



SOCIETY FOR AMERICAN ARCHAEOLOGY

December 13, 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) submits the following comments on the Advisory Council on Historic Preservation's (ACHP) revised draft program comment (PC), now titled "Program Comment on Certain Housing, Building, and Transportation Activities." We once again welcome the opportunity to provide input on this important proposal.

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 and avocational archaeologists, archaeology students and faculty in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The SAA appreciates the time and effort that went into making the extensive revisions contained in the current draft. We also agree with the intent of the PC—to make the Section 106 process more efficient and effective. While the revisions address some of the concerns with the earlier version, as outlined in our letter of September 20, we remain convinced that the new draft PC is fundamentally flawed for the following reasons:

1. The document still constitutes a de facto rulemaking, and as such cannot permit actions that run counter to the explicit requirements of the statute upon whose authority the rulemaking rests. While the change in the PC removing some consultations with Tribal Historic Preservation Officers (THPOs) from the proposed exemption is welcome, agencies would still be allowed to forego consultations with THPOs for undertakings not located on tribal lands. Meanwhile, agencies could waive consultations with State Historic Preservation Officers (SHPOs). To reiterate our earlier objection, this is the direct opposite of the process set forth by the statute. The legal justifications for the draft PC, as outlined by the ACHP general counsel in October, simply sidestep the concerns raised by the comments of the SAA and other organizations. The delegation of authority to the ACHP by the law is not unfettered, and it does not give the ACHP the ability to write rules outside the boundaries of the statute. Together, the SAA believes that the general counsel's response and the revised PC continue to make a mockery of the consultation process that is intended to occur between state and federal entities. The National

Historic Preservation Act is not and was never intended to be a one-way street, with the ACHP dictating terms to SHPOs and THPOs.

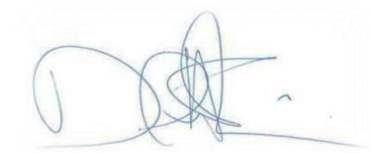
2. The revised draft continues the error of the earlier document by being virtually silent when it comes to archaeology and undertakings eligible under the PC. To reiterate, the SAA strongly believes that exemptions from ground disturbance, even for ground that was already examined at some point in the past, must be determined by archaeologists. By short-circuiting the consultation process, especially when it comes to SHPOs, the draft PC would remove protections from as yet unidentified archaeological sites.

3. Section VIII part A is particularly troubling. The 10-year duration of the proposed PC, though reduced from the earlier draft, is still a long time. There is no need for an extension of any duration at the discretion of a single individual. It is notable that Section IX seems, by contrast, to imply that in order for the PC to be withdrawn, a vote by the entire ACHP is needed. This provision should be withdrawn.

4. As of this writing, the current administration has 38 days remaining in office. The new administration will undoubtedly wish to closely scrutinize all rulemakings made by the outgoing one, particularly those promulgated after the election. It is highly likely, if not certain, that even if the current draft PC is finalized before January 20, 2025, that agencies will be unable to use it before the next president's appointees seek to implement new policies that reflect their outlook. To proceed with the draft PC under these circumstances would only cause unnecessary confusion among government organizations and stakeholders.

For the above reasons, we urge the ACHP to abandon this draft PC and work with the incoming administration and stakeholders to develop a different approach to bring further efficiencies to the Section 106 process without sacrificing either effectiveness or consultation.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Sandweiss", with a stylized flourish at the end.

Daniel H. Sandweiss, Ph.D., RPA
President