



August 19, 2019

Druscilla J. Null
Director, Office of Preservation Initiatives
Advisory Council on Historic Preservation

Re: *Development of a Strategic Plan for the Advisory Council on Historic Preservation*

Dear Director Null,

The American Cultural Resources Association (ACRA) appreciates the opportunity to comment on the development of a new Strategic Plan for the Advisory Council on Historic Preservation (ACHP) under the Government Performance and Results Modernization Act. The ACHP is a critical element of the nation's historic preservation program and serves a vital role as an independent federal agency providing expert recommendations and guidance on the nation's most pressing and complex preservation challenges. As the ACHP has invited comments on strategic directions for the organization, these comments will focus on a few areas of historic preservation guidelines and regulations where we believe ACHP expertise and leadership is most critically needed. Many of our comments prioritize topics that are especially relevant today as the preservation movement is facing significant environmental, technological, and societal changes.

ACRA is the national trade association supporting and promoting the common interests of cultural resource management firms. With the aim of delivering responsible solutions that balance development and preservation, our member firms undertake much of the legally mandated CRM studies and investigations in the United States. ACRA is a strong proponent of efficient environmental review to facilitate development while protecting our shared cultural heritage. Our members are consultants who support project proponents and federal agencies to comply with various federal permitting processes, including historic and cultural resources review under Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

ACRA suggests that the ACHP continue to showcase examples of best practices and the economic benefits of preservation, and support the development of digital databases that will allow us to address the major issues facing the discipline today. Many of ACRA's comments below emphasize issues that affect how the public sees preservation and the way preservation concerns emerge in consultation about planned development. Conveying the importance of preserving our American heritage to the public is essential, and must be

a major focus for the ACHP and the discipline in general moving forward. The preservation community has improved in this regard, but much work remains to be done. We need to communicate in a manner that allows the public to understand and appreciate how the past informs the future. The next four years of ACHP leadership should address a few issues that create a reputational or perception risk for the national preservation program; adversely impact stakeholder engagement and responsiveness; or represent emerging questions regarding preservation best practices where ACHP guidance is needed.

The Strategic Plan Should Identify Ways in Which the ACHP Can Facilitate Development of Improved Digital Information About Cultural and Historic Resources

Early avoidance of impacts and accurate project planning are essential to an efficient historic preservation program. The ACHP should support infrastructure project proponents by encouraging digitization of information about historic properties and access to maps that inform early siting decisions. ACRA commends the ACHP for convening the ACHP Digital Information Taskforce, established to develop geographic information systems (GIS) and other digital tools that provide cultural resource information to planners, CRM professionals, industries, and federal agencies engaged in planning.

To be effective, the objectives of the Digitization Taskforce must include spearheading agency and legislative solutions and must be prioritized in the new Strategic Plan. We further believe that the limited and disjointed condition of digital cultural resource data currently represents an ever-increasing risk to the national preservation program, as industries and other subject disciplines conduct their operations in information-management systems. If cultural resource data are not mapped in these systems, they will not be considered in project planning.

The ACHP Should Advocate for Agency and Congressional Solutions to the Problem of Appendix C

Another topic that creates reputational risk and uncertainty for the national preservation program is the Army Corps of Engineers' (Corps) regulations governing how the Corps addresses compliance with Section 106 of NHPA, laid out in their regulations at 33 CFR 325, Appendix C. The legality of these regulations has been cast into doubt by a variety of experts and stakeholders, including the ACHP. Appendix C regulations encourage the Corps to take an extremely circumscribed view of their federal authority and determine areas for their permits in a counter-intuitive fashion that erodes public trust. As the nation saw with the Dakota Access pipeline dispute in 2014-2017, public objections to the outcomes of Appendix C can have a very damaging effect on tribes, local communities, agencies, and proponents of projects.

In 2019, the Government Accountability Office produced a report for Congress titled *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, which closely assessed the current state of the Appendix C disputes between ACHP and the Corps. The report clearly states that Appendix C in its current form damages federal relationships with Indian tribes, and the GAO advocates for a legislative solution. It is ACRA's view that these Appendix C disputes are likely to persist and increase, and that it is appropriate and necessary for the ACHP to explore ways in which the agency might convene experts to assess the impact of Appendix C on project predictability and historic properties. Over the next four years, the ACHP should work with the Corps, interested members of Congress, stakeholders, and other experts to brainstorm and create legislative solutions.

The ACHP Should Reevaluate its Approach to NEPA/NHPA Integration, Especially on Projects with Adverse Effects

Developed by the ACHP and the Council on Environmental Quality, *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*, is very useful in defining the workings of each process and their potential integration. NEPA and CRM practitioners alike are aware that public involvement is defined very differently by the two processes. Experience with integrating NEPA and Section 106 indicates that substituting NEPA for the Section 106 process is only efficient for undertakings with no effect or no adverse effect. More complex projects with determinations of adverse effect require the completion of the entire Section 106 process – there are no shortcuts. The handbook in its current form fails to note these issues and does not provide a streamlined approach to projects with adverse effects. It is therefore recommended that the document be updated because substitution of the NEPA process for that of Section 106 is not always straight forward or necessarily more efficient.

The ACHP Should Expand its Relationships with Tribes and Continue to Advocate for their Roles as Stakeholders and Knowledge Holders

ACRA thanks the ACHP for stressing the importance of tribal consultation when proposing changes to the national preservation program with particular tribal impacts, such as the recent National Register of Historic Places (NRHP) proposed rule.¹ American Indian tribes and native Hawaiian organizations are disproportionately affected by historic preservation legislation, because such a considerable proportion of sites important to tribes meet eligibility criteria under the NHPA. The ACHP should ensure that tribes are engaged early on in any regulator proposals; that tribal expertise is required for evaluation processes

¹ ACHP letter dated April 29, 2019 to Acting Associate Director of Cultural Resources, Partnerships, and Science at the National Park Service.

involving traditional or sacred resources; and that tribal consultation is not abridged or infringed. Conferring voting status for the NATHPO member on the ACHP is a critical first step, and ACRA encourages the ACHP to examine its processes and structure to determine whether there are other expansions of tribal input in the ACHP leadership itself that may be appropriate.

We support Mr. Franklin's comments regarding the need for more tribal priorities in the upcoming strategic plan. The consultation process needs to be a two-way communication in which the tribes are able to provide recommendations regarding the management of resources and lands to the federal agencies. Such interaction is happening but it is not a widespread practice across federal agencies. Too often, Native American consultation is constrained by individual personnel within the federal agency. Finally, the documentation of ACHP accomplishments achieved under the previous Strategic Plan indicates extensive interaction with Native American tribes and Hawaiian organizations, federal agencies, cultural resource industry practitioners, infrastructure and energy development leaders, and federal agencies. ACRA recommends that the ACHP prioritize increased interaction between tribal entities and other affected parties to allow for better understanding of the process and consistency of practice among the several parties involved in a proposed project.

The ACHP Should Provide Expertise Regarding the Relationship of Environmental Sustainability to Historic Preservation

Historic building renovation and restoration is often the most environmentally friendly and sustainable form of construction, and the conservation goals of environmentalism and the preservation movements often run parallel to each other. At the same time, the push to develop alternatives to fossil fuels and develop energy independence creates a pressure point, and there are areas of tension. Current challenges in environmental sustainability and preservation include:

- Cumulative impacts of direct, indirect, and visual effects on historic properties by individual and largescale solar development, which is often unregulated.
- Tensions between offshore or terrestrial wind farm development and the historic properties or traditional cultural properties visually impacted by these developments.
- Risks of offshore energy developments to submerged paleolandscapes.
- Industrial historic properties that contain brownfield sites or other environmental contaminants.

The ACHP Success Stories include numerous examples of collaborative projects solved both environmental and historic preservation challenges in their design. ACRA believes that reducing our nation's carbon footprint is essential for all areas of American life, including reducing the effects of climate change on cultural resources. We ask that the ACHP consider and review these examples and prioritize ways in which environmental and historic resources review can be even better aligned.

The ACHP Should Conduct Research and Provide Guidance to Assess the Impact of Visual Effects on Historic Properties and Develop Best Practices

Often related to the issue of energy development is the identification, assessment, and mitigation of visual effects of largescale energy projects and other developments on historic properties, including our cultural landscapes and National Landmarks. Over the last several years there has been uncertainty on the part of federal agencies regarding whether visual effects can be direct, what scale of visual effect should be considered an Adverse Effect, and how projects should analyze and assess these visual effects. In fact, assessment methodology for visual effects was one topic under review during the D.C. Circuit Court of Appeals' order to vacate the permit issued by the Army Corps for the Surry-Skiffes Creek transmission line. We believe these types of issues, including the question of what constitutes a good-faith effort to assess visual effects and how agencies should make a determination of effect, will continue to be important in managing Section 106 review for such projects. The ACHP has a pivotal role in providing guidance on these issues.

The ACHP Should Convene a Taskforce on Traditional Cultural Landscapes and Visual Effects

Recent contentious projects such as the debate over the eligibility of the Chu'itnu Traditional Cultural Landscape for the National Register have highlighted the political and theoretical complexity of large traditional cultural property designations. These properties are especially contentious because some industry groups challenge the legitimacy of Bulletin 38, the National Park Service (NPS) guidance document regarding how to evaluate traditional cultural properties (TCPs). In some cases, even when asked to consider properties as TCPs, federal agencies have demonstrated inconsistent or resistant attitudes towards considering properties that are eligible for reasons other than archaeological or architectural significance. Given the recent NPS process to update and revise Bulletin 38, we believe a critical role for the ACHP over the next several years is to interpret the meaning of the NHPA Section 101 related to the creation and maintenance of "a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, *and culture*" (emphasis added).

As demonstrated by several projects within the past few years, the concepts of cultural landscapes and visual effects have proven to be a challenge for developers, infrastructure development, energy development, regulators, and preservationists alike. Both concepts are important to local communities and Native American tribes; however, none of the involved parties have truly developed management practices related to these concepts that allow the efficient balancing of development needs and historic preservation. It is recommended that the ACHP develop a diverse task force, consisting of infrastructure and energy developers, Native Americans, cultural resource industry practitioners, historic landscape architects, and preservationists to address this issue. Diversity of the task force is essential to the development of practical recommendations. The focus of this task force would be to provide guidelines for the management of cultural landscapes and visual effects when development projects are proposed.

The ACHP Should Develop Best Practices and Guidelines Regarding the Use of Emerging Technologies to Record Historic Resources

Recent decades have seen incredible improvements in technologies for recording historic structures, including 3D scanning, LIDAR (Light Detection and Ranging, a remote sensing method), photogrammetry, and exceptionally high-resolution photography. With these developments and a growing pressure on archives and state historic preservation offices to conserve space, there are a series of important considerations regarding file type obsolescence, digital data degradation or loss, unstandardized file type or minimum resolution, and of the need for guidelines regarding how these products are allowed to be edited. Additionally, it is unclear the extent to which these methods could replace earlier methods or should be required on particular projects. Currently we have the capacity to create a complete 3D model of a given historic building scheduled for demolition, but it is unclear how often this level of work is conducted in practice. These are critical issues the historic preservation community will be grappling with for decades. The ACHP should consider convening experts and working with their colleagues at agencies and in the private sector to ensure that, unlike with digital data and GIS, the preservation field is not left playing catchup with regard to these technologies.

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These issues are not easily solved, which is why they require focus and energy from the ACHP in order to address them. We believe a focus on these big picture issues and pressing preservation challenges are the best use of the unique position and expertise of the ACHP over its next four years.

As you develop the Strategic Plan process, please reach out to ACRA if we can be of additional assistance. Thank you for the opportunity to comment.

Best regards,

A handwritten signature in black ink, appearing to read "Kim Redman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kimberly Redman
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