



SOCIETY FOR AMERICAN ARCHAEOLOGY

October 23, 2023

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) provides the following comments on the Advisory Council for Historic Preservation's (ACHP) draft Housing and Historic Preservation Policy Statement. The SAA acknowledges that access to affordable housing is a significant problem in our nation and that historic preservation is sometimes seen as an exacerbating factor in that issue. We affirm that development, historic preservation, and protecting affordable housing can all occur simultaneously and that the public benefits from all three goals. Further, we appreciate the ACHP considering new policies and gathering data that could assist with the resolution of this crisis. We have a number of questions about the draft, however, and are concerned that as currently proposed it could inadvertently lead to the potential destruction of archaeological resources.

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 5,500 members, the SAA represents professional and avocational archaeologists, archaeology students 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.

Our general concerns with the document are as follows:

First, the document seems to inject the ACHP and the federal government into a policy area—zoning—that is exclusively a state and local issue. At times, the draft envisions outcomes that will require substantial revisions to state and local laws and ordinances. This would require a multiyear, coordinated effort by federal and non-federal policymakers, assuming the latter support the proposal in the first place. The draft, however, does not describe how such an effort will happen.

Second, it must be pointed out that many local officials know almost nothing about the National Historic Preservation Act (NHPA) and Section 106. To them, the policy will read like a federal directive and will undoubtedly cause a great deal of confusion and even opposition. Since zoning is a state and local issue, these officials will understandably want to know upon what authority the ACHP is issuing the policy.

Third, we question whether the system that the draft seems to envision could work in practice. We fear that it will lead to a host of problems including, but not limited to, loss of confidentiality and an increase in agencies outsourcing NHPA responsibilities without doing the proper paperwork.

The following are our specific comments and questions:

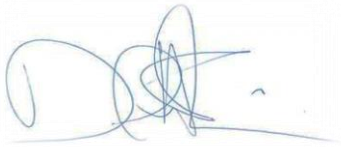
1. The Department of Housing and Urban Development (HUD) is only mentioned twice in the document, though it has arguably the most important federal role to play in this issue. Though the draft notes that HUD must comply with Section 106, that agency's tribal housing program is a problem. For years HUD has inappropriately delegated tribal consultation and Section 106 compliance activities to the applicants and contractors who frequently fail to do this work effectively. This situation needs to change before a wider policy shift can take place.
2. It is unclear what the term "public-serving institutions" means. Does it only refer to state and local governments, or does it also include other public institutions, such as state-funded colleges and universities?
3. "Minimal disturbance" in archaeology is a term that can have different meanings in different contexts. For this policy, it needs a precise definition. Archaeological investigations must follow proper scientific practice. The need for an archaeological investigation should be based on the horizontal and vertical limits of the proposed project, geographic location, and the potential for finding archaeological resources. Most archaeological sites are located on or near surface. Historical archaeological sites, for example, often encompass wide surface areas and/or occur in shallow, near-surface deposits. Further, rehabilitation of housing or a housing project can include substantial ground disturbance, such as installation of utility lines. Without a clear definition of "minimal" there is a heightened risk of inadvertent archaeological and human remains disturbance.
4. For the section on "gathering information," it is not clear who is expected to gather that information nor what that information is. What are the exact research questions to be answered, and what is the methodology to be used? Where will the information be disseminated, and who is reviewing the results? It is also not clear where the funding for the information gathering will come from.
5. Section 4 is problematic: "Public-serving institutions should promote zoning codes that encourage greater density of housing in tandem with preserving historic buildings and legalize housing in historic buildings in areas where it is now prohibited." As mentioned above, zoning is a state and local prerogative, so this could be interpreted as the federal government once again interjecting itself into a state or local issue. In addition, zoning is not the only mechanism for controlling land use. For example, the changing of zoning categories does not necessarily impact local organizations such as Homeowners Associations (HOAs). HOAs often place legally binding covenants on owners, covenants that also prohibit types of land uses. Any analysis of barriers to affordable housing must

address HOAs, as well as a host of other issues, including income inequality, transportation, and access to employment opportunities. These are beyond the scope of the ACHP's policy portfolio.

6. Regarding archaeological investigations (Section 9), we are concerned that the language, as currently drafted, could set a precedent for avoiding archaeological work even when it is necessary. The paragraph should be rewritten to make clear that archaeological surveys should take place if needed, and in consultation with State and/or Tribal Historic Preservation Offices. It should also be noted that while addressing inadvertent discoveries made during construction, there will be times when the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects will not apply. States have their own human remains and repatriation laws that are applied on non-federal private and public property and/or for state- or locally funded projects and permits. Similarly, the Native American Graves Protection and Repatriation Act will apply for projects on federal or tribal lands.

The SAA looks forward to working with the ACHP on this important issue in the months ahead.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sandweiss', written over a light blue grid background.

Daniel H. Sandweiss, PhD, RPA
President