



8 October 2024

Sara C. Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001-2637

via Electronic Mail



Brad Little
Governor of Idaho

Janet Gallimore
Executive Director
State Historic
Preservation Officer

Administration:
2205 Old Penitentiary Rd.
Boise, Idaho 83712
208.334.2682
Fax: 208.334.2774

Idaho State Museum:
610 Julia Davis Dr.
Boise, Idaho 83702
208.334.2120

**Idaho State Archives
and State Records
Center:**
2205 Old Penitentiary Rd.
Boise, Idaho 83712
208.334.2620

**State Historic
Preservation Office:**
210 Main St.
Boise, Idaho 83702
208.334.3861

**Old Idaho Penitentiary
and Historic Sites:**
2445 Old Penitentiary Rd.
Boise, Idaho 83712
208.334.2844

HISTORY.IDAHO.GOV

RE: Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin,

The Idaho SHPO is submitting comments on the most recent draft of the proposed *Program Comment on Accessible, Climate-Resilient, and Connected Communities* (PC). We understand that the goals of this proposed PC are to (1) advance the principles described in the ACHP *Policy Statement on Climate Change* (adopted 16 June 2023) and (2) expedite the review of projects that have minimal to no potential to affect historic properties, if they are present. Generally, we find these commendable goals but note that the progress of the PC-development process has been swift. We encourage the ACHP to consider allotting more time to the consultation process to ensure all parties are in agreement that consultation has been meaningful and appropriate prior to proceeding with adoption of a PC.

Additionally, we have concerns that combining three programmatic areas into a single PC will lead to confusion and misreading of the document. From our perspective, the proposed PC would be a better and easier tool to utilize if subdivided into three separate program alternatives: an exemption-based Program Comment focused on exempting specific housing and energy efficiency related activities from Section 106 review which have little to no potential to impact historic properties; a program alternative focused on streamlining and expediting Section 106 consultation on housing and energy efficiency related activities if certain conditions are met; and a program alternative focusing on transportation related undertakings that can be streamlined if certain conditions are met. Our recommendation is that the latter two be nationwide Programmatic Agreements or prototype Programmatic Agreements rather than Program Comments. National prototype programmatic agreements are particularly ideal because they include consultation with interested parties in each individual state, a fundamental cornerstone of the NHPA. However, our primary point is that we believe all parties would be better served with three discrete documents.

Our primary concerns with the PC as currently written are discussed below. We have included specific requests for revisions.



- *Coordination with Other Reviews:* The standard Section 106 process is often done concurrently with various other reviews. In relation to housing and energy efficiency projects, other reviews commonly include local planning and zoning codes, as well as federal and state tax incentive programs. For transportation projects, the requirements of Section 4(f) must be met (23 CFR 774). While it is likely not possible to consider all local and state codes/requirements, the requirements associated with federal tax incentives and Section 4(f) should be integrated into the PC to avoid confusion, with the existing qualification in Stipulation II.B that a Section 106 program alternative cannot modify the requirements associated with any other laws. If activities in the appendices would not allow a project to qualify for tax incentives or a *de minimis* finding under Section 4(f), those activities should be specifically identified, if not removed.
 - *Request:* (1) Ensure that Appendices A and B are consistent with the *Secretary of the Interior's Standards for Rehabilitation* (36 CFR 67) which are regulatory standards for the federal tax incentives program and (2) Ensure that Appendix C is consistent with a Section 4(f) *de minimis* finding, if the Appendix is not removed
- *Area of Potential Effect (APE) Definition and Guidance:* We note that the current draft PC does not include guidance on establishing an appropriate APE. A fully exemption-based PC would not need guidance on establishing an APE, but we feel that, as currently designed, this PC does, as it goes beyond exemptions and streamlines review for many activities *if* they will not have adverse effects to a historic property. Additionally, Section II.E.3 specifies that the PC is not applicable when an undertaking "would occur on or have the potential to affect" specific types of historic properties, but it is unclear how the potential to affect will be determined without guidance on establishing an APE. We note also that Appendices A-2, B-2, and C-2 include language such as the "activity will have no adverse effects on any historic property." A more robust discussion of APE would be helpful to ensure that these findings of effect are made in a consistent and uniform manner, and the appendices are being applied in the manner intended.
 - *Request:* Insert a stipulation with additional discussion and guidance on APE, specifically for activities listed in Appendices A-2, B-2, and C-2 (streamlined activities).
- *Historic Property Identification Efforts:* Section III.D states that "the undertakings covered by this Program Comment, due to their nature and potential effects, do not require a federal agency to determine whether an involved or affected property is a historic property except



where explicitly stated.” While we agree that many of the activities listed in the appendices (particularly Appendices A-1, B-1, and C-1, which we consider exempted activities appendices) would not result in an adverse effect if historic properties were present, we feel that additional guidance on identification efforts is necessary, particularly for activities listed in Appendices A-2, B-2, and C-2 (streamlined activities). We suggest that, at minimum, agencies should be required to consult SHPO/THPO site databases, with the APE informing the record search area, as is the case with the nPA for FCC. We also suggest that guidance on reasonable fieldwork identification efforts would be helpful.

- *Request:* Insert a stipulation with additional discussion and guidance on reasonable and good-faith historic property identification efforts within the APE for Appendices A-2, B-2, and C-2.
- *Eligibility Determinations by a Qualified Authority:* The current draft of the PC requires the use of qualified authorities, an umbrella term to include both individuals meeting the Secretary of the Interior’s Professional Qualification Standards (qualified professional) and individuals with indigenous knowledge-based expertise (Stipulation III.C), in certain situations. We note that, throughout the body of the PC, the terms “qualified authority” and “qualified professional” are not used consistently and suggest that it would be helpful for the distinction to be clarified prior to finalization.

We also note that within the appendices, there are multiple instances where activities may be streamlined if a property “has been determined by the federal agency or another federal agency to not be a historic property” (Appendix C-1.4). This should be specific that those making the determination must be appropriately qualified, or should require SHPO/THPO concurrence, or a determination made by the Keeper of the National Register. Further, as you know, the National Historic Preservation Act directs SHPOs, “in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic property and maintain inventories of the property.” If a federal agency is identifying historic properties and making determinations about eligibility, it is critical that this information be shared with SHPOs for concurrence to ensure: all parties have up-to-date information; PC users are applying the document appropriately; and future Section 106 consultation involving the same properties is based on consistent information between the agency and the SHPO.

- *Request:* (1) Insert language specifying that federal agency representatives who are making eligibility



determinations are appropriately qualified. (2) Require concurrence by SHPO/THPO on all new/changed eligibility determinations that have not had prior SHPO/THPO concurrence, (3) Require agencies to submit appropriate documentation of new/changed eligibility determinations to SHPO/THPO, and (4) Require all potential historic properties (sites unevaluated or needing additional data to evaluate) are treated as eligible historic properties for the purposes of the PC.

- *Annual Reporting and Meetings:* Section X stipulates that federal agencies must submit an annual report to ACHP for the first five years of the PC and every three years thereafter. While we understand that preparing an annual report is a time-consuming administrative task for agencies, we feel that the efficiencies provided by the PC are extensive enough that agencies should be able to produce a report annually throughout the duration of the PC. We request that this report is submitted not only to ACHP but also to the relevant SHPO/THPO offices so that SHPOs/THPOs can provide more useful feedback to ACHP during the Annual Meetings, which we also request to continue throughout the life of the PC. Without a full list of the undertakings exempted/streamlined under the PC, SHPOs may not be able to give accurate feedback on the effectiveness of the PC and its implementation and will be limited in the ways they can help propose adjustments and additions. We suggest that ACHP include a template for the annual report with the PC to maintain consistency across agencies and provide agencies with a predictable deliverable to add to their workload.
 - *Request:* (1) Require annual reporting and meetings throughout the duration of the PC, (2) Include an annual report template with the PC, and (3) Require annual reports to be submitted to relevant SHPOs/THPOs in addition to ACHP
- *Organization of the Appendices:* We note that the appendices are organized by type of undertaking (housing related, climate smart building, and transportation) and within each type there are two subsections, where subsection 1 generally contains a list of exempted activities not requiring Section 106 review on a project-by-project basis, and subsection 2 generally contains a list of activities where consultation may be streamlined/expedited if certain conditions are met. Many of the conditions in subsection 2 involve effect findings made by a qualified professional, where the qualified professional makes a written determination. We request these written documents be sent to the appropriate SHPO/THPO. Our preference is for the written determinations to be sent to SHPO/THPO for consultation prior to project implementation so that we can involve ACHP if any serious



flaws in the qualified professional's work exist that would adversely affect historic properties (e.g., they did not consider effects to a nearby historic district or consider whether the property may contribute to a historic district). We also suggest that guidance and/or a template for this written justification is included with the PC to help clarify the expectations of the written documentation and ensure the appropriate information is provided.

- *Request:* (1) Reorganize the appendices so that all activities requiring a finding or monitoring by a qualified professional/authority are moved to subsection 2, (2) Include a template for the written determinations/justifications required under subsection 2, and (3) Include a process for SHPO/THPO notification/review of the written determinations for these streamlined undertakings.
- In addition to our general comments regarding the structure and content of the PC, we have several specific concerns related to items within the appendices:
- "*Installation:*" We find that the inclusion of *installation* in many of the appendices creates exempted actions that are too broad and, as a result, have the potential to adversely affect historic properties. The current draft of the PC defines installation as "the action or process of placing or fixing something, including but not limited to materials, mechanical systems and components, appliances, and equipment, or of being installed, in a particular location." This definition suggests that new features, equipment, and systems may be installed without any parameters as to size, location, visibility, etc.
 - *Request:* (1) Refine the definition of installation to include only installation of replacement systems/parts when the replacement remains in the original location and is roughly the same size, and (2) Remove installation of new features from activities exempted under the PC
- "*Replacement:*" We note that several activities in the appendices include replacement, which the PC defines as "substitution of new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part." As above, this definition suggests that new features, equipment, and systems may be installed without any parameters as to size, location, visibility, etc. and therefore have the potential to adversely affect historic properties. To ensure that historic properties will not be affected by replacement activities, we feel that replacement



should be conditioned as “replacement in kind” within the appendices (particularly the exemption appendices).

- *Request:* Revise the activities in the appendices to include “replacement in kind” as opposed to “replacement”
- *Transfer, Lease, or Sale out of Federal Ownership/Control:* We are uncomfortable with the inclusion of transfer, lease, or sale out of federal ownership or federal control (Appendix A-1.5.e and Appendix C-1.5.c) without very specific requirements regarding what constitutes “adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance.” In Idaho there are very few entities with the qualified expertise to hold covenants/easements and review future projects for appropriateness; SHPO review and involvement on a case-by-case basis is critical.
 - *Request:* Remove these actions from the PC and require individual consultation with SHPO/THPO when transfer, lease, or sale out of federal ownership/control will occur
- *Emphasis:* Within the appendices, we note that several exempted activities are included when “less than 45 years old.” We recommend adding bolded emphasis to the age within these sections.
 - *Request:* Use bold font on “less than 45 years of age”

Overall, the ID SHPO is supportive of the ACHP’s goals to expedite consultation to facilitate the implementation of climate friendly transportation; to aid in providing accessible, energy efficient housing; and to further the adoption of “green” energy production at the household and community levels. We do, however, question whether a combined PC is the most appropriate program alternative to utilize and feel that it would benefit from being subdivided into three different program alternatives: an exemption based Program Comment focused on exempting specific housing and energy efficiency related activities from Section 106 review which have little to no potential to impact historic properties; a nationwide Programmatic Agreement or prototype Programmatic Agreement focused on streamlining and expediting Section 106 consultation on housing and energy efficiency related activities if certain conditions are met; and a nationwide Programmatic Agreement or prototype Programmatic Agreement focusing on transportation related undertakings that can be streamlined if certain conditions are met. If this PC moves forward, we hope that you will take the above-discussed comments into consideration when crafting a final document.

Thank you for your consideration.



IDAHO STATE
**HISTORICAL
SOCIETY**

Sincerely,

A handwritten signature in blue ink that reads "Tricia Canaday".

Tricia Canaday
Deputy State Historic Preservation Officer, SHPO Administrator
Idaho State Historic Preservation Office

CC: Erik Hein, NCSHPO
Christina Hingle, NCSHPO