

credits. We recommend any exclusions used in program alternatives be harmonious to the requirements of historic tax credit programs.

The program comment relegates SHPOs to be databases for federal agencies. We observed use of the phrase “record check” throughout the exclusions. While records checks are useful, most of the state of Iowa has not undergone survey for archaeological/architectural properties. Agencies often complete record checks for undertakings and provide unsupported determinations of “no historic properties affected” because no sites are known to occur on unsurveyed ground. Records checks alone do not provide sufficient identifications efforts for many projects and could result in adverse effects to historic properties, stoppage of work, and project implementation delays. The program comment also allows agencies the ability to exclude properties that they have determined are “not eligible.” Such a determination does not require consultation with the SHPO, CLGs, and/or tribal partners. Rarely, if ever, does a HUD responsible entity identify a property as “eligible” for listing on the National Register. Instead, eligibility determinations derive from Section 106 consultation.

Our contacts and consultation on many project types included in the program comment are often at the regional, state, and local level, either with formal delegation of authority or applicants informally being instructed by the federal agency to initiate consultation with our office. As currently written, the decision to implement this program comment would occur at the national level without requirements to consult with the impacted delegates or consulting parties prior to implementation. Federal agencies can, following consultation with signatures, decide to implement this program comment without agreement from other signatories. This does not allow signatories of existing agreements to decline to utilize the program comment; disrupting usage of effective agreements already in place.

Undertakings associated with transportation are markedly different than those associated with housing and climate type exclusions. Furthermore, a programmatic agreement with the DOT already covers many transportation-related activities. We recommend removal of Appendices C 1 and C 2 from the program comment and that these types of exclusions be considered at the state level. As we already have an efficient programmatic agreement in place with Federal Highways Administration and the Iowa DOT, integration of additional exclusions can be accomplished without complicating the process with a program comment.

Historic preservation works best when local peoples and agencies engage in the process. There are good examples of programmatic agreements from which we can draw upon for program alternatives, including nationwide, prototype, or program-level agreements. Foundational pieces of successful agreements lacking in this program comment are two-fold. First, a state-level approach allows customization for the unique circumstances found at the state level including qualified professional availability, local history, and architectural and archaeological nuances not accounted for at a nationwide level. Second, consultation between agencies and consulting parties, both in development of the agreement and its implementation/reporting, caters to specific views/perspectives, rules, codes, and procedures governing each party. Ongoing consultation identifies areas where the agreement is working, where it is not, and cultivates strong relationships that result in significant streamlining opportunities; even when an undertaking might result in an adverse effect. Cooperative and consistent consultation results in expedited reviews with high positive success rates. Examples of programmatic agreements that work well in Iowa include:

- A. The Programmatic Agreement Among the Federal Highway Administration, the Iowa Department of Transportation, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Federal-aid Transportation Project in the State of Iowa, as amended.

- B. Prototype Programmatic Agreement Between the US Department of Agriculture, Iowa Natural Resources Conservation Service (NRCS), and the Iowa State Historic Preservation Officer (SHPO) Regarding Conservation Assistance, as amended.
- C. The Programmatic Agreement Among the Federal Emergency Management Agency, the Iowa State Historic Preservation Officer, and the Iowa Department of Homeland Security and Emergency Management, as amended.

Iowa SHPO has a current average response time of 13 days for Section 106 project submissions. Our office continues to seek ways to reduce review times, but an ever-increasing number of projects results in high workloads at all stages and roles in the Section 106 process. In our experience, programmatic agreements are the best means of appropriately streamlining reviews at the state level while integrating SHPO and other consulting party voices. We look forward to exploring streamlining options and alternatives that do not eliminate SHPOs from the process so that we can better cater exclusions and processes to our various agency partners and local conditions.

Nationwide-level decision makers are not the same individuals involved in the practical application of Section 106 consultation, making significant investments in training imperative. Many agencies lack the necessary historic preservation professionals needed to use exclusions in the program comment and these agencies rely upon SHPO to identify concerns through their review as a part of standard Section 106 and programmatic agreement streamlined reviews. Agencies with the most coverage of this program comment (i.e., HUD), use responsible entities or delegate authority to fulfill Section 106 compliance and these entities rarely have Secretary of the Interior-qualified staff. In our reading of the program comment and through the various listening sessions we have attended, there is no concrete plan to train users of this program comment. Consistently we receive feedback from those directly involved with the Section 106 process, such as responsible entities or delegates, indicating that they need or are interested in training in Section 106, historic preservation, or identification of historic properties. Training and education opportunities are identified in consultation with SHPO on other projects and then provided on a case by case basis for agency staff, responsible entities, and delegates on specific needs by SHPO. Without clear guidelines and requirements for training and use of this program comment, there is the real possibility that practitioners at the regional, state, and local levels will not be supported through the implementation of this program comment.

The Iowa SHPO is concerned with reporting requirements of the program comment. As written, agencies would submit a sample of undertakings that have utilized the program comment. As the agency can choose the sample, such reporting creates biases toward successes while omitting failures. All undertakings utilizing the program comment should include documentation and be available for annual reporting with SHPOs and THPOs directly provided copies of the annual reporting. Furthermore, reporting should be annual throughout the duration of the comment and not move toward a triennial reporting system.

The use of “previously disturbed ground” in the exclusions is cause for concern. Iowa SHPO can point to many examples where agencies liberally apply this concept, and after review by our (and tribal partners) office, agree that historic property identification is incomplete and/or rework project scopes to keep a determination of “no historic properties affected” or “no adverse effect.” In Iowa, numerous projects are submitted and claim previously disturbed ground for areas under cultivation. Some submittals extend the concept of “previously disturbed” to any area that has platted lots. Archaeological site preservation is possible in both cultivated areas and in locations of heavy urban development, and there are examples across the country. Additionally, some archaeological sites have been avoided and left in place within rights-of-way that agencies later assume to be “previously disturbed.” This program comment creates potential for future projects to occur under the idea of “previously disturbed” ground or right-of-way without acknowledgement that different areas of the country have different conditions resulting in the need for local and state level knowledge of cultural development and history.

We appreciate the opportunity to provide comments on the proposed program comment. The Iowa SHPO believes that we can strike a balance between historic preservation and the goals of projects covered under the program comment. We are concerned that the impact of this program comment will be different than the intent, resulting in the loss of historic properties for Iowa communities. Should you have any questions concerning our comments or if you would like to discuss any items further, please contact me at heather.gibb@iowaeda.com or at 515-348-6285.

Sincerely,



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