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

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**From** Janese Chapman <chapmanj@detroitmi.gov>

**Date** Tue 08-Oct-24 4:22 PM

**To** Program Alternatives <program\_alternatives@achp.gov>

**Cc** Lisa DiChiera <Lisa.DiChiera@detroitmi.gov>; Tiffany Ciavattone <ciavattone@detroitmi.gov>; Garrick Landsberg <landsbergg@detroitmi.gov>; Ryan Schumaker <schumakerr1@michigan.gov>; Martha MacFarlane Faes <faesm@michigan.gov>; brigdon@mhpn.org <BRigdon@MHPN.org>; Devan Anderson <danderson@preservationdetroit.org>

Dear Members of the Advisory Council on Historic Preservation,

The office of the Historic Designation Advisory Board for the City of Detroit is in full agreement with the letter from the City of Detroit's Housing and Revitalization Department, dated October 8, 2024, regarding the Advisory Council's draft *Program Comment on Accessible, Climate-Resilient, and Connected Communities*.

Additionally, as the official office in the City of Detroit that identifies historic resources through surveys and designations, the draft Program Comment disregards the opportunity for our office to officially review and comment on potentially historic properties within a Section 106 process in the city of Detroit categorized as relevant to "Accessible, Climate-Resilient and Connected Communities."

We feel strongly that the City of Detroit's current Programmatic Agreement (PA) process addresses concerns expressed in the draft Program Comment, as can future Programmatic Agreements, which can be appropriately tailored to specific geographies and needs of local communities.

Thank you for your consideration of our concerns,

Janese Chapman, Director  
City of Detroit  
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Historic Designation Advisory Board  
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**Housing and Revitalization  
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October 8, 2024

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

RE: Call for comments on Program Comment proposals.

Dear Chair Bronin,

The City of Detroit's Housing and Revitalization Department is submitting comments on the Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities (PC), released on August 8, 2024.

The City of Detroit has worked under a Programmatic Agreement (PA) with the Michigan State Historic Preservation Office (SHPO) since 1997 to achieve its own streamlined process for Section 106 review for HUD assisted programs in the City of Detroit. Our PA is informed by knowledge of existing historic resources, types of new resources likely to be encountered, and consultation with a number of local stakeholders and Tribes, which has resulted in a tailored agreement for our specific needs at the local level. We agree that there are many ways to successfully streamline the Section 106 process; however, this draft Program Comment as written would not meet that goal. This PC would add confusion and uncertainty of Section 106 responsibilities and complicate who can define what a historic resource is and how potential impacts on such resources are assessed in the decision-making process.

Since 2019, this City has invested in 71 developments resulting in 4,646 units of affordable housing. Those units are a mix of 1,612 units in newly constructed buildings and rehabilitated formerly vacant buildings, as well as 3,036 existing affordable housing units in buildings that have been renovated. A vast majority of those developments received assistance from the City's HUD funding and reviewed under NEPA and through our PA. Additionally, in 2023 alone, approximately 447 single-family homes were provided home-repair services through various HUD assisted-grant programs. These projects completed Section 106 compliance requirements through a streamlined 5– 10-day review and approval process. The success of the City's PA to efficiently execute Section 106 and avoid or mitigate adverse effects for this volume of HUD-funded projects highlights the advantages of this type of program alternative.

Limiting consultation with SHPO and qualified professionals through this PC would lead to duplication of effort across agencies and raise the risk of inadvertent discoveries being made, ultimately leading to higher costs and construction delays. This PC would further complicate the Section 106 process, as federal agencies may operate under the PC, current PA's, or other program alternatives. Coordination of 24 CFR Part 58, 24 CFR Part 50, and projects with multiple HUD responsible entities could find themselves requiring different types of approvals and documentation in order to satisfy federal requirements.

The draft PC fails to define, broadly defines, or vaguely defines multiple key terms, which could lead to a variety of interpretations based on an individual's professional experience. Some key terms used in the document that are subject to misinterpretation by those without the requisite technical experience



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include *previously disturbed ground, historic urban deposits, hazardous materials, efforts to reduce energy use and greenhouse gas emissions, and primary façade*. In particular, we are concerned that the PC would allow unqualified individuals to make decisions about the presence or absence of historic urban deposits or the definition of a building's primary façade, which are often highly technical determinations.

Allowing federal agencies to make these technical determinations could lead them to systemically write off most of the historic record and overlook archaeological resources significant at the state and local level, especially in urban environments. The identification process outlined in 36 CFR 800.4(b) is a multifaceted determination that requires qualified professionals with knowledge of local environmental, geological, and cultural contexts to make determinations of historic significance. Without this identification process, determining whether an activity will adversely affect historic resources would often come down to guesswork. In cities like Detroit, archaeological resources are often the only remnants of the underrepresented communities wiped out through urban renewal efforts. Such resources do not appear to have been taken into account in this draft of the PC.

Finally, the broad scope of the PC makes it harder to define appropriate alternatives and exemptions. A HUD specific program comment based on the agency's eligible activities would serve as a more effective option to streamline the rehabilitation of existing housing and create new housing in existing buildings. At the very least, housing and transportation related activities deserve their own respective Program Comments in order to adequately identify and define an appropriate scope of exemptions.

Here is a link to view the City's: [Programmatic Agreement](#). We encourage you to review the section on archaeology requirements and thresholds for SHPO consultation. We also have an appendix of exemptions for project types that are not already exempt under the HUD Part 58 Review requirements. We hope this can serve as a reference to improve future versions of this PC and serve as an effective example of what programmatic agreements can accomplish.

We look forward to continuing consultation with ACHP in order to address our comments.

Sincerely,

DocuSigned by:

A handwritten signature in blue ink, appearing to read "Julie M. Schneider".

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Julie Schneider  
Director

CC: Penny Dwoinen, Housing & Revitalization  
Tiffany Ciavattone, Housing & Revitalization  
Janese Chapman, Historic Designation Advisory Board  
Lisa DiChiera, Historic Designation Advisory Board  
Garrick Landsburg, Planning and Development



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## Planning Division

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October 9, 2024

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

Chair Bronin,

On behalf of the City of Madison's Landmarks Commission, I am submitting comments on the draft ACHP Program Comment on Accessible, Climate Resilient, and Connected Communities. The Madison Landmarks Commission has undertaken a comprehensive update to our processes and standards to adapt to current preservation practices, foster a more equitable preservation program, and make our regulations more practical and user-friendly. The commission has reviewed the ACHP Policy Statement's and found them to be inspiring and supportive of what we are trying to implement in our local preservation program. This Program Comment, however, does not fulfill the promise of those publications.

The draft Program Comment proposes to eliminate most consultation with stakeholders and discards many physical preservation activities in the name of efficiency. This would effectively gut the National Historic Preservation Act, disenfranchise consulting parties, and have adverse effects on historic and cultural resources. The Madison Landmarks Commission has seriously undertaken its charge as a Certified Local Government by engaging as a stakeholder in Federal undertakings that impact historic resources by providing a public forum at its meetings for the community to speak as the commission organizes its comments as a stakeholder under Section 106. That public process allows for thoughtful integration of historic resources as our city continues to evolve. We do not support removing that mechanism for public engagement in projects with a Federal nexus.

As the Preservation Planner for the City of Madison, I also undertake the historic compliance reviews on behalf of HUD for Community Development Block Grant projects funded through the City, per our Programmatic Agreement with the Wisconsin SHPO and HUD. The proposed ACHP Program Comment would exclude most of my reviews and limit the areas of preservation-informed adaptive reuse to only the primary façade of a building. Historic properties are significant for more than just one side of a building and that is not the only place to tell the story of a property. As proposed, I would not be able to require that solar be installed parallel to the roof plane of a pitched roof, specify treatments for exterior repairs or compatible replacement materials elsewhere on a building.

Madison is also the site of long-term human habitation, with many human burial, sacred, and archaeological sites that are significant to our tribal partners. We are particularly disturbed by the

October 9, 2024

Page 2

disenfranchisement of tribal consultation and collaboration as outlined in the ACHP Program Comment. This is unacceptable.

We would encourage the ACHP to compile the comments offered as part of reviewing the proposed draft and to start anew, with a robust public process to inform a better path forward. Good planning practice must include public engagement and collaboration with stakeholders to achieve an equitable and functional end-product. This top-down approach harkens back to an earlier, exclusionary time of government policy. We look forward to future engagement on this topic.

Sincerely,



**Heather L. Bailey, Ph.D.** (she/her)

Preservation Planner

City of Madison, WI



**Tim Askin**  
Senior Planner  
tim.askin@milwaukee.gov

**Andrew Stern**  
Senior Planner  
andrew.stern@milwaukee.gov

October 9, 2024

Chair Sarah C. Bronin  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 2000

Via electronic mail to [program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)

Dear Chair Bronin:

In my capacity as staff to the City of Milwaukee's Historic Preservation Commission I am submitting comments on your *ACHP Program Comment on Accessible, Climate Resilient, and Connected Communities*. I appreciate this opportunity to comment on behalf of the City of Milwaukee.

Regulatory streamlining is, in principle, a laudable goal as is much of the intent of this Program Comment. Unfortunately, it is an overbroad document that is lacking in specificity and disregards vital stakeholders in the consultative process that makes up federal preservation practice and law. It also notably interferes with local processes, Programmatic Agreements, and the Department of Housing and Urban Development's (HUD) broad preservation policies and practices.

First we would like to state that we concur *in toto* with the letter of the Snoqualmie Tribe on this topic to you and dated October 7 inst. (enclosed). Implementing preservation policy in such a top-down matter is incompatible with the underlying principles of the National Historic Preservation Act which require recognition of local and indigenous knowledge and recognize that preservation practice inherently requires specific local knowledge.

Further to this point, local governments are **entitled** to participate in the consultation process: "A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party" (36 CFR 800.2(c) (3)). This program comment fully ignores





that entitlement. This disregard of the local government's explicit entitlement to consult has been typical of our experiences with Federal Preservation Officers, ACHP, and the National Park Service. Local governments have a vital role in preservation policy, as they represent "ground-truthing" and practical experience in procedures and politics based on specific events in contrast to the broad theoretical approaches applied by "higher" levels of government.

The program comment seems to indicate a fundamental misunderstanding of HUD's section 106 policy with Community Development Block Grant entitlement communities. The Milwaukee Historic Preservation Office completed 1141 Section 106 and Wisconsin Statute historic preservation reviews in 2023. Roughly half of these were under a Programmatic Agreement (PA) with HUD in which HUD delegates all Section 106 responsibility to the City and requires that the City employ a person who meets the Secretary of the Interior's Professional Qualifications for architectural history who will serve as the de facto Federal Preservation Officer for HUD.<sup>1</sup> I currently fill that role. Cities as small as Missoula, MT operate under substantially similar PAs.<sup>2</sup>

This office was responsible for Section 106 compliance on \$21,853,669 of HUD funds in 2023.<sup>3</sup> We are efficient; determinations of "no historic properties affected" or "no adverse effect" are typically returned within one business day. We typically resolve all HUD cases in any given year without finding any adverse effects. Alterations allowed under Appendix A-1 sub 2(a) could easily disqualify a building from future National Register listing. The length and complexity of the PC would slow rather than streamline these reviews as we would now have to check every individual review against this 42 page document rather than rely on our knowledge of the effects of existing standard scopes of work used by the City for HUD-funded projects.

This efficiency is possible because we are embedded in our specific location and have deep understanding of our local historic resources, regardless of any formal designation. It is impossible for distant federal officials to have this awareness without direct local and tribal consultation. Local governments are often not capable of or permitted to enter their local knowledge into SHPO databases.

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<sup>1</sup> U.S. Department of Housing and Urban Development, "CDBG Entitlement Program Eligibility Requirements," HUD.gov / U.S. Department of Housing and Urban Development (HUD), accessed October 9, 2024, [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg/entitlement-program](https://www.hud.gov/program_offices/comm_planning/cdbg/entitlement-program).

<sup>2</sup> City of Missoula, "Public Comment Open on a Proposed Programmatic Agreement," Engage Missoula, accessed October 9, 2024, [https://www.engagemissoula.com/hud-funded-programs/news\\_feed/public-comment-open-on-a-proposed-programmatic-agreement](https://www.engagemissoula.com/hud-funded-programs/news_feed/public-comment-open-on-a-proposed-programmatic-agreement).

<sup>3</sup> U.S. Department of Housing and Urban Development, "HUD Awards and Allocations," 2023, <https://www.hudexchange.info/grantees/allocations-awards/?viewMoreAwards=1&params=%7B%22state%22%3A%22WI%22%2C%22grantees%22%3A%5B%7B%22id%22%3A%22788%22%7D%5D%7D##granteeSearch>.



Wisconsin SHPO, for example, prohibits local governments from entering sites of interest into their database unless they are part of a formal survey or a formal request for an opinion on National Register eligibility. Tribes have an understandable aversion to listing every possible cultural resource, having a similar effect on the ability of distant federal officials to recognize all resources. Furthermore, to our knowledge, we are one of few local governments in Wisconsin that maintains a readily accessible online list of designated properties that could even be searched by federal officials.

In conclusion, Milwaukee opposes the program comment in its current form. We request that the ACHP withdraw the current proposal and begin anew with a consultative process that complies with their own regulations, as per the comments submitted by Preservation Partners and the Snoqualmie Tribe (enclosed).

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Askin', with a stylized flourish at the end.

Timothy Askin  
Senior Planner  
Milwaukee Historic Preservation Commission

Enc: Snoqualmie Tribe letter; Preservation Partners letter



## 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 [website](#) 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 7th, 2024

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

To Advisory Council on Historic Preservation (ACHP) Chair Sara C. Bronin:

This letter is written on behalf of *sdukʷalbixʷ*, the Snoqualmie Indian Tribe (“Snoqualmie” or “Tribe”), a federally recognized Indian Tribe and sovereign and self-determined government. The Tribe appreciates the opportunity to comment on ACHP’s proposed Program Comment (PC) on “Accessible, Climate Resilient, and Connected Communities” associated with housing-related, climate-smart building-related, and climate-friendly transportation infrastructure-related activities. With this stated appreciation, however, also come numerous concerns the Tribe holds regarding the ACHP’s attempt to provide all federal agencies with an alternative way to supposedly comply with their responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. part 800 (Section 106), as part of undertakings related to these identified activities. The Tribes concerns are as follows:

- ***This proposed PC for Section 106 alternatives—and any and all attempts to provide alternative programs and/or streamline Section 106 processes—without the free, prior, and informed consent of each and every federally recognized Native American tribe and Native Hawaiian Organization (NHO)*** is an attempt *in effect*—wittingly or unwittingly—to usurp the role of Congress, homogenize the diversities and densities of Native communities and peoples, erode tribal political and knowledge sovereignty, and erase the vital importance of procedural attention to ***place-specificity*** as understood, valued, lived, stewarded, and practiced through our own unique systems of Indigenous Knowledge (IK).
- What the PC proposes will functionally deregulate current processes that require attention to the specific and unique environmental, historical, social, economic, and cultural relationships to our places, properties, and landscapes of traditional religious and cultural significance by truncating and short-circuiting the procedures and processes of Section 106. ***It is these very processes of Section 106 and their sequential nature that permit us to better negotiate, coordinate, and fulfill our obligations to protect and preserve the integrity of our historic properties/properties of traditional religious and cultural importance (PTRCIs), continue practicing our intimately and indelibly associated traditional relational life/way systems in relationship with and to these historic properties/PTRCIs, and ensure our***



***capacities of and for collective continuance as unique Indigenous tribes and Indigenous peoples in continuity with our pasts and presents into the future.***

- Wittingly or unwittingly, ***the proposed PC will both undermine processes and procedures that afford tribes and NHOs rights and opportunities for protection and preservation of historic properties/PTRCs and negate associated pathways for heightened considerations*** through its attempts to produce “manageable forms of difference that are racially configured through whiteness” (Moreton-Robinson 2015:xvi). Given the content and substance of the proposed PC, the Tribe must make ACHP directly aware that “one does not have to *be* explicitly racist to reproduce white supremacy or its discursive formations” (Beliso-De Jesús and Pierre, 2020:71), and **assimilative and exclusionary practices, actions, and considerations such as those promoted in the proposed PC need not be intentional nor hostile to still be racist in effect** (see Pulido 2000).
- In attempting to address select climate change- and affordable housing-oriented activities ***without meaningfully engaging and providing correctives for the structural root causes of these problems and their implications in and for Native American tribe and NHO PTRCs***, as the proposed PC does, the ACHP is itself contributing to the facilitation and perpetuation of the destruction of Native lands, airs, and waters under a system of settler colonial domination, which must be understood “at [its] base [as] a winner-take-all project whose dominant feature is not exploitation but replacement. The logic of this project, a sustained institutional tendency to eliminate the Indigenous population, informs a range of historical practices that might otherwise appear distinct – invasion is a structure not an [isolated] event” (Wolfe 1999:163).
- ***The proposed PC—wittingly or unwittingly—will assist with the (re)generation and support structures of settler colonial invasion that evacuate effective tribal and NHO input and disappear procedures for effective tribal and NHO coordination and participation.*** Here, it must be stressed that even though the proposed PC states that the Section 106 process would need to be followed if an “undertaking would occur on or have the potential to affect.... 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*,” **it directly undermines the very processes and procedures afforded under Section 106 that more often than not are required to make such determinations.** Moreover, “sites” are only one property type eligible for the National Register of Historic Places (NRHP).
- In these respects, the content, substance, and structure of this proposed PC are not only misguided in their intents and offerings for alternative programs for Native historic preservation concerns, but negligent in both their passive inattention or active disregard for ***how all lands, airs, and waters of what today is***



***commonly called the United States of America are Native lands, airs, and waters—and how undermining and short-circuiting the full Section 106 process will structurally (re)generate and perpetuate social and environmental injustices and acts of cultural genocide***, or what Osage Scholar George Tinker has identified and named as “the effective destruction of a people by systematically or systemically (intentionally or unintentionally in order to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life” (Tinker 1993:6). ***This reasonably foreseeable outcome of the proposed PC is supported both by its stipulation that “[u]ndertakings 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,” and by Chair Bronin’s own characterization of the proposed PC’s very design, function, and purpose.***

- During ACHP’s September 25, 2024, so-called “Tribal Consultation on ACHP Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities” meeting, ***Chair Bronin stated that the proposed PC is focused on outcomes rather than processes.*** The Tribe reiterates to Chair Bronin and the ACHP that the rights and opportunities to both develop heightened considerations and negotiate or coordinate pathways for the better protection and preservation of our historic properties/PTRCIs is directly situated in **Section 106 as a sequential and consultative process.**
- With Chair Bronin’s statement, the Tribe questions how this proposed PC has abided by ACHP’s own consultation obligations to the Tribe, all federally recognized Native American tribes, and all NHOs. It is clear that ***the Tribe must once again inform the ACHP that there are currently 574 federally recognized Indian Tribes and additional NHOs*** throughout the lands and waters of what is today called the territories of the United States who hold government-to-government consultation rights.
- The Tribe uses the term “so-called” above in relation to the September 25, 2024, meeting held by ACHP because this ***general meeting is not and cannot count as good faith, reasonable, or meaningful government-to-government consultation with the Tribe, and no good faith, reasonable, or meaningful consultation on this proposed PC has been conducted by ACHP to date.*** The Tribe reminds ACHP that 36 C.F.R. § 800.14(e)(4) requires that if a “program comment has the *potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization*, the Council shall follow the requirements for the agency official set forth in paragraph f of this section” (emphasis added). 36 C.F.R. § 800.14(f) stipulates that “*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*” (emphasis added). 36 C.F.R. § 800.14(f)(1) further states that “[w]hen a proposed program alternative has nationwide





applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law” (emphasis added).

- As this proposed PC will affect all 574 federally recognized Native American tribes as well as NHOs, **the ACHP has not to date fulfilled even its own self-stated consultation responsibilities as outlined in its Policy Statement Regarding the Council’s Relationships with Indian Tribes** (November 17, 2000; updated July 3, 2007). The Tribe reminds ACHP that this policy in no uncertain terms stipulates that “[t]he basis for the ACHP’s policy regarding its role, responsibilities, and relationships with *individual Indian tribes* derives from the Constitution, treaties, statutes, executive orders, regulations, and court decisions” (emphasis added), and “[t]he ACHP acknowledges that Federal-tribal consultation is a *bilateral process of discussion and cooperation between sovereigns*” (emphasis added). **The development of this proposed PC has neither fulfilled ACHP’s responsibilities to individual Indian tribes nor honored any bilateral process of discussion or cooperation with the Tribe as a political and knowledge sovereign** (and it must be assumed the other 573 federally recognized Indian tribes and NHOs).
- If it is the dubitable position of the ACHP that appropriate good faith and reasonable consultation has occurred on this proposed PC to date, then it appears that the ACHP is attempting to unilaterally change the terms of government-to-government “consultation” and therein promote a program of “American colonial ambivalence,” or “the inconsistencies in the application of colonial rule ... [that] stems from the privileged position of the United States, from which it can unilaterally shift the terms of its relationship to indigenous people[s]” (Bruyneel 2007:10). While ACHP may well feel this is within its right, it is a clear violation of its own agency policies and stated principles regarding its responsibilities to Indian tribes and NHOs.
- It is clear that **Chair Bronin and the ACHP have little to no grasp or care what tribes and NHOs must contend with on a daily basis to just have our basic rights and opportunities afforded under Section 106 and other regulatory review processes, such as the National Environmental Policy Act (NEPA)**. Clearly, the ACHP has done little to no labor to understand how this proposed PC will harm Native American tribes and NHOs by rendering large swaths of our ancestral territories, traditional use areas, and traditional cultural land/waterscapes—that is, **our historic properties/PTRCIs**—unaccounted for and open to further dispossession, exploitation, and damage for activities that perpetuate settler colonial privileges to the detriment and loss of Indigenous peoples. In identifying a goal of the proposed PC “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,’ while simultaneously neglecting





tribal and NHO presence, rights, opportunities, concerns, and inclusion, your agency is— intentionally or unintentionally—***excluding Native peoples from this American Nation and necessary considerations of what is required for the viable continuance of our present and future generations.***

- As stated in the Tribe’s September 23, 2024, letter on Executive Order (EO) 14096 to the ACHP, the proposed PC in a multitude of ways ***undermines and contradicts your agency’s charges for environmental justice*** under EOs 12898 and 14096, ***advancements in equity*** for Native communities under EOs 13985 and 14091, and good faith and reasonable consultation obligations, as identified and outlined above.
- The proposed PC also contradicts ACHP’s own stated mission to promote “the preservation, enhancement, and sustainable use of our nation’s diverse historic resources” as well as the ACHP’s 2022 *Strategic Plan* and its “commitment to both efficiency and inclusion ... to each of the plan’s five ‘pillars’” (emphasis added). ***There has not only been no good faith, reasonable, or meaningful Tribal inclusion in the development or considerations of this proposed PC and its effects, but there does exist a clearly identifiable attempt to actively elide rights and opportunities afforded under Section 106 for tribal and NHO historic property/PTRCI concerns as well as wholesale exclusions of IK insights and experiences of how Section 106 may or may not work efficiently or effectively to address the challenges of colonial- and industrial-induced climate change and the affordable housing crisis for Native peoples.***
- ***The proposed PC further fails to account for ACHP’s own self-stated trust responsibilities to tribes*** outlined in its *Policy Statement Regarding the Council’s Relationships with Indian Tribes* (November 17, 2000; updated July 3, 2007), and reiterated in its May 21, 2024, *Policy Statement on Indigenous Knowledge and Historic Preservation*. In the ACHP’s own words (emphasis ours):

*The ACHP recognizes that it has a trust responsibility to federally recognized Indian tribes and views this trust responsibility as encompassing all aspects of historic resources including intangible values. The ACHP shall be guided by principles of respect for the trust relationship between the Federal Government and federally recognized Indian tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the Act, are consistent with the protection of tribal rights arising from treaties, statutes, and Executive orders.*

***The proposed PC in its content, substance, and the institutional mindsets of “white possessive logics” (Moreton-Robison 2015) and the structures of settler colonial domination and Indigenous expropriation and exclusion they support are widely inconsistent with the protection of tribal rights arising from***



***numerous agreements, EOs, and statutes, including those directly guiding the procedures of and implicated in Section 106 as a sequential and consultative process.***

To close, the Tribe must state for the record that it adamantly disagrees with the position offered by the Executive Director of the National Association of Tribal Historic Preservation Officers (NATHPO) Dr. Valerie J. Grussing during the ACHP's September 25, 2024, meeting to discuss the proposed PC that its content and substance raise no major red flags. ***The Tribe could not disagree more with this position. The entirety of this proposed PC is a major red flag for tribal concerns.***

***What the entire proposed PC is attempting to do is undermine and erode tribal rights and opportunities under white possessive logics*** to ultimately facilitate a program of "[t]he patriarchal state [that] reinforces the invisibility of a possessive investment in patriarchal whiteness by normalizing it in discussions about economic development and commitments to the nation" (Moreton-Robinson 2015:77). In contradistinction to what has been presented by the ACHP with this proposed PC, ***the Tribe advocates for efforts to improve the Section 106 compliance process through a consultative and inclusive program that is in accordance with the intent and language of the NHPA, including its 1992 amendments and their implications for the affordance of full rights and opportunities for tribes and NHOs under the Section 106 process and the stipulations outlined at 36 C.F.R. § 800.4(c)(1).*** The Tribe urges the ACHP to review and thoughtfully consider its own IK guidance from May 2024 that states:

[a]cknowledgement in this context [of 36 C.F.R. § 800.4(c)(1)] means to recognize and defer to Tribal or NHO interpretation of the property's significance and integrity. Members of the preservation community are not the experts on what constitutes Indigenous Knowledge or how it should be utilized to identify or evaluate the eligibility of a property that may be of religious and cultural significance to an Indian Tribe or NHO, including, but not limited to, ancestral materials recorded and documented as "archaeological."

***As the proposed PC stands, it promotes and will facilitate pathways to undermine tribal and NHO rights and opportunities currently afforded under Section 106 for the identified activities, normalizes and perpetuates settler colonial dominance, values, and privileges in addressing environmental and social harms born of its own developmental and economic systems to the harm and destruction of Native lands, airs, waters, and peoples, and embraces and reproduces exclusionary assumptions based in notions of terra nullius and the ideological myth of manifest destiny***, the latter of which maintains an "inherent right and morality of expansionism of a particular people group at the expense of other culture-sharing groups, who are perceived to be inferior" (Styres 2017:93) and "continues to be fuelled [sic] by a sense of entitled racial and religious superiority maintained through networks and relations of power and privilege" (Styres 2017:93-94). ***To put it simply, the proposed PC in both what it promotes and what it excludes perpetuates white supremacist narratives and white possessive privilegings to the harm and detriment of Native peoples and the historic properties/PTRCIs vital to our viable and continuing pasts, presents, and futures.***



Based on these numerous concerns, ***it is the firm position of the Tribe that the proposed PC in its entirety must be revised to (1) be attentive to tribal and NHO rights and opportunities inclusive of a process that respects and honors government-to-government consultation obligations and IK sovereignty of each of the 574 federally recognized tribes and NHOs under free, prior, and informed consent and (2) operationalize compliance responsibilities under Section 106 for all federal agencies through a process that acknowledges and accounts for the fact that all lands, airs, and waters of what today is commonly called the United States of America are Native lands, airs, and waters.*** Colonial- and industrial-induced climate change and affordable housing challenges are both crises born of settler colonial systems of domination. Native peoples should not, once again, as this proposed PC tacitly asks and actively promotes, be the ones burdened with sacrificing or being asked to sacrifice the places, properties, and land/waterscapes vital for our collective continuance as unique and healthy peoples in order to address, uphold, or maintain settler colonial systems of exploitation, dominance, and social and environmental imbalance, destruction, and domination. This is an absolute imperative for this proposed PC and the identified activities it is meant to address if the ACHP is to avoid regenerating and reproducing once again the “long and bumbled history of non-Indigenous peoples making moves to alleviate the impacts of colonization” (Tuck and Yang 2012:3).

The Tribe thanks Chair Bronin and the ACHP for attention to these vitally important concerns and to the necessary direct Tribal collaboration on and wholesale revisions to the proposed PC. The Tribe is committed to reasonable, meaningful, and good faith communication and consultation to fulfill our stewardship responsibilities for the lands, airs, and waters and all of the diverse, dynamic, and living resources that help comprise our ancestral territories, traditional use areas, traditional cultural land/waterscapes, and other historic properties/PTRCIs. If you have any questions or need additional information, please contact me at [jaime.martin@snoqualmietribe.us](mailto:jaime.martin@snoqualmietribe.us).

Sincerely,

DocuSigned by:  
  
55ECFF68F5D44FA...

Jaime Martin  
Executive Director  
Governmental Affairs & Special Projects

CC:

Dr. Allyson Brooks, Washington State Historical Preservation Officer  
Steven Moses, Snoqualmie Tribe Director of Archaeology & Historic Preservation  
Senator Patty Murray  
Senator Maria Cantwell



Congresswoman Kim Schrier

Jordan E. Tannenbaum, Vice Chair, Advisory Council on Historic Preservation

Erica C. Avrami, Advisory Council on Historic Preservation

Carmen A Jordan-Cox, PhD, Advisory Council on Historic Preservation

Frank G. Matero, Advisory Council on Historic Preservation

Monica Rhodes, Advisory Council on Historic Preservation

Charles "Sonny" L. Ward III, Advisory Council on Historic Preservation

Jane D. Woodfin, Advisory Council on Historic Preservation

Amelia AM Marchand, Advisory Council on Historic Preservation

Jamie Lee Marks, Advisory Council on Historic Preservation

Wm. Dancing Feather, Advisory Council on Historic Preservation

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## **ACCC Program Comment.DRAFT 8.8.24**

**Erin Morton Pugh**  
**Senior Preservation Planner**  
**City of Raleigh, North Carolina**

***The statements included below are the professional opinion of the City of Raleigh individual planning staff and do not necessarily reflect the views of the City of Raleigh organization or the Raleigh City Council.***

### **General Comments / Concerns**

- The proposed Program Comment sends a message that historic resources and regulatory processes we have for protecting them are seen as obstacles to our shared goals of affordable housing, climate action, and sustainable community growth.
- Program alternatives are recommended for routine projects that are not likely to adversely impact historic resources, and these should be reviewed by key stakeholders before starting. However, this nationwide Program Comment will cover many types of properties in different regions, which could lead to a high potential for adverse effects. This goes against the idea of using program alternatives.
- The proposed Program Comment would allow federal agencies to decide how it applies to a project without consulting or notifying State Historic Preservation Offices (SHPOs) or other stakeholders. This includes changes to non-primary facades, which usually require a review under Section 106. There would be no way to ensure that these changes meet the Secretary of the Interior's Standards, including removing or demolishing important features.
- The overall stated goals of the Program Comment are provided for with inconsistent and at times contradictory guidance and exemptions, particularly as it pertains to specific building feature improvements. For instance, only the addition of thermal insulation by treatments that do not damage historic fabric would be exempt, yet the proposed ability to remove windows on non-primary façades without review also has a clear and direct negative impact on historic fabric.
- The proposed Program Comment exemption for non-primary facades does not account for building enclosure systems that would serve both primary and secondary facades. As written, a project could be required to retain a historic roofing material on the primary façade while having the ability to convert to an alternate material in other areas without review. This could encourage to use of incompatible systems creating weak envelope connections prone to water intrusion, accelerated damage, and more frequent maintenance and repair. Consideration should be given to continue requiring a holistic review of enclosure systems, or otherwise provide narrowly defined exemptions for clearly non-historic materials only, such as asphalt shingles and flat membrane roofs.
- Local stakeholders would not be involved in projects allowed by the Program Comment, which could harm historic sites that aren't yet identified or listed in the National Register of Historic Places (NRHP). Since there's no requirement to notify anyone, important cultural resources could be

damaged or destroyed. This could have a bigger impact on historic sites in underrepresented communities and areas that haven't previously been surveyed or designated.

- Local preservation programs and policies have been developed over time to reflect the values and goals of the community. Usually, local policies follow the general guidelines set by the federal government. Even though past legal cases have upheld local regulations, local staff and groups often have to defend their programs against claims of being against “progress” or blocking development. While good preservation policies actually support shared goals like housing and climate action, developers often see preservation as just another obstacle. The proposed Program Comment perpetuates the idea that historic preservation is a hindrance to smart growth and sustainable development.
- Identifying cultural resources and deciding which properties may be eligible for protection is essential to the Section 106 process. This also allows local communities to gather important survey data to support their own programs. However, many underrepresented communities, which have faced disinvestment, often lack identified cultural resources. If eligibility determinations are removed, it means losing an important chance to protect these resources as new federally funded projects come into these communities.

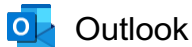
Research shows that investing in our historic and existing buildings is key to being ready for climate challenges because it helps reduce carbon emissions and the need for new materials. The Secretary of the Interior's Standards provide guidelines for improving energy efficiency in older buildings, using smart and proven methods that are good for the environment and honor our heritage. Rather than removing reviews for specific projects, a new policy from the ACHP should make it easier to apply these recommended energy-saving strategies. Local communities should also create similar guidelines for handling their designated properties.

The proposed Program Comment **does not** ensure that adverse effects are avoided.

- The **following scopes** should **not** 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.
  - BUILDING EXTERIORS - Entire building exteriors should remain subject to Section 106. If the ACHP continues to include non-primary facades in the Program Comment, it should not include 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.
  - 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.

- Revise **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. The Program Comment should 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.)
- Revise the **definition of green technologies**, which currently allows for a broad interpretation that is highly dependent on the individual administering a particular project. The ACHP Chair stated during scheduled public listening sessions that this term is intended to apply primarily to solar installations. Provide a revised definition to specify the finite list of technologies covered by this term. Review other glossary terms to ensure adequate clarity and specificity as well.
- Consider adding a notification requirement 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.
- Due to the unprecedented nature of this endeavor, consider implementing the policy as a limited pilot with a shorter term to allow for evaluation and improvement.





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**[External] ACHP proposed changes to the federal review**

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**From** George Gause <George.Gause@ci.stpaul.mn.us>

**Date** Wed 18-Sep-24 4:01 PM

**To** Program Alternatives <program\_alternatives@achp.gov>

The City of Saint Paul, MN supports the ACHP proposed changes to the federal review process. The changes will have a positive impact on projects which provide needed assistance to low income and underrepresented communities in our city.

The Saint Paul Heritage Preservation team manages Section 106 reviews for the City of Saint Paul and frequently partner with statewide organizations. Our office has experienced review wait times for Section 106 as high as 60 days. Most of these programs are simple rehabilitation projects (roofing, utilities, mechanical) and accounted for approximately 65% of the cities reviews last year. All these projects were found to have no effect on historic resources.

The potential changes will accelerate Section 106 review timelines and impact City of Saint Paul projects positively.

Please do not hesitate to contact me if you require additional information or wish to discuss our position.

Sincerely,  
George Gause, City of Saint Paul, MN



**George Gause**  
Supervisor, Heritage Preservation  
Planning & Economic Development  
1400 City Hall Annex  
25 4<sup>th</sup> Street West  
Saint Paul, MN 55102  
P: 651-266-6714  
Pronouns: He/Him  
[George.Gause@stpaul.gov](mailto:George.Gause@stpaul.gov)



**COUNTY OF BERGEN**  
**BERGEN COUNTY HISTORIC PRESERVATION ADVISORY BOARD**

One Bergen County Plaza – 4<sup>th</sup> Floor – Hackensack, NJ 07601-7076  
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Matthew Wolchko, AIA  
Chairman

Margaret O'Neill  
Vice Chairwoman

October 8, 2024

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

Dear Chair Bronin:

The Bergen County Historic Preservation Advisory Board (BCHPAB) appreciates this opportunity to provide comments on the proposed Advisory Council on Historic Preservation's (ACHP). "Program Comment on Accessible, Climate Resilient, Connected Communities. This Public Comment broadly pertains to housing, clean energy and energy efficiency projects and climate-friendly transportation projects unlike past Public Comments, this is not tied to any particular agency, action or historic property type.

The BCHPAB is often called up to provide comment on proposed projects as part of the Section 106 process of the National Historic Preservation Act. We have found the opportunity to comment allows for local expertise to be consulted for its knowledge of historic resources that are important to its citizens. As proposed, the Public Comment allows an agency to ignore citizen and local government concerns, which in turn, allows agencies to sidestep one of the most fundamental intents of the National Historic Preservation Act. Equally so, in streamlining the process, it fails to offer mitigation for adverse impacts which is also fundamental to the Section 106 consultation process. As proposed, this Public Comment offers no alternative solutions or mitigation for the harm it may cause.

Of additional concern to the BCHPAB are the potential unintended consequences of conflicting programs, particularly review under local preservation ordinances. Bergen County is home to nearly one million people spread over 70 municipalities: twenty with robust historic preservation commissions. As written, the proposed Public Comment has the potential to conflict with local historic preservation ordinances. It is possible that two different review standards could apply to different aspects of a project. This in turn, could lead to confusion and inconsistent outcomes.

Bergen County's citizens have directly benefited from Section 106 of the National Historic Preservation Act by providing feedback on numerous federally funded projects that would fall under the areas the proposed PC has targeted for streamlining. The Bergen County Historic Preservation Advisory Board urges the Advisory Council on Historic Preservation to reconsider this PC and stands ready to assist in this endeavor.

Sincerely,

*Matthew Wolchko*  
Matthew Wolchko, AIA  
Chair, Bergen County Historic Preservation Advisory Board

*Margaret O'Neill*  
Margaret O'Neill  
Vice Chair

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

Gray, Stewart <Stewart.Gray@mecklenburgcountync.gov>

Fri 16-Aug-24 11:19 AM

To: Program Alternatives <program\_alternatives@achp.gov>

Cc: Ramona Bartos <ramona.bartos@ncdcr.gov>; briansclarke1972@gmail.com <briansclarke1972@gmail.com>; Howard, John <John.Howard@mecklenburgcountync.gov>; Warlick, Tommy <Tommy.Warlick@mecklenburgcountync.gov>

Our department strongly urges the Advisory Council to make it clear that the proposed Program Comment on Accessible, Climate-Resilient, Connected Communities would not affect the ability of local governments to have oversight over buildings in local historic districts / landmarks through the public COA process. Our department plans to participate in ACHP listening sessions scheduled for September.

Thank you.

**Stewart Gray**

Director

Historic Landmarks Department

Mecklenburg County Government

704-999-3084 | 980-314-7660 | [MeckNC.Gov](https://www.mecknc.gov)



**Charlotte-Mecklenburg Historic Landmarks Commission**

1973 - 2024

Preserving Mecklenburg County's History for Over 50 Years



## [External] Maryland State Highway Administration Comments on Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

**From** Steve Archer <SArcher@mdot.maryland.gov>

**Date** Fri 27-Sep-24 9:13 AM

**To** Program Alternatives <program\_alternatives@achp.gov>

**Cc** David Clarke <david.clarke@dot.gov>; Beth Cole, MHT <beth.cole@maryland.gov>; Tim Tamburrino, MHT <tim.tamburrino@maryland.gov>

Good Morning,

I appreciate the opportunity to review and provide comments on the above-referenced Draft Program comment.

In general, the Maryland Department of Transportation State Highway Administration encourages and appreciates development of program comments and other tools to provide flexibility and efficiency in the Section 106 review process and are pleased to see ACHP continue making efforts in this area. Some of the elements identified in this program comment will be commonly included in transportation projects currently being designed and implemented in the future, and we appreciate the thought given to how to balance these important environmental features with historic preservation.

On the whole however, this draft program comment appears fairly cumbersome and as-written, it would be difficult to implement as currently drafted. We offer these comments largely from the state transportation agency perspective focusing on the transportation elements rather than the housing portions of the draft:

- **General Comment:** consider separating the housing and the transportation aspects of this program alternative into two different program comments. This would make the content more manageable/navigable for agencies, consulting parties, and users who generally would fall into one category or the other field with only a small number of program comment users working in both fields. It would not preclude users from using both (hypothetical) program comments.
- **Section II. C.** “Effect on Existing Agreements” – because the Program Comment allows applicability to components of undertakings (Section II E. A. 2.), clarity is needed here on partial exemptions. If a curb bulb or bike rack element is exempted via the program comment, but the remainder of the undertaking is reviewed under an existing MOA or PA, there is potential for confusion. Consider including a statement such as, “where the majority of project elements under review are covered by an Federal Agency’s existing Section 106 agreement, that agreement should be followed for general review process and in the event of project changes” (similar to how an existing unanticipated discovery plan is referenced in **Section V**)
- **Section III. A.**, from a transportation perspective, is problematic. While having “components of undertakings” be exemptable under under this program comment is a laudable goal, in practice it creates confusion as most transportation projects will contain a variety of elements, both for “ordinary” capacity/safety improvements while also containing climate-friendly elements.
- The equipment or project element’s *function* or *purpose* has no relationship to how it affects historic properties. The program comment should avoid these types of characterizations throughout, and simplify

by noting the types of work elements that do not affect historic properties under the specified conditions. A “camera limiting unauthorized traffic from pathways dedicated to transit use” (Appendix C-1-2-ix) may serve other functions as well. A tree “planted to improve the experience for pedestrians, bicyclists, micromobility or transit users” (Appendix C-2-3a), has no different effect to historic properties than a tree planted for any other reason, and these “purposes” are typically not specified into project documents. A global review throughout to remove this type of language would greatly simplify the program comment for the better.

- ♦ **Section III. B. 2.** – The program comment should provide more guidance for how a Federal Agency may determine an effect is possible to historic properties of religious and cultural significance prior to consultation with Indian Tribes and Native Hawaiian Organizations, such as review by a qualified historian, archaeologist, tribal liaison, etc. at the federal agency or its delegate. Strongly disagree with Stipulation III. C. that no “qualified authority” is needed to make determinations regarding various aspects of this program comment (such as evaluating ground disturbance and archaeological potential in urban deposits).
- ♦ The entirety of **Section IV** is a much larger issue beyond this program comment for certain activity types. Inclusion of these provisions only as relates to this program comment and the exemptions within muddies the issue of payment for certain services in Section 106 consultation. This should be extracted from the program comment, and ACHP should issue this as a separate policy statement. The provisions here are relevant to all Section 106 inventory and assessment work, not just Accessible, Climate-Resilient and Connected Communities projects. Also this type of in-depth research where a consulting party would potentially be compensated should not be common for the exempted activities under this program comment, making this section all the more incongruent.
- ♦ **Section V.** Unanticipated Discoveries – again it is unusual in a program comment to have a proscriptive section on Inadvertent Discovery (an issue that applies to all Section 106 reviews) as opposed to referring to 36 CFR 800.13(b). If ACHP wants to provide additional guidance on late discoveries, the appropriate place would be to update 36 CFR 800 rather than providing this detail in a program comment covering a very limited range of undertakings. If this language is to stand suggest the language be amended as follows: **A federal agency that has historic property discovery procedures in existing management plans, MOAs or PAs pertaining to historic properties should follow such existing procedures.**
- ♦ **Section X** is both overly burdensome and the much of the information required not useful to administering the program comment, or the broader goals of ensuring ability to comment on undertakings’ effects on historic properties. The program comment already defines the types of undertakings it may be used for, why should the federal agency report specific examples of these? If no quantitative metrics (e.g., number of projects processed using the program comment) are provided the data would seem to be not useful. It seems like “busy work”. This should be simplified, for example having the federal agency report any disputes regarding the program comment use, and omit all other requirements. Large agencies like FHWA that delegate work to state partners would find this incredibly cumbersome to compile on an annual basis, discouraging use of the program comment.
- ♦ **Section X.C.** should specify *to whom* ACHP staff provides its “written or oral summary” of information. This should be public information posted on ACHP’s website.
- ♦ **Definitions**, General comment: Some “Definitions” are overly detailed and cumbersome. Does the voltage or rate at which an EVSE charges a battery have any relevance to effects to historic properties?
  - That “Federal Agency” is including state or local governments with delegated authority for 106 should be made clearer elsewhere and throughout the document, rather than buried here.

#### - Appendix C-1:

-2.a.vii. Would be appropriate to include “recognized design manuals” or “fixed static” signs in the sign and signal stipulation. A “sign” can have a very broad interpretation, including some elements that can be incompatible with certain settings (variable message LED signs for example).

-5. a. These activities (leasing, refinancing, acquisition) are already generally exempted from Section 106 review under 36 CFR 800.3(a)(1) as undertakings with no potential to cause effects, and

should be removed from the program comment for simplification.

I would appreciate being added to any email distribution list regarding this and future program comment opportunities. Thank you for your consideration of the above input,

Steve Archer

Assistant Division Chief

Maryland Department of Transportation State Highway Administration

Environmental Planning Division

707 North Calvert Street

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Phone 410-545-8508

[sarcher@mdot.maryland.gov](mailto:sarcher@mdot.maryland.gov)



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**Francis K. O'Connor**, Commissioner  
**Kevin S. Corbett**, President & CEO

ONE PENN PLAZA EAST  
NEWARK, NJ 07105-2246  
973-491-7000



October 4, 2024

**Submitted Electronically at [program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)**

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

**RE: Public Comment on the Advisory Council on Historic Preservation's Draft Program Comment on Accessible, Climate-Resilient, Connected Communities**

Dear Chair Bronin:

The New Jersey Transit Corporation ("NJ TRANSIT") writes in response to the Advisory Council on Historic Preservation's ("ACHP") request to comment on its draft "Program Comment on Accessible, Climate-Resilient, Connected Communities" dated August 8, 2024 ("Program Comment"). ACHP is seeking feedback from the public and industry professionals to ensure that the Program Comment will enable federal agencies to advance historic preservation while meeting the nation's climate goals. Appendix C of the Program Comment provides an alternative way to comply with Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 for specified climate-friendly transportation-related activities, while Appendix A focuses on housing and Appendix B focuses on buildings.

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.). As an instrumentality of the State of New Jersey, NJ TRANSIT is responsible for operating and providing a unified, coherent, public transportation system in the most efficient manner. During its 40-plus years of service, it has become the largest statewide public transportation agency in the nation, with more than 12,000 employees operating commuter passenger rail, bus, light rail, and paratransit systems in New Jersey, New York, and Pennsylvania.

NJ TRANSIT applauds ACHP's commitment to rehabilitate or develop new climate-friendly transportation infrastructure and facilities. The exceptions provide for more efficient federal historic preservation reviews for activities that are commonly supported by the federal government and have minimal adverse effects on historic resources, but will ultimately enhance the project delivery process for environmentally friendly activities (e.g., biking and walking to stations). ACHP's commitment should serve as an example to other federal agencies to take actions to align the intent of this Program Comment with other review processes.

**Climate-Friendly Transportation Activities**

*Storage for Bicycles and Micromobility Vehicles Amendments*



NJ TRANSIT believes it is important to invest in projects that will improve first mile, last mile, and micromobility options for its customers while benefiting the entire state with reduced carbon emissions and an improved customer experience. To accomplish this, NJ TRANSIT supports the use of bicycles, personal electric vehicles (e.g., e-bikes, electric scooters, and Segways) and personal vehicles (e.g., scooters and skateboards) to get to and from stations. While bicycle racks are located at most train stations and Hudson-Bergen Light Rail and River LINE stations, and at several bus park ride lots and bus terminals in New Jersey, NJ TRANSIT has been working to also provide safe, secure, weather and theft-proof storage for bicycles and personal electric vehicles by installing bicycle lockers or depots. These are locked glass sheds near transit stations where commuters can leave their bicycles or scooters in an enclosed shelter before boarding public transportation. This year, a storage shed opened at the Summit, NJ train station. See <https://www.nj.com/union/2024/02/locked-glass-shed-coming-to-nj-transit-station-for-commuters-to-store-bikes.html>. NJ TRANSIT plans to install several more of these storage containers to provide durable, secure, and accessible shelters for bicycles and personal electric vehicles at its major transit hubs. See <https://www.northjersey.com/story/news/transportation/2022/11/11/nj-transit-coronavirus-funding-for-sustainability-environment-projects/69635024007/>.

The Program Comment recognizes that “bicycle parking” is a climate-friendly activity and exempts “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” from Section 106 review. NJ TRANSIT recommends enhancing bicycle parking by editing the Program Comment as follows:

- (1) Amending the definition of “Bicycle parking” under Section XI as follows: “Bicycle parking means a designated area to store a bicycle **or micromobility vehicle**, whether personal or shared, including bicycle racks, **bicycle locker, bicycle shelter**, and dedicated bicycle docks **and kiosks** used in a shared system.”
- (2) Adding the term “Bicycle locker” and the following definition to the list of definitions under Section XI: “Bicycle locker means a device or structure for storing personal or shared bicycles and micromobility vehicles, that may have a cover and enclosure to protect the bicycles and micromobility vehicles from weather or theft and is not intended for human occupancy.”
- (3) Adding the term “Bicycle shelter” and the following definition to the list of definitions under Section XI: “Bicycle shelter means a canopy structure above a bicycle rack for a personal or shared bicycle or micromobility vehicle that provides partial weather protection of the rack and bicycles or micromobility vehicles.”<sup>1</sup>

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<sup>1</sup> While the definition for “Climate-friendly transportation facility” already includes a “structure used for bicycle parking”, adding a specific definition for bicycle locker and bicycle shelter will ensure that bicycle lockers and shelters clearly meet the exceptions. Indeed, bicycle lockers and shelters are a recognized enhancement to bicycle parking in major cities. See <https://nacto.org/publication/transit-street-design-guide/station-stop-elements/stop-elements/bike-parking/#:~:text=Bike%20Parking.%20Bike%20parking%20can%20supplement%20transit%20ridership%20both%20in>. Since bicycle lockers and shelters may take on different forms and sizes based on capacity, security, or weather protection needs, it is best to leave the design of the structure to the experts who will tailor it to their station’s needs.

- (4) Amending the language of Appendix C-1(2)(a)(i) as follows: “i. *Bicycle rack, bicycle locker, and bicycle shelter.*”
- (5) Adding “vi. Bicycle locker 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 item.” to Appendix C-1(2)(b).
- (6) Adding “c. Bicycle locker with a combined dimension (length plus width plus height) of 30 linear feet or more, and with advertising space greater than 24 square feet visible at any one time; and *maintenance, repair, and in-kind replacement* of any other such item.” to Appendix C-2(2) and then changing Appendix C-2(2)(c) to Appendix C-2(2)(d).

#### *Miscellaneous Amendments*

NJ TRANSIT proposes the following additional edits to better fulfill the Program Comment’s intended purpose:

- (1) Removing the limitation in “Elevation” of “no more than 10 inches” to “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.” to Appendix C-1(1)(c).
  - NJ TRANSIT believes that this level of prescription (i.e., 10 inches) can be constraining, and would like to see flexibility in the elevation size to accommodate special grading needed for compliance with the Americans with Disabilities Act.
  - Further, Appendix C-2(1)(a) appears to negate or propose a conflict to this 10-inch restriction.
- (2) Changing “qualified authority” to “qualified professional unless a qualified authority is deemed more appropriate at the site location” to Appendix C-1(1) and Appendix C-1(2).
  - NJ TRANSIT believes having a qualified authority review the activities under Appendix C-1 and Appendix C-2 adds an unnecessary layer of review. A qualified authority is typically necessary for undertakings in cultural and tribal sites. Public transportation services are usually built on previously disturbed soils.

#### **Housing-Related and Building-Related Activities**

#### *Miscellaneous Amendments*

NJ TRANSIT proposes the following additional edits to strengthen the Program Comment:

- (1) Amending the language in Appendix A-1(1) and Appendix B-1(1) as follows: “The following activities do not require further Section 106 review when conducted in areas

adjacent to or on the same lot as housing, **but should still meet the Secretary of Interior's Standards for the Treatment of Historic Properties for listed and eligible properties.**"

- Despite exemption from Section 106, NJ TRANSIT would still submit these activities for review through the New Jersey Historic Preservation Office to ensure they meet the Secretary of Interior's Standards for the Treatment of Historic Properties for listed properties under the NJ Register of Historic Places Act (N.J.S.A. 13:1B-15.128 et seq.). Adding this additional language will clarify that other reviews still exist.
- (2) Clarifying who will determine whether the façade of a historic building is “non-primary” under Appendix B-1(2)(a) and Appendix B-1(2)(e)(i).
- (3) Clarifying who will determine whether “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*” under Appendix B-1(2)(e)(ii).
- (4) Clarifying who will determine whether “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*” under Appendix B-1(3)(b).

In conclusion, NJ TRANSIT appreciates the opportunity to comment on ACHP's Program Comment. With the effectuation of this Program Comment, NJ TRANSIT hopes to fix and install more pedestrian, bicycle, micromobility vehicle, and climate-friendly transit infrastructure more easily.

Sincerely,



Jeremy Colangelo-Bryan  
Chief Planner  
NJ TRANSIT  
One Penn Plaza East  
Newark, NJ 07105





TEXAS GENERAL LAND OFFICE  
COMMISSIONER DAWN BUCKINGHAM, M.D.

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 Texas General Land Office Community and Revitalization Division (“GLO”) appreciates the opportunity to submit these comments on the Advisory Council on Historic Preservation’s (“ACHP”) proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. The GLO is responsible for administering U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) and Mitigation (“CDBG-MIT”) funds for numerous federally declared disasters on behalf of the state. Congress appropriated Texas approximately \$14 billion, and with those funds, the GLO administers housing and infrastructure programs and projects throughout eligible disaster areas to help Texans recover from disasters.

Under CDBG-DR and CDBG-MIT authorizing legislation and HUD’s environmental regulations in 24 CFR part 58, recipients or subrecipients (“responsible entities”) assume the responsibility for completing environmental reviews under Federal laws and authorities. To qualify for CDBG-DR or CDBG-MIT assistance, a HUD-assisted project must comply with Section 106 of the National Historic Preservation Act (NHPA). The GLO state-run single-family housing programs have assisted Texans with reimbursements, rehabilitations, or reconstructions, resulting in thousands of Section 106 reviews while utilizing an executed Programmatic Agreement (“PA”) between the Texas Historical Commission (the “THC”) and the GLO.

GLO strongly supports the ACHP proposal to help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings, maintain and update buildings and their immediate environs concerning climate resiliency, and rehabilitate or develop new infrastructure. The GLO is supportive of the proposed Program Comment as an alternate way to comply with their responsibilities under Section 106 of the NHPA and for applying it to all federal agencies proposing to carry out, permit, license, fund, assist, or approve the covered undertakings which elect to use it.

The GLO also supports how the Program Comment can be utilized with existing agreements. While the GLO and THC programmatic agreement is tailored to meet Texas’ unique disaster recovery needs, the list of undertakings or components of undertakings identified as having no or minimal potential to adversely affect historic properties as outlined in Appendix A-1, B-1, or C-1 of the Program Comment is expansive, and to allow, through amendment, to incorporate, in whole or in part, the terms of this Program Comment would be a benefit by further streamlining the Section 106 process.

The GLO recommends extending the Program Comment to subrecipients not defined as units of general local government (“UGLG”) and, therefore, unable to assume the role of a responsible entity in HUD’s Part 58 regulations. As the responsible entity for non-UGLG subrecipients, the GLO, and potentially other HUD grantees, could authorize and delegate historic preservation reviews to these subrecipients for

the frequent and recurring undertakings covered by the Program Comment. Similar to the delegation procedures found in NHPA regulations at 36 CFR §800.2(c)(4).

Finally, the GLO encourages the ACHP to adopt the Program Comment and consider the recommendation detailed in these comments as promptly as possible. The Program Comment will provide a more precise and effective process to meet obligations under Section 106. Making a more streamlined process available to responsible entities and other federal agencies will achieve important national policies concerning housing and protecting the nation's historic and cultural heritage.

A handwritten signature in black ink, reading "Heather Lagrone". The signature is written in a cursive, flowing style.

Heather Lagrone

Sr. Deputy Director

Community Development and Revitalization



## State of Utah

SPENCER J. COX  
*Governor*

DEIDRE M. HENDERSON  
*Lieutenant Governor*

## Department of Natural Resources

JOEL FERRY  
*Executive Director*

## Public Lands Policy Coordinating Office

REDGE B. JOHNSON  
*Director*

October 8, 2024

*Submitted electronically at: [program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)*

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

### **RE: Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities**

Dear Madam Chair, Bronin:

The Public Lands Policy Coordinating Office (“PLPCO”) recently learned about the above-referenced Program Comment (“PC”). PLPCO shares the concerns enumerated by Dr. Christopher Merritt, Utah State Historic Preservation Officer (“Utah SHPO”). PLPCO urges you, other members of the Advisory Council on Historic Preservation (“ACHP”), and ACHP staff to withdraw this PC in favor of program or project-specific agreement documents that provide greater opportunities for all participants in the Section 106 process to be involved.

Concerning Dr. Merritt’s concern about a federal, one-size-fits-all approach, PLPCO is unconvinced that the potential effects of the undertakings covered by the PC upon historic properties are foreseeable and likely to be minimal or adverse. The PC is simply too broad to be applied to, for example, the Department of Housing and Urban Development’s “1 million housing units across 190,000 public housing buildings”, half of which are likely older than 50 years and, therefore, may qualify for National Register nomination.<sup>1</sup> Billions of dollars are being allocated to a host of undertakings for “climate-smart buildings” and “climate-friendly transportation”, both of which will include thousands, if not tens of thousands, of historical and cultural resources that may be National Register eligible and, if so, may be diminished by individual undertakings. In short, the PC is too

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<sup>1</sup> ACHP, “Draft Program Comment on Accessible, Climate-Resilient, And Connected Communities”, pp. 1–2 (August 8, 2024).

## ACHP's Draft Program Comment

September 8, 2024

Page 2

coarse to apply to all the known and potential historic properties affected by the multitude of undertakings.

PLPCO is deeply concerned that the ACHP is both the issuer and reviewer of the proposed PC. The ACHP, as an agency, is asking itself to “comment on a category of undertakings instead of conducting individual reviews under 36 C.F.R. §§ 800.4 through 800.6”.<sup>2</sup> This may meet the letter of the law, but it is not harmonious with the spirit of Section 106 consultation. Rather than having a chance to dispute this PC in the same way as a memorandum of agreement, which would obligate an agency to take the steps in 36 C.F.R. § 800.7, objecting parties will now be obligated to dispute individual undertakings, trusting that the lead agency will comply with the requirements of § VI of the PC. Because of this perceived conflict of interest, PLPCO urges the ACHP to give considerable weight to the critical comments of consulting parties.

Finally, PLPCO is disappointed to see the ACHP crafting a PC to streamline the Section 106 process for a highly contentious law, the Inflation Reduction Act, that gained no traction under its former name, the “Green New Deal”, and that President Biden recently admitted was misnamed.<sup>3</sup>

Here in Westby, you know, I’m proud to announce that my — my investments — that through my investments, the most significant climate change law ever — and, by the way, it is a \$369 billion bill. It’s called the — we — we should have named it what it was, but it — but any rate. (Laughter.)<sup>4</sup>

The reality of this PC is that it has the potential to make an astonishing number of historic properties martyrs to the climate crisis narrative, which many well-respected scientists still question.<sup>5</sup> In PLPCO’s opinion, the ACHP should be promoting “the preservation, enhancement, and sustainable use of our nation’s diverse historic properties”, rather than finding ways around them to implement a controversial and costly agenda item that is shrouded in pretense.

PLPCO respectfully urges the ACHP to carefully reconsider Dr. Merritt’s comments and (1) re-think the substance of the PC through additional consultation or, preferably, (2) withdraw the PC

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<sup>2</sup> 36 C.F.R. § 800.14(c).

<sup>3</sup> Saunder, Joe, “Humiliation for Kamala Harris: Biden Admits ‘Inflation Reduction Act’ Name Was a Mistake”. *The Western Journal* (September 7, 2024). Available at <https://www.msn.com/en-us/news/politics/humiliation-for-kamala-harris-biden-admits-inflation-reduction-act-name-was-a-mistake/ar-AA1q7RgM>.

<sup>4</sup> The Whitehouse Briefing Room, “Remarks by President Biden Highlighting How His Investing in America Agenda is Benefitting Communities Across Wisconsin and Ensuring Americans Have a Brighter, More Prosperous Future | Westby, WI” (September 5, 2024). Available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/09/05/remarks-by-president-biden-highlighting-how-his-investing-in-america-agenda-is-benefitting-communities-across-wisconsin-and-ensuring-americans-have-a-brighter-more-prosperous-future-westby-wi/>

<sup>5</sup> Davis, Jack, “Nobel Prize Scientist Declares ‘There Is No Real Climate Crisis’ – Gets Abruptly Canceled for IMF Climate Talk: Claim”. *The Western Journal* (July 23, 2023). <https://www.westernjournal.com/nobel-prize-scientist-declares-no-real-climate-crisis-gets-abruptly-canceled-imf-climate-talk-claim/>.



**ACHP's Draft Program Comment**

September 8, 2024

Page 3

altogether. If you continue consultation for this PC, then please consider PLPCO's request to be added as a consulting party by contacting Kristopher Carambelas, PLPCO's archaeologist, at [kcarambelas@utah.gov](mailto:kcarambelas@utah.gov) or (801) 231-2896.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal line extending to the right.

Redge B. Johnson  
Director



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**[External] WisDOT's Comments on the Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities**

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**From** Kaliszewski, Katherine N - DOT <katherinen.kaliszewski@dot.wi.gov>

**Date** Mon 23-Sep-24 5:08 PM

**To** Program Alternatives <program\_alternatives@achp.gov>

**Cc** Waldschmidt, Jay - DOT <Jay.Waldschmidt@dot.wi.gov>; Paye, Barry - DOT <Barry.Paye@dot.wi.gov>; Rumschlag, Samuel J - DOT <samuelj.rumschlag@dot.wi.gov>; Cloud, Lynn - DOT <Lynn.Cloud@dot.wi.gov>; Bethaney Bacher-Gresock <bethaney.bacher-gresock@dot.gov>; Hemesath, Lisa (FHWA) <lisa.hemesath@dot.gov>

WisDOT has reviewed the Proposed Comment on Accessible, Climate-Resilient, Connected Communities. We have two comments below:

- Provide additional guidance on what is considered 'previously disturbed' particularly in urban areas. Provide additional guidance for how the federal agency should work with a 'qualified authority' or 'qualified professional' to determine 'previous disturbance.'
- WisDOT would recommend strengthening *II.Scope, C. Effect on Existing Agreements*. Many state DOTs have undergone consultation to update their statewide PAs in the last few years. The current wording does not provide for adequate consultation for consulting parties to the Section 106 Delegation PAs. The current draft just asks for consultation and written notice. We suggest that consultation should be undertaken and states must then amend their PAs to include it. This would allow for robust consultation with consulting parties, particularly our tribal partners.



**WisDOT Cultural Resource Team (CRT)**  
**Wisconsin Department of Transportation**  
(608) 267-6693 office  
[wisconsindot.gov](http://wisconsindot.gov)

