



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

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October 9, 2024

Sara C. Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington DC 20001
Program_alternatives@achp.gov

Subject: ACHP Draft Program Comment on Accessible, Climate-Resilient, Connected Communities

Dear Chair Bronin:

Thank you for the opportunity to review and comment on the proposed *Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities* (Program Comment). Our office supports the use of Program Comments as program alternatives and appreciates the extraordinary efforts to develop one to address the nationwide needs for affordable housing and clean energy alternatives. Overall, our office supports the comments made by NCSHPO. Additionally, we offer the following comments:

It is our understanding that the Program Comment is intended to assist underfunded SHPOs and THPOs with the incoming workload stemming from recent infrastructure investment bills by reducing the number of undertakings that will require compliance with Section 106 of the National Historic Preservation Act. We appreciate the ACHP's effort to aid SHPOs and THPOs and applaud your outreach to Federal Historic Preservation Officers (FHPOs) to identify undertakings or actions with minimal potential to affect historic properties. However, we believe this approach will undermine our long-standing advocacy and education efforts to federal agencies or their delegates about Section 106 and the importance of consultation. We suggest shifting the national conversation to first address systemic understaffing and underfunding of all cultural resource programs (SHPOs, THPOs, and federal agencies) before exempting broad categories of undertakings from Section 106 review.

We generally are concerned about the approach to exempt projects from consideration under Section 106 based on their purpose once constructed, especially when there are already effective tools in place to assist agencies with routine project types, including over fifty programmatic agreements executed with our office. While the Program Comment could assist agencies that do not have an applicable Programmatic Agreement, most agencies with routine projects that have a low potential to effect historic properties have agreements in place to streamline project delivery while defining alternative ways to consult on programs and projects. This win-win is not retained in the Program Comment as the current draft does not include consultation opportunities for

consulting parties nor means for consulting parties to review undertakings that occurred in their community or have affected resources important to them. Effective Section 106 is more than the number of projects delivered. At minimum, federal agencies using the Program Comment need to have an annual reporting effort to consulting parties (SHPOs, THPOs, and the general public) with sufficient detail to demonstrate due diligence, which is paired with a means to ensure accountability if an agency, region, district, or office are not appropriately applying the Program Comment.

We also recommend revising the text of the Program Comment to provide additional detail and improve clarity in these areas:

- The Program Comment is large and cumbersome in order to capture all the undertakings and types of activities currently included in its scope. We recommend either focusing on a smaller subset of activities or dividing the undertakings among several Program Comments. This will enable cleaner documents and shorter processes that federal agencies will be able to implement in a way that will also consider effects to historic properties.
- The types of activities or undertakings that can use the Program Comment are insufficiently defined or conditioned to prevent unintended application. The activities listed in Appendixes A-1, A-2, B-1, and B-2 are broad or not clearly defined by the Program Comment. Identification of historic properties as outlined in the Program Comment is insufficient to adequately assess the effects these types of projects could have on historic properties, especially archaeological resources. Experience has shown that the expertise of SHPOs/THPOs, tribes, and other consulting parties are essential to assist federal agency staff to carry out the identification of historic properties and recognize contributing properties or essential characteristics, especially in a state as large as Alaska when so little has been systematically surveyed.
- It is unclear what problem the terms *qualified authority* or *qualified authorities* is seeking to resolve. The new terminology will increase confusion among agencies and the public due to their similarity to the Secretary of the Interior's (SOI) *Professional Qualification Standards* and will likely compromise the established practice of requiring SOI qualified professionals or those with special expertise consistent with 36 CFR 800.2(a)(1) and 36 CFR 800.2(c)(2)(ii)(D), respectively.
- AK SHPO is concerned that the inclusion of removal and/or replacing trees in Appendix A-1 1.c.iii will result in adverse effects to properties of cultural and traditional significance to tribes as well as designed landscapes. Alaska has over 200 federally recognized tribes with a rich history woven into our vast and varied natural environment. This exemption has a high probability of adversely effecting Culturally Modified Trees, Traditional Cultural Properties, and ancestral archaeological sites. Many of these resources are still being identified and are only brought to light during meaningful

consultation at a project level, which will not be required under the Program Comment. As such, we recommend incorporating text to trigger this consultation and ensure adequate identification efforts will occur, which may require government to government consultation and implementing Section 304 due to the sensitive nature of these property types.

- The inclusion of transportation projects in the Program Comment is problematic due to the increased risk of inadvertent discoveries and adverse effects to archaeological resources due to the scale and nature of such projects. The Program Comment does not provide the necessary safeguards to identify and evaluate these resources afforded in the standard Section 106 review or pursuant to Programmatic Agreements. Furthermore, the use of the Program Comment excludes consultation with tribes and local communities that could assist in avoiding these sites during the project development phase. The transportation needs of Alaska are unique and Alaska SHPO currently has several transportation related agreement documents in place the address these concerns.
- Revise Section II.C.1 to clarify whether dispute resolution will be carried out under the terms of the original agreement document or the Program Comment.

Our office supports efforts to improve Section 106 and consultation among the parties, but we do not support the Program Comment in its current form. We recommend providing for annual reporting to increase transparency in the federal decision-making process, incorporating consultation points with tribes and other consulting parties, and revising the text to align with the Secretary of Interior Standards.

Historic preservation and climate friendly initiatives are fundamentally compatible objectives. Architect and sustainability expert Carl Elefante famously said, “The greenest building is the one that is already built.” As preservationists, we support the inclusion of environmentally friendly adaptations to existing building stock and infrastructure. We look forward to working with the Advisory Council on Historic Preservation to address these concerns and develop a mutually beneficial agreement that promotes the ACHP Climate Change Policy adopted in 2023 and meets the requirements of the National Historic Preservation Act of 1966.

Sincerely,



For
Judith E Bittner
State Historic Preservation Officer

Cc: Erik Hein, NCSHPO