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October 9, 2024

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

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

Chair Bronin:

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

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

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

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

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

Adjustments to Duration

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

Affect on Existing Agreements

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

Role of Qualified Professionals

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

Definition of Primary Interior Space

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

Energy Study Prerequisite

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

Clarification of Applicability to Exceptionally Significant Properties Under 45 Years Old

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

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

Sincerely,

Bonnie McDonald

Bonnie McDonald

President & CEO