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Christopher Merritt  
State Historic Preservation Officer  
Utah State Historic Preservation Office

October 8, 2024

To the Advisory Council on Historic Preservation,

On behalf of the Utah State Historic Preservation Office, we are providing comments on the *Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities*.

While we are supportive of many of the objectives of the Program Comment, such as streamlining certain types of housing and transportation projects for the betterment of our communities, over the years our office has already strived, successfully, to accomplish this goal by developing relationships with agencies and creating efficiencies with programmatic agreements (such as the 2019 HUD PA between the Utah Housing & Community Development Division), digital processes, and a working relationship with all agencies to facilitate timely reviews without sacrificing historic preservation. In addition, our office already reviews and comments on undertakings in less than one week, thus delays are not an issue in Utah.

The wide-reaching Program Comment, which applies to all federal agencies (see preamble paragraph; typically Program Comments apply to a specific agency or program), reduces the opportunity for the Utah public and the State Historic Preservation Office (SHPO) to provide input and be involved in federal actions, thus disproportionately impacting our historic communities; and we feel strongly that meaningful consultation is at the heart of the preservation practice as envisioned by the National Historic Preservation Act. Further, we have one of the most streamlined systems for identification and consultation in the entire country, thus this is a 'one size fits all' solution that is not appropriate in Utah.

Before specific comments, we want to underscore that this proposed Program Comment undermines decades of practice and diminishes the statutory role of the SHPO. Congress, in the original 1966 National Historic Preservation Act, established the importance of the States and the SHPO role in federal programs by providing local expertise, historic property information, and review and comment on federal undertakings (54 USC 302303(b)), as germane to this discussion, specifically for SHPO to review "the content and sufficiency of any plans developed [by a federal agency] to protect, manage, or reduce or mitigate harm to that property" (54USC302303(9)(B)).

It is clear that this proposed Program Comment removes the significant role that SHPO's play in these processes outlined in the NHPA and the implementing regulations (36CFR800), let alone removing nearly all public commenting and local government consultation for those identified activities occurring within those same communities, and allowing federal agencies to make sweeping decisions in near isolation. The Utah SHPO feels that this proposed Program Comment goes against the intent of the National Historic Preservation Act and will do more to harm historic properties than the standard process by itself. Of course, there are always opportunities to find efficiencies within the federal

permitting systems but this particular example is too narrow (housing and infrastructure) and also too sweeping (giving too little oversight to federal decisions affecting local communities).

Key issues from the perspective of the Utah SHPO:

1. Existing state-level streamlining agreements are far better for Utah's communities, versus a federal one-size fits all approach.
2. Program Comment places a significant amount of power to federal agencies by removing any State Historic Preservation Office or Utah public input, review, or comment on a wide swath of undertakings.
3. Significance of historic buildings or archaeological sites being affected by proposed undertakings is insufficiently addressed through this Program Comment.
4. Under Section III.D "Determinations of Eligibility" a more robust effort should be made identifying historic properties that may be affected by undertakings, as this is a key component of the compliance process. Of which, we administer the database for those properties for the State of Utah.
5. Proposed streamlined/exempt actions directly impact character-defining features of historic buildings and neighborhoods without allowing adequate input from local or state level (see all of the Appendices)
6. While we appreciate that there is a Post-Review discovery section, with the sweeping exemptions here, the SHPOs will be hearing about undertakings ONLY when something bad has happened. That could delay projects significantly as we try to sort out next steps with a project that had no identification or paper trail. (Section V)
7. Dispute resolution has questionable language. For instance, it states appropriately that any entity can dispute the application of the Program Comment and if not resolved by the agency in 60 days they "may" forward that dispute to ACHP. That should be "will" forward to the ACHP, as that places too much power on the federal agency to ignore appropriate comments. In the same section, the ACHP notes that the Federal agency's decision is final, regardless of validity of a dispute by a consulting party. (Section VI)
8. The agreement is set to be 20 years long, which is significantly longer than most normal agreements, and offers little flexibility as projects/funding/historic research change. This also is sufficient time depth that the bad precedents set in this Program Comment become a baseline for future preservation efforts. (Section VII)
9. Amendment to this agreement is written currently to be driven by the Advisory Council and Federal Agencies, with little provision to include others (SHPOs, etc.) with the phrase 'as it [ACHP] deems appropriate'. We do not feel this is appropriate to limit inclusion in the amendment to the discretion of the ACHP or federal agencies alone. (Section VIII)
10. The annual reporting requirement for federal agencies should be more detailed on all the undertakings covered and exempted by the Program Comment, as we have agreed to in our existing programmatic agreements with agencies. (Section X)
11. Global comment on appendices is that much of the proposed work occurs within local communities, and the local government entity (let alone the SHPO) will not have any role in providing guidance on significant alterations to historic homes or neighborhoods by federal agencies. This again removes the local voice in defining local needs.

12. Some of the exemptions, especially those that allow for the replacement of character-defining features such windows and doors (under Appendix A-1.2), are concerning and if allowed may preclude a property owner from receiving historic tax credits that the Utah SHPO administered (Utah has a state tax credit for historic residential properties, in addition to the federal tax credit for commercial properties).
13. Byproduct impact would include that the SHPO's cultural resource databases, which by the National Historic Preservation Act the SHPO is meant to be the central repository for this information, would not be updated with new information on historic or archaeological resources given that the ACHP is allowing agencies to bypass SHPO consultation. This would create a generational impact to our databases, and the functioning of consultation processes.

Thank you for the opportunity to comment on the Program Comment, but as it is currently written we do not support its implementation with significant revisions to address the litany of concerns. We also are understanding that our Governor's Office and Public Lands Policy Coordinating Office will also be providing letters on this Program Comment. We look forward to more meaningful consultation on efforts to streamline Section 106, but in a responsible, public-engaging, and non top-down manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Merritt", with a long horizontal flourish extending to the right.

Christopher W. Merritt, Ph.D.  
Utah State Historic Preservation Officer