



December 14, 2024

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

**Re: Proposed Program Comment on Certain Housing, Building, and Transportation Activities**

Dear Chair Bronin:

The American Cultural Resources Association (ACRA), the trade association for private firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Advisory Council on Historic Preservation's (Council) Proposed Program Comment on Certain Housing, Building, and Transportation Activities (Program Comment).

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

Although ACRA commends the Council for its good-faith efforts to address a number of concerns with the Program Comment, it continues to believe that the scope of this proposed Program Comment is so broad and comprehensive that it will lead to a raft of unintended consequences that will impair the ability to preserve, protect and mitigate from harm our nation's cultural heritage. Worse, if adopted the Program Comment will set a precedent that may be abused by subsequent Councils and Council Chairs.

For these reasons, ACRA continues to recommend that the Council withdraw the Program Comment and work with individual agencies and other stakeholders to develop programmatic agreements appropriate to reach agency's unique mission, culture and program.

**Improvements to the Program Comment**

As stated earlier, ACRA welcomes a number of changes that the Council made to its original draft Program Comment. In particular, ACRA appreciates the fact that the proposed Program Comment stipulates that it "does not in any way supersede, replace, or change the terms of existing MOAs or PAs, or other program comments" and urges federal agencies that elect to amend or terminate an MOA or PA to engage in meaningful consultation with relevant Indian Tribes and Native Hawaiian Organizations even when not required by the underlying MOU or PA.

In a similar vein, ACRA supports provisions that require federal agencies to provide written notification prior to using this Program Comment to the Council, the National Conference of State Historic Preservation Officers (NCSHPO), and the National Association of Tribal Historic Preservation Officers (NATHPO). However, ACRA recommends that the Council amend this section to further require the agency to also notify the affected State or Tribal Historic Preservation Officer.

ACRA furthermore appreciates the Council's efforts to clarify that the Program Comment's lack of pre-emption of federal, state, local or Tribal laws or regulations includes both the federal rehabilitation tax credit, local historic preservation review or zoning ordinances, building codes, and permitting requirements.

ACRA welcomes changes to the reporting provisions that require agencies to provide annual reports every year for the duration of the Program Comment, as opposed to once every three years starting in 2029 as initially proposed. In addition, ACRA supports changes made in the document to require agencies to report on all instances where the Program Comment was utilized for undertakings covered by Section III.A.1.a., as opposed to just examples of such instances as in the initial draft. These changes will help improve transparency.

Lastly, ACRA welcomes the change in the duration of the Program Comment to 10 years, as opposed to the 20 years proposed in its initial draft.

### **Concerns with the Program Comment Approach**

Although ACRA commends the Council for making the above revisions to its proposal following feedback from stakeholders, its core concerns with the proposal remain.

As ACRA noted in its October 8 letter, it is unprecedented for the Council to issue a program comment on its own initiative, much less one that covers every federal agency. While allowable under the Council's regulations, ACRA believes this approach is inconsistent with the purpose and intent of program comments.

In addition, ACRA remains concerned that that the Program Comment – like the initial draft - would enable agencies to make decisions without the use of qualified professionals. "III.C., The Use of Qualified Professionals" states that:

"Except where explicitly stated, undertakings covered by this Program Comment do not require the use of a qualified professional. When the federal agency consults with a qualified professional, the type of qualified professional must be appropriate to the circumstances. As an example, determinations regarding architectural resources and structures must be made by a qualified professional meeting such professional standards for historic architecture or architectural history established by the Secretary of the Interior."

Although the language requiring that the type of qualified professional be appropriate to the circumstances is helpful, the draft Program Comment effectively gives agencies the authority to make decisions on whether specific undertakings affect historic properties without consulting with qualified authorities.

ACRA recognizes that there are many routine undertakings that reasonably would not be expected to have potential adverse effects on historic properties, and for which a full Section 106 review process is not warranted. However, the all-encompassing nature of this Program Comment, covering disparate kinds of projects and applying a blanket waiver across all agencies, is an approach that risks confusion and abuse.

### **Conclusion**

ACRA respectfully recommends that the Council withdraw this Program Comment and instead work with individual federal agencies to craft programmatic agreements that take into account each agency's unique mission, staffing, culture and capacity. Such an approach may take longer than a single Program Comment. But the consultation and careful collaboration that this approach would entail will ensure a better balance between the goals of development and preservation.

More importantly, this approach will keep faith with the fundamental mission of the Council and avoid creating a precedent for sweeping Program Comments designed to advance any future Executive Branch policy goals at the expense of our cultural heritage.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Stratton". The signature is fluid and cursive, with a large initial "A" and "S".

Amanda Stratton  
Executive Director