATHPO appreciates ACHP leading the conversation on climate change and affordable housing and supports the underlying goals of the proposed Program Comment but does not support the use of the Program Comment to achieve them. We look forward to working with you to find other ways to address both issues without creating a mechanism that could circumvent Tribal consultation and contribute to destruction of Tribal Nations' cultural resources and sacred places, and set precedent that could be used to promulgate similar future policies.

Thank you for considering our comments on the proposed Program Comment.

Sincerely.

Valerie J. Grussing, PhD

Valerie J. Loussing

Executive Director



October 7, 2024

Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001-2637

RE: Comments on the ACHP's Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

To whom it may concern:

I am pleased to submit the following comments on the ACHP's Draft Program Comment on behalf of the National Community Development Association (NCDA) and its member communities. NCDA is the professional trade association for municipal and county agencies that administer federal housing and community development programs, including the U.S Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME). NCDA's member communities are the Responsible Entity for conducting the required Part 58 Environmental Reviews and related Section 106 Historic Preservation reviews.

General Comments

NCDA applauds the ACHP for recognizing that the current Section 106 historic preservation review processes can "complicate or be a barrier to housing development, particularly of affordable housing" and that "such reviews need to be grounded in a flexible yet consistent approach to ensure that housing can be developed expeditiously while still preserving the historic qualities of affected historic properties". We believe that the ACHP's Draft Program Comment is a good first step towards such a more flexible and consistent approach.

NCDA recommends that HUD consider adopting the ACHP's Program Comment, once it is approved, as an alternate approach for HUD and its grantees to satisfy their compliance In Appendix A.1.responsibilities under Section 106. This could include incorporating those provisions of the Program Comment identified as "not requiring further review" into the Part 58 Environmental Review process as "categorically excluded" from review.

While we believe the Program Comment is a welcome step forward, we recognize that the adoption of this Program Comment may not have much impact in communities that have adopted different or more restrictive historic preservation review processes.

Specific Comments

In Section 3 (Work on the Building Interior) of Appendix A.1. Housing Activities Not Requiring Further Review, several of the covered <u>interior</u> activities are excluded from further review only if they are not "visible from the primary right of way" or either "exclusively affects *previously disturbed ground* or creates no new *ground disturbance*". It is unclear under what circumstances such interior work would be visible from the primary right of way and/or result in any ground disturbance. Some further explanation or examples would be helpful.

In Section 5 (Other Activities) of Appendix A.1. Housing Activities Not Requiring Further Review, activity e, permits the "Transfer, lease, or sale out of federal ownership or out of federal control of historic *housing*", with no further Section 106 review, but only "provided there are adequate and legally enforceable restrictions or conditions (such as in a deed covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii)". A definition of what length of time would constitute adequate "long-lerm preservation" would be helpful.

In all sections of the appendix the historic preservation requirements regarding the abatement of hazardous materials should be more flexible, especially for interior hazards posing an immediate or time-sensitive threat to health such as asbestos and lead paint in housing occupied by a child under age 6. Addressing such hazards should be prioritized and not delayed for a Section 106 review even if some adverse effects on a historic property may result.

NCDA and its member communities appreciate the opportunity to comment on this draft Program comment and look forward to the ACHP finalizing and adopting a final Program comment.

Sincerely,

Vicki Watson

Vicki Watson, Executive Director

National Community Development Association



October 7, 2024

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

Via email to: Program alternatives@achp.gov

Dear Chair Bronin:

As people in New Jersey who are charged with the preservation of historic buildings, sites and landscapes in our state, we are deeply concerned about the Draft Program Comments on Accessible, Climate Resilient, and Connected Communities (hereinafter "Program Comments") presented by the ACHC. They seem to run contrary to the intent and requirements of the National Historic Preservation Act. Specifically, the Program Comments would defeat that Act's procedures designed to allow comment and criticism from the very citizens affected by a given project. The proposed rule changes also seem to ignore the fact that federally funded projects are typically joint ventures with states and local governments, and those entities have relied on the cooperative nature of consultation embedded in the National Historic Preservation Act. The idea of enacting a stripped-down process without considering the actual impact on historic resources which may have state and local designations and protections, and the loss of a cooperative consultation process, is hasty and ill-advised.

Creation of affordable housing, the need for transportation improvements, and addressing climate change in our building programs are important domestic policy issues. Lack of progress on these fronts should not, however, be laid at the feet of the historic preservation community. The effort to pursue those larger policy goals should not be an excuse to dilute or ignore a historic site review process that incorporates expert and local knowledge.

The Program Comments need much more refinement before they can effectively be used to "streamline" the processes. We urge you to withdraw the proposal, and to engage states and communities in discussions about how proposed federal undertakings might be more smoothly executed so that needs for housing, transportation and climate adaptability might be met without defeating the protections for historic sites in the National Historic Preservation Act.

Yours sincerely,

Peter Lindsay and the citizen Board of the NJ Historic Trust
Peter Lindsay, PE, Chairman
Lisa Easton, AIA, Vice Chair
Janet Foster
Debbie Kelly
Kenneth Miller, Treasurer
Meme Omogbai
Chris Perks, PE
Patricia Anne Salvatore
Troy Simmons
Linda Stender, Secretary



October 8, 2024

Advisory Council on Historic Preservation Sara Bronin, Chair 401 F Street NW, Suite 308 Washington, DC 20001

Re: Draft Program Comment on Accessible, Climate-Resilient, Connected Communities

Dear Chair Bronin,

The New York Landmarks Conservancy joins our colleagues from across New York State in raising concerns about the ACHP Draft Program Comment (PC). We recognize that the aim of streamlining procedures can be a worthy one, but in many ways the PC deprioritizes preservation in favor of other policy goals.

The tone of the PC implies that preservation is antithetical to accessibility and climate resiliency. We disagree. Sustainability has always been a core principle of preservation. As we work with non-profits and religious institutions, we have seen the creativity and advances in technology that are making historic sites more accessible.

This nation-wide PC is too vast in scope. As it attempts to address many issues and many work types, it loses the nuance that is necessary when facing real-life preservation challenges. New York City is fortunate to have a strong Landmarks Law. It should be clear that the provisions of the PC do not supercede local preservation regulations.

The PC eases requirements that ensure protection and celebration of historic resources. It allows agencies to opt out of Section 106. It would allow removal of character-defining features such as windows and doors. It creates a new category of "minimal" impacts with no definition or standards. It does not contemplate how cumulative impacts would adversely affect historic resources, especially in dense urban environments where an accumulation of small impacts can quickly surpass a "minimal" threshold.

The PC provides too many opportunities to exclude SHPO staff in favor of qualified authorities whose responsibility is to their agencies or their clients, not preservation and eliminates the essential mitigation role of Section 106. The Section 106 process also allows for public input via consulting parties.



Our current experience with the installation of hundreds of 5G cell service towers illustrates this issue. Qualified consultants have found that none of the proposed installation sites have adverse impacts on historic resources. With input from local consulting parties, including the Conservancy, the NYS SHPO has found that some would create adverse impacts and are working through mitigation processes to alleviate those impacts.

The ACHP should champion preservation and its role in federal undertakings. The draft Program Comment does too much to diminish preservation.

Sincerely,

PegBreen President



October 9, 2024

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

Dear Chair Bronin,

The National Preservation Partners Network Board of Directors applauds ACHP's goals cited in the Program Comment: the urgent need to create accessible, climate-resilient, connected communities. We agree there are opportunities to improve federal processes, and the preservation movement is actively addressing barriers to creating more accessible, climate-resilient, and connected communities at the local and state level.

However, we agree with others in the field that more information should be gathered before enacting the proposed Program Comment to understand exactly where the current review delays are within the Section 106 process so they can be addressed directly and holistically. This data-based approach will more effectively improve preservation practices to achieve our shared goals without causing further confusion and delays in the approval processes. Changing current Section 106 processes so broadly without clear data to support the need for such sweeping alternative review pathways, and without addressing other preservation regulatory processes simultaneously, stands to have unintended negative consequences for historic resources, cause much confusion across the field at every level of government, and add to broad misperceptions that reusing existing buildings and incorporating historic assets into development plans is too complicated and expensive.

As a network of nonprofit preservation organizations and professionals across the United States, our members are the boots on the ground and stand ready to share experiences of what has caused delays and/or unnecessary expense in our communities when it comes to activating historic sites, addressing density in historic downtowns, repurposing

buildings for housing, or improving an older building's energy efficiency. We can also share success stories in hopes of inspiring more efficient and effective solutions.

Specific Comments and Concerns:

- A more detailed definition of primary interior spaces and facades is needed in the Program Comment. We are concerned that the current ambiguous definitions of primary interior spaces and facades will be inconsistently and/or inappropriately applied by federal agencies without necessary expertise in historic preservation and will result in the loss of significant historic fabric such as windows, doors and other character-defining features. Facades and primary interior spaces are a part of the public sphere and should be retained in order to communicate to the public the history and evolution of these historic places.
- The lack of clarity about the definition of a "Qualified Authority" is also a concern. Consultants and federal agency employees will undoubtedly feel pressured to provide opinions that placate their employers aka the federal agencies that will have every incentive to forgo the existing Section 106 process and instead opt for the more flexible and less transparent path of the Program Comment. We recommend the Program Comment replace a "Quality Authority" with a "Qualified Professional" in preservation and/or archaeology or engage SHPOs in this part of the process.
- NPPN is generally concerned that the Program Comment will leave unprecedented decision-making authority in the hands of federal agencies with no requirement to consult with SHPOs, Tribes, local governments or the public. This lack of transparency will inevitably lead to the loss of historic fabric and the diminishing of historic resources across the nation since existing expertise will be excluded from the process. We recommend adding the requirement for notification of these parties by the relevant federal agency prior to opting to use the proposed Program Comment so those parties can provide expert input on the agency's plans and potential negative impacts in the communities where those projects are undertaken.
- We are in agreement with the concerns of the National Alliance of Preservation Commissions (NAPC) that local stakeholders would not be engaged in undertakings that are permitted under the Program Comment and that historic resources, especially those that are not yet identified or listed in the NRHP, could be adversely impacted. Because there is no notification requirement, irreversible damage or destruction of cultural resources could occur. Potentially, this could

have a proportionately larger impact on historic resources in underrepresented communities and other areas where prior survey and designations have not been done.

- If implemented, a robust public input process should be created to provide more opportunities for comments on how the Program Comment is working in reality. Since the scope of the changes will impact historic resources in communities across the country, this will provide opportunities to make changes when unintended and/or unforeseen negative outcomes become apparent in the field. NPPN strongly recommends the ACHP initially launch the Program Comment as a pilot program with a three-year sunset date in order to study any unintended negative outcomes.

We strongly urge ACHP to consider the comments submitted by many of our 118 member organizations. Again, we appreciate your efforts to position preservation practices to address important issues our country faces today and hope to collaborate with ACHP on solutions.

Sincerely,

Samantha Bosshart

Hamaskle Bushen

Chair

Kim Trent

Kim Trent

Executive Director



October 9, 2024

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

Dear Chair Bronin,

I am writing on behalf of the National Trust Community Investment Corporation ("NTCIC") to express our support for the Advisory Council on Historic Preservation's ("ACHP") Program Comment on Accessible, Climate-Resilient, and Connected Communities. We appreciate the opportunity to provide our thoughts on this critical initiative, which aligns closely with our mission to make transformational impact investments in low-income and disinvested communities, promoting a brighter, more equitable future by revitalizing historic sites and driving renewable and sustainable energy initiatives through innovative community development and tax credit investment strategies. Since 2001, NTCIC had made more than \$2.5 billion in Federal and State tax credit equity investments benefiting low-income and disinvested communities.

Holistic Approach for Preservation and Adaptation

At NTCIC, we strongly advocate for a holistic approach to preservation and adaptation. This approach, as highlighted by our colleagues at the National Trust for Historic Preservation, the National Trust Green Fund, and Main Street America, is essential for facilitating community-serving rehabilitative, retrofitting, and adaptive reuse projects while preserving the historic fabric that communities value. A comprehensive, simplified process will enable us to address the pressing climate and housing crises more effectively.

Streamlined Processes for Federal Investments

We also support the need for streamlined processes tailored for retrofitting older buildings, particularly with federal investments such as the Greenhouse Gas Reduction Fund. These streamlined processes are crucial for accelerating climate-friendly adaptations. It is equally important to ensure that new Program Comments do not duplicate existing efforts by state departments of transportation, thereby avoiding redundancy and enhancing efficiency.

Incorporation of Local and Tribal Voices with Clear Design Guidance

Incorporating local expertise, Tribal consultation, and broad community input is vital to avoid unintended harm and ensure effective collaboration. Our colleagues have underscored the importance of clear design guidance to facilitate the adoption of climate-friendly interventions. We echo this sentiment and believe that such guidance will help streamline processes and foster authentic community engagement.

Support for Decarbonizing Adaptive Reuse



The reuse of older and historic buildings is a key strategy for reducing carbon emissions. However, this must be paired with energy efficiency and renewable energy integration to meet meaningful carbon reduction targets. At NTCIC, we are committed to supporting decarbonizing adaptive reuse projects that contribute to our environmental goals.

Challenges in the Section 106 Process

Addressing the anticipated challenges in the Section 106 process is necessary due to the expected increase in project reviews from federal programs. Our colleagues have highlighted the need for a collective effort to streamline these processes. We believe that a more efficient Section 106 process will facilitate timely project completion and support our shared goals of preservation and sustainability.

Appreciation for Interior Renovation Flexibility

We appreciate ACHP's approach to interior renovations, which can help small-scale developers navigate the renovation process more easily. Waiving Section 106 review for certain interior modifications can significantly ease the burden on developers and promote the adaptive reuse of upper-story spaces into housing units. This flexibility is essential for revitalizing Main Street districts and other historic areas.

Balancing Preservation and Sustainability

Balancing the preservation of historic integrity with sustainability goals is a delicate but necessary task. We support the emphasis on energy-efficient and reversible clean energy technologies. These technologies will allow us to preserve the historic character of buildings while promoting environmental sustainability.

In conclusion, we commend the ACHP for its leadership in advancing this critical conversation. The Program Comment represents a significant step forward in addressing the climate and housing crises through historic preservation. We look forward to continued collaboration with ACHP and other stakeholders to support this important work.

Thank you for considering our comments. Please do not hesitate to reach out if you require further information or have any questions.

Sincerely,

— Signed by: David (Lower

David G. Clower President & CEO

National Trust Community Investment Corporation



October 9, 2024

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

The National Trust for Historic Preservation ("National Trust") appreciates this opportunity to engage with the proposed Program Comment on Accessible, Climate Resilient, Connected Communities ("Program Comment"). We support the goals of the Advisory Council on Historic Preservation ("ACHP" or "Council") to address the ongoing climate and housing crises our nation faces. Through the National Trust Community Investment Corporation ("NTCIC"), Main Street America ("MSA"), the new National Trust Green Fund ("NTGF"), policy and legal advocacy, and community-driven preservation projects across the country, the National Trust champions the activation, rehabilitation, and repurposing of existing historic buildings with the aim of enabling a shared and humane future.

Because the societal challenges we face require both collective action within the national preservation network and collaboration across many different sectors, we respectfully suggest that a holistic approach would be beneficial. Such an approach would allow for the implementation of a simplified, comprehensive process that facilitates community-serving rehabilitative, retrofitting and adaptive re-use projects while also honoring the distinctive historic fabric that these communities value. Without a holistic approach, we question whether the Program Comment can achieve its maximum impact.

Such a comprehensive approach would necessarily involve a collective assessment of both Section 106 consultations and the application of the Secretary of the Interior's Standards for Rehabilitation. Are there, for example, categories of undertakings (e.g. moving interior walls and other interior alterations) or even categories of buildings where the overall process, from start to finish, can be simplified while also enabling broad community engagement? We also suggest that, given the anticipated federal investment in the retrofitting of older buildings through the Greenhouse Gas Reduction Fund (GGRF), a streamlined process tailored for these projects would significantly accelerate climate-friendly adaptation of the built environment.

The National Trust acknowledges the efforts the Council has undertaken to highlight how the processes in place, in spite of best intentions, impede our collective response to current crises. We share the Council's sense of urgency. We believe that all parties across federal agencies and the preservation community share ACHP's goals. If they are to be

implemented quickly, the start-to-finish processes we're suggesting will rely on expertise that these parties possess and the leadership they can provide.

This Program Comment aims to simplify particular aspects of the complex processes through which undertakings potentially impacting historic resources are assessed. We support this aim, and evaluating the impact of these undertakings will often rely on local expertise, Tribal consultation, and broad community input (For example, who will decide which façades are primary in any given community?). We respectfully urge that these voices be incorporated into a subsequent draft of the Program Comment so that the suggested approach does not unintentionally cause avoidable harm or obstruct future collaboration.

Through our work, the National Trust family of entities (NTCIC, MSA, NTGF, and NTHP) partners with many communities and constituencies who do not speak with one voice. We are, however, united in our commitment to working directly with local communities. Many of our initiatives prioritize places that investment dollars—whether for preservation, rehabilitation, retrofitting, or adaptive reuse—don't easily reach. As we work together to adapt and implement processes that meet the moment, protecting the agency of local communities we aim to serve will matter.

Included is a redlined version of the Program Comment prepared by our legal advocacy team along with observations from NTGF and MSA . Thank you for inviting our comments and views.

Sincerely,

Carol Quillen, President and CEO

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October 9, 2024

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

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin:

Thank you for the opportunity to offer thoughts on the Advisory Council on Historic Preservation's (ACHP) Program Comment on Accessible, Climate-Resilient, and Connected Communities (the Program Comment).

As a subsidiary of the National Trust for Historic Preservation, NT Green Fund is committed to providing low-cost capital and technical assistance to support the decarbonizing adaptive reuse of older and historic buildings. We share the ACHP's sense of urgency regarding the need for the preservation community to respond quickly and effectively to the climate and housing crisis.

Our work at NTGF is grounded in the understanding that the preservation of older and historic buildings is key to the United States' success in meeting the Paris Agreement's commitment to hold the increase in the global average temperature to below 2°C above pre-industrial levels. Reusing buildings can help to avoid 50-75% of the carbon that is produced by constructing an equivalent building out of new materials. However, reusing buildings itself is insufficient to meet carbon reduction targets; it is essential to reduce the energy use of older and historic buildings and convert to non-fossil fuel sources for heating and cooling, including on-site renewable energy. The ACHP Program Comment is an essential step towards facilitating more historic building reuse in a climate-friendly manner.

We believe the preservation community must come together to address anticipated challenges in the Section 106 process because the volume of projects undergoing review is

likely to grow significantly as programs of the Inflation Reduction Fund go into effect. We thank the ACHP for their efforts to anticipate and address these challenges.

- We appreciate the ACHP's approach to the treatment of interior renovations. We must allow for modifications such as moving corridors and subdividing large spaces to create housing, commercial space, and community facilities. These are issues that frequently hold up historic tax credit deals and often result in the abandonment of projects (especially for smaller-scale deals.) While we understand that the Section 106 process is distinct from the federal or state historic tax credit review process, we believe it is important to ensure that Section 106 will not introduce delays by requiring consultation related to interior modifications that are needed to repurpose a building and ensure a project's economic viability.
- We also sincerely appreciate the ACHP's approach to using solar on historic buildings, noting that in most circumstances, solar panels are completely reversible and will not harm historic fabric.
- We understand and share the concerns preservation partners have raised about the
 potentially unintended consequences of the Program Comment, specifically
 regarding the need for more clarity in the treatment of facades. We respectfully
 request that the ACHP offer more clarity and guidance on this topic.

As expressed in the National Trust's letter to the ACHP, we would welcome a more holistic approach to addressing the challenges the preservation community faces in responding to the climate and housing crises, including the collective assessment of both the Section 106 consultation process and the application of the Secretary of the Interior's Standards.

We appreciate the ACHP's leadership in advancing this critical conversation. Thank you for the opportunity to share comments.

Best regards,

Patrice Frey

Interim President & CEO



To: Sara Bronin, Chair, Advisory Council on Historic Preservation

From: Erin Barnes, President and CEO, Main Street America

Date: October 9, 2024

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Main Street America (MSA) appreciates the opportunity to respond to the Advisory Council on Historic Preservation's (ACHP) Program Comment on Accessible, Climate-Resilient, and Connected Communities (the Program Comment). Since MSA's founding, historic preservation has been an important tenant underlying our approach, and we recognize the concerns on the Program Comment expressed by our parent organization, the National Trust for Historic Preservation, and other preservation partners. MSA believes that climate-friendly interventions like those described in the Program Comment have a symbiotic relationship with community preservation, facilitating the long-term health of Main Street communities, and we believe implementation of the Program Comment would make it more efficient and straightforward to undertake certain projects on Main Streets.

Main Street America Background and Climate-Friendly Projects

Main Street America (MSA) leads a collaborative movement with partners and grassroots leaders that advances shared prosperity, creates resilient economies, and improves quality of life through place-based economic development and community preservation in downtowns and neighborhood commercial districts across the country. As a subsidiary of the National Trust for Historic Preservation, a core element of this work is redeveloping existing buildings to bring active use back to disinvested downtowns and neighborhoods, with over 325,000 buildings rehabilitated since 1980. We do this through a network of 46 Coordinating Programs at the state, county, or metro city level, with over 1,200 neighborhood and downtown affiliates committed to a preservation-based economic development methodology.

ACHP notes that the Program Comment aims to "help satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation." MSA agrees that these are critical objectives, and our research on Main Street communities aligns with the rationale that ACHP lays forth in the Program Comment:

- As of 2020, half of the 900,000 housing units in or near Main Street districts were more than 50 years old.
- 68% of Main Street districts are in disadvantaged areas that face environmental, health, and economic challenges, as measured by the Climate and Economic Justice Screening Tool (CJEST), developed by the U.S. Council on Environmental Quality.
- Over the past five years, 218 pedestrians walking in Main Street districts have been struck by vehicles and killed.

Creating thriving Main Street districts requires a multifaceted response that combines preservation, multimodal transportation, economic development, and sustainability. These concerns were considered as part of our comments previously submitted on the ACHP Housing and Historic Preservation Policy Statement and in response to a call for comments on the Application of the Secretary of the Interior's



Standards for Historic Preservation. Those comments specifically uplifted the need to create more housing in Main Street districts through limiting Section 106 review on interior modifications.

To resolve challenges, Main Street communities seek support from numerous federal programs, from discretionary grants through the Historic Preservation Fund to a broad variety of programs of the Department of Housing and Urban Development (HUD), the Department of Transportation (DOT), and the Environmental Protection Agency (EPA). As a general observation in the Program Comment, we encourage ACHP to use established definitions for activities (from agencies such as HUD, DOT, and EDA) to further strengthen and streamline suggestions and avoid conflicts of terms. Because Main Street communities benefit from a broad spectrum of federal programs, Section 106 review may occur in a variety of different projects, with different project goals.

Main Street America is also a lead capacity builder on the DOT Thriving Communities Program, a grant program that aids local communities in securing federal dollars for infrastructure projects, including transportation, housing, and climate resilience goals. Our experience supporting a cohort of 20 rural and tribal communities indicates that the primary needs of these communities is capturing resources and building technical skills and capacity to redevelop buildings and strengthen infrastructure. Yet, many communities interested in federal funding fall through the cracks due to the immense burden of deploying federal funding, from application to compliance with federal regulations. Delays in project deployment for any reason increase costs and result in stalled or abandoned plans.

There remains a delicate balance between the urgent issues of climate change and the housing crisis and retaining physical assets in our communities that carry our stories and values. The Main Street network is diverse in its priorities, governance structures, and opinions on how to best strike this balance. Our comments below align to sections outlined starting in Appendix 1-A on specific actions covered by the Program Comment.

Housing-Related Activities Not Requiring Further Review

MSA appreciates the ACHP's efforts to help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings, and to maintain and update buildings and their immediate environs, including essential civic infrastructure, in response to climate concerns. MSA collects primary data on the condition of Main Street buildings from our network of over 1,200 programs across the country through the Building Opportunities on Main Street (BOOMS) tracker. Based on our early analysis, we estimate around 200,000 upper-story housing units, which currently sit vacant or underutilized, could be created in these Main Street districts. We support ACHP's proposal to waive Section 106 review for maintenance, repair, rehabilitation, replacement and installation of certain interior elements of buildings. By waiving Section 106 review, small-scale developers on Main Streets will have an easier time navigating the challenging process of renovating historic buildings and facilitating the adaptive reuse of upper-story space into housing units.

Work on the Building Exterior

MSA supports preserving the historic integrity of buildings, especially primary facades. We support ACHP's proposal to exempt certain activities from Section 106, but we strongly encourage ACHP to consider how it could deploy the Program Comment to ensure that any replacement windows and doors meet energy-efficiency standards. While this change can facilitate the quicker development of upper floor



housing in Main Streets, we encourage balance with sustainability goals, such as requiring that replacement windows be double-hung, energy efficient windows, rather than replacement vinyl.

Additionally, we support the addition of solar energy systems and clean energy technologies on buildings in Main Street communities. We urge ACHP to emphasize that all clean energy technologies exempted from Section 106 review be reversible, which has long been the standard for historic preservation and is achievable with most energy efficiency upgrades. We believe that these changes will allow small-scale developers on Main Streets to convert upper-story units to housing, as well as renovate and breathe new life into businesses and homes alike on Main Streets – creating a built environment that is climate-friendly and more resilient.

Climate-Friendly Transportation-Related Activities Not Requiring Further Review

We are pleased to see that ACHP is working to facilitate more streamlined processes to improve or create new climate-friendly transportation infrastructure. Working collaboratively with local, state and federal departments of transportation, Main Street communities, from rural towns of less than 5,000 to large metropolitan areas, have played an active role in promoting and building climate-friendly infrastructure, like bicycle infrastructure and road diets. With the backing of decades of evidence, Main Street America believes that transportation infrastructure that centers people creates safer, more climate-friendly communities, while also boosting economic growth for businesses on or near corridors that implement these strategies. We support ACHP's proposals to usher in a more streamlined process for communities to implement these strategies, showing that preservation can play a supportive role in climate- and business-friendly interventions. When transit infrastructure promotes walkability and safety in a Main Street district, more buildings are put into active economic use, thereby facilitating their preservation.

We also acknowledge that our understanding of the multiple levels of existing program comments with state departments of transportation is limited; other entities involved in these processes have noted that the transportation concerns addressed by the Program Comment may already be covered under existing program comments. To the extent that this is true, we encourage the program comment to not be redundant to existing program comments executed by SHPOs and State DOTs.

Main Street America believes that interventions to create access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation are desperately needed in communities, and clear design guidance about what is and is not allowable will facilitate smoother adoption of these interventions. Finally, we have heard from the network of preservationists that the program comment could have negative impacts on undisturbed ground. We defer to tribal and other historic preservation experts on those issues. This is not a primary activity of ours.

Thank you for the opportunity to offer these comments. We appreciate any questions or further information required to support our comments and look forward to future collaboration with ACHP and other public-serving institutions to support this work.

Best.

Erin Barnes, President and CEO, Main Street America

DRAFT PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND CONNECTED COMMUNITIES

This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on [date of adoption], on its own initiative pursuant to 36 C.F.R. § 800.14(e), and went into effect on that date. It provides all *federal agencies* with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. part 800 (Section 106), regarding the *effects* of certain *housing*-related, *climate-smart building*-related, and *climate-friendly transportation infrastructure*-related activities.

I. INTRODUCTION

A. Background

The development of this Program Comment is driven by the nation's pressing needs to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce its energy use and greenhouse gas emissions, improve climate resilience, and cut energy costs; and to decarbonize its transportation sector — needs that have received high levels of attention from Congress, as well as state, local, and Tribal governments and private parties.

Recognizing these needs, in 2023, the ACHP adopted its Housing and Historic Preservation Policy Statement (Housing Policy Statement) and its Climate Change and Historic Preservation Policy Statement (Climate Change Policy Statement), which commit the ACHP to explore new opportunities to use program alternatives to enable federal agencies to advance historic preservation while meeting the nation's housing and climate goals. These policy statements reflect increasing public awareness that historic preservation strategies — and historic properties themselves — can play an important role in addressing the three interrelated sectors covered in this Program Comment.

Following these policy statements, the ACHP developed this government-wide Program Comment to help accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs in response to climate concerns, and to rehabilitate or develop new climate-friendly transportation infrastructure.

B. Current Federal Agency Action

Every day, federal agencies propose to carry out, permit, license, fund, assist, or approve undertakings covered by this Program Comment, and when they do, they must comply with Section 106 of the National Historic Preservation Act. While the federal government's role in supporting housing rehabilitation and production, climate-smart buildings, and climate-friendly transportation is difficult to quantify, an overview of current federal agency actions and investments offers insight into the scope and scale of undertakings covered by this Program Comment.

In the area of housing, federal agencies support housing for millions of Americans and preserve the viability and affordability, upgrade the energy efficiency, and enhance the climate resiliency of the nation's housing stock. The Department of Housing and Urban Development (HUD), for example, supports 1 million housing units across 190,000 public housing buildings, with HUD spending nearly \$9 billion annually in capital and operating funds on these units, over half of which were

Commented [BM1]: We have refrained from repeating many of the revisions proposed by other parties, even though we support them, but it will be important for ACHP to respond to ALL comments and proposed revisions.

built before 1975. HUD also provides billions annually through the Community Development Block Grant and HOME Investments Partnership programs. In addition, the Department of Defense provides over one million units to Military Service members, including 846,000 units in military-owned barracks, while the Rural Housing Service of the Department of Agriculture provides loans to support affordable multifamily developments in rural areas and currently has over 400,000 units in its portfolio, including 17,000 units that support farm laborers. Thousands of projects are funded by other federal agencies working to ensure all Americans have safe, habitable, and affordable housing.

In the area of climate-smart buildings, federal agencies have long undertaken projects that seek to reduce energy cost burdens, cut climate pollution, and boost climate resilience of the nation's building stock. The Inflation Reduction Act — the largest climate bill in history — and the Bipartisan Infrastructure Law have accelerated these efforts. The Environmental Protection Agency \$27 billion Greenhouse Gas Reduction Fund, for example, finances zero emissions building projects and clean technology deployment nationally, including in low-income and disadvantaged communities. The Climate Smart Buildings Initiative is catalyzing more than \$8 billion of private sector investments by 2030 to perform energy efficiency upgrades in federal buildings. The \$1 billion HUD Green and Resilient Retrofit Program invests in energy efficiency, electrification, clean energy generation, climate resilience, and low-embodied-carbon materials in HUD-assisted multifamily housing. And the Department of Energy Efficiency and Conservation Block Grant Program is assisting states, local governments, and Tribes in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency, including for residential and commercial buildings.

In the area of climate-friendly transportation, the federal government's project portfolio - from sidewalks and bike lanes, to bus shelters and light rail - spans multiple Department of Transportation operating administrations as well as other federal agencies, including those that might fund such projects (such as HUD and the Environmental Protection Agency) or build such projects (such as the Department of Agriculture and the Department of Interior). Through the Bipartisan Infrastructure Law and other recent actions, the federal government is currently making significant investments to reduce greenhouse gas emissions and bolster the resilience of America's transportation infrastructure. This includes \$91 billion over five years for public transportation projects, including for transit accessibility, transit-oriented development, and expanded transit service. It also includes \$66 billion to improve the nation's rail systems, representing the largest investment in passenger rail since the creation of Amtrak, and additional funding for pedestrian and bike infrastructure, recreational trails, Safe Routes to School, and more. Other funding includes billions \$7.5 billion over five years for electric vehicle charging infrastructure, \$8.7 billion over five years for transportation infrastructure resilience, and \$2 billion to reduce the lifecycle emissions of transportation construction projects by investing in materials with lower levels of embodied carbon emissions compared to industry averages.

Many types of activities relating to these and other federal agency programs and investments require Section 106 review.

C. Prior ACHP Action

The ACHP's statutory duties under the National Historic Preservation Act include advising the President, Congress, and state and local governments on historic preservation policy issues and overseeing the Section 106 process.

In its advising capacity, the ACHP has formally advised the President, Congress, and state and local governments on housing since at least 1995, when it issued its first policy statement on affordable housing. It updated this policy statement in 2006, and again in 2023. The Housing Policy Statement states that Section 106 reviews must "be grounded in a flexible yet consistent approach to ensure that housing can be developed expeditiously while still preserving the historic qualities of affected historic properties." Also in 2023, the ACHP advised on climate change and historic preservation through its Climate Change Policy Statement. It urges action on building reuse and energy-and-emissions-saving retrofits of older and historic buildings (including enhanced electrification and increased energy efficiency standards). It also supports expediting Section 106 review of projects addressing climate change, including clean energy and climate-friendly transportation projects.

In its oversight of the Section 106 process, the ACHP has also issued or participated in other program alternatives to create tailored review processes for certain programs and undertakings relevant to this Program Comment. At the request of Department of Defense, for example, the ACHP has issued six program comments specifically related to housing, which cover housing developed under specific congressionally appropriated programs, housing constructed during specific eras, and housing designed and built with similar form, style, and materials. The ACHP has also recently been a signatory to several statewide programmatic agreements with HUD related to projects and programs subject to 24 C.F.R. Parts 50 and 58. Prior program comments addressing housing have reduced the operational and maintenance costs of historic housing, made homes more comfortable for occupants, and facilitated the preservation and reuse of existing buildings.

With regard to climate-smart buildings, ACHP has issued several program comments, along with an exemption for the General Services Administration's routine operations and maintenance. The ACHP has also signed a Department of Energy Prototype Programmatic Agreement for weatherization activities and a Nationwide Programmatic Agreement Regarding Climate Resiliency and Sustainability Undertakings on Department of Homeland Security Owned Facilities, which cover a broad range of energy efficiency, water efficiency, and climate adaptation- related undertakings. Prior program alternatives incorporating climate-smart building strategies have reduced the operational and maintenance costs of historic buildings, made such buildings more comfortable for occupants, and facilitated the preservation and reuse of historic buildings.

With regard to climate-friendly transportation, the ACHP has issued two program comments specifically related to transportation projects, along with a government-wide exemption for certain electric vehicle supply equipment. In addition, the ACHP has been a signatory to statewide programmatic agreements with the Federal Highway Administration, state historic preservation offices, and state departments of transportation, covering a range of transportation-related activities. To the extent prior program alternatives have addressed climate-friendly transportation projects, they have facilitated such projects while upholding historic preservation values.

This Program Comment is guided in part by the mechanisms, provisions, and approaches in prior program alternatives that are most consistent with the ACHP's recently adopted Housing Policy Statement and Climate Change Policy Statement. In expanding beyond the scope of these prior program alternatives, this Program Comment creates a consistent and holistic approach for Section 106 review across the federal government for certain undertakings, reducing complexity and equipping federal agencies to more effectively and efficiently address the nation's needs.

D. Justification

Many types of activities relating to the programs identified in Section I.B. of this Program Comment, and other similar programs, require review under Section 106 of the National Historic Preservation Act. Recognizing the extent, and in some cases the increasing extent, of federal action in the housing, building, and transportation sectors, and the volume and repetitive nature of such action, the ACHP has issued this Program Comment to clarify preferred approaches to reviewing these covered undertakings. In doing so, this Program Comment enables federal agencies to focus on other undertakings with greater potential for adverse effects on historic properties, reducing taxpayer costs and facilitating project delivery — while enabling the production and rehabilitation of housing, the preparation of buildings to be climate-resilient, and the reduction of energy use and greenhouse gas emissions in the building and transportation sectors.

E. Goals

This Program Comment aims to promote actions that, consistent with the National Historic Preservation Act, 54 U.S.C. § 300101(1), "foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations."

More specifically, this Program Comment aims to achieve objectives laid out in ACHP policy statements, to advance historic preservation goals, and to help satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation. It does so in recognition of three critical facts: that the United States has an aging housing stock, with half of existing housing units built before 1979; that more than a third of greenhouse emissions comes from the building sector, and buildings use 75% of the electricity generated annually; and that transportation sector is the largest source of greenhouse gas emissions in the United States, responsible for about one-third of all emissions.

This Program Comment also aims to leverage the embodied carbon in existing buildings and other built infrastructure by facilitating reuse and thereby avoiding the need for new construction and for construction materials that currently account for more than 15 percent of annual global greenhouse gas emissions, and in turn slowing down climate change and its impacts on our most cherished places.

Ultimately, this Program Comment aims to benefit the people who live in the housing, work in the buildings, and move using the climate-friendly transportation infrastructure projects being carried out, permitted, licensed, funded, assisted, or approved by federal agencies.

II. SCOPE

A. Overall Effect

This Program Comment provides an alternative way for *federal agencies* to comply with their Section 106 responsibility to take into account the *effects* on *historic properties* of their covered *undertakings*. The Program Comment also provides the ACHP a reasonable opportunity to comment regarding covered *undertakings*.

B. Effect on Other Applicable Laws

This Program Comment does not modify, preempt, or replace any other federal laws, or any applicable state, local, or Tribal laws or regulations.

C. Effect on Existing Agreements

A federal agency that already has a Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) in effect that addresses covered undertakings must either:

- 1. Follow this Program Comment, rather than such MOA or PA for a class of covered *undertakings* for the life of this Program Comment. Before making a decision to do so, the *federal agency* must first consult with the signatories of such MOA or PA and then provide them must receive their written notice of concurrence in the decision to apply this Program Comment to a class of covered *undertakings*; or
- 2. Continue to implement the existing MOA or PA regarding such covered *undertakings*, rather than this Program Comment.

Federal agencies may pursue amendments to such MOAs or PAs per their stipulations, to incorporate, in whole or in part, the terms of this Program Comment. Federal agencies may also consider terminating such MOA or PA and follow this Program Comment to satisfy their Section 106 responsibility for the covered undertakings.

A *federal agency* that already has a Section 106 program comment or program comments in effect for covered *undertakings* must follow the terms of those program comments to the extent those program comments address the *undertakings* covered by this Program Comment. This Program Comment does not in any way supersede, replace, or change the terms of other program comments. *Federal agencies* may propose to the ACHP amendments to existing program comments following the amendment procedures in those program comments, to incorporate, in whole or in part, the terms of this Program Comment.

D. Effect on Tribal Lands

This Program Comment does not apply on *Tribal lands*, or to activities that may affect *historic properties* located on *Tribal lands*, unless the *Indian Tribe*, *Tribal historic preservation officer*, or a designated representative of the *Indian Tribe* has provided prior written notification to the Executive Director of the ACHP that the Tribe allows the use of the Program Comment on the Tribe's lands. *Indian Tribes* can agree to such use of the Program Comment by issuing an authorization for such use in a format substantially similar to the format contained in Appendix D to this Program Comment, and by submitting the completed authorization to the Executive Director of the ACHP. This Program Comment is applicable on those *Tribal lands* on the date of receipt by the Executive Director of the ACHP, who must ensure notice on such authorization is included on the website of the ACHP. The *Indian Tribe*, *Tribal historic preservation officer*, or designated representative of the *Indian Tribe* may terminate the *Indian Tribe*'s authorization to use this Program Comment by notifying the Executive Director of the ACHP in writing. Such a termination will be limited to the Program Comment's applicability to *undertakings* that would occur on or affect *historic properties* on the *Tribal lands* under the jurisdiction of the *Indian Tribe*.

Commented [BM2]: The National Trust does not support allowing agencies to unilaterally decide to violate binding Section 106 agreements. If the other signatories agree with the alternative to use the Program Comment, that's fine.

E. Standard Section 106 Review

A *federal agency* must follow the Section 106 review process under 36 C.F.R. §§ 800.3 through 800.7 or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative, if:

- 1. The *federal agency* elects, for any reason, not to utilize this Program Comment for an *undertaking* for which alternative compliance approaches are prescribed in Section III of this Program Comment.
- 2. The *undertaking* or components of an *undertaking* that include activities not listed in the Appendices, meaning the undertaking would be subject to the Section 106 review process, but the *federal agency* could incorporate use of this Program Comment in its review of the entire *undertaking*.
- 3. The *undertaking* would occur on or have the potential to affect the following *historic* properties:
 - a. Any National Monument, National Historic Site, National Historic Trail, National Historical Park, National Military Park, National Battlefield, National Battlefield Park, or National Battlefield Site.
 - b. Any site, object, *building*, or structure individually designated as a *National Historic Landmark* or designated as a *contributing property* to a *National Historic Landmark* district, or found within the boundaries of a *National Historic Landmark* archaeological district.
 - c. Sites of religious and cultural significance to *Indian Tribes* and *Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*.

III. ALTERNATIVE COMPLIANCE APPROACHES

A. Available Alternative Compliance Approaches

This Program Comment authorizes alternative compliance approaches for covered *undertakings*, as follows:

- 1. For *undertakings* or components of *undertakings* with no or minimal potential to adversely affect *historic properties*, as set forth in Appendix A-1, B-1, or C-1 of this Program Comment, a *federal agency* may proceed with the *undertaking* without conducting further review under Section 106.
- 2. For *undertakings* or components of *undertakings* for which the *federal agency* satisfies certain conditions, exclusions, or requirements, as set forth in Appendix A-2, B-2, or C-2 of this Program Comment, a *federal agency* may proceed with the *undertaking* if it satisfies the conditions, exclusions, or requirements prescribed in those Appendices, and it documents the manner in which it has satisfied such conditions, exclusions, or requirements.

B. Consultation with Indian Tribes and Native Hawaiian Organizations

The United States government has a unique legal and political relationship with *Indian Tribes* as set forth in the Constitution of the United States, treaties, statutes, court decisions, and Executive Orders. The United States recognizes the right of *Indian Tribes* to self-government. Tribes exercise inherent sovereign powers over their members and territories. The ACHP drafted this Program Comment with a commitment to strengthening the government-to-government relationship between the United States and *Indian Tribes*.

1. Potential Effects on Properties of Significance to Indian Tribes and Native Hawaiian Organizations

It is important to recognize that while this Program Comment was drafted to limit impacts on historic properties, such as sites with traditional religious and cultural significance to an Indian Tribe or Native Hawaiian Organization, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of Indian Tribes or Native Hawaiian Organizations, covered undertakings could directly or indirectly affect such properties.

2. Consultation-Related Obligations

If the federal agency, based on the location of the undertaking and the area of potential effects, determines that an effect on the historic properties of religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of Indian Tribes or Native Hawaiian Organizations, may occur, it must make a reasonable and good faith effort to identify potentially interested Indian Tribes and Native Hawaiian Organizations and invite them to consult to assess whether use of the Program Comment for the subject undertaking is appropriate. The federal agency's consultation effort should be informed by and be conducted in accordance with the National Historic Preservation Act, the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects, including by recognizing the special expertise of holders of Indigenous Knowledge.

The federal agency's effort to identify potentially interested Indian Tribes and Native Hawaiian Organizations should be informed by, but not limited to the following: the knowledge and expertise of agency Tribal liaison staff, historic maps, information gathered from previous consultations pursuant to Section 106, databases of Indian Tribes and Native Hawaiian Organizations where accessible and appropriate, the Bureau of Indian Affairs Tribal Leader List, U.S. Department of the Interior Native Hawaiian Organization List, the National Park Service Tribal Historic Preservation Program contact database, National Association of Tribal Historic Preservation Officers, the U.S. Housing and Urban Development Tribal Directory Assistance Tool, state historic preservation officer databases, and other resources.

3. Effect of Finding of Potential Effect on Certain Properties

Should it be determined through consultation with *Indian Tribes* or *Native Hawaiian Organizations* or otherwise that a proposed *undertaking* covered in this Program Comment could potentially result in an *effect* on a *historic property* with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, including a

Tribal identified sacred site or a site identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, the *federal agency* may not use this Program Comment and must instead follow the Section 106 review process under 36 C.F.R. § 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative.

4. Confidentiality-Related Obligations

Consistent with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, federal agencies should consider information regarding historic properties with traditional religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, Tribal identified sacred sites, and Indigenous Knowledge shared with the federal agency by Indian Tribes or Native Hawaiian Organizations as sensitive, unless otherwise indicated by the Indian Tribe or Native Hawaiian Organization. Federal agencies should clearly inform Indian Tribes and Native Hawaiian Organizations of any limitations on the agency's ability to keep sensitive information confidential. Federal agencies must keep sensitive information provided by Indian Tribes or Native Hawaiian Organizations confidential to the extent authorized by applicable federal laws, such as Section 304 of the National Historic Preservation Act. Federal agencies are encouraged to use best practices on confidentiality delineated in the 2023 Interagency Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites when implementing this Program Comment.

C. The Use of Qualified Authorities

Undertakings covered by this Program Comment do not require the use of a qualified authority except where explicitly stated, or except where, in the reasonable judgment of the federal agency in consideration of various factors, the use of a qualified authority is necessary to fulfill the intent of the National Historic Preservation Act or necessary or useful to inform the federal agency's decision-making.

When the *federal agency* chooses to use a *qualified authority*, the type of *qualified authority* must be appropriate to the circumstances. For example, a person recognized by the relevant *Indian Tribe* or *Native Hawaiian Organization*, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of *effects*, and treatment of *effects* to *historic properties* of religious and cultural significance to the Tribe or to *Native Hawaiians*, respectively, should be consulted to inform the identification, *effects* determination, and other matters involving *historic properties* significant to that *Indian Tribe* or *Native Hawaiian Organization*. As another example, determinations regarding architectural resources and structures must be made by a *qualified professional* meeting such professional standards for historic architecture or architectural history established by the Secretary of the Interior.

D. Determinations of Eligibility

Undertakings covered by this Program Comment, due to their nature and potential *effects*, do not require a *federal agency* to determine whether an involved or affected property is a *historic property* except where explicitly stated.

IV.ASSISTANCE TO CONSULTING PARTIES

This Program Comment does not require a *federal agency* to pay any consulting party for providing its views or comments in response to 36 C.F.R. part 800 responsibilities, including invitations to consult in a Section 106 review; to respond to the proposed *area of potential effects*, scope of identification efforts, eligibility findings, assessment of *effect*; or to consult to seek ways to resolve any *adverse effects* or to develop a memorandum of agreement or programmatic agreement to conclude the Section 106 review finding or determination. If, however, a *federal agency* asks an *Indian Tribe*, *Native Hawaiian Organization*, or any consulting party to do more than the activities listed in the preceding sentence in connection with this Program Comment, the *federal agency* or its applicant, grantee, or permittee, if applicable, must enter into an appropriate arrangement to provide the *Indian Tribe*, *Native Hawaiian Organization*, or consulting party reasonable payment for such services, if and to the fullest extent the *federal agency* has the authority to enter into such an arrangement and pursuant to its policies and procedures. Examples of services include requests to:

- **A.** Conduct an archaeological, ethnographic, or other inventory or field survey to identify *historic properties* that may be affected by the *undertaking*.
- **B.** Perform a *records check* on behalf of the *federal agency*.
- **C.** Conduct research and make preliminary assessments of National Register eligibility on behalf of a *federal agency*, as opposed to responding to determination of eligibility.
- **D.** Provide an assessment of the potential *effects* of the *undertaking* on *historic properties*, as opposed to responding to such an assessment.
- **E.** Carry out *mitigation measures*, including conducting additional research or monitoring ground disturbing activities as part of a mitigation plan.
- **F.** Curate artifacts or records recovered or made as part of *historic property* identification, evaluation, or mitigation efforts.
- **G.** Design or develop a specific plan or specifications for an *undertaking* that would meet the Secretary of the Interior's Standards for Rehabilitation or otherwise avoid, minimize, or mitigate *effects* to *historic properties*.
- **H.** Monitor ground disturbing activities or *federal agency* treatment of unanticipated discoveries.
- I. Contribute substantially to any of the above activities carried out by a third party.

A request during consultation by an *Indian Tribe* or *Native Hawaiian Organization* to conduct such services itself does not preclude reasonable payment for services simply because the request was made during consultation. A *federal agency* or its applicant, grantee, or permittee, if applicable, must consider should entering into an arrangement, in accordance with this Section, with any *Indian Tribe* or *Native Hawaiian Organization* making such a request.

V. UNANTICIPATED DISCOVERIES

A. Immediate Response Requirements

If previously unidentified historic properties or unanticipated effects, including visual, audible, atmospheric, and cumulative effects, to historic properties are discovered during implementation of the undertaking, the federal agency must immediately halt all activity that could affect the discovery and institute interim measures to protect the discovery from looting, vandalism, weather, and other threats. The federal agency must then follow the procedures set forth in 36 C.F.R. § 800.13(b); for sites with potential religious and cultural significance to Indian Tribes or Native Hawaiian organizations, the federal agency must request, and incorporate, if provided, the special expertise of Tribes or Native Hawaiian Organizations and the information provided by designated holders of Indigenous Knowledge and must follow those procedures accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and for sites involving burial sites, human remains, or funerary objects, the federal agency must follow these procedures in accordance with the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. A federal agency that has historic property discovery procedures in existing management plans pertaining to historic properties should follow such existing procedures.

B. Response to the Discovery of Human Remains, Funerary Objects, Sacred Objects, or Items of Cultural Patrimony

The *federal agency* must ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an *undertaking*, all work within 50 feet of the discovery must cease, the area must be secured, and the *federal agency*'s authorized official, local law enforcement, and coroner/medical examiner in accordance with any applicable state statute(s) must be immediately contacted. The *federal agency* must be guided by the principles within the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. The *federal agency* must comply with Section 3 of the Native American Graves, Protection and Repatriation Act and its implementing regulations, 43 C.F.R. part 10, in regard to any human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or Tribal land.

VI. DISPUTE RESOLUTION

Any person may file a dispute over the implementation of this Program Comment or its use for any particular *undertaking*, by filing a notice with the relevant *federal agency*, including the *federal agency's* federal preservation officer, with a copy to the consulting parties involved in the *undertaking* and any relevant *Tribal historic preservation officer* or *state historic preservation officer*. Objecting parties may include but are not limited to *Indian Tribes*, *Tribal historic preservation officers*, *state historic preservation officers*, *Native Hawaiian Organizations*, local governments, preservation organizations, owners of historic properties, and members of the public. The *federal agency* must consult with the objecting party to resolve the dispute for not more than 60 *days*. Any disputes over the evaluation of unanticipated discoveries must be resolved in accordance with the requirements of 36 C.F.R. § 800.4(c)(2) and Section V of this Program Comment, as appropriate.

Should resolution not be reached within 60 days, the federal agency may shall forward to the ACHP all documentation relevant to the objection, including the federal agency's proposed resolution if any, and request

the ACHP to provide within 30 days its advisory comments to resolve the dispute, and take the ACHP's comments into account before finalizing its approach to complying with Section 106. The federal agency must notify all-the objecting relevant partiesy and any relevant Tribal historic preservation officer or and state historic preservation officer regarding its approach to complying with Section 106 for an undertaking that is the subject of a dispute. The federal agency's decision regarding the resolution will be final. Following the issuance of its final the ACHP's decision, the federal agency official to whom the ACHP's decision is addressed must respond in writing prior to proceeding, but may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that the ACHP's decision.

The ACHP must monitor such disputes, and from time to time, the Executive Director of the ACHP may issue advisory opinions about the use of this Program Comment to guide *federal agencies*.

VII. DURATION

This Program Comment will remain in effect from the date of adoption by the ACHP through December 31, 2044;2034, unless prior to that time the ACHP withdraws the Program Comment in accordance with Section IX of this Program Comment. On any date during the six-month period preceding the expiration date, the ACHP Chair may amend the Program Comment to extend its duration in accordance with Section VIII.A. of this Program Comment. If an *Indian Tribe* authorizes the use of this Program Comment on its *Tribal lands* in accordance with Section II.D. of this Program Comment, such authorization will be in effect from the date of the issuance of the authorization until the termination of such authorization by the *Indian Tribe* or the expiration or withdrawal of this Program Comment, whichever is earlier.

VIII. AMENDMENT

The ACHP may amend this Program Comment after consulting with federal agencies and other parties as it deems appropriate and as set forth below.

A. Amendment by the Chair, ACHP

The Chair of the ACHP, after notice to the rest of the ACHP membership and federal agencies may amend this Program Comment to extend its duration. The ACHP must notify federal agencies and publish notice in the Federal Register regarding such amendment within 30 days after its issuance.

B. Amendment by the Executive Director, ACHP

The Executive Director of the ACHP, after notice to the ACHP membership and other *federal agencies* may amend this Program Comment to adjust due dates and make corrections of grammatical and typographical errors. The ACHP must notify *federal agencies* and publish notice in the Federal Register regarding such amendments within 30 *days* after their issuance.

C. All Other Amendments

Amendments to this Program Comment not covered by Sections VIII.A. or VIII.B. of this Program Comment will be subject to ACHP membership approval.

Commented [BM3]: The ACHP should have the final say in interpreting its own Program Comment

Commented [BM4]: In our view, a 10-year duration is much more appropriate than a 20-year duration. Technology will be substantially evolving during this period, and may warrant changes to the program comment.

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Commented [BM5]: We do not support unilateral extension of the duration by the Chair.

IX. WITHDRAWAL

If the ACHP determines that the consideration of historic properties is not being carried out in a manner consistent with this Program Comment, the ACHP may withdraw this Program Comment. The Chair of the ACHP must then notify federal agencies and publish notice in the Federal Register regarding withdrawal of the Program Comment within 30 days of the decision to withdraw. If this Program Comment is withdrawn, federal agencies must comply with the Section 106 review process under 36 C.F.R. § 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or another applicable agreement or program alternative for individual undertakings covered by this Program Comment.

X. REPORTS AND MEETINGS

A. Federal Agency Annual Reports

The federal agencies that use this Program Comment must provide annual reports regarding the use of this Program Comment during the previous reporting period, ending June—September 30 annually, to the ACHP, as provided in this Section. Each agency's annual report must: provide examples a list of all undertakings covered by Section III.A.1. of this Program Comment; provide information about the manner or extent to which the agency satisfied the conditions, exclusions, and requirements to proceed with the undertakings covered by Section III.A.2.; identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; include an assessment of the overall effectiveness of the Program Comment in meeting its intent; and summarize professional assistance and compliance monitoring activities. Annual reports are due on September 30-by December 31 of each year, starting-September 30 December 31, 2025 and ending September 30, 2029 December 31, 2035.

For the remaining duration of this Program Comment, the federal agencies that use this Program Comment must provide reports regarding the use of this Program Comment during the previous reporting period, ending June 30 trienmially, to the ACHP, as provided in this Section. Each agency's trienmial report must be submitted either as part of federal agencies' report to the ACHP pursuant to Executive Order (EO) 13287, "Preserve America," or, for federal agencies not otherwise required to submit such report to the ACHP, as a stand alone triennial report. Each agency's triennial report must: identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; and include an assessment of the overall effectiveness of the Program Comment in meeting its intent. Triennial reports are due on September 30 of every third year, starting September 30, 2032.

In any report required by this Section, the ACHP encourages *federal agencies* to also propose for ACHP's consideration amendments and refinements to this Program Comment based on their experience implementing it.

In any report required by this Section, a *federal agency* must include in its report the activities, if any, of entities to which it has delegated legal responsibility for compliance with Section 106 in accordance with federal law.

Commented [BM6]: It would make more sense to use the federal fiscal year as the reporting period, and then have the reports due by December 311

Commented [BM7]: In order to evaluate and quantify the impact and effectiveness of the program comment, it will be important to have complete data, not a tiny number of examples hand-picked by the agency. Since the agency will need to make determinations on a case-by-case basis about the applicability of the program comment, it is not unreasonable to ask the agencies to keep those records and report them to ACHP.

Commented [BM8]: It would make more sense to have an annual report for ten years.

B. Annual Meetings

By January 31, 2026 and for four-ten years thereafter, the ACHP must schedule an annual meeting and invite federal agencies, Indian Tribes, state historic preservation officers, Tribal historic preservation officers, Native Hawaiian Organizations, ACHP members, preservation organizations, and others it deems appropriate, to discuss implementation of the Program Comment. At the meeting, attendees will have an opportunity to provide their views on the overall effectiveness of the Program Comment in meeting its intent and purpose. Such views may inform decisions such as those regarding amendments to the Program Comment. Annual meetings may take place in-person, by phone, virtually using electronic meeting platforms, or any combination of such means.

C. ACHP Reports

At any time, but at least once during the initial three-year period during which this Program Comment is being used, and every three years thereafter, ACHP staff must provide a written or oral summary of information received from *federal agency* reports, annual meetings, or other sources about the utility of this Program Comment and make any recommendations for amendments to the ACHP membership.

XI. DEFINITIONS

For purposes of this Program Comment, the following definitions apply, and beginning in Section II of this Program Comment, such words are *italicized* for convenience:

Abatement means acting or actions to eliminate, lessen, reduce, or remove.

Adverse effect, as provided in 36 C.F.R. § 800.5(a)(1), means an action that may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association; and it includes reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of potential effects, as provided in 36 C.F.R. § 800.16(d), means the geographic area or areas within which an *undertaking* may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, and is influenced by the scale and nature of an *undertaking* and may be different for different kinds of effects caused by the *undertaking*.

Bicycle lane means a portion of a roadway that has been designated by striping, signage, and pavement markings for the exclusive use by and increased safety of bicyclists.

Bicycle parking means a designated area to store a bicycle, whether personal or shared, including bicycle racks and dedicated bicycle docks used in a shared system.

Bicycle rack means a rack for a personal or shared bicycle, e-bicycle, or scooter that is typically u-shaped.

Bicycle rail means a traffic control device that provides a protective barrier between motor vehicle travel lanes and *protected bicycle lanes* or *cycle tracks*.

Bulb out means feature that extends the line of the curb into the traveled way, reducing the width of the street, also known as curb extensions or bump-outs.

Building means a constructed work created principally to shelter any form of human activity, including mobile and manufactured homes and *climate-friendly transportation facilities* that are buildings.

Building energy control system means a mechanical system enabling a building occupant to manage or monitor energy use and all components of such system, including but not limited to programmable thermostats, digital outdoor reset controls, occupancy sensors, Underwriters Laboratories listed energy management systems or building automation systems, demand response and virtual power plant technologies, smoke and carbon monoxide detectors, and related technologies.

Character-defining feature means an element of a historic property that demonstrates or includes the characteristics of a historic property that qualify the historic property for inclusion in the National Register of Historic Places, including elements that contribute to the historic property's overall shape, style, design, and decorative details.

Clean energy technologies means solar energy systems, wind energy systems, battery energy storage systems, geothermal systems, and microgrids serving a building or buildings, or serving a climate-friendly transportation facility.

Climate-friendly transportation infrastructure means pedestrian, bicycle, micromobility vehicle, bus (including bus rapid transit), and rail infrastructure.

Climate-friendly transportation facility means a building or structure used for bicycle parking, micromobility parking, a bus station, a bus rapid transit station, or a rail station.

Climate-smart building means a building that is energy efficient, electric, uses clean energy, and is resilient.

Climate resilience is defined as the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

Community solar system means a solar photovoltaic installation with up to 5 megawatts nameplate capacity and delivering at least 50% of the power generated from the system to buildings within the same utility territory as the facility.

Cool pavement means paving materials that reflect more solar energy, enhance water evaporation, or have been otherwise modified to remain cooler than conventional pavements.

Contributing property, as provided in National Register Bulletin 16A, "How to Complete the National Register Registration Form," means a building, structure, object, or site, as applicable, within the boundaries of a historic district that adds to the historic associations, historic architectural qualities, or archaeological values for which a property is significant because it was present during the period of significance, relates to the documented significance of the property, and possesses historic integrity or is capable of yielding important information about the period; or it independently meets the criteria for the National Register of Historic Places.

Cycle track means a bicycle facility that is physically separated from motor vehicle traffic, distinct from the sidewalk, and for the exclusive use of bicyclists.

Day means calendar day, taking place from one midnight to the following midnight.

Economic feasibility means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including estimated construction costs (including the cost of *building* material and labor), estimated operational costs, available budget, and timelines for compliance review processes to the extent they impact financial conditions for the *undertaking*.

Effect, as provided in 36 C.F.R. §§ 800.5(a)(1) and 800.16(i), means a direct, indirect, reasonably foreseeable, or cumulative alteration to the characteristics of a *historic property* qualifying it for inclusion in or eligibility for the National Register of Historic Places.

Electrification means the *replacement* or conversion of an energy-consuming device or system from non-electric sources of energy to electricity; or the *replacement* or conversion of an inefficient electric appliance to an efficient electric appliance.

Electric vehicle supply equipment or EVSE means conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle (EV) connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE: i. Level 1: Refers to a freestanding or wall mounted charging structure that delivers a 110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle's battery. ii. Level 2: Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle's battery. iii. Level 3 (also known as Direct Current (DC) Fast Charging): Refers to a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output ranging between 40 kW-500 kW delivering 50-1000 volts of direct current to the EV battery. Converts AC power to DC within the charging station and delivers DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 200 miles of range per 30 minutes of charging time.

Emergency situation means any of the following: occurrence of a natural catastrophe, such as a hurricane, wildfire, flood, or excessive heat; declaration of emergency by the President, an *Indian Tribe*, governor, or a chief elected official of a territory or city; or recognition or report of a sudden, serious, and imminent threat to life, health, safety, or property.

EVSE criteria means (1) take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable; (2) use reversible, minimally invasive, non-permanent techniques to affix the infrastructure; (3) minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance; (4) use the lowest profile equipment reasonably available that provides the necessary charging capacity; (5) place the EVSE in a minimally visibly intrusive area; and (6) use colors complementary to surrounding environment, where possible.

Federal agency means an agency as defined by 5 U.S.C. § 551(1), and includes state, local, or Tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

Flex post means flexible bollards or delineators used to separate motor vehicle traffic from a bicycle lane, protected bicycle lane, or cycle track, and designed to withstand being hit or run over by motor vehicles.

Green infrastructure means the range of measures that use plant or soil systems, permeable ground surface materials, stormwater harvest and reuse, or landscaping to store, infiltrate, and evapotranspirate stormwater and reduce flows to sewer systems or to surface waters, including but not limited to rain gardens, bioswales, bioretention facilities, and other ecosystem services and nature-based solutions used to treat stormwater as close to the source as possible and improve resiliency.

Greenhouse gas means gas that traps heat in the atmosphere, including but not limited to carbon dioxide, methane, nitrous oxide, and fluorinated gases (such as hydrofluorocarbons).

Ground disturbance means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of any soils that are not previously disturbed ground.

Ground surface material means any hard material typically used to cover soils for transportation purposes, including but not limited to asphalt, concrete, pavers, cobblestones, Belgian blocks, bricks, gravel surface or base, or wood.

Hazardous material means lead, lead-containing material (including lead-based paint), asbestos, asbestos-containing material (including floor tile, plaster, insulation, glazing putty, roofing material, and flashing material), radon, and other similar materials detrimental to human health and safety.

High friction surface treatment means application of very high-quality aggregate to the pavement using a polymer binder to restore or maintain pavement friction at existing or potentially high crash areas.

Historic building means a building included in, or eligible for inclusion in, the National Register of Historic Places, as an individually listed property or as a contributing property to a historic district.

Historic building material means building material used in the construction of a historic building and installed during the period of significance, and any pre-existing in-kind replacement of same.

Historic district means a geographically definable area that possesses a significant concentration of historic buildings, associated buildings and structures, and objects united historically by plan or physical development that are historic properties.

Historic property, as provided in 36 C.F.R. § 800.16(1), means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization that meet the National Register of Historic Places criteria.

Housing means any building containing one or more dwelling units, including but not limited to multi-unit apartment buildings, single-family homes, administrative and employee dwelling units, and recreation residences, in a variety of building types and configurations, including but not

limited to *buildings* served by an elevator or elevators, "walk-up" *buildings*, rowhouses, semi-detached homes, mobile and manufactured homes, and freestanding homes.

Indian Tribe, as provided in 36 C.F.R. § 800.16(m), means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-kind building materials means new *building* materials that are identical to *historic building materials* in all possible respects, including their composition, design, color, texture, and other physical and visual properties.

In-kind replacement means replacement of historic or existing building materials with in-kind building materials.

Installation means the action or process of placing or fixing something, including but not limited to materials, *mechanical systems* and components, appliances, and equipment, or of being installed, in a particular location.

Lowest profile equipment means EVSE that is the smallest height and width possible that meets the EV charging needs.

Maintenance and repair means activities required to maintain in an operational state, or to bring back to operating condition by *repair* or *replacement* of obsolete, broken, damaged, or deteriorated features, elements, materials, and systems.

Mechanical system means any heating, cooling, indoor air quality, ventilation, dehumidification, air conditioning, plumbing, or electrical system, and the individual elements and components of each system.

Micromobility vehicle means small, lightweight vehicles such as e-bicycles and scooters, which can be human-powered or electronic, privately owned or shared, and operate at low to moderate speeds of 15 to 30 miles per hour.

Micromobility parking means an area to store for micromobility vehicles, whether private vehicles or shared vehicles, including dedicated bicycle docks used in a shared system.

Minimally visibly intrusive means that the EVSE is partially visible but does not detract from the views from or to historic properties.

Mitigation measures means any existing, new, or updated materials or actions that serve to address, compensate for, or otherwise resolve adverse effects on historic properties, and may include research reports, historical documentation, recordation, and other materials and activities.

National Historic Landmark, as provided in 36 C.F.R. § 800.16(p), means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

Native Hawaiian, as provided in 36 C.F.R. § 800.16(s)(2), means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian Organization, as provided in 36 C.F.R. § 800.16(s)(1), means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

Parking facilities mean buildings, structures, land, rights-of-way, facilities, or areas used for parking of motor vehicles.

Permeable ground surface materials means permeable pavement, permeable pavers, porous flexible pavement, or other material or system that provides a hard surface, while allowing water to flow through to the underlying soils instead of into the storm sewer.

Potentially historic ground surface materials means any ground surface material comprised of pavers, cobblestones, Belgian blocks, bricks, or wood that are 45 years or older.

Previously disturbed ground means soils not likely to possess intact and distinct soil horizons and have a reduced likelihood of possessing *historic properties* within their original depositional contexts in the area and to the depth to be excavated, and does not mean plowed soils or historic urban deposits, including *previously disturbed right-of-way*.

Previously disturbed right-of-way means areas where previous construction or other activities have physically altered soils within the three-dimensional area of potential effects to the point where there is likely no potential for an archaeologically significant property to remain, including but not limited to: the entire curb-to-curb roadway, existing sidewalks, existing drains, and parking areas, including the prepared substrate constructed to support the infrastructure down to undisturbed or intact soil or subsoil. As-built drawings and plans can be used to determine the vertical and horizontal dimensions of the previously disturbed areas.

Primary façade means the exterior façade of a *building* which serves as the front or the major entry point of the *building*, provided that a determination of the *primary façade* depends on a variety of factors, and one *building* may have more than one *primary façade*. The determination of *primary façade(s)* must be documented in writing by a *qualified professional* in the field of historical architecture or architectural history.

Primary right-of-way means the corridor, open to the public for transportation purposes, from which a person may best view the *primary façade* of a *building* or, if the *primary façade* is not visible from the public *right of way*, the corridor nearest the façade through which people enter the *building*.

Primary space means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other space that contains a *character-defining feature* of a *historic building* or historic *climate-friendly transportation facility*.

Protected bicycle lane means a bicycle facility that is physically separated from motor vehicle traffic and is distinct from the sidewalk for the exclusive use by and increased safety of bicyclists.

Qualified authority means a qualified professional or a person recognized by the relevant Indian Tribe or Native Hawaiian Organization, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of effects, and treatment of effects to historic properties of religious and cultural significance to their Indian Tribe or to Native Hawaiians, respectively.

Qualified professional means a person who meets the relevant standards outlined in the Secretary

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of the Interior's Professional Qualifications Standards, as amended and annotated. <u>"Relevant standards"</u> means that archaeology professionals are not *qualified professionals* with respect to architectural resources, and architecture professionals are not *qualified professionals* with respect to archaeological resources.

Rail infrastructure means structures, building, land, and equipment that supports land lines, including both the infrastructure that is in the rail right-of-way (such as ballast, ties, tracks, bridges, and tunnels) and the infrastructure that is adjacent to the right-of-way such as signs, signals, mileposts or switches.

Recognized design manual means one of the following: Federal Highway Administration Manual on Uniform Traffic Control Devices, American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets, National Association of City Transportation Officials (NACTO) Urban Street Design Guide, NACTO Urban Bikeway Design Guide, NACTO transit Street Design Guide, NACTO Bike Share Station Siting Guide, or NACTO Urban Street Stormwater.

Records check means a search of relevant Indian Tribe, state historic preservation office, Tribal historic preservation office, Native Hawaiian Organization, and federal agency files, records, inventories, and databases, or other sources recommended by such parties, for information about whether historic properties, including properties with traditional religious and cultural significance to one or more Indian Tribes or Native Hawaiian Organizations, are known to exist within an area of potential effects.

Reduce energy use or greenhouse gas emissions means to take an action that: lessens either the amount of energy used or greenhouse gas emitted to perform the same task or produce the same result; replaces an energy production source reliant on fossil fuels with a clean energy technology or upgrades a clean energy technology; or achieves electrification.

Rehabilitation means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

Replacement means substitution of new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part.

Solar energy system means any addition, alteration, or improvement which is designed to utilize solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer, or some combination of these types to reduce the energy requirements of that structure from other energy sources, including but not limited solar hot water equipment, community solar systems, and solar photovoltaic equipment and all components.

State historic preservation officer, as provided in 36 C.F.R. § 800.16(v), means the official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act to administer the state historic preservation program or a representative designated to act for the state historic preservation officer.

Substitute building materials means modern, industry standard, natural, composite, and synthetic materials that simulate the appearance, physical properties, and related attributes of historic materials well enough to make them alternatives for use when historic building materials require replacement.

Technical feasibility means the viability, suitability, and practicality of a proposed undertaking in light of a range of considerations, including health, safety, energy efficiency, climate resiliency,

durability of materials, and sound professional judgment (including architectural, archaeological, or engineering judgment).

Transit means mass transportation by a conveyance (including a bus, railcar, locomotive, trolley car, or light rail vehicle) that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.

Transit-oriented development building means a building within one half mile of an existing or planned transit stop to be developed or redeveloped as part of a federal program or project to promote transit-oriented development.

Tribal historic preservation officer, as provided in 36 C.F.R. § 800.16(w), means the Tribal official appointed by the *Indian Tribe's* chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the *state historic preservation officer* for purposes of Section 106 compliance on *Tribal lands* in accordance with Section 101(d)(2) of the National Historic Preservation Act.

Tribal lands, as provided in 36 C.F.R. § 800.16(x), means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking, as provided in 36 C.F.R. § 800.16(y), means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a *federal agency*, including those carried out by or on behalf of a *federal agency*; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.

Zero emissions building means a building that is highly energy efficient, does not emit greenhouse gases directly from energy use, and is powered solely by clean energy, as further defined in the National Definition of a Zero Emissions Building.

APPENDIX A-1: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW

1. Site Work

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

- a. *Rehabilitation*, *replacement*, *installation*, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*:
 - i. Concrete and asphalt ground surfaces such as streets, parking areas, driveways, and walkways, including repaving, restriping, replacing such surfaces with *permeable ground surface materials*, and reducing surface size, but not changing vertical alignment or expanding surface size.
 - ii. Park, playground, and sports equipment such as platforms, guardrails, handrails, climbers, ramps, stairways, ladders, balance beams, fitness equipment, rings, rolls, unmechanized merry-go-rounds, seesaws, slides, swings, benches, netting, basketball hoops, drinking fountains, and *ground surface materials*, but not *buildings*.
 - iii. Fencing, but not *replacement* or removal of fencing that is a *character-defining feature* of a *historic property*.
 - iv. Wayfinding, address, and identification signage.
 - v. Lighting, such as *building*-mounted lighting and freestanding lighting in parking areas, along driveways or walkways, or in park and playground areas, and including relamping and rewiring, but not including *replacement* or removal of lighting that is a *character-defining feature* of a *historic property*.
 - vi. Water feature, such as decorative fountains, including replumbing, but not *replacement* or removal of a water feature that is a *character-defining feature* of a *historic property*.
 - vii. Curb, gutter, steps, ramp, and retaining wall, but not a retaining wall that is a *character-defining feature* of a *historic property*.
- b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.
- c. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of grass, shrubs, and other plants, and xeriscaping.
 - iii. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.
 - iv. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.

- v. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
- vi. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.
- d. *Maintenance*, *repair*, *rehabilitation*, *replacement*, and removal of the following elements serving *housing*, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, or other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Vault toilets.
- e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact *ground surface materials* 45 years or older or known *historic properties*.
- f. *Installation* and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on or near the exterior of *housing*:

a. Rehabilitation, replacement, and installation of the following elements: on a building less than 45 years old and not known determined after a records check to be a non-historic property; or on a building the federal agency or another federal agency has determined to not be a historic property within the preceding ten years; or on the non primary façade of a historic building or on the non-primary façade of a building whose eligibility for inclusion in the National Register is not known and in a location not otherwise visible from the primary right of way:

- $i.\ Doors, including\ insulated\ exterior\ doors\ and\ basement\ bulkhead\ doors.$
- ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings or window louvers.
- iii. Canopies, awnings, and solar shades.
- iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs on flat roofs; and green, sod, or grass roofs on flat roofs.
- v. Improvements that address the requirements of the Americans with Disabilities Act, such as ramps and railings.
- vi. Mechanical systems and fire alarm, fire suppression, and security systems and equipment.

Commented [BM9]: The program comment should address the disposal of elements that are removed. Once the original windows, doors, siding, roofing, etc. are removed, if they are all thrown into a landfill, that undermines the environmental goals of this exemption.

Commented [BM10]: Although we are comfortable with this broad exemption as applied to non-historic buildings, the National Trust does not support its application to historic buildings, since the adverse effects could risk the loss of National Register eligibility.

- vii. Solar energy systems.
- viii. Elevator systems.
- ix. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
- x. Foundations and seismic and structural *repairs*, with *ground disturbance* limited to areas within 10 feet of the *building*.
- xi. Chimneys.
- xii. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, or frieze board vents.
- xiii. Siding.
- xiv. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement activities on any building, including:
 - i. *Maintenance*, *repair*, and *in-kind replacement* of any element listed in Section 2.a. of this Appendix.
 - ii. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
 - iii. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.
 - iv. Removal of exterior paint or graffiti using non-destructive means, limited to hand scraping, low-pressure water wash of less than 500 psi, heat plates, hot air guns, and chemical paint removal.
- c. Maintenance, repair, rehabilitation, replacement, installation and removal of any of the following elements on or near a building, provided that such activity exclusively affects previously disturbed ground or creates no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Foundation vents, if painted or finished to match the existing foundation material.
 - iv. Green infrastructure.
 - v. Gray water systems.
- d. Paint on previously painted exterior surfaces.

- e. Rehabilitation, replacement, and installation of clean energy technologies, provided that:
 - i. Such technology is located either outside the boundaries of a *historic district*, or on the non-primary façade side of <u>non-historic housing</u>, or in a location not otherwise visible from the *primary right-of-way*; and is located on the same lot as or on an adjacent lot to that *housing*, or in the case of a *community solar system*, in a lot within two blocks or two thousand feet (whichever is longer) of the *housing* served;
 - ii. Such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*;
 - iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted *solar energy system* may be visible from the *primary right-of-way* if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.
- f. Maintenance, repair, or in-kind replacement of clean energy technologies.
- g. Abatement of hazardous materials where effects of the abatement are reversible or temporary or not visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of historic housing or housing whose eligibility for inclusion in the National Register is not known; or windows 45 years or older.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of *housing*, and do not result in physical changes visible from the *primary right-of-way*:

- a. Maintenance, repair, rehabilitation, replacement, and installation, and abatement of hazardous materials, that take place entirely within the interior of the housing and: in an individual housing unit; in any interior location of housing less than 45 years old and not known after a records check not to be a historic property; on housing the federal agency or another federal agency has determined to be not a historic property within the preceding ten years; or in any interior space within historic housing that is not a primary space. Example activities covered by this Section 3.a. include: removal, alteration (including of width, height, and location), and construction of interior walls; alteration of floors and flooring (including of material, pattern, and texture); alteration of ceilings (including of material, lighting, and height); installation of mechanical systems and fire alarm, fire suppression, and security systems and equipment; insulation and air sealing; removal and installation of equipment and fixtures (including bathroom, kitchen, and lighting equipment and fixtures); replacement and refurbishment of elevator cabs, system-wide upgrades to elevator mechanical systems, installation of building energy control systems; and installation of coderequired signage; removal, alteration, and construction of stairs; cosmetic improvements; and improvements to address the requirements of the Americans with Disabilities Act.
- b. Rehabilitation, replacement and installation of any of the following elements, in any location other than the locations identified in Section 3.a. of this Appendix, if such activity does not result

Commented [BM11]: This needs to be italicized.

in physical changes visible from the *primary right-of-way* and has no visual *effect* on the *primary spaces* of historic *housing*:

- i. *Mechanical systems*, including but not limited to heating, ventilating, and cooling components such as heat pumps, electric furnaces and boilers, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, ventilation systems, and refrigeration lines; and fire alarm, fire suppression, and security systems and equipment.
- ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
- iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.
- iv. Electronic ignition devices.
- v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.
- vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.
- vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- viii. Building energy control systems.
- ix. EnergyStar (or similarly rated) appliances.
- x. Battery energy storage systems.
- xi. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where approved by a *qualified professional*, and where such insulation can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
- xii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials* and can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
- xiii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- c. *Maintenance*, *repair*, and *in-kind replacement* of any of the elements listed in Section 3.b., any *building* element, any improvement that addresses the requirements of the Americans with Disabilities Act, and any cosmetic or decorative features of the *housing*.
- d. *Maintenance*, *repair*, *in-kind replacement*, and *rehabilitation* of a skylight, atrium, courtyard, or lightwell; and *installation* of a new skylight, atrium, courtyard, or lightwell that will not be visible

Commented [BM12]: These projects are technically complex and require the expertise of a historical architect. For example, insulating masonry walls is very challenging due to potential moisture issues. We recommend further guidance be included or this provision be removed.

from the *primary right-of-way* and will not result in interior reconfigurations to *primary spaces* or removal of *historic building materials* in *primary spaces*.

e. Abatement of hazardous materials where effects of the abatement are reversible or temporary or not visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of historic housing or housing whose eligibility for inclusion in the National Register is not known; or windows 45 years or older.

4. Emergency Work

The following activities related to the exterior or interior of any historic *housing* do not require further Section 106 review when such work relates to an *emergency situation* and takes place within 30 *days* of the occurrence of the *emergency situation* and otherwise complies with 36 C.F.R. § 800.12:

- a. Temporary stabilization that causes no permanent damage to historic *housing* or any other *historic property*, including *installation* of temporary bracing, shoring and tarps.
- b. Emergency repair of masonry, concrete, or building façade cracks or falling elements.
- c. Emergency *repair* of falling plaster or other elements that pose an immediate and imminent health and safety hazard.
- d. Abatement of hazardous materials required to address an emergency situation.
- e. Replacement and demolition of a deteriorated or damaged mobile or manufactured home.

5. Other Activities

The following activities do not require Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of *housing*.
- b. Feasibility studies related to energy efficiency improvements, *electrification*, improvements incorporating *clean energy technologies*, and other topics relating to *building* energy use.
- c. Leasing, refinancing, acquisition, or purchase by the *federal agency* of *housing*, provided that any changes in use or access, or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- d. Transfer, lease, or sale of a federal government-owned *housing* from one *federal agency* to another *federal agency*, provided that any changes in use or access, or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- e. Transfer, lease, or sale out of federal ownership or out of federal control of historic *housing*, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed

covenant) as determined by the relevant State Historic Preservation Officer to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).

f. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

Commented [BM13]: We are not comfortable with this determination being made unilaterally by the federal agency or the applicant, since Section 106 consultation often results in revisions to strengthen proposed easement or covenant language. SHPOs occasionally hold these types of easements themselves.

APPENDIX A-2: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1 Site Work

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

- a. *Replacement*, *installation*, or removal of any of the following elements which are either less than 45 years old and create new *ground disturbance* in previously undisturbed soils, or 45 years or older; if a *qualified professional authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*; or if the *area of potential effects* has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with *Indian Tribes* and *Native Hawaiian Organizations* without such survey or consultation identifying any *historic properties*:
 - i. Any of the elements listed in Sections 1.a. and 1.d. of Appendix A-1, including *character-defining features* of such elements.
 - ii. Test borings, soil sampling, well drilling, or perc tests more than eight inches in diameter, or that impact *ground surface materials* 45 years or older or known *historic properties*.
- b. Planting of a new tree 40 feet or more from a building or replacement or installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building, if a qualified authority has made a written determination that such planting will have no adverse effects on any historic property.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of *housing*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, and installation of the following elements on the exterior of: buildings 45 years or older if a qualified professional authority determines that the building is not a historic property; or buildings 45 years or older determined by a qualified authority to be a historic property, if a qualified professional makes a written determination that such installation or replacement will have no or minimal adverse effects on any character defining feature of a historic building:
 - i. Any of the elements listed in Section 2.a. of Appendix A-1, including elements in locations other than those identified in that Section.
- b. Rehabilitation, replacement, or installation of any of the following elements on, or in the case of clean energy technologies near (as further provided below), a building, which create new ground disturbance on previously undisturbed ground, if a qualified professional authority makes a written determination that such activities will have no adverse effects on any historic property:
 - i. Any of the elements listed in Section 2.c. of Appendix A-1, including elements in locations other than those identified in that Section.

- ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix A-1.
- c. Replacement of exterior historic building materials of historic housing with in-kind or substitute building materials after the federal agency, with the assistance-written approval and documentation of from a qualified-professional authority, conducts the following selection procedure:
 - i. Characterize existing *historic building materials* in terms of condition, design, material properties, performance (including insulation and air sealing value), safety, and presence of hazards such as lead-based paint, asbestos, or other *hazardous materials*;
 - ii. Next, determine, based on an evaluation of technical feasibility and economic feasibility, if historic building materials can be repaired or if they must be replaced;
 - iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical feasibility and economic feasibility;
 - iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute *building* material;

provided, however, that a *federal agency* may only utilize this selection procedure if such *replacement* or demolition does not create *ground disturbance*, creates *ground disturbance* exclusively on *previously disturbed ground*, or, in the opinion of a *qualified-authority professional*, has no *adverse effects* on any *historic property*.

d. The *abatement* of *hazardous materials*, where such activity is irreversible or permanent or will be visible from the *primary right-of-way*, create new *ground disturbance*, or result in the permanent removal or *replacement* of: windows on the primary façade of a historic *building* or a *building* whose eligibility for inclusion in the National Register is not known; or windows 45 years or older, if a *qualified professional authority*—makes a written determination that such activity will have no *adverse effects* on any *historic property*.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of *housing*, after the satisfaction of the identified conditions, exclusions, and requirements:

a. In addition to those activities listed in Section 3 of Appendix A-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such activity results in physical changes to a historic building visible from the primary right-of-way or has a visual effect on the primary spaces of a historic building, if a qualified professional authority—makes a written determination that such activity has no adverse effects on any historic property.

APPENDIX B-1: CLIMATE-SMART BUILDING-RELATED ACTIVITES NOT REQUIRING FURTHER REVIEW

1. Site Work

The following activities do not require further Section 106 review when they are conducted in areas adjacent to a *building* or on the same lot as a *building*, and when conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*:

a. Rehabilitation, replacement, installation, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance, and not including replacement or removal of any element that is a character-defining feature of a historic property:

i. Fencing.

- ii. Lighting, such as *building*-mounted lighting and freestanding lighting in parking areas, along driveways and walkways, in park and playground areas, and in other areas, and including relamping and rewiring.
- iii. Water feature, such as decorative fountains, including replumbing.
- iv. Curb, gutter, steps, ramp, and retaining wall.
- b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.
- c. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of any of the following that are native, naturalized, drought-adapted, drought-resistant, drought-tolerant, water-wise, or xeric: grass, shrubs, and other plants; and xeriscaping.
 - iv. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.
 - v. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
 - vi. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
 - vii. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.
 - viii. Removal of concrete or asphalt ground surfaces or *replacement* of such surfaces with *permeable ground surface materials*.
 - ix. The following activities conducted to address fire threats within 200 feet of a *building* or auxiliary structure:

- a. Disposal of heavy accumulations of ground litter and debris.
- b. Removal of small conifers growing between mature trees, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*.
- d. *Maintenance*, *repair*, *rehabilitation*, *replacement* and removal of the following elements, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Vault toilets.
- e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact *ground surface materials* 45 years or older or known historic properties.
- f. *Installation* and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when they are conducted on or near the exterior of a *building* and when they are conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building*, or to enhance the *climate resilience* of the *building*:

- a. *Rehabilitation*, *replacement*, and *installation* of any of the following elements: on a *building* less than 45 years old and not known after a *records check* to be a *historic property*; on a *building* the *federal agency* or another *federal agency* has determined to not be a *historic property* within the preceding ten years; or on the non-*primary façade* of a historic *building* or on the non-*primary façade* of a *building* whose eligibility for inclusion in the National Register is not known and in a location not otherwise visible from the *primary right-of-way*:
 - i. Doors, including insulated exterior doors.
 - ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings, and window louvers.
 - iii. Canopies, awnings, and solar shades.
 - iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs; and green, sod, or grass roofs.
 - v. Mechanical systems and fire alarm, fire suppression, and security systems and equipment.
 - vi. Solar energy systems.

- vii. Elevator systems.
- viii. Chimneys.
- ix. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, and frieze board vents.
- x. Siding.
- xi. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement of the following elements on, or in the case of clean energy technologies near (as further provided below), any building:
 - i. Any element listed in Section 2.a. of this Appendix.
 - ii. Clean energy technologies.
 - iii. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
 - iv. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.
- c. *Maintenance*, *repair*, *rehabilitation*, *replacement*, *installation*, and removal of any of the following elements on or near a *building*, provided that such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Foundation vents, if painted or finished to match the existing foundation material.
 - iv. Green infrastructure.
 - v. Gray water systems.
- d. Paint on previously painted exterior surfaces.
- e. Rehabilitation, replacement, and installation of clean energy technologies, provided that:
 - i. Such technology is located either outside the boundaries of a *historic district*, or on the non-primary façade side of a historic *building*, or in a location not otherwise visible from the *primary right-of-way*; and is located on the same lot as or on an adjacent lot to that *building* or *buildings*, or in the case of a *community solar system*, in a lot within two blocks or two thousand feet (whichever is longer) of the *building* or *buildings* served;
 - ii. Such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*;

iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted *solar energy system* may be visible from the *primary right-of-way* if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when they are conducted in the interior of a *building* and when they are conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building*, or to enhance the *climate resilience* of the *building*:

- a. Maintenance, repair, rehabilitation, replacement, and installation of any of the following elements:
 - i. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where such insulation can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
 - ii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials*, and can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
 - iii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- b. *Maintenance*, *repair*, *rehabilitation*, *replacement* and *installation* of any of the following elements, if such activity does not result in physical changes visible from the *primary right-of-way*, and has no visual *effect* on the *primary spaces* of a historic *building*:
 - i. *Mechanical systems*, including but not limited to heating, ventilating, and cooling components such as furnaces, heat pumps, electric furnaces, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, heat pumps, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, and refrigeration lines.
 - ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
 - iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.
 - iv. Electronic ignition devices.
 - v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.
 - vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.

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- vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- viii. Building energy control systems.
- ix. EnergyStar (or similarly rated) appliances.
- x. Battery energy storage systems.

4. Other Activities

The following activities do not require Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of *buildings*.
- b. Feasibility studies related to energy efficiency improvements, *electrification*, improvements incorporating *clean energy technologies*, and other topics relating to *building* energy use.
- c. Leasing, refinancing, acquisition, or purchase by the *federal agency* of energy efficiency, *electrification*, and *clean energy technologies*, provided that any changes in use or any physical activities related to the *maintenance*, *repair*, *rehabilitation*, *replacement*, or *installation* of such technologies must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- d. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

APPENDIX B-2: CLIMATE-SMART BUILDING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1. Site Work

The following activities do not require further Section 106 review when conducted in areas adjacent to a *building* or on the same lot as a *building*, and when conducted primarily to *reduce energy use or greenhouse* gas emissions of the *building* or to enhance *climate resilience* of the *building*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. *Rehabilitation*, *replacement*, *installation*, and removal of any of the following elements which are either less than 45 years old and create new *ground disturbance* in previously undisturbed soils, or 45 years or older, if a *qualified profesional authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*; or if the *area of potential effects* has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with *Indian Tribes* and *Native Hawaiian* organizations without such survey or consultation identifying any *historic properties*
 - i. Any element listed in Section 1.a. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
 - ii. Any element listed in Section 1.d. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
- b. Planting of a new tree 40 feet or more from a building, or replacement or installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building, if a qualified authority makes a written determination that such planting will have no adverse effects on any historic property.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of a *building*, and when conducted primarily to *reduce energy use or greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, and installation of the following elements visible from the primary right-of-way and on the exterior of: buildings 45 years or older if a qualified professional determines that the building is not a historic property; or buildings 45 years or older determined by a qualified professional to be a historic property, if a qualified professional makes a written determination that such installation or replacement will have no or minimal adverse effects on any character-defining feature of a historic building; provided, however, that an analysis of adverse effects must consider technical feasibility and economic feasibility, including long-term operational costs and climate resilience of the building upon which elements are installed or replaced:
 - i. Any element listed in Section 2.a. of Appendix B-1, unrestricted by any limiting conditions found in such Section.
- b. Rehabilitation, replacement, or installation of any of the following elements on or near a building, which create new ground disturbance on previously undisturbed ground, if a qualified

authority makes a written determination that such activities will have no adverse effects on any historic property:

- i. Any of the elements listed in Section 2.c. of Appendix B-1.
- ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix B-1.
- c. Replacement of historic building materials of historic housing with in-kind or substitute building materials to improve energy efficiency after the federal agency, with the assistance of a qualified professional as needed, conducts the following selection procedure:
 - i. Characterize existing *historic building materials* in terms of condition, design, material properties, performance, safety, and presence of hazards such as lead-based paint, asbestos, or other *hazardous materials*;
 - ii. Next, determine, based on an evaluation of *technical feasibility* and *economic feasibility*, if *historic building materials* can be *repaired* or if they must be replaced;
 - iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical feasibility and economic feasibility;
 - iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute *building* material;

provided, however, that a *federal agency* may only utilize this selection procedure if such *replacement* or demolition does not create *ground disturbance*, exclusively affects *previously disturbed ground*, or, in the opinion of a *qualified authority*, has no *adverse effects* on any *historic property*.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of a building, and when conducted primarily to reduce energy use or greenhouse gas emissions of the building or to enhance climate resilience of the building, after the satisfaction of the identified conditions, exclusions, or requirements:

a. In addition to those activities listed in Section 3 of Appendix B-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such activity results in physical changes to a historic building visible from the primary right-of-way or has a visual effect on the primary spaces of a historic building, if a qualified professional authority makes a written determination that such activity will have no adverse effects on any historic property.

APPENDIX C-1: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITES NOT REQUIRING FURTHER REVIEW

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials, and they are located entirely within the previously disturbed right of way:

a. Maintenance, repair, rehabilitation, replacement, and installation of the following elements when used for or incorporated into pedestrian, bicycle, micromobility vehicle, or transit infrastructure:

i. Ground surface material, including installation of slurry seals, overlays, and seal coatings; sealing and repairing cracks; milling and re-paving; repair of potholes; and restoration after utility installation.

ii. Curb.

iii. Sidewalk.

iv. Bulb out.

v. Ramp.

vi. Crosswalk, including a raised crosswalk across a roadway and a raised intersection.

vii. Mark on the ground surface for visibility and delineation, including striping for bicycle lanes, thermoplastic striping and paint, painted sidewalk extensions, sidewalk stencils, bicycle parking, micromobility parking, and paint in zones of potential conflict between bicyclists and motor vehicle drivers.

viii. Detectable warning on or before a curb, entry point, crosswalk, or accessible facility.

ix. Island, including a pedestrian island to reduce crossing distance or improve visibility, and a corner island to separate bicycles from motor vehicles or enable a protected bicycle queuing area or motor vehicle waiting zone.

b. Maintenance, repair, rehabilitation, replacement, and installation of the following ground surface materials and elements:

 ${\bf i.}\ High\ friction\ surface\ treatment.$

ii. Cool pavement.

iii. Permeable ground surface materials.

iv. Rumble strip.

vii. Traffic calming device, such as speed hump, speed table, raised crosswalk, and raised intersections.

c. Elevation of no more than 10 inches of the existing ground surface to maintain, create, or connect pathways for pedestrians, bicyclists, or *micromobility vehicle* users, or to facilitate boarding and disembarking at *transit* facilities.

Commented [BM14]: We recommend removing this entire section on transportation-related projects. Since the vast majority of states have existing PAs that cover transportation projects and seem to be working well, a more careful analysis is warranted to identify gaps or problems that have arisen, and to develop a more carefully tailored program alternative to address those specific problems.

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2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials or historic building materials, they are located entirely within the previously disturbed right of way, and they follow the specifications of a recognized design manual (if and to the extent covered in any such manual):

a. Maintenance, repair, rehabilitation, replacement, and installation of the following elements when used for or incorporated into pedestrian, bicycle, micromobility vehicle, or transit infrastructure:

- i. Bicycle rack.
- ii. Micromobility parking corral.
- iii. Bicycle rail or wheel stop no taller than 6 inches.
- iv. Flex post no taller than 36 inches and no larger in circumference than 22 inches.
- v. Bollard no taller than 48 inches and no larger in diameter than 12 inches.
- vi. Concrete or stone block no taller than 24 inches and no wider than 6 inches, to protect bicycle parking or micromobility parking or to delineate a pedestrian pathway.
- vii. Sign, signal, traffic control device, and signalization, including any such elements that address the requirements of the Americans with Disabilities Act.
- viii. Ticket dispensing structure, fee collection structure, interpretive wayside exhibit structure, and single post metal or wooden sign 5 feet or less in height and 2 square feet or less in cross-section area, not including provisions for solar power.
- ix. Camera, intelligent transportation systems, and other technological equipment limiting, removing, or identifying unauthorized traffic from pathways dedicated to walking, biking, micromobility vehicle use, or transit
- x. Temporary construction fencing, but not grading, creating a soil borrow pit, or other significant excavation.
- b. Maintenance, repair, rehabilitation, replacement, and installation of street furniture, including the following elements, provided that such activity does not result in the removal of historic street furniture:
 - i. Bench.
 - ii. Table.
 - iii. Freestanding planter.
 - iv. Street light.
 - v. Shelter for *transit* users with a combined dimension (length plus width plus height) less than 30 linear feet and with advertising space no greater than 24 square feet visible at any one time; and *maintenance*, *repair*, and *in kind replacement* of any other such shelter.

- e. Maintenance, repair, rehabilitation, and in kind replacement of the following elements:
 - i. Catenary system.
 - ii. Tracks, including ballasts and ties.
 - iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, tolling, monitoring of motor vehicle traffic, or security purposes.

3. Work Relating to Vegetation and Landscapes

The following activities occurring within the same right of way or on the same lot as climate friendly transportation infrastructure do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials, and further provided that they exclusively affect previously disturbed ground or create no new ground disturbance:

- a. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, shrubs, other plants, and trees.
 - ii. Planting of any of the following that are native, naturalized, drought adapted, drought-resistant, drought-tolerant, water-wise, or xerie: grass, shrubs, and other plants; and xeriscaping.
 - iii. Replacement of a tree in its existing location and planting of a new tree on, along, or within a street that already has street trees.
 - iv. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
 - v. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a character defining feature of a historic property.
- b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure or landscaping to delineate pedestrian pathways or bicycle lanes, provided such green infrastructure or landscaping follows the specifications of a recognized design manual (if and to the extent covered in any such manual).

4. Work on Bridges

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

- Maintenance, repair, rehabilitation, and in kind replacement of drains, joints, joint seals, concrete decks, parapet, rail, concrete, steel elements, bearings, retaining walls, and bridge machinery.
- b. Cleaning and washing.

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- c. Conducting electrochemical extraction and cathodic protection.
- d. Mitigating cracks, including pin and hanger replacement and other retrofits.
- e. Implementing countermeasures against scour.

5. Other Activities

The following activities do not require Section 106 review:

- a. Leasing, refinancing, acquisition, or purchase by the federal agency of:
 - i. A railway right of way for the maintenance, development, or expansion of either rail to-trail pathways or passenger rail service;
 - ii. A transit oriented development building; or
 - iii. Fleets of bieyeles, hybrid or electric vehicles, or electric locomotives,

provided that any physical activities related to such properties must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

- b. Transfer, lease, or sale of a federal government owned climate friendly transportation facility or transit-oriented development building from one federal agency to another federal agency, provided that any changes in use or any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such facility must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives:
- c. Transfer, lease, or sale out of federal ownership or out of federal control of a historic climate-friendly transportation facility or transit oriented development building, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed covenant) to ensure long term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).
- d. A decision to limit motor vehicle access to, through, or on streets that remain available for walking, bicycling, micromobility vehicle, or transit uses, including "play streets," "sehool streets," "safe route to school" streets, or "open streets," provided that any physical activities related to such decisions, including but not limited to the maintenance, repair, rehabilitation, replacement, or installation of streets for the purpose of limiting motor vehicle access, must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- e. Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment satisfying the EVSE criteria.

APPENDIX C-2: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

The following activities do not require further Section 106 review after the satisfaction of the identified conditions, exclusions, or requirements:

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property:

a. Elevation of the existing ground surface by more than 10 inches, or that will result in the demolition or removal of potentially historic ground surface materials: to maintain, create, or connect pathways for pedestrians, bicyclists, or micromobility vehicle users, or to facilitate boarding and disembarking at transit facilities.

2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

a. Any activities listed in Section 2.a. of Appendix C-1 that will result in the demolition or removal of potentially historic ground surface materials or historic building materials, or create new ground disturbance in previously undisturbed soils, or result in the removal of historic street furniture.

b. Rehabilitation, replacement, and installation of a shelter for transit users with a combined dimension (length plus width plus height) 30 linear feet or more, or with advertising space more than 24 square feet visible at any one time.

e. Installation of the following new elements that will result in the demolition or removal of potentially historic ground surface materials or historic building materials or that create new ground disturbance in previously undisturbed soils:

i. Catenary system.

ii. Tracks, including ballasts and ties.

iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, to monitor motor vehicle traffic, or for security purposes.

3. Work Relating to Vegetation and Landscapes

The following activities do not require further Section 106 review, even if they create new ground disturbance in previously undisturbed soils, if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property:

a. Planting of a new tree on, along, or within a street that has not previously had street trees, or in other locations where such planting is intended to improve the experience for pedestrians, bicyclists, micromobility vehicle users, or transit users.

b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure and landscaping related to pedestrian pathway or bicycle lane delineation that will result in the

Commented [BM15]: We recommend removing this entire section on transportation-related projects. Since the vast majority of states have existing PAs that cover transportation projects and seem to be working well, a more careful analysis is warranted to identify gaps or problems that have arisen, and to develop a more carefully tailored program alternative to address those specific problems.

DRAFT FOR PUBLIC COMMENT - DATED 8/8/2024

demolition or removal of potentially historic ground surface materials or will create new ground disturbance.

4. Work on Bridges

The following activities do not require further Section 106 review, even if they create new ground disturbance in previously undisturbed soils, if a qualified authority makes a written determination that such activity will have no adverse effects on any historic property:

a. Activities listed in Section 4 of Appendix C-1 and conducted on historic bridges.

b. Rehabilitation, replacement, or installation of a bridge built to serve pedestrian, bicycle, micromobility vehicle, or transit use.

APPENDIX D: FORMAT FOR AUTHORIZATION BY AN INDIAN TRIBE FOR USE OF THIS PROGRAM COMMENT ON ITS TRIBAL LANDS

On behalf of [NAME OF INDIAN TRIBE] and as a duly authorized representative of such Tribe, I authorize federal agencies to utilize the Program Comment on Housing on the Tribal Lands of the [NAME OF INDIAN TRIBE]. This authorization is in effect until the withdrawal or termination of the Program Comment or on the date of receipt by the Executive Director of the Advisory Council on Historic Preservation that [NAME OF INDIAN TRIBE] has rescinded its authorization, which it may do at any time.

For further information, please contact: [Tribal Contact; Name and Contact Information].

Signed by:
[6]
[Signature]
Name:
Title:
Date:
Acknowledged and accepted by the ACHP:
[Signature – leave blank]
Name:
Title:
Date:





October 9, 2024

Advisory Council on Historic Preservation Sarah Bronin, Chair 401 F Street NW, Suite 308 Washington, DC 20001

Dear Chair Bronin:

We appreciate the opportunity to comment on the draft Program Comment on Accessible, Climate-Resilient and Connected Communities. On behalf of the undersigned New York-based preservation nonprofit organizations, the Preservation Colleagues network, we respectfully submit the following comments.

We recognize the need to streamline the Section 106 consultation process in certain areas and appreciate that the ACHP is focusing on housing and climate. As preservation organizations, we advocate for affordable housing projects, climate resilience and sustainability in the built environment, and transportation alternatives. It is imperative that the preservation movement promote these efforts and communicate the essential role that preservation plays in advancing more resilient and equitable communities.

However, we are concerned that the draft Program Comment is too broad in scope and places too much responsibility on federal agencies and/or their consultants to review their own undertakings. As such, it runs counter to the intent of the National Historic Preservation Act and risks irreparably harming the nation's historic resources. Specific comments are as follows:

- We support streamlining the Section 106 process and agree that many of the project types
 included in the Program Comment are sensible. Projects that are unlikely to impact historic
 resources—such as electrifying appliances, replacing non-historic playground equipment,
 or replacing asphalt surfacing, to name a few—should indeed be exempted from the
 standard Section 106 review process.
- For projects with potential adverse effects, we do not support removing SHPO (and other consulting parties) from the Section 106 process. Federal agencies should not be given full decision-making power over their own projects. Many of the project types in the Program Comment require nuanced consideration by an experienced preservation professional (or a person recognized by the relevant Indian Tribe or Native Hawaiian Organization to have expertise, where appropriate). SHPO staff provide objective assessment and have extensive experience reviewing potential impacts and applying the SOI Standards. For many project types, they are best suited—alongside design professionals and project sponsors— to explore creative solutions that accomplish the dual goals of preserving character defining features while also providing affordable housing and/or advancing climate goals.
- We want to see a re-evaluation of project types that would be covered by the Program
 Comment, in consultation with SHPO staff. Of particular concern is the exemption of
 building exteriors, including windows, doors, and the use of substitute materials. Both

- primary and secondary elevations should remain subject to the standard Section 106 process.
- We recommend a revision to the definition of housing to support the preservation and production of affordable housing. The current definition makes no mention of affordability; presumably the Program Comment could apply to any undertaking that involves housing, regardless of ownership or affordability.
- The lack of notification requirements is concerning and could result in the intentional or unintentional loss of historic resources and/or character defining features that have not yet been identified in surveys or listed in the National Register. This could disproportionately impact historically marginalized communities, which are generally less well documented.
- We also want to see a shorter initial duration of the Program Comment and do not support unilateral extension of the duration by the Chair.
- We strongly recommend more robust reporting requirements, including an annual report
 from participating federal agencies of <u>all</u> undertakings covered by the Program Comment,
 particularly in the first years that the Program Comment is in effect. Reporting should
 include in-depth evaluation by ACHP with input from preservation partners such as SHPOs
 and nonprofit preservation organizations.
- Overall, we are concerned that the broad scope of this Program Comment sends the
 message that preservation is an obstacle to affordable housing and climate solutions.
 Modern preservation best practices actively promote both. Often, the treatment that meets
 the SOI Standards is, in the long term, the more economical and sustainable treatment and
 provides building occupants with an enhanced quality of life.

While we support streamlining the Section 106 process in principle and support many of the exemptions included in the Program Comment, we do not believe that the current draft achieves an equitable balance between streamlining review processes, protecting historic resources, and providing public input in federal undertakings. Thank you for your consideration.

Sincerely,

Adirondack Architectural Heritage, Erin Tobin, Executive Director
Friends of the Upper East Side Historic Districts, Nuha Ansari, Executive Director
Historic Albany Foundation, Pamela Howard, Executive Director
Historic Districts Council, Frampton Tolbert, Executive Director
Historic Ithaca, Susan Holland, Executive Director
Landmark Society of Western New York, Wayne Goodman, Executive Director
New York Landmarks Conservancy, Peg Breen, President
Preservation Association of Central New York, Nicole M. Fragnito, Executive Director
Preservation Buffalo Niagara, Bernice Radle, Executive Director
Preservation League of New York State, Jay DiLorenzo, President
Preservation Long Island, Tara Cubie, Preservation Director
Saratoga Springs Preservation Foundation, Samantha Bosshart, Executive Director
TAP Inc., Barb Nelson, AIA, Executive Director
Village Preservation, Andrew Berman, Executive Director



opennewyork.org

October 3, 2024

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

Re: Advisory Council for Historic Preservation's accessible, climate-resilient, and connected communities program comment

Dear Chair Bronin,

My name is Annemarie Gray, and I am the Executive Director of Open New York, the State's leading grassroots advocacy organization fighting for fairer and more abundant housing in New York. On behalf of Open New York's nearly 600 dues-paying members, I respectfully submit this comment on the Advisory Council for Historic Preservation's accessible, climate-resilient, and connected communities program comment.

In order to get out of our nationwide housing supply shortage, we will need actors at every level of government to make it easier and quicker to create new homes. Open New York is thrilled to see that the Advisory Council on Historic Preservation is centering these goals in publishing its new program comment. By providing an alternative and faster process for federal agencies to meet their Section 106 obligations for a tailored list of projects, private and public actors will be able to create more homes in more places at reduced costs.

By promoting energy-efficient and climate-resilient housing, the initiative reduces the operational costs of new and rehabilitated homes and will contribute to creating sustainable, affordable housing, benefiting both the environment and lower-income residents. Opening up more historic buildings and encouraging adaptive reuse is also a great, climate-friendly way to bring more homes to more communities. Lastly, the changes will support transportation projects that will allow residents to live greener, more climate-friendly lives.

In summary, Open New York supports the new program comment as it will foster faster, more efficient, and sustainable housing production while balancing the need to preserve historic properties and be one step, of many, towards getting us out of the housing supply shortage that we find ourselves in. This form of streamlining is critical and should be considered for additional activities concerning infill development in the future.

Sincerely,

Annemarie Gray Executive Director

Open New York



8013 Bellona Ave, Riderwood, MD 21204 410-832-1812 www.preservationabc.org

To: Advisory Council on Historic Preservation Members:

October, 8th, 2024

Preservation Alliance of Baltimore County is Baltimore County's (Preservation Alliance) (previously known as the Baltimore County Historical Trust) non-profit organization, established in the 1970s & incorporated in 1981, dedicated to preserving our county's historic buildings, sites, communities, & landscapes.

As a consulting party to Maryland State & federally funded projects in Baltimore County, we are very troubled with the propose Program Comment on Accessible, Climate-Resilient, and Connected Communities. Not only are historic buildings already the greenest buildings that exist, but historic preservation is one of the hardest sells in America. We need historic preservation organizations & agencies to stand up for their purported missions & stand-up for preservation first, not water-down, & even further gut, the already too few protections for our irreplaceable historic buildings. Preservation Alliance therefore concurs with The National Conference of State Historic Preservation Officers' (NCSHPO) statement that the" proposed Program Comment should seek to harmonize, not subvert historic preservation, with other policy goals."

Preservation Alliance also concurs with NCSHPO's observations that "the proposed changes would be confusing, & potentially detrimental in that the proposed Program Comment conflicts with local preservation ordinances and will frustrate project reviews,as well as with the Secretary of the Interior's Standards for rehabilitation tax credit programs." Not only are these potential changes challenging in themselves, national standards often serve as a role model as to how other preservations agencies & organizations create their preservation rules & regulations; potentially causing these local entities to water-down their own preservation standards, & justifying doing so due the potentially new Advisory Counsel guidelines.

Also problematic is that, under the proposed regulations, many historic buildings would lose their status & protections. The potential that newer historic buildings, those built between 1928-1978, would be automatically approved, without review or comment, for replacement windows & doors is not acceptable. This is especially troubling for pre-1950 buildings, which most often have architecturally & aesthetically significant, along with efficient & quality built, original windows & doors.

Omitting historic buildings that are not officially deemed as "historic" by governmental agencies is equally troubling. Unfortunately, many times historic buildings are not officially deemed "historic" by agencies for political reasons, especially from governmental & developer pressure. So these buildings would fall through the cracks a second time with this potential policy.

Your agency's attitude towards Interiors & "non-primary" exteriors is concerning, as historic buildings should be viewed as a whole, & all components are integral & important. Most people spend far more time inside buildings, than admiring them from the outside; not safeguarding historic interiors strips them of their soul & character. The integrity of historic buildings needs to be valued as a whole, not in parts; as kitsch & facadism.

Environmental protection is not about making more stuff, it is about protecting far more & consuming much less. To have an historic preservation agency advocating for the destruction of historic windows is very troubling, on the levels of historic integrity, & environmental protection. The most efficient windows are historic ones with either wooden storms or interior storms. Most new windows only last 10-25 years, while historic windows can last 100-200 years, or more (please see New Hampshire Preservation Alliance's excellent analysis on historic windows

https://www.nhpreservation.org/blog/why-preserving-your-old-wood-windows-is-an-energy-efficient-choice#:~:text=Wood%20windows%20are%20designed%20to,the%20need%20for%20full%20replacement.) Besides authenticity, destroying historic windows is horrible for the environment, as it adds to landfills, takes resources out of the environment to make news ones (greatly exasperating biodiversity loss) & spews more carbon in the production process, thereby escalating our climate crisis, * negating any potentially benefits.

We, at Preservation Alliance also support & concur with all the commentary by, & concerns of, the NCSHPO, along with those of the individual State Historic Preservation organizations, as attached to the NCSHPO commentary to the Advisory Council.

To reiterate, Historic Preservation should be viewed & appreciated as an important endeavor & end unto itself, not just a vehicle, as important as they may be, for other enterprises. It is the duty of all historic preservation agencies & organizations to uphold the significance of historic preservation, & its primary status in our landscape, & inherent role in environmental protection.

Sincerely,

Anne Gryczon,

Executive Director



October 9, 2024
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

To Whom it May Concern,

Thank you for the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. We are writing to express our support for the proposed Program Comment and its potential to help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings.

We write on behalf of The Pew Charitable Trusts, a global, non-governmental research and public policy organization dedicated to serving the public. The Pew Charitable Trusts' housing policy initiative studies ways that policymakers can increase housing availability and access to safe and affordable home financing. Specifically, Pew works to help policymakers reimagine their approach to housing by illuminating how public policy has helped create the housing shortage, which is the main driver of sharply rising costs. Strict zoning and land-use regulations have limited the availability of homes, especially lower-cost options such as apartments and townhouses, which could otherwise help meet the nation's housing demand.

For most Americans, housing is their largest regular expense, but an acute housing shortage of an estimated 4 million to 7 million homes and resulting increase in rents and home prices mean millions more households are struggling to afford housing than in the recent past. Furthermore, many metro areas in the U.S. have seen stark increases in levels of homelessness in recent years, driven primarily by fast-rising rents. Researchers have consistently found that homelessness is high in urban areas where rents are high, and homelessness rises when rents rise. Policymakers at all levels are looking at ways to help expand the housing supply and bring down costs.

¹ The Pew Charitable Trusts, "It's Time To Fix Housing In America: Start With Financing And Zoning," https://www.pewtrusts.org/en/about/news-room/opinion/2023/07/10/its-time-to-fix-housing-in-america-start-with-financing-and-zoning.

² The Pew Charitable Trusts, "How Housing Costs Drive Levels of Homelessness," https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness.



Pew has conducted research into the regulatory barriers that slow down housing development and increase the cost of housing. Procedural hurdles delay housing projects and increase costs due to extra expenses for building materials, construction staff, attorneys, consultants, and interest on borrowed funds. These higher costs are transferred to buyers and renters, leading to pricier housing in areas with restrictive zoning and lengthy approvals compared to places with flexible regulations.³

Across the country, laws are being passed to ease the barriers to home construction by cutting unnecessary environmental studies, allowing third-party permit reviews if jurisdictions are slow, limiting permit denials, and ensuring clear, predictable review processes. Pew's research shows that Americans overwhelmingly support such policies. In a nationally representative 2023 survey of more than 5,000 American adults about various law changes designed to improve the availability and affordability of housing, 86% of respondents favored requiring "local governments to use a quick and clear process for making decisions about building permits."

These reforms are yielding positive outcomes. Quicker approval times enhance housing supply and reduce development costs, aiding affordability. Minneapolis, for instance, implemented various zoning reforms from 2009 to 2021 and limits application reviews to 60 days for faster permitting. Consequently, the city has added significant new housing, keeping rent increases below 1% annually since 2017, while residents' incomes have grown much faster. This combination has notably improved housing affordability. In some cases, flat rents might deter new construction by reducing landlords' revenue expectations, but easier and quicker permitting and sustained demand for new homes has kept builders adding housing.

In keeping with the findings of our research, Pew supports the elements of the ACHP's proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities that would help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings. Rehabilitations ensure that older and historic homes meet contemporary needs. Meanwhile, converting nonresidential historic buildings into housing results in the creation of new homes. Enabling rehabilitations and conversions to be completed more quickly and streamlining required processes will help increase housing supply and reduce housing shortages more quickly.

The proposed Program Comment would promote the ongoing use of historic properties to address the nation's housing requirements. It addresses Section 106 review stipulations for housing-related activities such as routine maintenance and repair, interior renovations, mechanical upgrades, and environmental

³ The Pew Charitable Trusts, "Reforms Spur Faster Housing Approvals in California," https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2024/08/reforms-spur-faster-housing-approvals-in-california.

⁴ The Pew Charitable Trusts, "Survey Finds Large Majorities Favor Policies to Enable More Housing," https://www.pewtrusts.org/en/research-and-analysis/articles/2023/11/30/survey-finds-large-majorities-favor-policies-to-enable-more-housing.

⁵ The Pew Charitable Trusts, "Minneapolis Land Use Reforms Offer a Blueprint for Housing Affordability," https://www.pewtrusts.org/en/research-and-analysis/articles/2024/01/04/minneapolis-land-use-reforms-offer-a-blueprint-for-housing-affordability.



hazard remediation, thus helping to solve the nation's housing shortage. As noted by the ACHP, the proposed Program Comment could improve the economic and housing stability of many of the one million households across 190,000 public housing buildings under the Department of Housing and Urban Development, as well as those in housing supported by the Department of Defense, Department of Agriculture, and other federal agencies.

Pew is supportive of the proposed reforms that would address Section 106 review requirements. We would also encourage the ACHP to consider expanding the scope of the Program Comment to more fully support the production and rehabilitation of affordable, accessible, energy-efficient, and hazard-free housing while also promoting historic preservation. In particular, we would encourage the ACHP to evaluate the effects of: 1) expanding the exemption from further Section 106 review to the entirety of the interior of residential buildings (rather than limiting the Program Comment to individual housing units) and 2) applying similar conditions to buildings and elements that are greater than 45 years old as those that are applied to buildings and elements that are less than 45 years old.

Pew looks forward to engaging the council and other stakeholders on these issues in the coming months and years. Thank you again for the opportunity to comment and for your efforts to improve the quality and availability of housing for millions of Americans.

Sincerely,

Tushar Kansal

1 Kaul

Senior Officer, Housing Policy Initiative

The Pew Charitable Trusts

tkansal@pewtrusts.org | 202.540.6745



The Advisory Council on Historic Preservation Submitted to: program_alternatives@achp.gov

October 9, 2024

Re: Draft Program Comment on Accessible, Climate-Resilient, and

Connected Communities

Gentlepeople:

The Public Housing Authorities Directors Association (PHADA) is a membership organization that represents approximately 1,900 chief executive officers of local housing authorities. PHADA wishes to submit the following comments to the Advisory Council on Historic Preservation (the ACHP) in response to the council's announcement of a Draft Program Comment on Accessible, Climate-Resilient, And Connected Communities. The association submitted comments to the council on July 1, 2024, encouraging the council to consider the broadest reasonable array of improvement projects to exempt from Sectio 106 reviews or the use of a streamlined review process. The council would mitigate the financial and administrative burden involving public housing and other assisted properties managed by PHADA members and other public housing authorities (HAs).

PHADA is grateful for the range of activities the council has included as exempt from Section 106 reviews or subject to a streamlined review process. PHADA also appreciates the explicit inclusion of Americans with Disability Act activities and activities involving hazard abatement in the exclusions or subject to a streamlined review process.

The association understands that the council's program comment will govern federal agencies' fulfillment of obligations for conducting Section 106 reviews, and that HUD will take steps to incorporate the council's final program statement in its environmental review process. The council's draft will give HUD latitude to amend its review processes and relieve HAs

of significant burdens involving the maintenance or revitalization of their housing stock.

PHADA notes that a number of exemptions in the draft program statement refer to buildings or building elements not more than 45 years old. A significant part of the public housing inventory will fall outside of that time period and so will not benefit from the council's simplification and streamlining efforts. In 2025, buildings and building elements built or installed before 1980 will still be subject to the standard existing Section106 and environmental review processes required by HUD. PHADA also notes that the draft program statement's building age window of 45 years will move the effective date for these exclusions each year. In 1935, only buildings and building elements constructed or installed after 1990 will be covered by the council's draft program statement. PHADA suggests the council consider an older threshold that would include a larger proportion of the public housing and assisted housing inventory.

PHADA understands that the council will take comments submitted by the public concerning this draft program statement, revise that draft in response to comments received, and publish a final program statement in the Federal Register that may be subject to public comments and revisions. PHADA appreciates the steps the council has taken so far to accept comments on July 1 and October 9, and the association looks forward to reviewing the council's final statement that HUD will use in revising its environmental review process.

Sincerely,

James P. Armstrong

Analyst

Public Housing Authorities
Directors Association

202 549 4335

Jacycle@principle2.org



October 1, 2024

CC:PA:01:PR (REG-108920-24) Room 5203 Internal Revenue Service P.O. Box 7604 Ben Franklin Station Washington, DC 20044

Re: ACHP Draft Program Comment on Accessible, Climate-Resilient and Connected Communities

To Whom It May Concern:

On behalf of Preservation of Affordable Housing, Inc. (POAH), I am pleased to submit the following comments in response to the Draft Program Comment on Accessible, Climate-Resilient and Connected Communities (the "Program Comment" or "PC") released for public comment by the Advisory Council on Historic Preservation (ACHP) on August 8, 2024.

POAH is a national nonprofit organization whose mission is to preserve, create and sustain affordable, healthy homes that support economic security, racial equity and access to opportunity for all. Since its founding in 2001, POAH has built or preserved more than 13,000 units of affordable rental housing in 12 states and the District of Columbia at more than 130 properties, providing affordable homes for more than 20,000 Americans.

POAH's property portfolio – like the nation's affordable multifamily housing inventory – includes a high proportion of buildings over 50 years old, and so POAH has substantial experience navigating the Section 106 historic preservation review process in connection with its rehabilitation projects. At the same time, POAH is deeply committed to improving the energy efficiency and climate resiliency of its properties through renovation projects – often including external scope elements like window replacements and installation of solar arrays.

Too often, the Section 106 review process introduces uncertainty and delay as the federal agency, the SHPO, the project team, and other stakeholders evaluate the potential impacts of proposed rehab scope and work through alternatives or mitigants, as well as related effects on a project's budget, timeline, or other factors. For affordable housing projects which already struggle with marginal financial viability amid complex regulatory environments, Section 106 review can create a significant additional burden, diverting resources that may be desperately needed for critical project scope.

Accordingly, POAH strongly supports the ACHP's efforts through this Program Comment to streamline historic preservation reviews for housing and climate-resiliency projects with limited or no adverse effects on historic properties – in ACHP's words, to "accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs in response to climate concerns, and to rehabilitate or develop new climate-friendly transportation infrastructure."

POAH strongly supports the Program Comment's clear delineation of exterior scope elements that would not require further Section 106 review in certain clearly defined circumstances. In particular, POAH strongly supports the Program Comment's guidance providing that certain exterior elements may be replaced on a historic residential building's primary façade without triggering Section 106 review if a qualified professional makes a written determination that such installation or replacement will have no or minimal adverse effects on any character-defining feature of a historic building.

POAH likewise strongly supports the Program Comment's provision that the qualified professional's analysis of adverse effects for certain exterior scope items on a historic building undertaken primarily to reduce energy use or greenhouse gas emissions of the building or to enhance climate resilience must "consider technical feasibility and economic feasibility, including long-term operational costs and climate resilience of the building." This new guidance acknowledges the reality that rehab scope decisions must be made in the context of financial constraints, and that scope elements that support energy efficiency and resilience often support the long-term preservation of the overall historic structure more effectively than alternative components that may appear more "historic".

We would encourage ACHP to extend the logic of this Program Comment to its guidance for housing and climate-related projects which remain subject to further Section 106 review to ensure that federal agencies and SHPOs are clearly directed to consider technical and economic feasibility and long-term climate resilience in their analyses of adverse effects. We would also encourage ACHP to develop clear guidance for federal agencies and SHPOs (and other stakeholders) on acceptable timelines for Section 106 reviews, in order to reduce the delays and uncertainty that these reviews often impose on urgent housing and climate projects.

Thank you for consideration of these comments. We would be happy to discuss or clarify these comments at your convenience; please don't hesitate to reach out to me at aspofford@poah.org or 617-449-1016 with any questions you may have.

Sincerely

Andrew Spofford

Senior Vice President / Chief of Staff Preservation of Affordable Housing, Inc.



[External] ACHP Program Comment - Power Forward Communities

From Nate Jenkins <nate@powerforwardcommunities.org>

Date Wed 09-Oct-24 5:22 PM

1 attachments (26 KB)

PFC_Comment_ACHP_ProgramComment_10092024 - Final.docx;

Hello,

Power Forward Communities (PFC) understands the pivotal role that historic preservation plays in protecting cultural resources and heritage and intends to operate within the framework of the National Historic Preservation Act (NHPA), including Section 106. PFC strongly supports the Program Comment from the Advisory Council on Historic Preservation (ACHP). Please see our attached Program Comment submission.

Sincerely, Nate Jenkins

--

W. Nate Jenkins
Chief Operating Officer



October 9, 2024

Advisory Council on Historic Preservation (ACHP)

Re: Feedback on Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Background:

Power Forward Communities (PFC) represents a coalition of some of the country's most trusted housing-, climate-, and community-focused not-for-profit organizations, including Enterprise Community Partners, Rewiring America, Habitat for Humanity International, Local Initiatives Support Coalition (LISC), and United Way Worldwide. PFC has been awarded a \$2 billion grant from the Greenhouse Gas Reduction Fund (GGRF) National Clean Investment Fund (NCIF) competition administered by the U.S. Environmental Protection Agency (EPA). These funds will be used to decarbonize single- and multi-family dwellings across the country, with a particular focus on low-income and disadvantaged communities. With 42% of energy emissions stemming from fossil-fueled machines in our homes, cars, and power sources, PFC will deploy this capital to support the installation of heat pumps, heat pump water heaters, induction stoves, solar panels, home battery systems, EV charges, and the execution of wiring and weatherization updates that support them.

PFC supports and welcomes the proposed Program Comment:

PFC understands the pivotal role that historic preservation plays in protecting cultural resources and heritage and intends to operate within the framework of the National Historic Preservation Act (NHPA), including Section 106.

PFC strongly supports the Program Comment from the Advisory Council on Historic Preservation (ACHP). It is a forward-thinking solution that preserves the integrity of historically significant buildings but also streamlines relevant compliance obligations. By expediting the approval process for proposed projects, this Program Comment will allow for GGRF funds to flow more easily to underserved, historically disadvantaged communities, many of which may have been previously overlooked or unable to engage with energy-efficient housing programs due to bureaucratic barriers or costs associated with Section 106 reviews. With these barriers reduced, PFC could bring much-needed energy efficiency upgrades to these areas, allowing for meaningful, long-term cost savings and improvements in housing resilience.

PFC offers the following considerations in support of the proposed Program Comment:

- Consideration 1 Addressing Aging Housing Stock: Over half of U.S. homes are over 45 years old, and these older homes are primarily concentrated in low-income and minority neighborhoods, which poses significant challenges for maintenance and affordability. The Program Comment enables the rehabilitation of these existing buildings in alignment with PFC's mission to enhance energy efficiency in America's homes. This will help reduce the need for new construction (which currently accounts for 15% of annual global greenhouse gas emissions) in alignment with PFC's mission to reduce carbon footprints while improving living conditions in underserved communities.
- Consideration 2 Streamlining Improvements: The Program Comment is crucial for reducing regulatory barriers, particularly the compliance demands of Section 106. This will enable faster upgrades to older homes and allow PFC to facilitate projects that might otherwise be considered too burdensome due to extensive administrative processes, reviews, and other requirements that may adversely impact such upgrades. PFC supports streamlining these requirements as it would expedite the process of providing much-needed upgrades to enhance the energy efficiency and climate resilience of older / historic buildings.
- Consideration 3 Reducing Costs and Improving Efficiency: The Program
 Comment will allow PFC to utilize its GGRF funds directly on projects that will have
 immediate impact on communities. By improving efficiency the Program Comment
 will reduce overall project costs but also improve the effectiveness of GGRF funds.
- Consideration 4 Working closely with LIDACs: PFC is committed to directing 75% of our financial assistance to Low-Income and Disadvantaged Communities over the next seven years. This directly aligns with ACHP's goal to transform American housing and communities into affordable, accessible, energy-efficient, climate-resilient, and hazard-free environments. PFC remains committed to working with communities to incorporate their input and feedback, ensuring that local voices are heard and respected throughout the project lifecycle.



October 9, 2024

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

Dear Chair Bronin:

Preservation Action (PA) welcomes the opportunity to provide comments on the Advisory Council for Historic Preservation's (ACHP) proposed "Program Comment on Accessible, Climate Resilient, Connected Communities" (PC). Founded in 1974, Preservation Action is a 501(c)4 nonprofit organization created to serve as the national grassroots advocacy organization for historic preservation. We represent an active and engaged grassroots constituency from across the country, including thousands of members and supporters from nearly every state.

PA appreciates the goals expressed in the PC of making communities more accessible, climate resilient, and connected, and fully shares the desire for historic preservation to be an active partner in solving the pressing issues of creating more affordable housing and enhancing energy efficiency in buildings. However, PA has serious concerns about some aspects of the PC's content and the process by which it was introduced. At this time we cannot support the PC as proposed, and strongly recommend the ACHP withdraw the PC and consider alternative approaches.

Background

In 1966, in response to historic places being lost or irreversibly altered, the National Historic Preservation Act (NHPA) was enacted to coordinate federal and state efforts to preserve historic properties and cultural resources nationwide. Section 106 of the NHPA requires federal agencies to consider the impact federal undertakings have on historic properties and helps ensure states, Tribes, and the public have a meaningful voice in federal undertakings. The NHPA and this vital consultation process has been an unequivocal success, assuring historic and cultural resources are identified and considered as part of the federal planning process. Of course, nothing is without its flaws, and PA recognizes that the processes by which NHPA is upheld have imperfections that must be corrected over time.

Part of the success of the Section 106 process is due to its inherent flexibility, allowing for Programmatic Agreements and other program alternatives that provide a more expedited process for certain routine undertakings. Historically, usage of alternatives has rightfully been limited, only provided at the request of the agency, when appropriate; narrow in scope; and after a careful and thoughtful process that ensures the consideration of historic resources.



Acknowledging that Section 106 and other processes addressed by the PC have their faults, and that the PC's intention is, in part, to address these limitations, streamline processes, and – in concept – prepare historic preservation to be an active part of progressive movements, we believe the PC as proposed will ultimately cause more harm than good.

Unique in its conception, design, and scope, the PC would have a far larger reach and apply more broadly than any program-specific or agency-specific program alternatives previously developed. We feel this PC would likely set a precedent for future ACHP and federal agency actions. The PC development process thus far has not allowed for adequate consultation with impacted stakeholders – especially considering the unprecedented nature of the proposal, the broad scope, and the number of state and local level agreements that would be impacted. Further, the PC fails to identify – using supporting data – how the projects and undertakings covered by the PC are being delayed by the current Section 106 process.

A rushed process will lead to more negative impacts and outcomes for preservation that cannot be undone. As stated in our letter to ACHP council members alongside other national preservation organizations, we strongly encourage the ACHP to follow their *own quidelines* crafted for other agencies to utilize when seeking program alternatives as well as to fully engage with interested parties prior to further consideration.

Below are some of our concerns about the PC as proposed:

The PC, as proposed, completely eliminates consultation with State and Tribal Historic Preservation Officers (SHPOs/THPOs) and the public at large.

This elimination of consultation would apply to virtually any federal undertaking related to housing or energy efficiency. Consultation with interested parties to identify and consider historic and cultural resources is part of the fundamental intent of the NHPA. Public consultation provides an invaluable perspective to the process that would otherwise be lost. SHPOs and THPOs have a far better understanding of historic resources in their jurisdictions and are best positioned to engage with local stakeholders. Additionally, eliminating SHPOs and THPOs from the process contradicts the statutory requirements under the NHPA.

Removing SHPOs, THPOs, and public consultation would actually slow down the process, leading to more negative outcomes and delays. Carefully consulting with interested parties earlier in the process helps to avoid potential conflicts.

Internal delays from SHPOs and THPOs are largely due to understaffed and overworked departments whose intentions are to ensure development happens with respect to and protection of historic sites. Properly funding and staffing these departments is key to expediency and efficiency.



The Program Comment, as proposed, conflicts with numerous local preservation ordinances and state programmatic agreements.

SHPOs across the country have negotiated their own state-specific programmatic agreements to help streamline federal undertakings at the state level. These agreements have already gone through substantial consultation with federal agencies, tribes, and local governments and are tailored to the unique characteristics of each state. Superseding carefully crafted state agreements with a very broad PC – whose own process lacks the consultation and specificity of these agreements – would lead to more inconsistent compliance and outcomes.

The PC also conflicts with numerous local preservation ordinances and local review processes. In many cases, federal agencies would still need to comply with these local ordinances which would lead to more complexity and confusion in the process, therefore causing further project delays.

The PC, as proposed, would conflict with the Secretary of the Interior's Standards for Rehabilitation, impacting the Federal Rehabilitation Tax Credit program.

While the PC applies to the Section 106 process, it would create a conflict with the Secretary of the Interior's Standards. This could lead to a disincentive for federal programs that rely on the Standards, like the Federal Rehabilitation Tax Credit (HTC). Or create a situation where a user unknowingly misses out on taking advantage of the HTC.

The PC, as proposed, does not require mitigation for adverse effects.

The Section 106 process requires federal agencies to consider adverse effects to historic resources and evaluate alternatives to avoid or mitigate these adverse effects. The PC would eliminate mitigation for projects that have "minimal" adverse effects. This is a very subjective term that could easily be abused to suit a federal agency's needs. Furthermore, the PC does not identify who makes that determination and, without consultation, it is assumed to be left up to the federal agency and/or a "qualified authority." The mitigation of adverse effects is a foundational component of the Section 106 process. The PC, as proposed, essentially allows for this key requirement to be sidestepped for an extensive number of undertakings.

The PC, as proposed, gives too much power to federal agencies to make decisions.

The PC gives too much leeway to federal agencies to make their own determinations on how historic resources will be impacted. Consultation with states, tribes, and the public at large is removed from the process and instead the PC relies on qualified professionals or qualified authorities, which are poorly defined.



For instance, the PC does not include a qualified archaeologist in the definition of qualified authority. This is especially important when considering exemptions for ground disturbances. Not properly considering impacts to archaeological remains would harm important sites and lead to costly project delays.

Conclusion

Preservation Action believes that historic preservation has an important role to play in addressing the climate crisis and expanding the use of historic rehabilitation to create more housing, and that overall there is a need for greater efficiency for all parties involved. PA stands ready to work with the ACHP on these shared goals. However, for the reasons stated above, we have serious concerns about the PC as currently proposed and the process in which the PC was initiated. Respectfully, we urgethe ACHP to withdraw the PC and consider alternative approaches.

Sincerely,

Russ Carnahan, President

Bus Carnahan

Preservation Action

Briana Paxton, Chairwoman

Bin Porton

Preservation Action

PRESERVATION PARTNERS

September 30, 2024

Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

Dear Members of the Advisory Council:

On behalf of the below organizations, we would like to express our collective concerns regarding the process of introducing the proposed *Program Comment on Accessible, Climate-Resilient, and Connected Communities*. We believe that historic preservation has a role in addressing the climate crisis, and we share the Council's desire to expand the reuse and rehabilitation of historic buildings for housing, but these goals must be harmonized with sound preservation policy. This proposed Program Comment is novel in its conception, design, and scope, and will likely set a precedent for future ACHP actions. With this in mind, we ask that you proceed with careful consideration, according to the same guidelines you've crafted for other agencies.

The ACHP's guidance is clear about the need to consult with stakeholders in developing an outline, timeline, and outreach plan before the request for a Program Comment is made. Given the number of existing state and local level agreements that would be deeply impacted by the provisions of this Program Comment, such consultation is of the utmost importance. However, while the ACHP offered a short window for stakeholders to comment on the evolving concept of this Program Comment, no preliminary discussions took place.

Additionally, the official ACHP <u>website</u> contains a list of ten guidelines that a federal agency should consider when seeking a program alternative. These items are based on recommendations from the ACHP's 2021 Program Comment Review Panel. We respectfully point out that the following items were not fully addressed prior to the development of the draft, and we urge the Council to consider them now.

- 1) What are the federal agency's **goals** in seeking a program comment?
- 2) What is the category of undertakings?
- 3) What **metrics** are available to quantify the magnitude of the category of undertakings? (e.g., number of undertakings, frequency of their proposal, number of historic properties affected, workload statistics, etc.)
- 4) Identify the part(s) of the standard Section 106 process the federal agency wants to tailor and explain why such modifications are desired?

- 5) What is the advantage of using a program comment for this category of undertakings in lieu of conducting individual reviews under 36 CFR §\$800.4 800.7? What are the anticipated benefits?
- 6) **Has the agency considered other program alternatives** that could address this need? If so, why is the program comment [or other approach in §800.14 (a)-(e)] the appropriate vehicle?
- 7) **Specify the likely effects** on historic properties that would result from undertakings to be subject to the program comment.
- 8) Specify the steps the agency official anticipates it will take to **ensure that the effects are taken into account** and any anticipated preservation benefits from this approach.
- 9) Identify the time period for which the program comment will be requested, and why.
- 10) **Detail any anticipated public or stakeholder interest** and how the agency official plans to arrange for public participation **appropriate to the subject matter and the scope of the category** and in accordance with subpart A of 36 CFR Part 800.

We hope that the Council will address the above guidelines prior to any further consideration of the proposed Program Comment. We welcome the chance to collaborate on ways to make historic preservation better facilitate the goals of this Program Comment, but we also fear that decisions made in haste will harm our historic places in perpetuity.

Sincerely,

National Conference of State Historic Preservation Officers

American Cultural Resources Association

American Institute of Architects

Asian & Pacific Islander Americans in Historic Preservation

National Alliance of Preservation Commissions

National Preservation Partners Network

Preservation Action

Society for American Archaeology

Society for Historical Archaeology



October 9, 2024

Ms. Sara Bronin, Chair Advisory Council on Historic Preservation 401 F St., NW, Suite 308 Washington, DC 20001

RE: Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin,

As Oregon's only statewide non-profit historic preservation organization, Restore Oregon works with thousands of people and communities across the state each year to preserve, reuse, and pass forward the historic places and spaces that embody Oregon's diverse cultural heritage. Our organization has been contributing to the field of historic preservation for almost 50 years.

Restore Oregon recognizes your leadership at the ACHP for addressing historic preservation's role in supporting national policies on affordable housing and climate resiliency and we support those two recently adopted policy statements. Our organization's new five-year strategic framework, adopted last year, sets out to address three inter-related issues of housing, climate and equity and inclusion for underserved and underrepresented communities and we intend to use the tools and work of the field of historic preservation to address those needs and will use these policy statements in our work as well.

We thank you for asking for the public's review of the new Draft Program Comment focused on housing, climate-smart buildings and climate-friendly transportation. These are very broad and sweeping areas where any federal agency may define their projects within these areas to divert from the Section 106 process. And that is at the heart of the reason why Restore Oregon cannot support the Program Comment as drafted. We align with the positions of many of our colleagues, especially the Oregon State Historic Preservation Office, as well as the National Conference of State Historic Preservation Officers, the American Cultural Resources Association, the National Alliance of Preservation Commissions, the Society for American Archaeology, the US Department of the Interior, and more who've been in conversations over

the last couple of months concerned about the broad sweeping and confusing nature of how this Program Comment could be implemented and make the process more confusing and inherently <u>less</u> efficient.

Because this Program Comment would broadly apply to all federal agencies, it is our belief that they would elect or be forced by agency guidelines to follow this and essentially remove the community voice entirely from a process intentionally designed to provide an advocacy voice to those who know their historic resources best – the local, regional or statewide advocates and citizens. Our nonprofit often provides local communities expertise on the Section 106 process to aide and strengthen the local concerns and to work towards appropriate solutions/mitigation via the process. We appreciate that the Program Comment would exclude National Historic Landmarks (NHL); but here in Oregon, we only have 17 NHL's and that exclusion is insufficient for all of the other historic places and sites in our State.

We work in concert with our Oregon SHPO leadership and staff to the best of our ability to proactively support the balance of historic preservation with a project's needs. The Program Comment will effectively remove our voice and contribution to a meaningful consultation process that yields positive outcomes for the historic resource and the communities' ability to stay connected to their historic and cultural heritage.

We respectfully ask that this Program Comment be withdrawn and that the ACHP provide more time to reconsider an approach that can assist in streamlining the process, address the needs mentioned in a manner that includes the experience and expertise from not only the SHPO/TPHO but the nonprofits and organizations that work directly at the community level. We will gladly work in collaboration to find solutions to implement the two recently adopted policy statements in a manner that can achieve the goals expressed.

Thank you for the opportunity to provide comment on this important issue.

Sincerely,

Nicole Possert Executive Director



October 9, 2024

Advisory Council on Historic Preservation (ACHP)

Re: Feedback on Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Background:

Rewiring America (RA) is a member of Power Forward Communities (PFC), a coalition of some of the country's most trusted housing-, climate-, and community-focused not-for-profit organizations, including Enterprise Community Partners, Habitat for Humanity International, Local Initiatives Support Coalition (LISC), and United Way Worldwide. PFC has been awarded a \$2 billion grant from the Greenhouse Gas Reduction Fund (GGRF) National Clean Investment Fund (NCIF) competition administered by the U.S. Environmental Protection Agency (EPA). Rewiring America will use its portion of these funds to decarbonize single-family dwellings across the country, with a particular focus on the installation of heat pumps in low-income and disadvantaged communities.

RA supports and welcomes the proposed Program Comment

RA strongly supports the Program Comment from the ACHP. It is a forward-thinking solution that preserves the integrity of historically significant buildings but also streamlines relevant compliance obligations. By expediting the approval process for proposed projects, this Program Comment will allow for GGRF funds to flow more easily to underserved, historically disadvantaged communities, many of which may have been previously overlooked or unable to engage with energy-efficient housing programs due to bureaucratic barriers or costs associated with Section 106 reviews. With these barriers reduced, RA will be able to bring much-needed energy efficiency upgrades to these areas, allowing for meaningful, long-term cost savings and improvements in housing resilience.

RA supports the proposed Program Comment in particular due to the following considerations:

Addressing Aging Housing Stock

Over half of U.S. homes are over 45 years old, and these older homes are primarily concentrated in low-income and minority neighborhoods, which poses significant challenges for maintenance and affordability. The Program Comment enables the rehabilitation of these existing buildings in alignment with RA's mission to enhance energy efficiency in America's homes. This will help reduce the need for new construction (which currently accounts for 15% of annual global greenhouse gas emissions) in alignment with PFC's mission to reduce carbon footprints while improving living conditions in underserved communities.

Streamlining Improvements

The Program Comment is crucial for reducing regulatory barriers, particularly the compliance demands of Section 106. This will enable faster upgrades to older homes and allow RA to facilitate projects that might otherwise be considered too burdensome due to extensive administrative processes, reviews, and other requirements that may adversely impact such upgrades. RA supports streamlining these requirements as it would expedite the process of providing much-needed upgrades to enhance the energy efficiency and climate resilience of older / historic buildings.



October 9, 2024

Advisory Council on Historic Preservation 401 F Street, NW Suite 308 Washington, DC 20001

Attn: program alternatives@achp.gov

Re: Program Comment on Accessible, Climate-Resilient, and Connected Communities

To Whom It May Concern:

On behalf of Stewards of Affordable Housing for the Future (SAHF), thank you for the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities relating to Section 106 of the National Preservation Act.

SAHF is a collaborative network of twelve multi-state, mission-driven non-profit affordable housing developers that collectively own and operate nearly 2,000 affordable multifamily properties that are home to more than 239,000 seniors, families, and individuals across the country. SAHF members are deeply committed to providing homes that are stable and healthy for its residents and the surrounding community. SAHF members also have significant experience with the Section 106 historic preservation review process in connection with their rehabilitation projects. It is with this lens that we support ACHP's efforts to better streamline the historic preservation review process for housing and climate-resiliency projects, balancing the objectives of historic preservation and the urgency of climate change, and provide the following comments:

- Streamlining Section 106 reviews: Affordable housing developers, including SAHF members, struggle with marginal financial viability and complex regulatory requirements, and Section 106 reviews have often added burden and confusion. In our portfolio, members have even experienced review processes for as long as a year, resulting in delays that not only affect developers but the families and individuals waiting for homes. We support the clear recognition of activities that warrant Section 106 review and those do not, such as certain exterior elements that have minimal or no effect on a building's character-defining features and design. SAHF members have highlighted how meaningful these proposals are, including facilitating the electrification of historic buildings by exempting or streamlining reviews for mechanical and electrical system upgrades, including retrofits and installations of new all-electric energy efficient appliances and building systems, including heat pumps. These clear delineations will be instrumental in streamlining Section 106 reviews and assuring consistent treatment of site improvements and building elements that promote affordable, accessible, and energy-efficient housing policy goals.
- <u>Standardize SHPO Reviewer Experiences:</u> To further reduce the burden that owners face, we also recommend ACHP work with state historic preservation offices (SHPOs) to better ensure

standardization among reviewers. SAHF members have experienced subjectivity on the reviewer level that have only further complicated the review process. We would also encourage ACHP to develop clear guidance for federal agencies and SHPOs (and other stakeholders) on acceptable timelines for Section 106 reviews, in order to reduce the delays and uncertainty that these reviews often impose on urgent housing and climate projects.

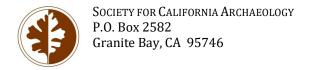
- <u>Update Standards on a Regularly Basis</u>: Climate-resiliency measures and tools continue to
 advance and these should be reflected in updated standards on a regular basis after public
 comment. For example, increased flexibility in the ability to utilize smaller windows, and more
 modern glazing techniques (i.e. allowing aluminum/vinyl windows in lieu of wood windows) may
 be appropriate to meet current and future energy codes.
- <u>Technical Assistance Needs</u>: Some SAHF members have also observed a growing trend of
 requiring developers to document existing conditions for the local SHPO and performing
 extensive archeological studies. These studies can add significant delays to project phases, as
 much as 12 to 16 weeks and several hundred thousand dollars in costs. We recommend ACHP
 reconsider when such studies are required and if so, provide additional resources and technical
 assistance and briefings to mitigate costs and delays incurred.

SAHF and its members strongly support and applaud ACHP's efforts to advance affordable housing, climate-smart buildings, climate-friendly transportation, and clean energy projects, through streamlining Section 106 reviews. We welcome the opportunity to engage further and thank you again for the opportunity to provide comments. Please feel free to contact Althea Arnold, SAHF's Senior Vice President for Policy (aarnold@sahfnet.org) or Isabela Antonio (iantonio@sahfnet.org) with questions about our comments above.

Sincerely,

Althea Arnold

Senior Vice President, Policy



October 9, 2024

Hon. Sara C. Bronin Chair Advisory Council on Historic Preservation 401 F Street NW, Suite 208 Washington, DC 20001

Re: Comments on ACHP's Draft Program Comment on Accessible, Climate Resilient, Connected Communities

Dear Chair Bronin.

The Society for California Archaeology (SCA) appreciates the opportunity to provide comments on the proposed Advisory Council on Historic Preservation's (ACHP) "Program Comment on Accessible, Climate Resilient, Connected Communities" (Program Comment), pertaining to certain housing-related, climate-smart building-related, and climate-friendly transportation infrastructure-related activities. For the reasons below, the SCA opposes the draft Program Comment and urges the ACHP to consider alternative approaches to achieve its objectives of advancing historic preservation goals while helping to satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation.

The SCA is a non-profit scientific and educational organization dedicated to research, understanding, interpretation and conservation of the heritage of California and the regions that surround and pertain to it. With more than 1250 members, the SCA seeks to increase public appreciation and support for archaeology by helping agencies, planners, landowners and developers to understand their obligations and opportunities to manage archaeological sites and by representing the concerns of California archaeologists before government commissions and agencies, and on legislation.

The SCA supports efforts to improve efficiencies and historic preservation outcomes that are in accordance with 36 CFR Part 800 and the intent of the National Historic Preservation Act. The SCA finds that this Program Comment as drafted however, diminishes the opportunity for parties to meaningfully engage in consultation with federal agencies to identify historic properties and seek ways to avoid, minimize, and mitigate effects to them.

The exemptions within the draft Program Comment that would allow for numerous classes of undertakings to proceed without identification efforts and assessments by professionally qualified archaeologists based on determination by non-qualified personnel of "previously disturbed contexts" is of particular concern to the SCA. Professionally qualified archaeologists are trained to understand the potential to encounter buried or artificially obscured sites and should be relied upon to do so, not only to ensure appropriate measures are in place to avoid effects to historic properties, but also to limit post-review discoveries and avoid costly project delays.

Lastly, the SCA calls into question the need or justification for this Program Comment. The ACHP has not sufficiently demonstrated that the standard Section 106 process at 36 CFR Part 800 or the numerous program alternatives, including programmatic agreements, existing, in-place, and available for use are not sufficient to effectively and efficiently accommodate the federal actions in the housing, building, and transportation sectors necessary to produce affordable housing, improve climate resilience, cut energy costs, and decarbonize the transportation sector. The ACHP has instead listed in the draft Program Comment, the

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numerous program alternatives that it has recently issued and in its 2024 triennial report on stewardship achievements of federal agencies in managing historic properties, "In a Spirit of Stewardship, A Report on Federal Historic Properties", it in fact states that "Agencies have effectively used Section 106 program alternatives to tailor Section 106 project reviews for multiple land- and property-managing agency benefits, including focusing limited resources on preservation priorities and contributing to comprehensive historic property management strategies. Program alternatives have also improved efficiency and effectiveness of project reviews for infrastructure projects affecting historic properties on federal lands."

The SCA looks forward to further assisting the ACHP in identifying measures to enhance existing program alternatives that judiciously and sensibly improve efficiencies in project delivery and historic preservation outcomes.

Please contact SCA President Tony Overly at tony@scahome.org should you have any questions.

Best regards,

Tony Overly President, Society for California Archaeology

Monica Strauss President Elect, Society for California Archaeology Brendon Greenaway Immediate Past President, Society for California Archaeology



October 9, 2024

Submitted via email

Sara Bronin Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington, DC 20001

RE: Advisory Council on Historic Preservation's Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin,

The Solar Energy Industries Association (SEIA) is the national trade association of the U.S. solar and storage industry, which employs nearly 280,000 Americans. We represent over 1,200 organizations that promote, manufacture, install, and support the development of solar energy. Environmentally and culturally responsible development of solar energy and storage is a paramount objective of the solar industry and as such we are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, SEIA appreciates the opportunity to provide the following comments on the Advisory Council on Historic Preservation's (ACHP) Program Comment on Accessible, Climate-Resilient, and Connected Communities.

A. Introduction

SEIA is deeply committed to building a strong solar and storage industry to help our nation meet the renewable energy targets set forth by President Biden in an equitable and environmentally responsible manner. To modernize the grid and address the climate crisis, solar energy must account for at least 30% of U.S. generation by the end of this decade and 40-50% by 2035. That means roughly quadrupling our current pace of installations by 2030.

To build solar infrastructure at a pace consistent with that goal, the country needs siting and permitting practices that allow for and incentivize unprecedented levels of clean energy deployment on all types of infrastructure, including on historic buildings and housing. However, current permitting practices for projects requiring federal agency approvals can be lengthy and difficult, often leading to increased uncertainty and costs, delaying or even halting development. Many solar energy projects require federal permits and as such Section 106 regulations can have significant impacts on the clean energy permitting process. Addressing these challenges related



to federal agency environmental review, permitting, and siting of all types of solar projects is of critical importance to the energy transition.

B. ACHP's Program Comment is a good step in balancing important historic preservation outcomes and the need to deploy clean energy at speed and scale

SEIA supports ACHP's recent efforts to advance its important historic preservation mission alongside goals to reduce greenhouse gas emissions and improve climate resilience. We strongly believe that a balance is required between robust environmental and cultural resource review, and the need to efficiently and predictably obtain federal permits for clean energy projects that are needed to decarbonize the grid and address the climate crisis. This Program Comment to provide federal agencies with an alternative and accelerated way to comply with their responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations for certain solar energy projects on historic housing is a good step in line with those dual goals.

Specifically, SEIA strongly supports expedited review for any solar project that has no to limited impact on the environment, cultural resources, or historic properties, such as the solar energy systems exempted in this Program Comment.

C. For solar developers, certainty and consistency are of paramount importance in the permitting process

We respectfully offer a few recommendations for ACHP to consider as it finalizes this Program Comment. Consistency in the permitting process across federal agencies is of vital importance to project developers. Because multiple federal agencies can use this Program Comment to implement their Section 106 responsibilities, it is important that the criteria for exemption are clear and can be uniformly applied across agencies and projects. We recommend ACHP ensure that the definitions for key criteria terms for solar energy installations such as "non-primary façade" and "primary right-of-way" are clear. Interpretation of these terms will determine the kinds of solar energy systems receiving expedited review and as currently noted in the Program Comment, a "determination of the primary façade may depend on a variety of factors".¹

SEIA members have experience with delayed projects because of overly burdensome work to show a permitting agency how a specific solar system complied with vague or confusing criteria under Section 106. It is possible the wording of the exception criteria here creates the same unnecessary outcomes. In addition, when allowing for an exception for roof-mounted solar energy systems installed with methods that "sits close to the roof" it may be helpful to provide

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¹ Program Comment at 18.



examples such as for projects that use building integrated solar technology to provide clarity and certainty around this exception.

Finally, SEIA members have experience with building solar energy systems on the primary façade of a building, but due to the height, location, or other structural elements of the building, the panels were minimally visible from the primary-right-of-way. We recommend ACHP consider adding an exception for this type of project, like the terminology found in the electric vehicle supply equipment (EVSE) definition. The EVSE section uses criteria such as "minimally visibly intrusive area" to cover installations that are partially visible but do not detract from the views to historic properties. Applying these criteria to solar energy installations could allow clean energy projects that cannot comply with the current criteria in the Program Comment but otherwise adhere to the intent and purpose of the Program Comment to receive the same expedited review.

D. Conclusion

SEIA supports ACHP's efforts to provide a pathway to expedited review for clean energy projects that have a limited impact on historic preservation. We also encourage ACHP to consider a similar effort in the future to balance historic preservation and the need to decarbonize the grid in the transmission and utility-scale solar and storage sectors.

Sincerely,

/s/ Maren Taylor
Maren Taylor
Director of Regulatory Affairs and Counsel
Solar Energy Industries Association

Ben Norris Vice President of Regulatory Affairs Solar Energy Industries Association

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² Program Comment at 15.



SOCIETY FOR AMERICAN ARCHAEOLOGY

September 20, 2024

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

Dear Chair Bronin:

The Society for American Archaeology (SAA) appreciates this opportunity to provide comments on the proposed Advisory Council on Historic Preservation's (ACHP) "Program Comment on Accessible, Climate Resilient, Connected Communities" (PC), pertaining to certain housing-related, climate-smart building-related, and climate-friendly transportation infrastructure—related activities. For the reasons stated below, the SAA vehemently opposes the draft PC as currently written and urges the ACHP to withdraw the document.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional archaeologists in the private sector and the academy, avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, and government agencies. The SAA has members throughout the United States, as well as in many nations around the world.

Background:

The National Historic Preservation Act of 1966 (NHPA) was intended and designed to be a collaborative process between states, tribes, local governments, and the federal government to preserve historic resources impacted by federal and federally sponsored undertakings. The NHPA ensures that each stakeholder's voice is heard, because it is through their involvement that American heritage that might be impacted by such undertakings are identified. This includes historic buildings, structures, and archaeological sites, as well as tribal places and objects of traditional religious and cultural importance. The process established by the statute and its regulations was

designed precisely to ensure that the identification, preservation, and protection of historic sites and resources did not rest entirely within the purview of a single governmental entity. Yet adoption of this draft PC would result in precisely that situation.

The PC in its current form violates the NHPA:

It is a basic tenet of administrative law that a government agency can only undertake actions that are within the power delegated to it by Congress (Ass'n of Am., Physicians & Surgeons, Inc. v. United States FDA, 226 F. Supp. 2d 204 (D.C.D. 2002)). After nearly a half century of deference to agencies on questions of the scope of their delegated authority and the interpretation and application of their regulations (Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984)), the United States Supreme Court (SCOTUS) recently rescinded much of that deference (Loper Bright Enters. v. Raimondo, 144 S. Ct. 2444 (2024)). In other words, the court has tacitly recognized that agencies have often acted outside of their delegated congressional jurisdiction and authority and that, consistent with the US Constitution, much of that activity must instead be undertaken by Congress.

The current PC exemplifies the extra-legislative activity with which SCOTUS was concerned in *Loper* for two reasons. First, while the ACHP has authority to "provide program comments at its own initiative" 36 CFR 800.14(e), that initiative and authority do not derive from Congress—the ACHP provided itself with the authority to issue program comments, which are controlling policy once adopted, without any such authorization or direction from Congress. Second, even if one accepts the ability of the ACHP to grant itself the ability to issue program comments, any such policies must remain within the congressionally delegated confines of the ACHP's authority pursuant to the statute. Unfortunately, the draft PC does exactly the opposite.

The ACHP is an advisory body expressly established to "advise," "encourage," and "inform" various federal, state, tribal, and local entities regarding the implementation of the NHPA (56 U.S.C. 304102). Critically, pursuant to and consistent with this statutory obligation, the ACHP has developed the Section 106 process that constitutes a framework for federal agencies to ensure compliance with their NHPA responsibilities. A cornerstone of the Section 106 process is the consultation with state, tribal, and local entities and other stakeholders regarding undertaking effects on historic properties. The draft PC contravenes the NHPA mandate to advise and inform State Historic Preservation Officers (SHPOs) and tribal representatives and eliminates the regulatorily mandated consultations in Section 106. In this regard, the draft PC creates several new categories of undertakings that the ACHP proposes to exempt from critical Section 106 review and consultation. As provided in the PC, NHPA-covered effects to properties that fall in the

category of "climate-friendly," "climate-smart," and "housing rehabilitation and production" (as defined in the comments and to be interpreted by federal agencies) will be effectively treated as categorical exclusions from the Section 106 process as the impacts relate to the consultation process. In other words, the draft PC, while not amending duly adopted federal regulations (i.e., Section 106), exempts entire swaths of federal undertakings from having to adhere to the statutorily and regulatorily mandated consultations with SHPOs and tribes, among others.

Agency policy has long been used to avoid the requirement of legislation by Congress and the notice and comment regulation adoption process required by the Administrative Procedures Act (APA). The draft PC is just that: agency policy. If the ACHP implements these comments, they will have the effect of becoming controlling agency policy, and the ACHP has no legal authority to implement policies that contradict statutory mandates. Congress was clear: the ACHP has the authority to "promulgate regulations as it considers necessary to govern the implementation of the NHPA (56 U.S.C. 304108(a)). The ACHP has no further authority. The effect of the draft PC will be to create exemptions for federal agencies' compliance with the NHPA and Section 106. Congress contemplated such a scenario when it provided the ACHP with the authority to "promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this division when the exemption is determined to be consistent with the purposes of this division" (56 U.S.C. 304108(c)). The draft PC, however, not only is <u>not</u> a promulgated regulation but, if implemented, will provide federal agencies with an option to do end-runs around existing legal consultation mandates, an outcome clearly inconsistent with the purposes of the statute. In addition, because the draft PC does not have legal force as a law or regulation, its approval and implementation must follow 5U.S. Code § 553 - Rule making in the APA. The process the ACHP is following for the document, however, does not follow the APA.

Thwarting SHPO and tribal involvement in the Section 106 process pushes those entities out of the statutory and regulatory mandate in every undertaking that might be classified as "climate-friendly," "climate-smart," and "housing rehabilitation and production." Such a development was clearly never contemplated or intended by Congress, is not supported by the black letter law of the NHPA and contravenes the ACHP's own existing regulations. Accordingly, if implemented, the draft PC is unconstitutional *ab initio*.

The exemptions for ground disturbance are unacceptable and will result in unnecessary damage to archaeological sites and delays of projects. Exemptions from ground disturbance must be determined by qualified archaeologists, not project managers or their delegates. Archaeologists understand the potential of buried sites and artifacts or interments. This is particularly true for archaeological sites located in urban areas, which

are often built upon the locations of ancient habitation sites. The fact that the draft PC does not take this reality into account demonstrates that its draftees have neither expertise in archaeological site identification nor understanding of ground disturbance methodology and site-transformation processes. The exemptions called for in the draft PC not only remove protections from unidentified archaeological sites but also increase the potential to cause projects to come to a halt once inadvertent discoveries are made, thus exacerbating costs to the taxpayer and delaying projects.

Additionally, in the context of our understanding of climate change impacts as adverse effects to archaeological and sacred cultural sites, the unsupported ACHP claim that the exemption of classes of ground disturbance will contribute to climate resiliency may exacerbate the loss of resources to climate mitigation measures.

The draft PC does not recognize that SHPOs have their own authority under 54 U.S. Code §302303 to review federal undertakings. As stated above, SHPOs have the statutory authority to conduct reviews of federal undertakings for the protection of affected historic properties. The draft PC essentially proscribes this authority by giving agencies the option of not having to carry out Section 106 reviews for large categories of undertakings, a proscription not permitted to the ACHP by the NHPA.

The draft PC would violate existing agreements. Programmatic Agreements (PAs) and Memoranda of Agreements (MOAs) require the signature of either a SHPO or the National Conference of State Historic Preservation Officers as the negotiated consent in mitigation of effects to historic properties by federal undertakings. These agreements are binding contracts between the states and federal agencies. Yet the draft PC would give federal agencies the ability to abrogate their contractual responsibilities when it comes to certain undertakings. Under the PC it is not even clear that other signatories to the MOAs or PAs would have an opportunity to comment on amendments or terminations. The ACHP should be fully aware of the benefits of these PAs. For example, in California the Federal Highway Administration has estimated that the existing PA has resulted in a reduction of more than 45 labor hours per undertaking, or tens of thousands of total hours saved per year. This in turn means millions of dollars in savings for the taxpayer. Existing state and national PAs have resulted in enormous time and cost saving benefits. There is no reason to change a process that is working, especially when the ACHP has not presented any data demonstrating the need for the draft PC.

The Determinations of Eligibility provision in the draft PC is a direct violation of the NHPA. Section 106 of Title 54 is explicit—the effects of an undertaking on historic properties <u>must</u> be considered by the federal agency, the SHPO, and Tribal Historic Preservation Officer (THPO). Again, that legal requirement cannot be waived in

regulation or policy when such an exemption directly contradicts the purpose of the statute.

The section "Consultation with Indian Tribes and Native Hawaiian Organizations" is confusing. It does not appear to have any relationship with the remainder of the draft PC. It fails to specify how qualifications to carry out consultations with tribes will be determined or who will make those determinations. The PC does not specify exactly who are the "tribal liaison staff" nor does it define "tribal authority." Nor does the PC make clear how or even if these officials are supposed to consult with THPOs. In addition, in the 2017 report *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*, multiple tribes specifically pointed out how "tribal liaison staff" are not properly trained to handle tribal consultation. This further weakens this section's ability to succeed when it is well documented that "tribal liaison staff" are poorly trained to perform the tasks in their own job description.

The concept of a qualified authority versus a qualified professional is also very confusing. The draft does not adequately define "appropriate to the circumstances." It also does not make clear the difference between the "qualified authority" and "qualified professional."

Section III, Alternative Compliance Approaches, of the draft PC is unclear. The document does not specify who will determine minimal potential harm to adversely affect historic properties. PAs and MOAs are the current methods for making these decisions and are developed by qualified professionals. It also does not make clear under what standards, such as the Secretary of the Interior's Professional Qualifications Standards, these determinations will be made. This section should be removed from any future draft of the PC.

Section V. A. Immediate Response Requirements—This section is inadequate. It references 36 CFR § 800.13(b) but only in the context of sites with potential traditional religious and cultural importance to Indian Tribes or Native Hawaiian organizations (NHOs). Archaeological sites that have no potential religious and cultural significance to Tribes or NHOs are not mentioned. This is another example of how the draft PC provides insufficient protections for archaeological resources impacted by undertakings exempted by the policy.

Section VIII—The amendment provision is an unbalanced approach. Under this language, the ACHP can unilaterally amend a comment. It must notify agencies but does not have to offer agencies a chance to comment. Further, other agencies can offer amendments, but only the ACHP has approval authority. The draft PC does not outline a process by which potential disagreements can be resolved. The draft is also unclear as to whether or not consultation will take place between the ACHP and the agencies.

Alternative approaches to the draft PC:

The SAA supports efforts to improve the Section 106 compliance process that are in accordance with the intent and language of the NHPA. There are actions that the ACHP can take to accelerate climate- and energy-related project delivery without undermining protections for historic properties and diminishing the participation of states, tribes, and localities. Some suggestions include (1) the ACHP could issue guidance to address cases in which a project's area of potential effect (APE) only partially covers an archaeological or other NRHP-eligible site or resource, a situation leading to many sites not being fully delineated; (2) tribes have outlined, including in the report *Improving Tribal Consultation* and Tribal Involvement in Federal Infrastructure Decisions, that there must be a standard for data associated with project reviews. The ACHP could establish minimum levels of data presented for a project in order to constitute a "reasonable good faith effort"; and 3) gaps in technology frequently slow down reviews. Security protocols between federal, state, and tribal government entities—not to mention other stakeholders—have led to file sharing systems that do not work on all networks. The ACHP could facilitate a discussion about how to share the data associated with the Section 106 review process, thus eliminating the delays associated with data sharing by the various consulting parties.

The SAA strongly urges the ACHP to withdraw the draft PC and engage with SHPOs, THPOs, archaeologists, and other stakeholders and experts to devise ways to improve Section 106 reviews for climate- and energy-related undertakings. Only by embarking on a multilateral approach to streamlining—as opposed to the unilateral (and illegal) method encapsulated in the draft PC—can the Council achieve its goal while still protecting our irreplaceable historic properties and ensuring that state, tribal, and local voices are heard.

Sincerely,

Daniel H. Sandweiss, PhD, RPA President



October 2, 2024

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

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

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

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

Page 6, Section II E.3.a

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

Page 8, Section III C

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

Page 10, Section V A. Immediate Response Requirements

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

Page 21, Appendix A-1.1.a

No. 1. Site Work states:

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

Followed by:

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

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

Page 22, 1.c

This section states:

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

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

Page 24, 3

Item "b" under No. 3 states:

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

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

Page 28, Appendix A-2

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

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

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

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

Page 39, Appendix C-1

No. 4 on Work on Bridges states the following:

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

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

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

Alternative Approaches to the Proposed Program Comment

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

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

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

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

Sincerely,

Richard Veit, Ph.D.

Rich Veit

President, Society for Historical Archaeology



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usgbc.org

October 9, 2024

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

Re: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Submitted via email to program_alternatives@achp.gov

Dear Chair Bronin and members of the Council,

The U.S. Green Building Council (<u>USGBC</u>) is a mission-based nonprofit organization established over 30 years ago with a vision of a built environment that supports planet and people. We are focused on transforming the way buildings and communities are designed, built and operated, enabling an environmentally and socially responsible, healthy, and prosperous world. Our flagship green building system, Leadership in Energy & Environmental Design (<u>LEED</u>), has been embraced around the world, and applied to many historic buildings, such as these examples.

We are writing in support of the proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities, which will help accelerate climate resilience and sustainability improvements and promote the long-term preservation and use of historic buildings to benefit people and their communities. The American Council for an Energy-Efficient Economy (ACEEE) also supports the enclosed comments.

We respectfully offer the following comments and recommendations on each of the activity categories covered in the Program Comment:

Climate-Smart Buildings

Renovating older and historic buildings is an important strategy to reduce greenhouse gas emissions from the building sector, which is currently responsible for more than 30% of U.S.

emissions. The most sustainable building is an existing building: our <u>research</u> shows retrofitting existing buildings can be up to 60% less carbon intensive than building a new high performance building. This proposed Program Comment would support decarbonization through streamlined Section 106 review, helping expedite federally supported projects that increase energy efficiency, implement clean energy technologies, and, through the reuse of older and historic buildings as an alternative to new construction, avoid new embodied carbon emissions.

Enhancing the resilience of older and historic buildings is also critical with the increasing scale and frequency of climate-driven natural disasters and extreme weather. According to the Fifth
National Climate Assessment, the U.S. now experiences, on average, a billion-dollar weather or climate disaster every three weeks. Facilitating climate resilience upgrades—including building envelope improvements and adding on-site renewable energy generation and/or storage—will help protect older and historic buildings, and the people who use them, in the face of growing risks. Thus, the Program Comment's streamlining of federally-supported efficiency and clean energy can aid long-term preservation.

The activities exempted from further review by this proposed Program Comment will also provide numerous direct benefits to people and communities. Energy efficiency upgrades to the building envelope and HVAC systems, for example, can improve comfort, health, and overall habitability for occupants, while also reducing energy costs and improving affordability. In turn, supporting ongoing use through timely upgrades can help ensure historic buildings are preserved long-term.

Housing

Simplifying the review process for rehabilitation of older and historic buildings for housing is an important lever to help address the housing shortage and affordability crisis. As with Climate-Smart Buildings, the proposed Program Comment would smooth the path for more federally supported housing upgrades that improve affordability, energy efficiency, resiliency, and quality of life, while also supporting decarbonization goals.



The program comment should include manufactured and mobile home *replacements* similarly to rehabilitation (not only in emergency situations). This is included in some state agreements such as Idaho's agreement with HUD. Many mobile and manufactured homes (both older and younger than 45 years) were not well constructed and are in too poor shape to be rehabilitated or renovated. The best option for the preservation of the manufactured home communities in which many of these homes are located—and for the low-income residents—is to replace them with new higher quality, more efficient manufactured homes. Several Federal programs at HUD and EPA can help fund such replacements; hence streamlining any Section 106 review will be helpful.

We also note that the draft Program Comment does not directly address conversion of non-residential historic buildings into housing. With growing interest in this type of reuse, we recommend expressly including this activity in relevant sections of the comment. Assuming the exemptions under Appendices A-1 and A-2 are also intended to apply to the rehabilitation and conversion of non-residential historic buildings for housing, we recommend clarifying that explicitly in the appendices.

Consider also adding "battery energy storage systems" to the list of Building Exterior-related activities not requiring further review on non-listed buildings less than 45 years old in the appropriate locations in the appendices. We note that battery energy storage systems are included under "Work Related to the Building Interior" under Appendices A-1 and B-1 and recommend inclusion under "Work Related to the Building Exterior" as well to provide flexibility for buildings where conditions are preferable for outdoor installation of battery storage systems.

• Climate-Friendly Transportation

The proposed Program Comment will help advance projects that deliver important community benefits including improved public health, safety, and quality of life, while helping to decarbonize the transportation sector.



To support additional options to increase walkability, bike access, and other micromobility, we recommend expanding the list of "Other Activities" under APPENDIX C-1 by adding at the end of (5)(a) as follows:

"Leasing, refinancing, acquisition, or purchase by the federal agency of:

**

iv. Greenway trails or other off-road recreational trails appearing in a land use or transportation plan adopted by a division of government."

We further recommend that the Advisory Council develop user-friendly tools for federal agency staff to apply the Program Comment and other related prior Program Comments as highlighted under "Prior ACHP Action," in meeting their Section 106 obligations.

In conclusion, USGBC applauds the Advisory Council on Historic Preservation on this timely and forward-looking Program Comment and we support its swift adoption. Particularly with significant federal funding through the Inflation Reduction Act and other ongoing federal efforts on climate-friendly buildings, housing, and infrastructure, the improved efficiencies created by this Program Comment will have a significant impact on accelerating beneficial projects across the country.

Thank you for considering our input. Please do not hesitate to contact us if you have any questions or if we may be of assistance.

Sincerely,

Sabine Rogers
Federal Policy Project Manager
U.S. Green Building Council
srogers@usgbc.org



CC: Lowell Ungar, Director of Federal Policy, ACEEE