

## **FINAL STATEMENT OF REASONS**

### **UPDATE TO INITIAL STATEMENT OF REASONS**

Sections 4859.01 – 4859.06. The proposed regulation as originally noticed defined the requirements and process for applying for the State Historic Rehabilitation Tax Credit (SHRTC) program for the rehabilitation of a certified historic structure or a qualified historic residence. The program is to be administered by the Office of Historic Preservation (OHP) and the California Tax Credit Allocation Committee (CTCAC). After further review by the public, OHP determined that the regulation required substantial changes that were sufficiently related. As such, the proposed regulation was made available for public comment from March 19 – April 3, 2024, and previously as noted in the attachments below.

#### **ATTACHMENT 1**

**SUMMARY & RESPONSE MATRIX TO COMMENTS RECEIVED DURING 2<sup>nd</sup> 15-DAY  
COMMENT PERIOD AND COLLECTED COMMENTS  
March 19 – April 3, 2024**

There were no other changes in the laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Regulatory Action.

#### **ATTACHMENT 2**

**SUMMARY & RESPONSE MATRIX TO COMMENTS RECEIVED DURING 1<sup>st</sup> 15-DAY  
COMMENT PERIOD AND COLLECTED COMMENTS  
SEPTEMBER 2023**

#### **ATTACHMENT 3**

**SUMMARY & RESPONSE MATRIX TO COMMENTS RECEIVED DURING PUBLIC  
HEARING  
MAY 2023**

#### **ATTACHMENT 4**

**SUMMARY & RESPONSE MATRIX TO COMMENTS RECEIVED DURING 45-DAY  
COMMENT PERIOD AND COLLECTED COMMENTS  
MAY 2023**

ATTACHMENT 1 to FINAL STATEMENT OF REASONS

Summary of comments received and responses from the Public Comment Period March 19, 2024, through April 3, 2024

OAL FILE NUMBER 2023-1016-03S

**Summary of comments received and responses from 15-Day Public Comment Period March 19 through April 3, 2024**

*Note: the responses to the comments below are contained in the Final Statement of Reasons. A copy of the submitted written comments is contained in Tab D of the rulemaking record; the letters with comments are bracketed to identify the individual comments by the corresponding comment number that is identified below.*

Commenter Organization/ Name	Comment Number	Comment Summary	Response
Adam Markwood 3/29/24	1.1	4859.02(k), definition of Owner: Replace 'and' with 'or' in reference to the Internal Revenue Code and the California Franchise Tax Board.	4859.02(k) is revised to delete reference to the Internal Revenue Code as immaterial to state tax credits.
Evanne St. Charles Architectural Resources Group 3/29/24	2.1	Clarify why there is a checkbox to confirm an approved or pending NPS Part 1, but no checkboxes for Parts 2 and 3 indicating that proposed work has been previously reviewed and approved by OHP/NPS.	An NPS approved Part 1 application lists the property in the California Register and signifies qualification for state tax credit, since there is no analogous state review for a Part 1. Review and approval of federal Part 2s and 3s are analogous to Initial and Completed applications. No action required.
	2.2	Clarify whether project drawings, photographs, or other supplemental materials need to be submitted for dual projects, or whether OHP will rely on the materials submitted with the HPCA package.	The Instructions v. 5/24 referencing Dual Projects clearly state that “The state review uses the same supplemental documentation and formats required by the federal tax credit program.” No action required.
Tom Brandeberry 3/29/24	3.1	4859.02(k), definition of Owner: Replace 'and' with 'or' in reference to the Internal Revenue Code and the California Franchise Tax Board.	See comment response 1.1.

<p>Zeenat Hassan Disability Rights California 3/29/23</p>	<p>4.1</p>	<p>OHP should expressly require compliance with state and federal accessibility standards in the SHRTC program and explain how it will determine when an exception to the standards is appropriate.</p>	<p>ADA Accessibility Guidelines Sec. 202.5 (ADAAG) and 36 CFR Part 1191 define the SHPO's role when conflicts arise between accessibility and preservation. No action required.</p>
	<p>4.2</p>	<p>The regulations should explain OHP's legal authority under state and federal law to ensure that rehabilitation of historic buildings maximizes access for people with disabilities and complies with state and federal accessibility requirements.</p>	<p>See comment 4.1.</p>
	<p>4.3</p>	<p>§4859.01. Program Authority and Function. The regulations need to specify which agency is responsible for ensuring compliance with state and federal accessibility requirements and relocation laws and for determining qualification standards for affordable housing projects and transit-oriented developments.</p>	<p>State accessibility requirements also address federal requirements and are realized through state building codes which are adopted and administered by local jurisdictions. No action required.</p>
	<p>4.4</p>	<p>§4859.03. Initial Project Application. The regulations need to include a description of the process OHP will use and the standards by which it will determine whether an exception to the ADA's accessibility requirements, or other applicable accessibility standards, is legally justified.</p>	<p>See comment 4.1.</p>
	<p>4.5</p>	<p>To prevent tenant displacement, the regulations must require compliance with local, state, and federal tenant relocation laws.</p>	<p>Compliance with local, state and federal tenant relocation laws are the purview of those respective jurisdictions. No action required.</p>
	<p>4.6</p>	<p>Application Instructions v. 5/24 Appendix D, Project located on surplus property:</p> <p>The information OHP requires in the letters is insufficient to show that the public agency and the applicant have fully complied with the requirements of the Surplus Land Act. If used for the development of housing for low- and moderate-income households, the Surplus Land Act requires the entity that owns the land to make at least 25% of the total number of units developed on the parcels available for sale at "affordable housing cost" (as defined in Health and Safety Code Section 50052.5) or for rent at "affordable rent" (as defined in H.S.C. section 50079.5). (Gov't Code section 54222.5.) The law further requires the rental units to remain affordable to, and occupied by, lower-income households for a minimum of 55 years for rental housing, 45 years for ownership housing, and 50 years for rental or ownership housing located on tribal trust lands. These</p>	<p>Revenue and Taxation Code Sections 17053.91(a)(2)(A) and 23691(a)(2)(A) specifically cite Government Code Section 54142 and Section 54221(b) as the definitions for surplus land that qualifies a project for the 25% tax credit bonus. The Surplus Land Act comprises Sections 54220 – 54234, which are not cited in Sections 17053.91 and 23691. Any structure rehabilitated on surplus land must receive a building permit, where all physical requirements for access are mandated and enforced through building codes. Any conditions of conveyance would be enforced by the local agency. No action required.</p>

		and further requirements must be contained in a covenant or restriction recorded against the land at the time of sale. Affordable housing advocates have reported that many agencies do not comply with the requirements to offer surplus land first to developers of affordable housing and to prioritize the development of affordable housing over other uses.	
	4.7	Request revision of Appendix D to require that the letters provided under Section A, "Project located on Surplus Property" detail the process by which the public agency made the land available, including any claimed exemptions or exceptions, and an explanation of the affordability levels it commits to preserving.	Appendix D section A adds documentation of the conveyed federal property and all conditions of the conveyance to the requirement to provide an ordinance acquiring the surplus property.
	4.8	Appendix D, section B appears to be the only place where the 15% minimum requirement for affordable housing is listed. The minimum requirement does not appear anywhere in the regulations, and OHP has provided no explanation for how it decided on that number. This is a problem because the minimum percentage is a substantive agency decision that directly impacts the availability of affordable housing in the state. OHP needs to state the minimum requirement in its regulations, explain in its statement of reasons why it decided on that number, and consider public comments on whether a different level of affordability would be more appropriate. We support a minimum percentage of units to qualify as affordable housing, but we urge OHP to set the threshold at a higher percentage and to target a deeper level of affordability.	<p>Instructions v. 5/24, Appendix D section B is revised to read "B. Projects that include affordable housing for lower income households as defined by Health and Safety Code Section 50079.5".</p> <p>Instructions v. 5/24, Appendix D section B is revised to delete "Government" Code and replace it with "Health and Safety" Code.</p> <p>Instructions v. 5/24, Appendix D section B revises the minimum number of affordable units in consultation with the CTCAC.</p>
	4.9	Recommend requiring that applicants identifying as affordable housing projects must agree to maintain affordability for at least 55 years through a deed restriction. This approach would bring OHP's affordable housing protections into alignment with the protections used by CTCAC and HCD to ensure long-term affordability in their programs. OHP should require applicants to include documentation of the project's affordability level and deed-restricted covenants as attachments to the application.	<p>Instructions v. 5/24, Appendix D section B adds the requirement of a deed restriction maintaining affordability of 55 years in consultation with the CTCAC.</p> <p>It is not unusual for historic rehabilitation tax credit projects incorporating low income housing to also apply for low income housing tax credits. That program would</p>

			enforce any conditions required of their enabling statute.
	4.10	Appendix D adopts some definitions from HCD's Transit-Oriented Development Housing Program, but it does not explain how OHP will determine whether the applicant has met other components of the definition of "transit-oriented development," like what criteria a project must meet to be a "higher density, mixed-use development" under the statute that authorizes the SHRTC. HCD's TOD program also includes additional requirements like affordability standards and accessibility requirements. To bring consistency among state housing programs and maximize public benefit, OHP should require that applicants meet the same standards that HCD's TOD grantees meet with respect to affordability and accessibility.	<p>Instructions v. 5/24, Appendix D section E is revised to include higher density, mixed use development in the section heading consistent with the enabling statutes.</p> <p>Instructions v. 5/24, Appendix D section E adds an instruction requirement to include a dedicated block in the Initial Project Application Narrative describing the existing density and mixed use condition of the structure proposed for rehabilitation, and any proposed scopes of work to maintain or increase the density and the mixed use.</p>
	4.11	Recommend including guidance and requirements on increasing access for people with disabilities. This appendix should include the Secretary's recommendation to consult the National Park Service's preservation brief, "Making Historic Properties Accessible."	Appendix F, "Additional Guidance" has been added to the Instructions v. 5/24 with links to NPS resources, including the Preservation Brief "Making Historic Properties Accessible"
	4.12	<p>Recommend adding an Appendix to comply with applicable accessibility laws. We suggest the following language:  Applicants must explain how they will comply with all of the following accessibility laws:</p> <p>(1) The Americans with Disabilities Act of 1990 (42 U.S.C. section 12101 et seq) and its implementing regulations at 28 C.F.R. part 35.151 (Title II regulations for new construction and alterations) and 28 C.F.R. subpart D (Title III regulations for new construction and alterations);</p> <p>(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) and its implementing regulations at 24 C.F.R. part 8;</p> <p>(3) The Uniform Federal Accessibility Standards (UFAS) at 24 C.F.R. part 40 or, in the alternative, the 2010 ADA Standards for Accessible Design;</p>	These are the regulations that enforce design and construction ADA compliance. Local Building offices are responsible for the compliance with these regulations. No action required.

		<p>(4) The State Historical Building Code (HSC section 18950 et seq); and</p> <p>(5) California Building Code Chapters 11A and 11B.</p> <p>If applicable to the property, applicants must also explain how they will comply with the Architectural Barriers Act Standards (federal projects) and the Fair Housing Act (42 U.S.C. section 3601 et seq) and its implementing regulations at 24 C.F.R. part 100, and the ANSI A117.1-1986 design and construction standard incorporated by reference at 24 C.F.R. part 100.201a (projects with residential units).</p>	
	4.13	<p>Initial Project Application form: Recommend adding boxes to the Initial Project Application form for applicants to explain in detail how they will comply with applicable laws on accessibility, tenant relocation, and the Surplus Land Act. Suggestions to add the following boxes:</p> <p>In Section 6, require applicants to disclose how many dwelling units in a residential project will contain accessibility features for people with mobility disabilities, sensory disabilities, or both. Either in this form, in a supplement, or in the Narrative Template, OHP should require the applicant to explain the process they will use to maximize the accessibility of the project's dwelling units and the rest of the property.</p>	<p>Revenue and Taxation sections 17053.17 and 23691 do not mandate explanations for compliance with accessibility codes. Local building departments are responsible for enforcing all building codes, including accessibility.</p> <p>No action required.</p>
	4.14	<p>Initial Project Application Section 6, require applicants to identify the number of dwelling units that will become uninhabitable temporarily or permanently during the rehabilitation work and specify what local, state, and federal relocation laws apply to those dwelling units.</p>	<p>See comment 4.13.</p>
	4.15	<p>Initial Project Application Section 8, require applicants seeking the 25% bonus credit for surplus land or transit-oriented development to explain how they will comply with the Surplus Land Act or HCD's affordability and accessibility requirements for transit-oriented development as applicable.</p>	<p>See comment 4.13.</p>
	4.16	<p>Comments to add boxes to the Application Narrative Template that require applicants to explain in detail the following:</p> <ul style="list-style-type: none"> <li>• How applicants will comply with accessibility requirements during the rehabilitation process.</li> <li>• applicants whose projects will result in the temporary or permanent displacement of occupants from existing dwelling</li> </ul>	<p>See comment 4.13.</p>

		units, how the applicant will comply with the federal, state, and/or local relocation laws applicable to the dwelling units.	
	4.17	<ul style="list-style-type: none"> <li>For applicants seeking the 25% bonus credit for Surplus Property, how the applicant will comply with all of the requirements of the Surplus Land Act, including how it will maintain the required affordability level for the required period of time.</li> </ul>	See comment 4.6.
	4.18	<ul style="list-style-type: none"> <li>For applicants seeking the 25% bonus credit as a transit-oriented development, how it will match or exceed the affordability and accessibility requirements that HCD uses in its Transit-Oriented Development Housing Program.</li> </ul>	<p>Revenue and Taxation Code sections 17053.17 and 23691 reference higher density mixed use development within a half mile of a transit station to define a structure qualifying for a 25% tax credit bonus.</p> <p>Existing definitions further defining a transit station were adapted from CA Department of Housing and Community Development Transit-Oriented Development Housing Program to remain more consistent between state programs.</p> <p>There is no statutory requirement for projects applying for historic rehabilitation tax credits to also comply with Transit-oriented Development requirements.</p> <p>No action required.</p>
	4.19	<p>Comments on Application Amendment form: Section 4 should include space for the applicant to explain whether the proposed amendment will impact the ability of people with disabilities to access and use the property. If so, the applicant must explain the alternative methods it will use to achieve program access. The applicant should also explain if the proposed amendment will result in the displacement of occupants of a dwelling unit and, if so, whether the displacement will be temporary or permanent and how the applicant plans to comply with the requirements of any local, state, and federal relocation laws that apply to the dwelling unit.</p>	See comment 4.13.

	4.20	Comments on Completed Project Application Section 4: confirm that applicants fulfilled the commitments made in their initial application by requiring applicants to explain how they complied with accessibility, affordability, and relocation requirements. Recommend expanding Section 4 to require information about how the applicant complied with previously cited accessibility requirements.	See comment 4.13.
Tara Hamacher	5.1	Instructions v. 5/24, CTCAC Fees: Comment notes that the 2% administrative fee charged by CTCAC is prohibitively high.	Fees were modeled after similar programs since an equivalent value in tax credits is awarded. If fees prove too high in practice they can be changed. No action required.
	5.2	Instructions v. 5/24, State Initial Project Application: Comment suggests adding a web page where applicants can look up their addresses to find out if the property is listed in the California Register.	A web page to look up the property status in the California Register was not included in the Instructions because web sites can change URL addresses and their use is discouraged in regulations. There are ongoing efforts to make this information more accessible by OHP. When that information is in place, access will be offered at that time.
	5.3	Comment to spell out “QRE” as it is not a common term.	QRE is defined where first used in the Instructions v. 5/24, in Application Fees and Calculation. No action required.
	5.4	Comment asks why same contact information is present in the Completed Project Application as redundant. Same information is requested in the Initial Project Application.	The Complete Project Application is modeled after the NPS Part 3 form, which is also requested in the Part 2 application. On occasion that information can change. It also is convenient for the reviewers to have the information at hand. No action required.
	5.5	Comment again suggesting fees are too high.	See comment 5.1.
	5.6	Comment asking for clarification of the separate certified Qualified Rehabilitation Expense document.	The Completed Project Application has added a separate “Certified Qualified Rehabilitation Expense” document for return with fee to the CTCAC.



	5.7	Appendix A, File format names: comment suggesting file names be differentiated from NPS file names, and that file descriptors do not match application titles.	File names for state tax credit projects begin with the OHP project number identifier. Dual projects will use the NPS project number first, because there is no change in the way dual projects are submitted. No action required.
	5.8	Appendix C, Documentation Standards: A request to provide a link or web site address to the NPS documentation requirements..	The link to the NPS documentation requirements has been restored.
	5.9	Appendix C, Documentation Standards: Clarification requested whether color or black and white photos should be used.	A new instruction is added directing all new photos must be in color, excepting vintage or historical photos.
	5.10	Appendix C, Documentation Standards: Question whether zip files can be uploaded.	A new instruction is added to Appendix B, directing that no zip files be uploaded.
	5.11	Observation that different document names from federal forms is confusing and a guess how the federal formwork will be copied to apply for state tax application.	State documents are titled differently to make a distinction between the two programs to avoid confusion. Dual applications should have no confusion because the state process is the federal process, only the state application form and fees are submitted. No action required.
	5.12	SHRTC 1 Applications Initial: Sections 1, 2 and 3 are in the Initial Application heading which is confusing. "Applications" is plural and should be "Application".	Sections 1, 2 and 3 are all subheadings in the Initial application which is why they are included in the title. The regulations explain how the application process is divided, which includes two sections, section 3 and section 5, which belong to sections which CTCAC administrates, which are not part of the federal process. The "Application" plural is not found in the application document, a more specific reference must be made. If the plural is referring to both the Initial, Amendment and

			Completed Applications, then the plural is correct. No action required.
	5.13	SHRTC 2 Applications Narrative: The narrative template field are not expandable and other formats are not discussed.	Instructions v. 5/24 “9. Section 2 Initial Project Application Narrative Template” adds a paragraph explain that the form is not expandable and that if more room is needed, to continue the description on a separate sheet or create a facsimile of the Narrative Template in a new document to allow room for larger descriptions. The state narrative form does not impact dual project applicants as only federal submissions are used.
	5.14	SHRTC 2 Applications Narrative: What is the process to apply for state tax credit for federal projects already begun?	§4859.01(d)(1) is added to direct projects completed or in construction after January 1, 2022, to submit an Initial Project Application with fees to receive approval from OHP and CTCAC.
	5.15	SHRTC 2 Applications Narrative: OHP and NPS project numbers should be listed on the Narrative Template like the Initial Project Application.	No OHP or NPS project number fields are provided on the Narrative Template because no dual project applicants will be using the form. No action required.
	5.16	SHRTC 2 Applications Narrative: Why is “Applications” plural?	See comment 5.12.
	5.17	SHRTC 3 Applications Amendment: The computer file title refers to “SHRTC Applications Amendment” Why is it not “Application”?	When files are sorted alphabetically the first descriptor refers to the type of file, and the second descriptor refers to the specific application name. This keeps all application files together when sorted. No action required.
	5.18	SHRTC 4 Applications Completed: Item 6 “Data for legislative analysis” should be moved to the Initial Project Application form because that information would be useful to know sooner.	Information such as the impact on taxes may not be fully understood at the start of a project, and numbers of jobs can’t be accurately counted until the end of a project.

			No action required.
	5.19	SHRTC 4 Applications Completed: How do state sections 4 and 5 correspond to the federal process?	State section 4 is analogous to the federal Part 3 application. There is no analogy to section 5 as that is conducted with the IRS as a separate action. Dual project applicants submit sections 4 and 5 at project completion. Instructions for completing the form are in Instructions v. 5/24. No action required.
	5.20	SHRTC 4 Applications Completed: Sections 4 and 5 are in the "Completed" title and confusion between the state application and the federal Part 3.	The Completed Project Application form requires Applicant input for section 4 but only requires a fee remittance that the new added "Cost Certification Document" on the next application page is used by the applicant. The dual project applicant submits this entire form using instructions found in Instructions v. 5/24. No action required,
	5.21	SHRTC 4 Applications Completed: Why is "Applications" plural?	See comments 5.12 and 5.17.
Emily Van Loon Tenderloin Neighborhood Development District	6.1	Clarify what projects that have already received federal Part I and Part II approval need to do when applying for the state historic tax credit.	§4859.01(d) adds subsection (1) and (2) clarifying state tax credit application for projects in construction or completed on or after January 1, 2022.
	6.2	Recommends ensuring a preference for 100% affordable housing projects applying for the state historic credits.	Revenue and Taxation Code sections 17053.17 and 23691 specify a preference order of time and date received and cannot be changed.

**From:** [Adam Markwood](#)  
**To:** [tax\\_calshpo@Parks](mailto:tax_calshpo@Parks)  
**Subject:** 4859 PUBLIC COMMENT  
**Date:** Friday, March 29, 2024 8:46:24 AM

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[1.1] I would like to request the following change to the definition of Owner, with the suggested modification being to delete 'and' and replace it with 'or':

**“Owner” means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person, or entity recognized by the Internal Revenue Code and or the California Franchise Tax Board for purposes of the applicable tax benefits.**

Thanks,

Adam Markwood  
Director of Investments  
Brian Wishneff & Associates  
30 W. Franklin Rd, Suite 503  
Roanoke, Virginia 24011  
c. 540-520-6902  
[www.wishneff.com](http://www.wishneff.com)

[adam@wishneff.com](mailto:adam@wishneff.com)

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**From:** tax, calshpo@Parks <[calshpo.tax@parks.ca.gov](mailto:calshpo.tax@parks.ca.gov)>  
**Sent:** Friday, March 29, 2024 11:05 AM  
**To:** tax, calshpo@Parks  
**Subject:** Reminder: SHRTC 15-Day Public Comment Period ends April 3rd

This is a reminder to all interested parties who commented on previous drafts of the State Historic Rehabilitation Tax Credit to review and comment on the second 15-day Public Comment Period for the current final drafts of the regulations, instructions, and application forms. The comment period will end at 11:59 PM on April 3, 2024.

Below is a link to the Notice of Modification to text of the Proposed Regulation. The review documents are available now on the OHP [State Historic Rehabilitation Tax Credit](#) web page.

Thank you for your participation.

[NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION](#)

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**From:** Huck, Mark@Parks

**Sent:** Monday, March 18, 2024 12:47 PM

**To:** tax, calshpo@Parks <[calshpo.tax@parks.ca.gov](mailto:calshpo.tax@parks.ca.gov)>

**Subject:** Notification of SHRTC 15-Day Public Comment Period

Good afternoon,

We are reaching out to all interested parties who commented on previous drafts of the State Historic Rehabilitation Tax Credit, to invite you to review and comment on the second 15-day Public Comment Period for the current final drafts of the regulations, instructions, and application forms. The comment period will have a term of 15 days beginning at 12 AM March 19, 2024, and ending at 11:59 PM on April 3, 2024.

Below is a link to the Notice of Modification to Text of the Proposed Regulation. The review documents become available at 12 AM March 19<sup>th</sup> on the OHP [State Historic Rehabilitation Tax Credit](#) web page.

Thank you for your participation.

[NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION](#)

## Huck, Mark@Parks

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**From:** Evanne St. Charles <[E.StCharles@ARGCREATE.com](mailto:E.StCharles@ARGCREATE.com)>  
**Sent:** Friday, March 29, 2024 9:10 AM  
**To:** tax, calshpo@Parks  
**Subject:** 4859 PUBLIC COMMENT SHRTC Letter  
**Attachments:** 4859 PUBLIC COMMENT\_SHRTC Letter\_StCharles\_20240329.pdf

You don't often get email from [e.stcharles@argcreate.com](mailto:e.stcharles@argcreate.com). [Learn why this is important](#)

Hello,

Attached please find my public comment letter regarding the revised State Historic Tax Credit regulations.

Thank you,  
Evanne

**Evanne St. Charles, LFA, LEED AP O+M**  
Senior Associate | Architectural Historian & Preservation Planner  
*She/Her*

### **ARCHITECTURAL RESOURCES GROUP**

360 E. 2<sup>nd</sup> Street, Suite 225 | Los Angeles, CA 90012  
626.583.1401 x125 | [e.stcharles@ARGcreate.com](mailto:e.stcharles@ARGcreate.com)  
Architects | Planners | Conservators

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Architectural  
Resources Group

360 E. 2nd Street, Suite 225  
Los Angeles, California 90012

*ARCreate.com*

March 29, 2024

California Office of Historic Preservation  
Attn: Jody L. Brown  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via e-mail: [calshpo.tax@parks.ca.gov](mailto:calshpo.tax@parks.ca.gov)

RE: 4859 PUBLIC COMMENT: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, State Historic Preservation Tax Credit Program

Dear Jody Brown:

Thank you for the opportunity to provide comments on the revised proposed regulations and procedures related to the State Historic Preservation Tax Credit Program. After reviewing the revised draft regulations and procedures, we've prepared the following requests for clarification.

*Requests for Clarification*

Per §4859.02(f) and the SHTC Application Instructions, a project that is currently pursuing federal tax credits may also apply for the SHTC (known as a "dual project"). The Application Instructions note that dual projects are not required to submit the SHTC Narrative or Amendment forms, and only need to submit the Initial Application and Completed Project Application forms.

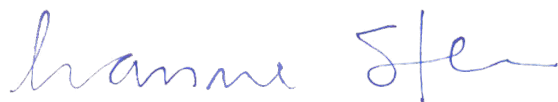
Additionally, the SHTC Initial Project Application provides a checkbox to indicate whether dual projects have received OHP/NPS approval on HPCA Part 1. However, the application does not provide a checkbox or other method to indicate whether the project has received OHP/NPS approval on HPCA Part 2 or 3.

Given the above information, we request clarification on the following:

**[2.1]** Since dual projects are not required to submit SHTC Narrative or Amendment forms, and there is no checkbox on the Initial or Completed Project Applications to indicate prior receipt of an approved HPCA Part 2 or 3, how are applicants supposed to indicate that proposed work has been previously reviewed and approved by OHP/NPS?

**[2.2]** Please clarify whether project drawings, photographs, or other supplemental materials need to be submitted for dual projects, or whether OHP will rely on the materials submitted with the HPCA package.

Sincerely,

A handwritten signature in blue ink that reads "Evanne St. Charles". The signature is written in a cursive, flowing style.

Evanne St. Charles, LFA, LEED AP O+M  
Senior Associate, Architectural Resources Group



**From:** [Tom Brandeberry](#)  
**To:** [tax\\_calshpo@Parks](mailto:tax_calshpo@Parks)  
**Subject:** Notification of SHRTC 15-Day Public Comment Period  
**Date:** Friday, March 29, 2024 10:49:43 AM

---

You don't often get email from [brandeberrytom@gmail.com](mailto:brandeberrytom@gmail.com). [Learn why this is important](#)

Hello,

[3.1] I would suggest the following change to the definition of Owner, with the suggested modification being to delete 'and' and replace it with 'or':

**“Owner” means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person, or entity recognized by the Internal Revenue Code and or the California Franchise Tax Board for purposes of the applicable tax benefits.**

Thanks,

Tom Brandeberry  
(916) 281-7638

**From:** [Zeenat Hassan](#)  
**To:** [tax\\_calshpo@Parks](mailto:tax_calshpo@Parks)  
**Cc:** [Dara Schur](#); [Navneet Grewal](#); [Jenny Olson](#)  
**Subject:** 4859 Public Comment  
**Date:** Friday, March 29, 2024 2:02:22 PM  
**Attachments:** [Outlook-logo \(002\).png](#)  
[2024.03.29 DRC comments on OHP SHRTC proposed regulations - final.pdf](#)

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Hello,

Please find attached public comments from DRC on OHP's proposed regulations for the State Historic Rehabilitation Tax Credit. Thank you in advance for your consideration of these comments. We are happy to meet with you if you have questions or concerns about our suggestions.

Sincerely,

**Zeenat Hassan** (she/her)  
Senior Attorney, Civil Rights Practice Group  
Disability Rights California  
1000 Broadway, Suite 395  
Oakland, CA 94607  
Direct: (510) 267-1225 | Fax: (510) 267-1201  
Intake Line: (800) 776-5746 | TTY: (800) 719-5798



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**LEGAL ADVOCACY UNIT**  
1000 Broadway, Suite 395  
Oakland, CA 94607  
Tel: (510) 267-1200  
Fax: (510) 267-1201  
TTY: (800) 719-5798  
Intake Line: (800) 776-5746  
[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

March 29, 2024

Via email to [calshpo.tax@parks.ca.gov](mailto:calshpo.tax@parks.ca.gov)

California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

**RE: 4859 Public Comment**

Dear OHP:

Disability Rights California (DRC) thanks you for the opportunity to provide comments on the proposed modifications to sections 4859.01-4859.06 of the California Code of Regulations and related forms. DRC is a non-profit agency established under federal law to protect, advocate for, and advance the human, legal, and service rights of Californians with disabilities.<sup>1</sup> Increasing the availability of accessible, affordable housing is a major priority for us.

We are pleased that the State Historic Rehabilitation Tax Credit incentivizes the revitalization of historic sites to serve as affordable

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<sup>1</sup> Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. § 794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. § 3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, PL 107-252; as well as under California Welfare and Institutions Code §§ 4900 et seq.

housing; however, we remain concerned that the proposed regulations and application forms continue to omit key provisions that are necessary to ensure people with disabilities have equal access to the housing available under the program. The proposed regulations also fail to require compliance with relocation protections for tenants who may be displaced by program activities. We elaborate on those concerns below and provide suggested language that we hope will assist OHP in the development of an accessible, equitable program. Should OHP have any questions or concerns on these comments, we are happy to discuss them with staff and to provide technical assistance to ensure that the disability community enjoys equitable benefits from the SHRTC program.

**[4.1] Global comment: OHP should expressly require compliance with state and federal accessibility standards in the SHRTC program and explain how it will determine when an exception to the standards is appropriate.**

In DRC's work on public access issues, we frequently encounter the mistaken belief that historic sites and other buildings built before 1990 are wholly exempt from the accessibility requirements of the Americans with Disabilities Act. This is untrue. The ADA, its regulations, and agency guidelines all require property owners to take affirmative steps to remove barriers and to enhance access for people with disabilities, particularly when an older building undergoes rehabilitation. Property owners are required to comply with ADA Accessibility Standards sections 202.1-202.5 for additions and alterations to existing structures. Alterations to residential dwelling units must comply with all of those sections except as provided in Section 202.5.<sup>2</sup> In fact, the 2010 ADA Accessibility Standards require owners of qualified historic buildings to comply with these accessibility requirements unless the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance would threaten or destroy the historic significance of the building or facility. (2010 ADA Accessibility Standards section 202.5.) Even if some exceptions to compliance are granted pursuant to Section 202 or by the historic body, the developer still must use alternative methods to achieve program

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<sup>2</sup> Where permitted by Section 202.5, the only other historic building exceptions are found in Sections 206.2.1, Exception 1 (site arrival points); 206.2.3, Exception 7 (accessible routes in multi-family buildings and facilities); 206.4, Exception 2 (entrances); and 213.2, Exception 2 (toilet rooms and bathing rooms). Each of these exceptions requires specific alternative methods of providing accessibility.

accessibility. The developer also has an additional obligation to achieve program accessibility under the text of the ADA itself and the Department of Justice's ADA regulations.<sup>3</sup>

California law is similarly protective of disabled people's right to access historic sites. The State Historical Building Code provides that the "application of any alternative standards for the provision of access to the disabled or exemption from access requirements shall be done on a case-by-case and item-by-item basis, and shall not be applied to an entire qualified historical building or structure without individual consideration of each item, and shall not be applied to related sites or areas except on an item-by-item basis." (Health & Safety Code section 18954.) It further requires all state agencies to administer and enforce the code "with respect to qualified historical buildings or structures under their respective jurisdiction." (HSC section 18959(a).) Similarly, California Government Code 11135 requires all state agencies and state-funded activities to provide program access.

In their current form, the SHRTC regulations do not reflect federal or state accessibility requirements or OHP's role in enforcing those requirements with respect to historic buildings. OHP needs to include these requirements in the SHRTC regulations (similar to other tax credit regulations<sup>4</sup>) because property owners are otherwise likely to overlook accessibility requirements entirely, perpetuating the exclusion of disabled people from places of historic significance and from affordable housing. Incorporating accessibility requirements into the regulations promotes inclusion and equity for the disability community in California. OHP also needs to explain in the regulations when and how it will use its authority to grant a narrow exception to the accessibility requirements. Without a clear process and standards, OHP runs the risk of violating disability rights laws by allowing property owners to benefit from a state program without providing the requisite access to people with disabilities.

Inclusion of accessibility standards is consistent with the Legislature's mandate that OHP operate the SHRTC program in compliance with the

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<sup>3</sup> Advisory, 202.5: Alterations to Qualified Historic Buildings and Facilities Exception.

<sup>4</sup> See e.g., 4 C.C.R. Sections 10325(f)(7)(K) (accessibility requirements for new construction and rehabilitation projects) and 10337(c)(monitoring, recordkeeping, and certification of compliance with fair housing laws and building codes, among other requirements).

Secretary of the Interior's requirements at 36 C.F.R. part 67. That part requires property owners to consult the National Park Service's Guidelines for Rehabilitating Historic Buildings, which discusses "recommended" and "not recommended" methods of enhancing accessibility without compromising the integrity and historical significance of a building. Including accessibility standards in the regulations also comports with the ADA's general mandate on state and local governments to conduct all services, programs, and activities in a manner that does not exclude people with disabilities from the benefits of those services, programs, and activities. (42 U.S.C. section 12132; 28 C.F.R. section 35.130(a).) Incorporating accessibility requirements into the SHRTC regulations is within the scope of OHP's authority, is necessary to implement these statutory mandates, and exemplifies good public policy.

## **II. Comments on specific sections of the proposed regulations**

### **A. §4859.01. State Historic Rehabilitation Tax Credit Authority and Function.**

**[4.2] 1) The regulations should explain OHP's legal authority under state and federal law to ensure that rehabilitation of historic buildings maximizes access for people with disabilities and complies with state and federal accessibility requirements.**

Subsection (a) summarizes OHP's authority under the Revenue and Taxation Code to, among other things, ensure that rehabilitation projects comply with the Secretary of the Interior's Standards for Rehabilitation at 36 C.F.R. part 67.7. As discussed above, 36 C.F.R. part 67 requires property owners to maximize access for people with disabilities, and state law places upon OHP the duty to administer its programs consistent with state and federal accessibility requirements. Accordingly, subsection (a) should discuss OHP's authority to enforce state and federal accessibility requirements as they apply to historic buildings in the SHRTC program. We recommend the following additions to subsection (a):

**(2) The State Historical Building Code requires OHP, as a state agency, to administer and enforce the provisions of Health and Safety Code Part 2.7 with respect to qualified historical buildings or structures under its jurisdiction. (HSC section 18959(a).) The statute**

gives OHP the authority to adopt rules and regulations governing the rehabilitation, preservation, restoration, related reconstruction, safety, or relocation of qualified historical buildings and structures within its jurisdiction. (HSC section 18958.)

(3) The 2010 ADA Standards for Accessible Design give OHP authority to determine when an exception to the requirements for accessible routes, entrances, or toilet facilities should apply because compliance would threaten or destroy the historic significance of a building or facility. (2010 ADA Standards for Accessible Design, section 202.5.)

**2) [4.3] The regulations need to specify that OHP is responsible for ensuring compliance with state and federal accessibility requirements and relocation laws.**

Proposed subsection (b)(1) describes OHP's scope of authority in the SHRTC program but does not discuss its duty to ensure applicants comply with state and federal accessibility standards and relocation laws. We recommend the following changes (in blue) to subsection (b) to clarify these duties:

(b) The OHP establishes program directions in coordination with the California Tax Credit Allocation Committee (CTCAC).

(1) The OHP is responsible for ensuring that the proposed rehabilitation project meets the Standards for Rehabilitation, and that the property is a certified historic structure that is a qualified residence or a certified historic building. OHP is also responsible for ensuring project compliance with state and federal accessibility requirements (including the Americans with Disabilities Act of 1990 as amended [42 U.S.C. Section 12101 et seq.] and its implementing regulations at 28 C.F.R. part 35.151 [Title II regulations for new construction and alterations] and 28 C.F.R. subpart D [Title III regulations for new construction and alterations]; Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. Section 794] and its implementing regulations at 24 C.F.R. part 8; the Uniform Federal Accessibility Standards [UFAS] at 24 C.F.R. part 40 or, in the alternative, the 2010 ADA Standards for Accessible Design; the State Historical Building Code [Health and Safety Code Section



18950 et seq]; the California Building Code Chapters 11A and 11B; the Architectural Barriers Act Accessibility Standards; and the Fair Housing Act [42 U.S.C. Section 3601 et seq] and its implementing regulations at 24 C.F.R. part 100 and the ANSI A117.1-1986 design and construction standard incorporated by reference at 24 C.F.R. part 100.201a) and tenant relocation laws (including the Federal Uniform Relocation Assistance and Real Property Acquisition Act and its regulations at 49 C.F.R. Part 24, including Appendix A to Part 24; Government Code section 7260 et seq and its implementing regulations at 25 C.C.R. 6000-6198; and any local relocation laws in effect in the jurisdiction where the property is located).

**B. §4859.03. Initial Project Application**

- 1) [4.4] The regulations need to include a description of the process OHP will use, and the standards by which it will determine, whether an exception to the ADA’s accessibility requirements, or other applicable accessibility standards, is legally justified.**

As a state agency, OHP is required under Title II of the ADA, Section 504 of the federal Rehabilitation Act, and Government Code 11135 to ensure that all of its programs, services, and activities are accessible to people with disabilities and do not discriminate against people with disabilities. This requirement includes the responsibility of ensuring that projects under OHP’s control comply with the ADA’s accessibility requirements. The U.S. Department of Justice’s ADA Title II regulations require alterations to historic properties to comply, “to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in section 35.151(c).” (28 C.F.R. 35.151(b)(3)(i), (ii).) Similarly, the Department’s ADA Title III regulations require “alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.) or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part.” (28 C.F.R. 36.405(a).) In situations where physical access cannot be provided in a manner that will not threaten or destroy the historic significance of the building or facility, Title II and Title III entities must provide alternative methods of access pursuant to the regulations. As a Title II entity, OHP is responsible for ensuring SHRTC

projects comply with the DOJ's accessibility requirements "to the maximum extent feasible" and to otherwise provide "alternative methods of access" in compliance with federal law. Similarly, as a state agency, OHP is responsible for ensuring compliance with Section 504 of the Rehabilitation Act, California building codes, and other state and federal statutes requiring accessibility.<sup>5</sup>

In the 2010 ADA Standards for Accessible Design, the DOJ requires alterations to historic buildings to comply with accessibility requirements unless the State Historic Preservation Officer determines that compliance would threaten or destroy the historic significance of the building or facility. In that circumstance, the exceptions for alterations to historic buildings may apply to that particular element. OHP needs to adopt regulations that explain how it will exercise this authority in the SHRTC program. The procedure and standards OHP adopts will also need to comply with California's requirement under the State Historical Building Code that the application of any alternative standards for disability access or exemption from access requirements "be done on a case-by-case and item-and-item basis, and shall not be applied to an entire qualified historical building or structure without individual consideration of each item, and shall not be applied to related sites or areas except on an item-by-item basis." (HSC section 18954.) Compliance with these statutory requirements is necessary to prevent "rubber-stamping" inaccessible projects that, under state and federal law, must be accessible to people with disabilities. To assist applicants in determining how to maximize the accessibility of their properties, OHP could require in the regulations that applicants use the National Park Service's preservation brief, "Making Historic Properties Accessible," as a planning tool.<sup>6</sup> Although the brief predates the 2010 ADA Standards for Accessible Design, its approach to accessibility remains a helpful guide. DRC is available to provide technical assistance to OHP on developing guidelines to exercise its authority to enforce accessibility standards.

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<sup>5</sup> See, e.g., California Government Code Section 11135 (prohibitions against disability discrimination in state funded programs). California Building Code Chapter 11B provisions are substantially similar to the 2010 ADA Standards for Accessible Design.

<sup>6</sup> Thomas C. Jester and Sharon C. Park, *Making Historic Properties Accessible*, September 1993 (available at: <https://www.nps.gov/orgs/1739/upload/preservation-brief-32-accessibility.pdf>).

To further implement the accessibility requirements discussed above, we suggest that OHP also add the following language (in blue) to subsections (g) and (n):

(g) Decisions are based on the descriptions contained in the application form and other supplementary material. In the event of any discrepancy between the application form and supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application form shall take precedence **unless the discrepancy pertains to a feature of accessibility for people with disabilities. In that circumstance, OHP will presume the application fails to meet required accessibility standards unless the applicant can provide compelling evidence showing otherwise.**

[...]

(n) Once a proposed project has been approved, substantive changes in the work from those described in the application must be brought promptly to the attention of the OHP using the Amendment form v. 5/24 to ensure continued conformance to the Standards for Rehabilitation. The OHP will notify the applicant whether the revised project continues to meet the Standards for Rehabilitation. **Changes that reduce access for people with disabilities will generally not be approved by OHP.** Amendments do not incur any additional fees.

**2) [4.5] To prevent tenant displacement, the regulations must require compliance with local, state, and federal tenant relocation laws.**

To avoid tenant displacement during rehabilitation of SHRTC properties, we recommend adding new subsection (o):

**(o) All applications must indicate whether the proposed rehabilitation will result in the displacement of residents, either temporarily or permanently. If displacement is anticipated at the time of the Initial Project Application, the applicant must identify the local, state, and federal relocation requirements applicable and commit to compliance with all applicable requirements. The Completed Project Application must summarize whether displacement occurred (even if not**

anticipated) and state how the applicant complied with all applicable relocation laws. Applicable relocation laws include:

- (1) The Federal Uniform Relocation Assistance and Real Property Acquisition Act and its regulations at 49 C.F.R. Part 24, including Appendix A to Part 24;
- (2) Government Code section 7260 et seq and its implementing regulations at 25 C.C.R. 6000-6198; and
- (3) Any local relocation laws in effect in the jurisdiction where the property is located.

### **III. Comments on the Application Instructions v. 5/24**

#### **C. Appendix D: Initial Application submittal requirements for the 25% Bonus Credit**

##### **3) [4.6] A. Project located on Surplus Property**

For projects seeking the 25% bonus credit under the Surplus Property criteria, OHP needs to require a stronger demonstration of compliance than what is being proposed. As currently written, Appendix D directs applicants to submit letters on letterhead from the appropriate agency confirming the land's status as surplus land and its transfer of ownership.

The information OHP requires in the letters is insufficient to show that the public agency and the applicant have fully complied with the requirements of the Surplus Land Act. If used for the development of housing for low- and moderate-income households, the Surplus Land Act requires the entity that owns the land to make at least 25% of the total number of units developed on the parcels available for sale at "affordable housing cost" (as defined in Health and Safety Code Section 50052.5) or for rent at "affordable rent" (as defined in H.S.C. section 50079.5). (Gov't Code section 54222.5.) The law further requires the rental units to remain affordable to, and occupied by, lower-income households for a minimum of 55 years for rental housing, 45 years for ownership housing, and 50 years for rental or ownership housing located on tribal trust lands. These and further requirements must be contained in a covenant or restriction recorded against the land at the time of sale. Affordable housing advocates have reported that many agencies do not comply with the requirements to

offer surplus land first to developers of affordable housing and to prioritize the development of affordable housing over other uses.

OHP should revise Appendix D to require that the letters provided under Section A detail the process by which the public agency made the land available, including any claimed exemptions or exceptions, and an explanation of the affordability levels it commits to preserving. In other words, the letter needs to explain how the public entity and the applicant complied with the law, not merely an assurance that they did.

#### **4) [4.7] B. Project includes affordable housing**

Appendix D appears to be the only place where the 15% minimum requirement is listed. The minimum requirement does not appear anywhere in the regulations, and OHP has provided no explanation for how it decided on that number. This is a problem because the minimum percentage is a substantive agency decision that directly impacts the availability of affordable housing in the state. OHP needs to state the minimum requirement in its regulations, explain in its statement of reasons why it decided on that number, and consider public comments on whether a different level of affordability would be more appropriate. We support a minimum percentage of units to qualify as affordable housing, but we urge OHP to set the threshold at a higher percentage and to target a deeper level of affordability.

Additionally, OHP should require that applicants identifying as affordable housing projects must agree to maintain affordability for at least 55 years through a deed restriction. This approach would bring OHP's affordable housing protections into alignment with the protections used by CTCAC and HCD to ensure long-term affordability in their programs. OHP should require applicants to include documentation of the project's affordability level and deed-restricted covenants as attachments to the application.

#### **5) [4.8] E. Project located within ½ mile of Transit Station**

Appendix D adopts some definitions from HCD's Transit-Oriented Development Housing Program, but it does not explain how OHP will determine whether the applicant has met other components of the definition of "transit-oriented development," like what criteria a project must meet to be a "higher density, mixed-use development" under the statute that

authorizes the SHRTC. HCD's TOD program also includes additional requirements like affordability standards and accessibility requirements. To bring consistency among state housing programs and maximize public benefit, OHP should require that applicants meet the same standards that HCD's TOD grantees meet with respect to affordability and accessibility.

#### **D. Appendix E: Secretary of the Interior's Standards for Rehabilitation**

This appendix reflects the Secretary of the Interior's regulations on historic preservation at 36 C.F.R. part 67. We support the inclusion of these standards in the appendix, but **[4.9]** we encourage OHP to also include guidance and requirements on increasing access for people with disabilities. This appendix should include the Secretary's recommendation to consult the National Park Service's preservation brief, "Making Historic Properties Accessible." **[4.10]** OHP should also add to Appendix E (or in a new Appendix F), the requirement to comply with applicable accessibility laws. We suggest the following language:

Applicants must explain how they will comply with all of the following accessibility laws:

- (1) The Americans with Disabilities Act of 1990 (42 U.S.C. section 12101 et seq) and its implementing regulations at 28 C.F.R. part 35.151 (Title II regulations for new construction and alterations) and 28 C.F.R. subpart D (Title III regulations for new construction and alterations);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) and its implementing regulations at 24 C.F.R. part 8;
- (3) The Uniform Federal Accessibility Standards (UFAS) at 24 C.F.R. part 40 or, in the alternative, the 2010 ADA Standards for Accessible Design;
- (4) The State Historical Building Code (HSC section 18950 et seq); and
- (5) California Building Code Chapters 11A and 11B.

If applicable to the property, applicants must also explain how they will comply with the Architectural Barriers Act Accessibility

Standards (federal projects) and the Fair Housing Act (42 U.S.C. section 3601 et seq) and its implementing regulations at 24 C.F.R. part 100, and the ANSI A117.1-1986 design and construction standard incorporated by reference at 24 C.F.R. part 100.201a (projects with residential units).

Any deviations, exceptions, or alternatives proposed that differ from the accessibility standards must be approved in advance by the OHP using the specified procedures. [Procedures to be developed by OHP.]

#### **IV. Comments on Sections 1, 2, and 3 Initial Project Application v. 5/24**

OHP should add boxes to the Initial Project Application form for applicants to explain in detail how they will comply with applicable laws on accessibility, tenant relocation, and the Surplus Land Act. Consistent with our comments above, we suggest adding the following boxes:

- [4.11] In Section 6, require applicants to disclose how many dwelling units in a residential project will contain accessibility features for people with mobility disabilities, sensory disabilities, or both. Either in this form, in a supplement, or in the Narrative Template, OHP should require the applicant to explain the process they will use to maximize the accessibility of the project's dwelling units and the rest of the property.
- [4.12] Also in Section 6, require applicants to identify the number of dwelling units that will become uninhabitable temporarily or permanently during the rehabilitation work and specify what local, state, and federal relocation laws apply to those dwelling units.
- [4.13] In Section 8, require applicants seeking the 25% bonus credit for surplus land or transit-oriented development to explain how they will comply with the Surplus Land Act or HCD's affordability and accessibility requirements for transit-oriented development as applicable.



## V. [4.14] Comments on Section 2 Narrative Template v. 5/24

Consistent with our comments above, we urge OHP to add boxes to the Narrative Template that require applicants to explain in detail the following:

- How applicants will comply with accessibility requirements during the rehabilitation process. We suggest the following language: “Describe how the project will comply with the required accessibility requirements in any additions or alterations, including the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Uniform Federal Accessibility Standards (UFAS), the State Historical Building Code, the California Building Code Chapters 11A and 11B, and the Architectural Barriers Act Accessibility standards and/or the Fair Housing Act if applicable. If any exceptions to those standards have been permitted, explain the basis for the exception and describe what alternative methods will be used to ensure program access.” OHP should encourage applicants to consult the NPS publication, “Making Historic Properties Accessible,” for guidance.
- For applicants whose projects will result in the temporary or permanent displacement of occupants from existing dwelling units, how the applicant will comply with the federal, state, and/or local relocation laws applicable to the dwelling units. The applicants’ narrative should state whether the occupants have the right to return to their dwelling unit or to occupy a new dwelling unit in the project after the rehabilitation work is complete.
- For applicants seeking the 25% bonus credit for Surplus Property, how the applicant will comply with all of the requirements of the Surplus Land Act, including how it will maintain the required affordability level for the required period of time.
- For applicants seeking the 25% bonus credit as a transit-oriented development, how it will match or exceed the affordability and accessibility requirements that HCD uses in its Transit-Oriented Development Housing Program.



- For applicants seeking the 25% bonus credit for affordable housing for lower-income households, how the applicant will maintain the required level of affordability and over what period of time.

**VI. [4.15] Comments on Section 2 Amendment Form v. 5/24**

Section 4 should include space for the applicant to explain whether the proposed amendment will impact the ability of people with disabilities to access and use the property. If so, the applicant must explain the alternative methods it will use to achieve program access.

The applicant should also explain if the proposed amendment will result in the displacement of occupants of a dwelling unit and, if so, whether the displacement will be temporary or permanent and how the applicant plans to comply with the requirements of any local, state, and federal relocation laws that apply to the dwelling unit.

**VII. [4.16] Comments on Sections 4 and 5 Completed Project Application v. 5/24**

To confirm that applicants fulfilled the commitments made in their initial application, OHP should require applicants to explain how they complied with accessibility, affordability, and relocation requirements. We recommend expanding Section 4 to require information about:

- How the applicant complied with the accessibility requirements of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Uniform Federal Accessibility Standards (UFAS), the State Historical Building Code, the California Building Code Chapters 11A and 11B, and the Architectural Barriers Act Accessibility standards and/or the Fair Housing Act if applicable to the particular project. The applicant's explanation should include a description of any exemptions it applied, how it applied those exemptions as narrowly as possible, and what alternative methods it used to provide program access for people with disabilities.
- The number of dwelling units (identified by unit number and unit type) that include accessibility features for people with mobility and/or sensory disabilities;

- The number of occupants who were displaced from their dwelling units, whether the displacement was temporary or permanent, what relocation laws apply to those units, and how the applicant complied with those laws;
- For applicants seeking the 25% bonus credit for affordable housing, how the applicant will maintain the requisite affordability level over time;
- For applicants seeking the 25% bonus credit for Surplus Property, how the applicant complied with the requirements of the Surplus Land Act, including how it will maintain the requisite long-term affordability level; and
- For applicants seeking the 25% bonus credit for transit-oriented development, how the applicant has met or exceeded the accessibility and affordability requirements HCD uses in its Transit-Oriented Development Housing Program.

In Section 6, OHP should modify the form to allow applicants to explain if their project provides a public benefit in the form of adding dwelling units to the state's housing supply, especially those that are both affordable and accessible.

## **VIII. Conclusion**

We reiterate our appreciation to OHP for its consideration of these comments. We hope our suggestions assist OHP in administering the SHRTC in a way that provides Californians with disabilities equal access to the public benefits available under the program. We are available to meet with OHP staff upon request to discuss our comments and provide technical assistance on issues pertaining to the access rights of disabled Californians.

Sincerely,

Zeenat Hassan  
Senior Attorney

Dara Schur  
Senior Counsel

Tara Hamacher comments attached to the Instructions v. 5/24 manual.

Instructions v. 5/24, Application Fees and Calculation.

### CTCAC Fees:

**Processing Fee:** A fee in the amount of \$500 for Qualified Residence projects and \$1,000 for all other projects shall be submitted to the CTCAC at the time the applicant is notified by the OHP that the Initial Project Application is forwarded to the CTCAC.

**Administrative Fee:** A fee in the amount of 2% of the tax allocation credit shall be submitted to the CTCAC within 10 calendar days of the allocation award at project completion.

Comment 5.1: This is cost prohibited! Brokers barely make this much, now we have to build in 2% for State as a fee? Really? Plus \$500 - \$1,000. Why are applicants who are forced to work with little allocation forced to pay additional fees for this program. Where is the State money to cover program costs? You guys are unknowledgeable about how high the transaction costs are already. Accountants, Attorney's, Consultants, all cost money, now the State takes money off the top of your award and wants money 10 days after allocation award? Are you serious?

Instructions v. 5/24, Section 2 Initial Project Application, Section 1:

#### 1. Historic Property:

- a. Provide the commonly known historic name of the property. If there is none, the property name is the street address.
- b. Provide the address of the property.
- c. Identify any local, state, or national historic district to which the property contributes, if any. Local listing designations can be included here. Identify the jurisdiction listing the property.
- d. Type 'X' into only one box indicating the property is a contributor to a California registered Historic District, an individually listed property on the California Register, or an approved or pending federal tax credit Part 1 "Evaluation of Significance" form.

Comment 5.2: Provide web site address where one can look up their property.

Instructions v. 5/24, Section 2 Initial Project Application, Section 2:

#### 2. Project data:

- a. The total estimated cost of the project. (non-QRE + QRE)
- b. The estimated total QRE costs.

Comment 5.3: Spell out what QREs are, people don't know this term.

Instructions v. 5/24, Section 4 Completed Project Application:

1. Historic Property:
  - a. Provide the commonly known historic name of the property. If there is none, the property name is the street address.
  - b. Provide the address of the property.
  - c. Identify any local, state, or national historic district to which the property contributes, if any. Local listing designations can be included here. Identify the jurisdiction listing the property.
  - d. Type 'X' into only one box indicating the property is a contributor to a California registered Historic District, an individually listed property on the California Register, or an approved or pending federal tax credit Part 1 "Evaluation of Significance" form.
  
2. Project contact (if different from applicant):
  - a. Provide contact's name.
  - b. Provide contact's company.
  - c. Provide contact's mailing address.
  - d. Provide contact's phone number and email address.
  
3. Applicant:
  - a. Type 'X' into the box affirming that either the applicant is the owner of the property, or the owner is aware of the proposed project and has no objection to its rehabilitation. Include a letter signed by the owner acknowledging the project and agreeing to the rehabilitation project.
  - b. Provide applicant's name.
  - c. Provide applicant's signature.
  - d. Provide the date the application was signed.
  - e. Provide the name of applicant's business, company or corporation.
  - f. Provide applicant's mailing address.
  - g. Provide applicant's phone number.
  - h. Provide applicant's email address.

Comment 5.4: Why do we need to provide this info again for a completed project, it's redundant.

Instructions v. 5/24, Section 4 Completed Project Application:

5. Completed Application category and fee:
  - c. The fee amounts in the boxes across from the checked allocation category are computed using the formula published in the "Application Fees and Calculation" paragraph above.

Comment 5.5: Again, I think the fees are too high.

Instructions v. 5/24, Section 4 Completed Project Application:

~~Section 5 is completed by the CTCAC. Submit a separate certified Qualified Rehabilitation expense document in the format required by the CTCAC. Projects with an excess of \$250,000 must be issued by a licensed certified public accountant.~~

Comment 5.6: What does this mean, until now nothing is mentioned about a "Separate certified Qualified Expense document" This is available for larger projects in the beginning, but the final cost certification isn't finished for months after project completion. The Federal program does not have this requirement. This is IRS function and accountants put on applicates tax return. I think this section needs more explanation upfront for applicants.

#### Appendix A, File name Format Examples

When naming files for upload to the OHP Portal, use these standard formats. Dual projects will use the NPS standard format.

- "<OHP> Initial submission"
- "<OHP project number> Initial submission Narrative"
- "<OHP project number> Initial submission Photo Key"
- "<OHP project number> Initial submission Photos jpeg"
- "<OHP project number> Initial submission Photos PDF"
- "<OHP project number> Initial submission Drawings"
- "<OHP project number> Initial submission additional information"
- "<OHP project number> Amendment 1 submission"
- "<OHP project number> Completed submission", etc.

Comment 5.7: How is this different than Federal process titles you want. This should need to have SHTC or HTC in the title, so you know the difference. I am noticing that these titles are different than the application titles, might want to revisit and link them.

#### Appendix C, Documentation Format Standards for Qualified Residence submittals

All applicants are encouraged to follow the submittal format examples as described on the National Park Service (NPS) [Documentation Requirements for Certification Applications](#) web page.

Comment 5.8: Provide a link or web site address for NPS documentation requirements.

#### Appendix C, Documentation Format Standards for Qualified Residence submittals, Photo format:

Photos may be submitted as jpegs in a folder. Each folder cannot exceed 50 photos, and photo files cannot be larger than 500 kilobytes. Photos must be numbered sequentially and submitted with a document which describes each photo in numerical order.

Comment 5.9: Do you want color or black and white? Should tell applicants for clarification.

Appendix C, Documentation Format Standards for Qualified Residence submittals, Drawing format:

Architectural drawings and legible sketches by others must be submitted in PDF format. All drawings must be numbered and referenced in the Rehabilitation Application Narrative Template.

Comment 5.10: Can we upload ZIP files? Might want to say.

Tara Hamacher comments continue in the following letter.

**From:** [Tara Hamacher](#)  
**To:** [tax\\_calshpo@Parks](mailto:tax_calshpo@Parks)  
**Cc:** [Tara Hamacher](#)  
**Subject:** 4859 PUBLIC COMMENT  
**Date:** Wednesday, April 3, 2024 2:05:13 PM  
**Attachments:** [SHRTC\\_INSTRUCTIONS.pdf](#)

---

To Whom It May Concern,

Please find the following comments to the State Historic Tax Credit public comment period. For the Instructions section I have made comments on the pdf itself and it is attached. Please review that as well as the below comments. Thank you.

**[5.11] General Comment on application titles.** This program should mirror the Federal Program application titles even if Federal credits are not being pursued. By coming up with new titles for these forms it confused me reviewing this information. For example currently it is:

- Sections 1,2 and 3 Initial Project Application ( Federal Level this is called Part 1. By introducing 1 - 3 this is confusing)
- Section 2 Application Narrative Template (The words "Narrative Template" should be dropped, no need for this description and template is not an application title. Again it should mirror Federal titles)
- Section 2 Amendment ( Section 2 Amendment? That would be the first document? This should be Part 2 Amendment, not Section 2 because again that suggest the 1st page of this application as that is the 2nd section of the application)
- Section 4 and 5 Completed Project Application. (Federal level is called Part 3. Again it should mirror Federal titles)

I envision that if we do the 20% Federal Rehabilitation tax credit that we can make a copy of that application and submit it for State Credits. Any deviation from the 20% Federal Rehabilitation tax credit language/ titles make the California State credit different and in my opinion will cause unnecessary confusion to the industry consultants and property owners. This process is so overwhelming anyway, don't make it more so by introducing a new vocabulary for the State Application. It needs to be as easy as possible.

Further comments on each page are as follows:

#### **[5.12] SHRTC\_1\_APPLICATIONS\_INITIAL**

1. Section 1: There should also be a box for "federal Part 2 application submission". That way OHP knows there has also been a Part 2 submitted on the project.
2. The application page titles are confusing. For example this page says "Sections 1, 2 and 3 of initial project application. Yet the form goes on to have
3. Which one is it? Why is "Applications\_" plural? Wouldn't it be "Application"?

#### **SHRTC\_2\_APPLICATIONS\_NARRATIVE**

1. [5.13] The Part 2 form is limiting for text/data input that will make it hard to provide complete information. It is common to have more photo and drawings to list as well. This form

should be expandable or available in another editable format to make it easier for applicants to write up the project properly and avoid addendum pages which can be confusing to follow for the reviewer.

2. [5.14] What if there is a federal Part 2 application already complete? Are we allowed to submit a copy of that application and OPH accept it for the State program. This should be allowed b/c filling out 2 applications when a project is also applying for federal credits is to much work and double typing into a limited form will make it challenging to comply.
3. [5.15] Should be able to list OHP & NPS project #'s on this form so its easily identified by reviewer as on Part 1 page.
4. [5.16] Which one is it? Why is "Applications\_" plural? Wouldn't it be "Application"?

### **SHRTC\_3\_APPLICATIONS\_AMENDMENT**

1. [5.17] On the computer file title this is referred to as SHRTC Applications Amendment but the actual application says "Section 2 Amendment" Which one is it? Why is "Applications\_" plural? Wouldn't it be "Application"? digital names should match actual application names, and that should be the title in the email subject line, all the same.

### **SHRTC\_4\_APPLICATIONS\_COMPLETED**

1. [5.18] Item 6 on this form should be moved to Part 1 application. Isn't this information needed to qualify the project for the program to begin with? Or is the State only looking to collect this data after the fact of issuing the SHTC approval? If the State wants to confirm jobs, etc at the end then it could be asked again for the completion but don't let applicants delay providing this information upfront as it needs to be understood that this is a criteria to be met.
2. [5.19] How does Part 4 & 5 correspond with the Federal Process? Consultants are used to doing a Part 3 with completion photographs and summary on meeting Part 2. This process seems different and I am not sure how to close out the project based on this for.
3. [5.20] Title of this section is SHRTC 4 Applications Completed" This is confusing as the document says 4 & 5.
4. [5.21] Again why is "Applications\_" plural? Wouldn't it be "Application"?

Hope my feedback is helpful. Look forward to getting this program off the ground. Thanks for all your hard work.

--

Best regards,

Tara J. Hamacher  
President

Historic Consultants  
[www.HistoricConsultants.com](http://www.HistoricConsultants.com)  
256 S. Robertson Blvd, # 2401 | Beverly Hills, CA 90211  
213-379-1040 cell | [tara@historicconsultants.com](mailto:tara@historicconsultants.com)



**From:** [Emily Van Loon](#)  
**To:** [tax\\_calshpo@Parks](mailto:tax_calshpo@Parks)  
**Cc:** [Christopher Cummings](#)  
**Subject:** 4859 PUBLIC COMMENT  
**Date:** Wednesday, April 3, 2024 2:47:38 PM  
**Attachments:** [24-0403 TNDC Comments re State HTC SHPO.pdf](#)

---

Hello – I'm submitting TNDC's comments on the proposed changes to the state historic rehabilitation tax credit regulations.

Thank you for the opportunity to comment.

**Emily Van Loon**  
Associate Director of Housing Development  
[evanloon@tndc.org](mailto:evanloon@tndc.org)  
[p 415.358.3933](tel:415.358.3933)  
Tenderloin Neighborhood Development Corporation  
232 Eddy Street | San Francisco, CA 94102



April 3, 2024

Ms. Jody L. Brown  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

Re: Comments to Modifications of Proposed State Historic Tax Credit Regulations

Dear Ms. Brown,

The Tenderloin Neighborhood Development Corporation (TNDC) thanks you and your staff for providing us the opportunity to comment on the modifications to the proposed state historic tax credit regulations.

The application provided for comment delineates between 'state projects' and 'dual projects,' those applying for only state historic tax credits and those applying for both state and federal historic tax credits. **[6.1]** Can you please clarify what projects that have already received federal Part I and Part II approval need to do when applying for the state historic tax credit?

**[6.2]** Additionally, TNDC continues to urge OHP to ensure a preference for 100% affordable housing projects applying for the state historic credits. The state historic tax credit presents a unique opportunity for qualifying rehabilitation projects to access much needed funds – and we believe that 100% affordable housing should be first in line. While TNDC understands that the allocation process for the state historic tax credit will essentially be first-come-first-served, we believe an affordable preference could be in place in the instance that multiple applications are received simultaneously when the application is available in 2024.

We thank you for your careful consideration of this comment letter and your commitment to the preservation of historic affordable housing properties.

Sincerely,

Emily Van Loon  
Associate Director of Housing Development  
Tenderloin Neighborhood Development Corporation



ATTACHMENT 2 to FINAL STATEMENT OF REASONS

Summary of Comments Received and responses including collected correspondence from Public Comment Period September 14, 2023, through September 30, 2023

OAL FILE NUMBER 2023-1016-03S

**Summary of Comments Received during 15-Day Public Comment Period from September 14 through September 30, 2023**

*Note: the responses to the comments below are contained in the Final Statement of Reasons. A copy of the submitted written comments is attached for the rulemaking record; the letters with comments are bracketed to identify the individual comments by the corresponding comment number that is identified below.*

Commenter Organization/ Name	Comment Number	Comment Summary	Response
Paul Street 9/14/23	1.	Email offering assistance and support	No action required.
Zeenat Hassan Disability Rights California 9/15/23	2.	Offer to discuss program regarding disability access.	See responses to Comment 7.
Rajeev Jog 9/18/23	3.1	Comment regarding 4859.02 (k) in Definitions referencing IRC Section 86(b)(2) limiting qualified applicants with a modified adjusted gross income of \$200,000 or less for qualified residence allocation, and observing how few owners of historic homes would qualify.	The limits for applicants of qualified residences are defined in the legislation and cannot be changed.
Mark Stivers Advocacy Director CA Housing Partnership 9/27/23	4.1	Cover letter summarizing attachment from Chris Cummings [5], Director of Housing Development, Tenderloin Neighborhood Development Corporation (see below). 4.1 Appreciation that projects in construction are qualified.	See responses to Comment 5.
Chris Cummings TNDC 9/28/23	5.1	§4859.01(d): Suggest alternate allocation division of qualified residence, \$5M, Historic building projects with QRE costs below \$1M, \$10M, and historic building projects with QRE costs \$1M or more, \$35M.	Allocation amounts are defined in the legislation and cannot be changed.
	5.2	Suggests prioritizing affordable housing projects.	Priority is set in the legislation as “first come, first served” and cannot be changed.

	5.3	§4859.03(c) clarify whether projects that have received Part 1 and Part 2 federal approval will be granted reciprocal approval for the state tax credit.	4859.03(a)(1)(A) clarifies that federal projects with an approved Part 1 qualify for the state tax credit. 4859.02(f) states that federal submissions are used for state review.
	5.4	§4859.03(l) prescribes a deadline to begin the project construction within 365 days from the issuance of the allocation by the CTCAC. It is suggested that the deadline be extended after CTCAC or CDLAC incentive deadlines for low income housing tax credits.	4859.03(l) was increased from 180 days to 365 days in consultation with the CTCAC and is determined to be sufficient.
William Wilcox Tax-Exempt Bond Program Manager of Housing and Community Development 9/28/23	6.1	§4859.03(c) suggests that federal projects with approved Part 1 and Part 2 are reciprocally approved as state tax credit projects.	See comment response 5.3.
	6.2	§4859.03(f) suggests prioritizing projects that are 100% deed restricted affordable housing for review and allocation.	See comment response 5.2.
	6.3	§4859.03(l) prescribes a deadline to begin the project within 365 days from the issuance of the allocation by the CTCAC. It is suggested that the deadline be extended after CTCAC or CDLAC deadlines.	See comment response 5.4.
Zeenat Hassan Disability Rights California 9/29/23	7.1	OHP should expressly require compliance with state and federal accessibility standards in the SHRTC program and explain how it will determine when an exception to the standards is appropriate.	ADA Accessibility Guidelines Sec. 202.5 (ADAAG) and 36 CFR Part 1191 define the SHPO's role when conflicts arise.
	7.2	§4859.01. Program Authority and Function. The regulations need to specify which agency is responsible for ensuring compliance with state and federal accessibility requirements and relocation laws and for determining qualification standards for affordable housing projects and transit-oriented developments.	Other regulations enforce design and construction ADA compliance. Not actionable as a part of these program regulations.
	7.3	The regulations should explain OHP's legal authority under state and federal law to ensure that rehabilitation of historic buildings maximizes access for people with disabilities and complies with state and federal accessibility requirements.	See comment response 7.2.

	7.4	§4859.03. Initial Project Application The regulations need to include a description of the process OHP will use and the standards by which it will determine whether an exception to the ADA's accessibility requirements, or other applicable accessibility standards, is legally justified.	Not actionable as a part of these program regulations.
	7.5	To prevent tenant displacement, the regulations must require compliance with local, state, and federal tenant relocation laws.	Not actionable as a part of these program regulations.
	7.6	§4859.06. Standards for Rehabilitation encourage OHP to also use this section to notify applicants of the additional federal and state requirements that apply to SHRTC projects. We recommend that OHP list all applicable accessibility standards in a new subsection and require applicants how the project complies with applicable accessibility standards:	ADA Accessibility Guidelines (ADAAG) and 36 CFR Part 1191 enforces compliance at the local level.
The Americans with Disabilities Act of 1990 (42 U.S.C. section 12101 et seq) and its implementing regulations at 28 C.F.R. part 35.151 (Title II regulations for new construction and alterations) and 28 C.F.R. subpart D (Title III regulations for new construction and alterations);		Only enforceable at the local level.	
Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) and its implementing regulations at 24 C.F.R. part 8;		See comment response 7.2.	
The Uniform Federal Accessibility Standards (UFAS) at 24 C.F.R. part 40 or, in the alternative, the 2010 ADA Standards for Accessible Design;		See comment response 7.2.	
The State Historical Building Code (HSC section 18950 et seq); and California Building Code Chapters 11A and 11B.		See comment response 7.2.	
	7.7	If applicable to the property, applicants must also explain how they will comply with the Architectural Barriers Act Accessibility Standards (federal projects) and the Fair Housing Act (42 U.S.C. section 3601 et seq) and its implementing regulations at 24 C.F.R. part 100, and the ANSI A117.1 1986 design and construction standard incorporated by reference at 24 C.F.R. part 100.201a (projects with residential units).	Not actionable as a part of these program regulations.

## Morlet, Aubrie@Parks

---

**From:** Office of Historic Preservation General Inbox  
**Sent:** Thursday, September 14, 2023 4:37 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: From Paul Street

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

-----Original Message-----

From: paul street <[streetster@icloud.com](mailto:streetster@icloud.com)>  
Sent: Thursday, September 14, 2023 9:56 AM  
To: Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
Subject: From Paul Street

[You don't often get email from [streetster@icloud.com](mailto:streetster@icloud.com). Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

Dear Aubrie [1]

Thanks for the email in regards to the State Rehab tax credit.

I am the owner of 1513 Forest Knoll Drive. Los Angeles. 90069.

This property, was, after my application and presentation to the LA City, given historical resource status as an example of mid century post and beam design from AIA architectural master Richard Dorman.

I recently enhanced the property in keeping with the original design with some upgrades using modern eco friendly materials.

I am interested in being involved with this new tax credit offer and assisting with my own personal experience doing this. It is a valuable service you are proposing and should be fully supported to ensure our Californian heritage is available for generations to come.

Please do not hesitate to connect or advise how I can discuss in more detail.

Sincerely

Paul Street.

## Morlet, Aubrie@Parks

---

**From:** Office of Historic Preservation General Inbox  
**Sent:** Monday, September 18, 2023 9:25 AM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: Public Notice - State Historic Rehabilitation Tax Credit

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

---

**From:** Rajeev Jog <[rjog@uwalumni.com](mailto:rjog@uwalumni.com)>  
**Sent:** Thursday, September 14, 2023 4:14 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Subject:** Fw: Public Notice - State Historic Rehabilitation Tax Credit

You don't often get email from [rjog@uwalumni.com](mailto:rjog@uwalumni.com). [Learn why this is important](#)

One comment about the proposed rules:

--

(k) "Qualified Residence" has the same meaning as that term is defined in Section 163(h)(4) of the Internal Revenue Code, that will be owned and occupied by an individual taxpayer who has a modified adjusted gross income, as defined by Section 86(b)(2) of the Internal Revenue Code, of two hundred thousand dollars (\$200,000) or less,

--

[3.1] Putting a MAGI limitation on the fee simple owner of a historic property, especially one as low as \$200K, virtually guarantees that all of the historic homes in urban areas of California, if not all of California, will simply be ineligible for this credit.

If that is your intention, you will achieve it.

Rajeev Jog  
San Jose California

----- Forwarded Message -----

**From:** California Office of Historic Preservation <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**To:** "[rjog@uwalumni.com](mailto:rjog@uwalumni.com)" <[rjog@uwalumni.com](mailto:rjog@uwalumni.com)>  
**Sent:** Thursday, September 14, 2023 at 09:44:29 AM PDT  
**Subject:** Public Notice - State Historic Rehabilitation Tax Credit

[View as Webpage](#)

## Morlet, Aubrie@Parks

---

**From:** Office of Historic Preservation General Inbox  
**Sent:** Wednesday, September 27, 2023 9:56 AM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT - Historic Tax Credit Regulations  
**Attachments:** OHP Historic Tax Credit Comment Letter September 2023.pdf

Happy Wednesday!

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

---

**From:** Mark Stivers <[mstivers@chpc.net](mailto:mstivers@chpc.net)>  
**Sent:** Wednesday, September 27, 2023 9:24 AM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Cc:** Zeto, Anthony <[Anthony.ZETO@treasurer.ca.gov](mailto:Anthony.ZETO@treasurer.ca.gov)>  
**Subject:** 4859 PUBLIC COMMENT - Historic Tax Credit Regulations

You don't often get email from [mstivers@chpc.net](mailto:mstivers@chpc.net). [Learn why this is important](#)

[4] Dear Ms. Morlet, Please accept the attached comments from the California Housing Partnership regarding the revised proposed regulations for the historic tax credit program. We appreciate your work and consideration.

**Mark Stivers**  
Director of Advocacy  
**California Housing Partnership**

c: (916) 224-0318 | [mstivers@chpc.net](mailto:mstivers@chpc.net)  
[Web](#) | [Twitter](#) | [Newsletter](#)





September 27, 2023

Ms. Aubrie Morlet  
California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

**RE: Comments to the September 8, 2023 Historic Tax Credit Proposed Regulations**

Dear Ms. Morlet:

Thank you for the opportunity to comment on the revised proposed regulations released on September 8, 2023, relating to the historic state tax credits.

[4.1] In Section 4859.01(e) we support and greatly appreciate the Office of Historic Preservation's (OHP) revised proposal to make credits available to projects already in construction or completed after January 1, 2022. We are aware of a number of conversions of historic structures to affordable housing that are under construction but, in this highly inflationary environment, may not be able to complete absent additional resources. Access to historic credits will ensure the final preservation of these historic structures.

Section 4859.03(l) requires rehabilitation to commence within 365 days of issuance of a credit. While this is a reasonable standard for most types of projects, it does not necessarily fit for affordable housing developments also seeking Low-Income Housing Tax Credits (LIHTC), which are offered at limited times each year and highly competitive. In some cases, applicants must apply in a few rounds to secure a LIHTC allocation, with construction commencing per Tax Credit Allocation Committee (TCAC) and Debt Limit Allocation Committee (CDLAC) regulations, within 180 or 194 days of award. We recommend that OHP defer rehabilitation deadlines to TCAC and CDLAC for developments seeking LIHTC financing.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Mark Stivers".

Mark Stivers  
Director of Advocacy  
[mstivers@chpc.net](mailto:mstivers@chpc.net)



September 28, 2023

Ms. Aubrie Morlet  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

Re: Comments to Modifications of Proposed State Historic Tax Credit Regulations

Dear Ms. Morlet,

The Tenderloin Neighborhood Development Corporation (TNDC) thanks you and your staff for providing us the opportunity to comment on the modifications to the proposed state historic tax credit regulations.

Firstly, TNDC is thrilled that OHP revised Subsection 4859.01 of the proposed regulations to include qualifying projects in construction or that have not yet begun construction on January 1, 2022. Here are our remaining comments:

**[5.1] Subsection 4859.01(d)** TNDC supports the 3 categories delineated in the recent modifications. The upcoming 2024 round of state historic credits is expected to include \$50 million in funding, TNDC suggests dividing the available funds between the 3 categories in these amounts:

1. Qualified residence; **\$5 million**
2. Certified historic building with qualified rehabilitation expenditures of less than one million dollars; **\$10 million**
3. Certified historic building with qualified rehabilitation expenditure of one million dollars or more; **\$35 million**

**[5.2]** Additionally, TNDC continues to urge OHP to ensure a preference for 100% affordable housing projects applying for the state historic credits. The state historic tax credit presents a unique opportunity for qualifying rehabilitation projects to access much needed funds – and we believe that 100% affordable housing should be first in line. While TNDC understand that the allocation process for the state historic tax credit will essentially be first-come-first-served, we believe an affordable preference could be in place in the instance that multiple applications are received simultaneously when the application is available in early 2024.





**[5.3] Subsection 4859.03(c)** TNDC requests that OHP clarify whether projects that have already received an approved Part I and Part II for federal historic tax credits need to complete a full application for the state historic credit. TNDC suggests that simply providing proof of the approved Part I and Part II suffice for the OHP-portion of the state historic tax credit application process.

**[5.4] Subsection 4859.03(l)** In cases where the project also has an allocation of Low-Income Housing Tax Credits, the deadline to commence construction should be the later of the date imposed by the California Tax Credit Allocation Committee (TCAC), the deadline imposed by the California Debt Allocation Committee (CDLAC), or the 365 day deadline currently listed in the draft regulations for the state historic tax credits.

We thank you for your careful consideration of this comment letter and your commitment to the preservation of historic affordable housing properties.

Sincerely,

Chris Cummings  
Director of Housing Development  
Tenderloin Neighborhood Development Corporation



## Morlet, Aubrie@Parks

---

**From:** Brown, Jody L@Parks  
**Sent:** Friday, September 29, 2023 1:08 PM  
**To:** Morlet, Aubrie@Parks; Huck, Mark@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT  
**Attachments:** SFMOHCD OHP State HTC Comment Letter 9.28.23.pdf

Another one

Jody L. Brown  
Deputy State Historic Preservation Officer/Tribal Liaison  
California Office of Historic Preservation  
1725 23<sup>rd</sup> St., Suite 100, Sacramento, CA 95816  
916-445-7000  
[Jody.L.Brown@parks.ca.gov](mailto:Jody.L.Brown@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

---

**From:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Sent:** Friday, September 29, 2023 12:05 PM  
**To:** Brown, Jody L@Parks <[Jody.L.Brown@parks.ca.gov](mailto:Jody.L.Brown@parks.ca.gov)>  
**Subject:** FW: 4859 PUBLIC COMMENT

Not sure who this goes to now...

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

---

**From:** Wilcox, William (MYR) <[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)>  
**Sent:** Thursday, September 28, 2023 5:08 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org). [Learn why this is important](#)

Dear Aubrie Morlet and OHP Staff,

Please see attached the comments on the State Historic Tax Credit Regulations, as revised 9/8/23. Thank you for your time and consideration and we appreciate your response to our previous comments. Let me know if I can provide any additional information or clarification.

Best,

William

William Wilcox  
Tax-Exempt Bond Program Manager

Mayor's Office of Housing & Community Development  
1 South Van Ness Avenue, 5th Floor San Francisco, CA 94103  
[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)

**Mayor's Office of Housing and Community Development**  
City and County of San Francisco



**London N. Breed**  
Mayor

**Eric D. Shaw**  
Director

California Office Of Historic Preservation  
Attn: Aubrie Morlet  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

9/28/2023

Dear Aubrie Morlet and OHP Staff,

On behalf of the City and County of San Francisco ("CCSF" or the "City"), the Mayor's Office of Housing and Community Development (MOHCD), is pleased to comment on the Office of Historic Preservation's (OHP) proposed regulations on State Historic Tax Credits (Section 4859). We have shared similar comments with the California Tax Credit Allocation Committee (TCAC) and will forward these comments to them as well.

We overall believe these regulations will greatly support the rehabilitation of historic affordable housing projects across California. We greatly appreciate and agree with the updates to the requirements around construction start and completion date to qualify for the credits. Thank you for hearing and responding to our concerns.

However, there are three small issues that we would like to see addressed through a regulation change:

**[6.1]** *Section 4859.03(c): How to Apply*

We would suggest that OHP automatically approve any projects that already have an approved NPS Part 1 and Part 2, since OHP has already reviewed and approved these projects as part of that process. This will save staff and project time on a repetitive review. This would also be aligned with how many other states currently handle this process for State Historic Tax Credits.

**[6.2]** *Section 4859.03(f): Application Decisions*

Currently, the regulations make no mention of prioritization of any specific type of project. Given California's housing crisis and the immense challenge of meeting the housing needs of low-income Californians, we would ask that OHP prioritize projects that are 100% deed restricted affordable housing for review and allocation. This should be defined as projects restricted to be affordable to households making 80% of the Area Median Income or less.

Since there is a finite amount of tax credits available, OHP should prioritize projects that meet the greatest public purpose. However, this could be delayed and implemented in a future year after demand has been better gauged and processes fully implemented.

**[6.3]** *Section 4859.03(l): Construction Commencement Deadlines*

In cases where the project also has an allocation of Low-Income Housing Tax Credits, the deadline to commence construction should be the later of the date imposed by the California Tax Credit Allocation Committee (TCAC), the deadline imposed by the California Debt Limit Allocation Committee (CDLAC), or the 365 day deadline currently listed in the draft regulations for the State Historic Tax Credits.

Thank you for the opportunity to comment and we look forward to continuing the work of housing all Californians. Please let us know if we can clarify any of our points or provide any additional information.

Sincerely,

William Wilcox

Tax-Exempt Bond Program Manager  
San Francisco Mayor's Office of Housing and Community Development  
[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)

## Morlet, Aubrie@Parks

---

**From:** Brown, Jody L@Parks  
**Sent:** Friday, September 29, 2023 1:08 PM  
**To:** Morlet, Aubrie@Parks; Huck, Mark@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT  
**Attachments:** DRC comments on OHP State Historic Rehab Tax Credit proposed regs, 09.29.2023.pdf

fyi

Jody L. Brown  
Deputy State Historic Preservation Officer/Tribal Liaison  
California Office of Historic Preservation  
1725 23<sup>rd</sup> St., Suite 100, Sacramento, CA 95816  
916-445-7000  
[Jody.L.Brown@parks.ca.gov](mailto:Jody.L.Brown@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Sent:** Friday, September 29, 2023 12:53 PM  
**To:** Brown, Jody L@Parks <[Jody.L.Brown@parks.ca.gov](mailto:Jody.L.Brown@parks.ca.gov)>  
**Subject:** FW: 4859 PUBLIC COMMENT

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

---

**From:** Zeenat Hassan <[Zeenat.Hassan@disabilityrightsca.org](mailto:Zeenat.Hassan@disabilityrightsca.org)>  
**Sent:** Friday, September 29, 2023 12:34 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Cc:** Dara Schur <[Dara.Schur@disabilityrightsca.org](mailto:Dara.Schur@disabilityrightsca.org)>; Romae-Anne G. Aquino <[Romae-Anne.Aquino@disabilityrightsca.org](mailto:Romae-Anne.Aquino@disabilityrightsca.org)>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [zeenat.hassan@disabilityrightsca.org](mailto:zeenat.hassan@disabilityrightsca.org). [Learn why this is important](#)

[7] Hello,

Please find attached DRC's comments on the revised proposed SHRTC regulations. Thank you in advance for your review of these comments.

Sincerely,

**Zeenat Hassan** (she/her)  
Staff Attorney II, Civil Rights Practice Group  
Disability Rights California  
1000 Broadway, Suite 395



Oakland, CA 94607  
Direct: (510) 267-1225 | Fax: (510) 267-1201  
Intake Line: (800) 776-5746 | TTY: (800) 719-5798



Website: [www.disabilityrightsca.org](http://www.disabilityrightsca.org) | [www.disabilityrightsca.org/espanol](http://www.disabilityrightsca.org/espanol)

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**The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Any inadvertent disclosure does not waive the attorney-client privilege. Thank you**



**LEGAL ADVOCACY UNIT**

1000 Broadway, Suite 395  
Oakland, CA 94607  
Tel: (510) 267-1200  
Fax: (510) 267-1201  
TTY: (800) 719-5798  
Intake Line: (800) 776-5746  
[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

September 29, 2023

Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

**RE: Comments on Revised Proposed Regulation C.C.R. Section 4859**

Dear OHP:

Disability Rights California (DRC) thanks you for the opportunity to provide comments on the revised proposed regulations to implement the State Historic Rehabilitation Tax Credit Program. DRC is a non-profit agency established under federal law to protect, advocate for, and advance the human, legal, and service rights of Californians with disabilities.<sup>1</sup>

We support the goal of the SHRTC program of preserving and revitalizing historic sites, particularly those that can serve as affordable housing. However, we are disheartened to see that the proposed regulations do not expressly require compliance with any state or federal accessibility

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<sup>1</sup> Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. § 794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. § 3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, PL 107-252; as well as under California Welfare and Institutions Code §§ 4900 et seq.

requirements applicable to historic sites. The regulations also fail to require compliance with relocation protections for tenants who may be displaced by program activities. Our comments below elaborate on the specific protections that OHP should include in its program regulations. Should OHP have any questions or concerns on these comments, we are happy to discuss them with staff and to provide technical assistance to ensure that the disability community enjoys equitable benefits from the SHRTC program.

- I. **Global comment: OHP should expressly require compliance with state and federal accessibility standards in the SHRTC program and explain how it will determine when an exception to the standards is appropriate.**

In DRC's work on public access issues, we frequently encounter the mistaken belief that historic sites and other buildings built before 1990 are wholly exempt from the accessibility requirements of the Americans with Disabilities Act. This is untrue. The ADA, its regulations, and agency guidelines all require property owners to take affirmative steps to remove barriers where feasible and to enhance access for people with disabilities, particularly when an older building undergoes rehabilitation. In fact, the 2010 ADA Accessibility Standards requires owners of qualified historic buildings to comply with the U.S. Department of Justice's requirements for accessible routes, entrances, and toilet facilities unless the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance would threaten or destroy the historic significance of the building or facility. (ADA Accessibility Standards section 202.5.)

California law is similarly protective of disabled people's right to access historic sites. The State Historical Building Code provides that the "application of any alternative standards for the provision of access to the disabled or exemption from access requirements shall be done on a case-by-case and item-by-item basis, and shall not be applied to an entire qualified historical building or structure without individual consideration of each item, and shall not be applied to related sites or areas except on an item-by-item basis." (Health & Safety Code section 18954.) It further requires all state agencies to administer and enforce the code "with respect to qualified historical buildings or structures under their respective jurisdiction." (HSC section 18959(a).)

**[7.1]** In their current form, the SHRTC regulations do not reflect federal or state accessibility requirements or OHP’s role in enforcing those requirements with respect to historic buildings. OHP needs to include these requirements in the SHRTC regulations because property owners are otherwise likely to overlook accessibility requirements entirely, perpetuating the exclusion of disabled people from places of historic significance and from affordable housing. Incorporating accessibility requirements into the regulations promotes inclusion and equity for the disability community in California. OHP also needs to explain in the regulations when it will use its authority to grant a narrow exception to the accessibility requirements. Without a clear process and standards, OHP runs the risk of violating disability rights laws by allowing property owners to benefit from a state program without providing the requisite access to people with disabilities.

Inclusion of accessibility standards is consistent with the Legislature’s mandate that OHP operate the SHRTC program in compliance with the Secretary of the Interior’s requirements at 36 C.F.R. part 67. That part requires property owners to consult the National Park Service’s Guidelines for Rehabilitating Historic Buildings, which discusses “recommended” and “not recommended” methods of enhancing accessibility without compromising the integrity and historical significance of a building. Including accessibility standards in the regulations also comports with the ADA’s general mandate on state and local governments to conduct all services, programs, and activities in a manner that does not exclude people with disabilities from the benefits of those services, programs, and activities. (42 U.S.C. section 12132; 28 C.F.R. section 35.130(a).) Incorporating accessibility requirements into the SHRTC regulations is within the scope of OHP’s authority and exemplifies good public policy.

## **II. Comments on specific sections of the proposed regulations**

### **A. §4859.01. Program Authority and Function.**

**1) [7.2] The regulations need to specify which agency is responsible for ensuring compliance with state and federal accessibility requirements and relocation laws and for determining qualification standards for affordable housing projects and transit-oriented developments.**

Subsection (c) describes the division of responsibility between OHP and CTCAC for the SHRTC program but does not clarify which entity is responsible for ensuring applicants comply with state and federal accessibility standards and relocation laws. It also does not explain which entity is responsible for determining whether a rehabilitated structure includes a sufficient quantity of affordable housing to qualify for the increased credit benefit described in Revenue and Tax Code sections 17053.91(a)(2)(B) and 23691(a)(2)(B)—and what that threshold quantity would be—and whether a rehabilitated structure qualifies for the increased tax benefit as a transit-oriented development described in Revenue and Tax Code sections 17053.91(a)(2)(E) and 23691(a)(2)(E). Based on our understanding of the SHRTC program and the existing obligations of the agencies, we propose that OHP take responsibility for ensuring compliance with accessibility standards and relocation laws, and CTCAC take responsibility for determining eligibility for increased tax benefits as an affordable housing project or transit-oriented development. We recommend the following changes (in blue) to subsection (c) to clarify these responsibilities:

(c) The OHP establishes program directions in coordination with the California Tax Credit Allocation Committee (CTCAC).

(1) The OHP is responsible for ensuring that the proposed rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation and that the property is a certified historic structure or a qualified residence. OHP is also responsible for ensuring project compliance with state and federal accessibility requirements, including all requirements listed in §4859.06(i)(1), and tenant relocation laws, including all laws listed in §4859.03(r).

(2) The CTCAC is responsible for all procedures, legal determinations, and rules and regulations concerning tax credit allocation and compliance. This includes: a) determining

whether the project meets the criteria for either the 20% credit in Revenue and Tax Code section 17053.91(a)(1) or the 25% credit in section 17053.91(a)(2), and b) establishing standards to qualify for increased tax benefits as an affordable housing project or a transit-oriented development, including specifying minimum percentages for affordable units, under section 17053.91(a)(2).

**2) [7.3] The regulations should explain OHP's legal authority under state and federal law to ensure that rehabilitation of historic buildings maximizes access for people with disabilities and complies with state and federal accessibility requirements.**

OHP should add subsections to Section 4859.01 that explain its legal authority to enforce state and federal accessibility requirements as they apply to historic buildings. We recommend the following additions:

(f) The State Historical Building Code requires OHP, as a state agency, to administer and enforce the provisions of Health and Safety Code Part 2.7 with respect to qualified historical buildings or structures under its jurisdiction. (HSC section 18959(a).) The statute gives OHP the authority to adopt rules and regulations governing the rehabilitation, preservation, restoration, related reconstruction, safety, or relocation of qualified historical buildings and structures within its jurisdiction. (HSC section 18958.)

(g) The 2010 ADA Standards for Accessible Design give OHP authority to determine when an exception to the requirements for accessible routes, entrances, or toilet facilities should apply because compliance would threaten or destroy the historic significance of a building or facility. (2010 ADA Standards for Accessible Design, section 202.5.)

## **B. §4859.03. Initial Project Application**

- 1) [7.4] The regulations need to include a description of the process OHP will use and the standards by which it will determine whether an exception to the ADA's accessibility requirements, or other applicable accessibility standards, is legally justified.**

As a state agency, OHP is required under Title II of the ADA and Section 504 of the Rehab Act to ensure that all of its programs, services, and activities are accessible to people with disabilities and do not discriminate against people with disabilities. This requirement includes the responsibility of ensuring that projects produced with OHP assistance—including SHRTC projects—comply with the ADA's accessibility requirements. The U.S. Department of Justice's ADA Title II regulations require alterations to historic properties to comply, "to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in section 35.151(c)." (28 C.F.R. 35.151(b)(3)(i), (ii).) Similarly, the Department's ADA Title III regulations require "alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.) or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part." (28 C.F.R. 36.405(a).) In situations where physical access cannot be provided in a manner that will not threaten or destroy the historic significance of the building or facility, Title II and Title III entities must provide alternative methods of access pursuant to the regulations. As a Title II entity, OHP is responsible for ensuring SHRTC projects comply with the DOJ's accessibility requirements "to the maximum extent feasible" and to otherwise provide "alternative methods of access" in compliance with federal law. Similarly, as a state agency, OHP is responsible for ensuring compliance with Section 504 of the Rehabilitation Act, California building codes, and other state and federal statutes requiring accessibility. See, e.g., California Government Code Section 11135 (prohibitions against disability discrimination in state funded programs). (California Building Code Chapter 11-B provisions are substantially similar to the 2010 ADA Standards for Accessible Design.)

In the 2010 ADA Standards for Accessible Design, the DOJ requires alterations to historic buildings to comply with accessibility requirements unless the State Historic Preservation Officer determines that compliance

would threaten or destroy the historic significance of the building or facility. In that circumstance, the exceptions for alterations to historic buildings may apply to that particular element. OHP needs to adopt regulations that explain how it will exercise this authority in the SHRTC program. The procedure and standards OHP adopts will also need to comply with California's requirement under the State Historical Building Code that the application of any alternative standards for disability access or exemption from access requirements "be done on a case-by-case and item-and-item basis, and shall not be applied to an entire qualified historical building or structure without individual consideration of each item, and shall not be applied to related sites or areas except on an item-by-item basis." (HSC section 18954.) Compliance with these statutory requirements is necessary to prevent "rubber-stamping" inaccessible projects that, under state and federal law, must be accessible to people with disabilities. To assist applicants in determining how to maximize the accessibility of their properties, OHP could require in the regulations that applicants use the National Park Service's preservation brief, "Making Historic Properties Accessible," as a planning tool.<sup>2</sup> Although the brief predates the 2010 ADA Standards for Accessible Design, its approach to accessibility remains a helpful guide.

To further implement the accessibility requirements discussed above, we suggest that OHP also add the following language (in blue) to subsections (g) and (n):

(g) Certifications are decided based on the descriptions contained in the application form, including descriptions of applicable accessibility requirements, and other available information. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application form shall take precedence **unless the discrepancy pertains to a feature of accessibility for people with disabilities. In that circumstance, OHP will presume the application fails to meet required accessibility standards unless the applicant can provide compelling evidence showing otherwise.**

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<sup>2</sup> Thomas C. Jester and Sharon C. Park, *Making Historic Properties Accessible*, September 1993 (available at: <https://www.nps.gov/orgs/1739/upload/preservation-brief-32-accessibility.pdf>).



[...]

(n) Once a proposed project has been certified, substantive changes in the work from those described in the application must be brought promptly to the attention of the OHP by written statement to ensure continued conformance to the Standards for Rehabilitation. The OHP will notify the applicant whether the revised project continues to meet the Standards for Rehabilitation. [Changes that reduce access for people with disabilities will generally not be approved by OHP.](#) Amendments do not incur any additional fees.

**2) [7.5] To prevent tenant displacement, the regulations must require compliance with local, state, and federal tenant relocation laws.**

To avoid tenant displacement during rehabilitation of SHRTC properties, we recommend adding new subsection (r):

[\(r\) All applications must indicate whether the proposed rehabilitation will result in the displacement of residents, either temporarily or permanently. If displacement is anticipated at the time of the Initial Project Application, the applicant must identify the local, state, and federal relocation requirements applicable and commit to compliance with all applicable requirements. The Completed Project Application must summarize whether displacement occurred \(even if not anticipated\) and state how the applicant complied with all applicable relocation laws. Applicable relocation laws include:](#)

- [\(1\) The Federal Uniform Relocation Assistance and Real Property Acquisition Act and its regulations at 49 C.F.R. Part 24, including Appendix A to Part 24;](#)
- [\(2\) Government Code section 7260 et seq and its implementing regulations at 25 C.C.R. 6000-6198; and](#)
- [\(3\) Any local relocation laws in effect in the jurisdiction where the property is located.](#)

## C. §4859.06. Standards for Rehabilitation

The provisions of this section reflect the Secretary of the Interior's regulations on historic preservation at 36 C.F.R. part 67. We support this approach, but we encourage OHP to also use this section to notify applicants of the additional federal and state requirements that apply to SHRTC projects. We recommend that OHP list all applicable accessibility standards in a new subsection (i):

(i) [7.6] Applicants must explain how they will comply with all of the following accessibility laws:

- (1) [7.6] The Americans with Disabilities Act of 1990 (42 U.S.C. section 12101 et seq) and its implementing regulations at 28 C.F.R. part 35.151 (Title II regulations for new construction and alterations) and 28 C.F.R. subpart D (Title III regulations for new construction and alterations);
- (2) [7.6] Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) and its implementing regulations at 24 C.F.R. part 8;
- (3) [7.6] The Uniform Federal Accessibility Standards (UFAS) at 24 C.F.R. part 40 or, in the alternative, the 2010 ADA Standards for Accessible Design;
- (4) [7.6] The State Historical Building Code (HSC section 18950 et seq); and
- (5) [7.6] California Building Code Chapters 11A and 11B.

[7.7] If applicable to the property, applicants must also explain how they will comply with the Architectural Barriers Act Accessibility Standards (federal projects) and the Fair Housing Act (42

U.S.C. section 3601 et seq) and its implementing regulations at 24 C.F.R. part 100, and the ANSI A117.1-1986 design and construction standard incorporated by reference at 24 C.F.R. part 100.201a (projects with residential units).

Any deviations, exceptions, or alternatives proposed that differ from the accessibility standards must be approved in advance by the OHP using the specified procedures. [Procedures to be developed by OHP.]

### III. Conclusion

We reiterate our appreciation to OHP for its consideration of these comments. We hope our suggestions assist OHP in designing the SHRTC program in a way that protects and enhances the right of people with disabilities to have equal access to the benefits of state projects, particularly affordable housing. We are available to meet with OHP staff upon request to discuss our comments and provide technical assistance on issues pertaining to the access rights of disabled Californians.

Sincerely,

Dara Schur  
Senior Counsel

Zeenat Hassan  
Staff Attorney II

Romae-Anne Aquino  
Law Clerk

## Brown, Jody L@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Monday, October 2, 2023 9:49 AM  
**To:** Brown, Jody L@Parks  
**Cc:** Huck, Mark@Parks  
**Subject:** FW: 4859 Public Comment  
**Attachments:** 23-0929 TNDC Comments re State HTC.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
916-445-7000

---

**From:** Emily Van Loon <evanloon@tndc.org>  
**Sent:** Saturday, September 30, 2023 7:22 AM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Cc:** Christopher Cummings <ccummings@TNDC.org>  
**Subject:** 4859 Public Comment

You don't often get email from [evanloon@tndc.org](mailto:evanloon@tndc.org). [Learn why this is important](#)

Hello Ms. Morlet – thank you for accepting the attached comments from TNDC regarding the proposed changes to the state historic tax credit regulations.

Emily Van Loon – Associate Director of HD – 415-358-3933

ATTACHMENT 3 to FINAL STATEMENT OF REASONS

Summary of Comments Received and responses including the transcript from the Public Hearing conducted May 31, 2023, between 1 and 4 pm. Comments received in person and online.

OAL FILE NUMBER 2023-1016-03S

**Summary of Comments Received during Public Hearing, May 31, 2023**

*Note: the responses to the comments below are contained in the Final Statement of Reasons. A copy of the submitted written comments and the transcript of the May 31, 2023, public hearing is attached for the rulemaking record; the transcript of the public hearing is bracketed to identify the individual comments by the corresponding comment number that is identified below.*

Commenter Organization/ Name	Comment Number	Comment Summary	Response
Scott Landman	1.1	Concern regarding Section 4859.05(f) of the proposed regulations, the ineligibility of projects under construction or which have been completed prior to submission of an application for historic tax credits.	4859.05(f) is deleted and revised as 4859.01(e) that allows projects in construction as of 1/1/22 to apply for state tax credits.
Jenifer Hembree Page & Turnbull	2.1	4859.04(b): Provide clarification regarding buildings that are contributors to registered historic districts.	Section 4859.04(b) has been rewritten to clarify that both individually listed and contributors to a listed historic district on the CA Register are qualified for the state tax credit.
	2.2	4859.04(f): Define final certification of rehabilitation as used in this section.	4859.04(f), conditions of certification revocation, is deleted and revised in 4859.05(h).
	2.3	Clarify how the electronic delivery system will function.	4859.03(c)(8) is added that directions for electronic submittal are found in the Instructions v. 5/24, which are incorporated into the current rulemaking package.
	2.4	What is the anticipated time frame allowable for reviews by OHP and CTCAC?	4859.03(c)(5) has been added to define the application review period as typically 30 days.
	2.5	Will CTCAC rank applications or is ranking solely determined by receipt date?	4859.03(m) has been added to define CTCAC's queue order as the order in which OHP completes review of applications.

	2.6	Will CTCAC allocate the full amount of credits needed, as outlined in an application, or will partial amounts be distributed?	The Initial allocation is determined by the CTCAC, with final approved allocation as determined by CTCAC's audit of the completed projects Qualified Rehabilitation Expenses (QREs). No action required.
	2.7	Will CTCAC allocate the credits equitably throughout the state by county and/or region?	Credits are awarded on a "first come, first serve" basis as required by the legislation. No action required.
	2.8	Clarify how a window of opportunity for applying, or an annual application deadline is established.	4859.03(o), (p), and (q) have been added to describe how application windows are affected by availability of the allocation fund.
	2.9	Will applicants seeking to list their property for the purposes of applying be given priority or an expedited process for listing by the Registration unit?	Listing a property in the California Register is a separate process from applying for a tax credit. No action required.
	2.10	Clarify how will the state will ensure equitable access to the program for homeowners.	See comment response 2.7.
	2.11	Clarify how information about the program and the process be made user friendly so homeowners can apply without the need for a professional fee for services.	4859.03(c)(7) is added to allow submittal discretion for state tax credit only applicants.
	2.12	Has the state considered waiving review fees for homeowners?	Fee submittals are required to encourage feasible projects to apply. No action required.
	2.13	It is suggested that the initial application mirror the Federal Historic Preservation Certification Applications part one and two to avoid duplicative work.	The Initial Project Application closely resembles the federal application for the purpose of simplified application. The Instructions v. 5/24 are incorporated into the current rulemaking package.
Emily Van Loon Tenderloin Neighborhood Development Corporation	3.1	Provide an exemption for initial application of projects in construction after 1/1/22.	See comment response 1.1.

Tara Hamacher Historic Consultants	4.1	Applicants should be able to be under construction while making application to the tax credit.	See comment response 1.1.
	4.2	Provide a place in the application for the taxable year the structure has been placed in service to allow timely access to the credit.	The OHP determines from the Completed Project Application whether the project meets the Standards for Rehabilitation. Tax preparation to apply the tax credit is a separate process. No action required.
James Rolf Rolf Preservation Works	5.1	4859.04(b): a building must be listed on the California Register at the time of the tax credit application submittal. Buildings not yet listed are not eligible for the state tax credit. I would encourage the California SHPO to be more in line with the Federal application where a preliminary determination for listing on the National Register qualifies the project to apply.	The State tax credit Initial Application aligns with the federal Part 1 "Determination of Significance" because eligibility for the National Register equals listing on the California Register, qualifying the project to apply for state tax credits. No action required.
Gina Rodriguez, for Albert Rex	6.1	4859.05(l): Concern about the work having to commence 180 days after approval, as it can take much longer than that for projects to start.	4859.05(l) has been deleted and 4859.03(l) has been added to make the start of construction no later than 365 days.
Tara Hamacher Historic Consultants	7.1	When will the tax authority come out with guidelines?	CTCAC will be issuing guidelines and will announce their availability on their website. No action required.
Teresa Grimes	8.1	Clarify a review period in the regulations like the federal tax credit process where there's a 30 day period.	See comment response 2.4.
	8.2	If the application fees are in the regulations and the regulations are adopted, will that make it difficult for you all to update them in the future if you feel like that's necessary?	The fees are described in the Instructions v. 5/24, incorporated in the current draft of the rulemaking package. The rulemaking process will be initiated again if fees or other substantial changes are made.
Tara Hamacher Historic Consultants	9.1	4859.07, Appeals: Add a clarification about situations where the OHP decision differs from the NPS decision for a project meeting the Standards.	Section 4859.07 has been deleted and section 4859.06 is revised to include paragraph (j), which allows for a rare difference of opinion and approval or denial separate from the NPS decision in the current draft of the rulemaking package.

William Cox Mayor's Office of Housing and Community Development San Francisco	10.1	4859.05(f): Request that an additional sentence be included that projects will also be eligible to apply if they are for deed restricted affordable housing that qualifies for Low Income Housing Tax Credits and already approved for Federal Historic Credits.	See comment response 1.1.
Mike Garavaglia Garavaglia Associates	11.1	Concerned that the federal credit and the state credit are aligned as much as possible regarding eligibility to apply.	See comment response 2.13.
	11.2	No prevailing wage requirement for the credits should be established because for most prevailing wage projects it's just going to the increase in construction costs which counter the effectiveness of the tax credits.	The legislation is silent on the topic of prevailing wages. No action required.
Christina Lake Louisiana	12.1	Clarify how will the state homeowner credit be paired with the federal tax credit that does not qualify for federal tax credits.	Historic structures that are not income producing, such as a residence, do not qualify for federal tax credits. Qualified residences may only apply for state tax credits, which the current proposed regulation reflects. No action required.
Mike Garavaglia Garavaglia Associates	13.1	Clarify how Certified Local Districts created by the NPS and a local jurisdiction interact with the state tax credit.	Certified local Districts create an administrative historic district which qualifies contributors for federal tax credits. If a project is eligible for listing on the National Register as per the federal Part 1, then the project qualifies for state tax credits. No action required.
Andrea Mauk Real Estate Agent Los Angeles	14.1	Allow properties eligible for the California Register to qualify for the state tax credit.	Listing on the California Register is a requirement of the legislation and cannot be changed. No action required.



# Public Hearing for the State Historic Rehabilitation Tax Credit Program Proposed Regulations Transcript

California Natural Resources Agency headquarters  
715 P Street, Sacramento, CA

May 31, 2023, from 1:00 to 4:00pm (PST)

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14:00

All right.

14:04

**Aubrie Morlet:** I think I'm on. Julie, can you hear me? You can nod. OK. Hello, everyone. We're going to get started with the public hearing for the State Historic Rehabilitation Tax Credit proposed regulations. And we have with us our State Historic Preservation Officer, Julianne Polanco, who's going to speak with us in a moment. I'm Aubrie Morlet with the Architectural Review and Compliance Unit and I have with me Mark Huck, our Restoration Architect. All right. Juli, to you.

14:52

**Julianne Polanco:** Hi everybody. Welcome and thank you for joining us today in this public meeting for the California State Historic Tax Credit regulations. We are so delighted to be having this meeting and bringing you these regulations in order to get your input, your thoughts, your ideas on what we've published. Aubrie will go over the rules of the meeting and the sequence of the hearing and then how we respond to comments and the process. So I just want to say thanks. We're really excited to stand up this program. We're so hopeful that it will be wildly successful, that we will see these amazing resources of California rehabilitated and put into current use. So thank you for joining us all today. I'll be staying on for a while to listen and learn. And but you have a great team here with them with Aubrie and Mark, Jody Brown and Leslie Thelen, who are also helping out with us today. So thanks for joining us. And with that, Aubrie, I'll turn it back to you and we can get started.

16:10

**Aubrie Morlet:** Thank you, Juli. Mark Huck is going to give a very brief overview of the [process] getting to here and the regulations and then I'll go over the housekeeping for the meeting.

16:26

**Mark Huck:** Thank you, Aubrie. These regulations are drafted to reflect the intent of legislation approved October 9th, 2019, which represented the culmination of years and perhaps decades of attempts to create a state historic rehabilitation tax credit, promoting historic building maintenance and reuse. It is our hope that these draft regulations provide concise explanations and directions for this new program. To keep it simple, the process is modeled exactly from the federal state credit review process, so that

one review serves both the federal and state review. Offering a state tax credit is expected to increase the number of historic rehabilitation applications as it has in other states. A critical feature of the state legislation is the homeowner occupied tax credit, which will leverage private stewardship of historic homes and neighborhoods to provide funding for appropriate maintenance and repair so that historic communities remain as a physical record of California's unique history now and into the future. OHP thanks the public for submitted written comments and it's time today to assist in creation of this program. We will look forward to receiving your comments.

17:40

**Aubrie Morlet:** All right. Thank you, Mark. On to housekeeping for the hearing. The sole purpose of this hearing is to obtain public comments and recommendations. Each speaker will have 3 minutes. Each speaker will see a "45 seconds remaining" card and then a "Done" card to assist with time management.

In addition to speaking at this hearing, any interested party can submit comments in writing here at the hearing. There are pens and paper provided at the sign in table. You can also submit comments in person or through the mail at the Office of Historic Preservation at 1725 23rd Street, Suite 100, Sacramento, CA 95816. You can also submit public comments through email at [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov) with subject line "4859 public comment". The public comment period ends on Tuesday, June 20th, 2023.

We will take speakers in the room first if there are any that wish to speak and for our online attendees, please raise your hands to speak. If you have called into the meeting, you use \* 5 to raise your hand and then again to lower your hand.

To protect the integrity of the rulemaking process, we are only taking comments and recommendations. Once the public comment period has closed, we will respond to all comments and recommendations in the Final Statement of Reasons.

19:31

**Aubrie Morlet:** All right, Scott Landman, I'm going to allow your mic. Can you hear us, Scott?

**Scott Landman:** Can you hear me?

**Aubrie Morlet:** Yes, there you are.

20:04

**Scott Landman:** Great, good afternoon.

**Aubrie Morlet:** Good afternoon.

20:11

**Scott Landman:** [1.1] My comment relates to section 4859.05 F of the proposed regulations. Specifically, the ineligibility of projects under construction or which have been completed prior to submission of an application for historic tax credits. The stated intent of California Senate Bill 451, which was signed into law in October of 2019 is to allow for tax credit allocations for qualified rehabilitation expenditures for projects undertaken from and after January 1st, 2021, through December 31st, 2026. The fact that an historic building structural condition and business occupancy considerations necessitated commencement of an appropriate historically sensitive rehabilitation project prior to the adoption of

final regulations, which was commenced in anticipation of the availability of historic tax credits, should not prevent the allocation of historic tax credits to a project which would otherwise qualify for such tax credits. By allowing projects which commence construction during the period intended to be covered under the tax credit law to receive tax credits, the stated purposes of the historic tax credit law, that is, the preservation and restoration of historic buildings, the continued viability of income producing properties, and the incorporation of restored historic properties as economic drivers in underserved communities, will be advanced in a manner consistent with the intent of the tax credit law. The proposed rule that projects which have commenced or completed construction prior to the submission of an application are not eligible for historic tax credits contradicts the language and certainly the intent of the law. As such, section 4859.05 F of the proposed regulations should be modified to allow eligibility for rehabilitation projects which were commenced after January 1, 2021, without regard to whether such projects were commenced prior to the submission of an application. With the removal of such restriction, the thoughtful and detailed criteria set forth in the proposed regulations will still ensure that only appropriate projects will qualify for an allocation of historic tax credits. Thank you. My comment is complete. I appreciate your time.

**Aubrie Morlet:** OK. Thank you.

**Gina Rodriguez [present in the room]:** Can you ask what state the speaker is from?

22:45

**Aubrie Morlet:** Sure. Scott Landman, there's a guest [in the room] who is just wondering, I'm sorry, what state you're from maybe?

22:53

**Scott Landman:** I'm from New York, but I'm addressing California issues.

**Aubrie Morlet:** Of course. Thank you.

23:24

**Aubrie Morlet:** Yes, there is. I'm trying to. All right, Jen Hembree. Are you there? Can you hear us? Can we hear you? Hello.

**Jen Hembree:** Can you hear me now?

**Aubrie Morlet:** Yeah, there you are. OK.

23:46

**Jen Hembree:** Yes, thank you everybody for the opportunity to speak. This is Jen Hembree and I am with Page and Turnbull an architecture planning and preservation firm with offices throughout California. We have several clarification requests regarding language in the proposed regulations as well as questions. In section 4859.04 B, we note this section discusses protocols related to buildings individually listed in the California Register that include more than one building, as well as buildings functionally related historically. [2.1] We ask that clarification regarding buildings that are contributors to registered historic districts be provided. [2.2] In section 4859.04 F, we ask that the state define final certification of rehabilitation as used in this section. We also have the following questions regarding the process. [2.3] What electronic

delivery system will be implemented for submission of applications? And [2.4] what is the anticipated time frame allowable for reviews by OHP and CTCAC? We asked that a flow chart be provided which outlines the timelines and the review relationship between OHP and CTCAC. We understand the program is described as a first come, first served program. [2.5] Will CTCAC rank applications or is ranking solely determined by receipt date? [2.6] Will CTCAC allocate the full amount of credits needed, as outlined in an application, or will partial amounts be distributed? [2.7] Will CTCAC allocate the credits equitably throughout the state by county and/or region? Given no review time frame has yet been indicated, we are concerned staff may be stretched. [2.8] We ask whether the state has considered establishing a window of opportunity for applying or an annual application deadline? And [2.9] given buildings must be listed in the California Register to be eligible, will applicants seeking to list their property for the purposes of applying be given priority or an expedited process for listing by the Registration unit? Lastly, [2.10] how will the state ensure equitable access to the program for homeowners? It's understood an income limit has been imposed, but [2.11] how will information about the program and the process be made user friendly so homeowners can apply without the need for a professional fee for services? [2.12] Has the state considered waiving review fees for homeowners? Lastly, [2.13] we recommend the initial application mirror the Federal Historic Preservation Certification Applications part one and two to avoid duplicative work for those applying to both programs. Thank you for your consideration.

26:47

**Aubrie Morlet:** Thank you. All right, Emily Van Loon. Hopefully I said that correctly. I'm going to open up your mic. Emily, are you there?

27:15

**Emily Van Loon:** Yeah, I'm here. Can you hear me OK?

**Aubrie Morlet:** Excellent, we can.

**Emily Van Loon:** Cool. Thank you. I'm Emily Van Loon. I'm an Associate Director of Housing Development at Tenderloin Neighborhood Development Corporation (TNDC) and I lead TNDC's portfolio recapitalization efforts. Many of our properties are located in the Uptown Tenderloin Historic District here in San Francisco and our properties house low income and formerly homeless San Franciscans. We care about the preservation of our historic buildings, and many of our older properties are in need of major rehabs not only to preserve their historic features, but also to make critical life safety upgrades as well. And funding for rehab projects at the state level has been pretty slim in recent years since bonds became competitive. But TNDC has been able to make great use of the federal historic tax credit on three recent projects and we'd like to use the state historic credit on our projects as well. We see it as a much needed capital source for our portfolio rehabs. We think it's absolutely critical that the state historic credit be available for projects that are under construction, whether or not a project is phased and this would match the regulations of the federal historic credit. And it would also allow affordable developers maximum flexibility, which we really see as necessary as part of this program. Those rehabs that have moved forward in recent years have done so on very limited funding and a rising cost environment. And we know some developers who have added the federal historic credit during the construction period to cover things like cost escalation and the unknowns often associated with historic rehabs. So we think the state credit should function similarly. Additionally, TNDC has a need for these credits now on multiple projects, one that's under construction and one that will likely be under

construction by the time the State Historic application process is available. Since the law was signed in 2019, we've really been awaiting these guidelines and the ability to apply for the state historic credit. And so we've structured a couple of rehabs around the availability of this funding. While the regulation, drafting and the application process is kind of pushed out year by year, a couple of our projects have moved forward. So I also just kind of want to add that if your team is unable to change the regulations to allow projects under construction to apply going forward and kind of in perpetuity, [3.1] I'd request that you provide an exemption for at least the first year of the state historic tax credit application process to kind of allow for projects that are under construction who have been waiting for these credits to become available to apply and make use of them. Because I think there's a handful of us that have structured projects since 2019 to include these credits as a funding source. And we would really benefit from the ability to access them now that they're almost available. Thank you.

30:28

**Aubrie Morlet:** Thank you. Alright. I don't have any other hands raised. Is there anyone else that would like to speak right now? Tara Hamacher. Sorry, probably doing terrible there. Can you hear me? Her mic is still off.

31:32

**Tara Hamacher:** Well, here, here. Sorry. How about how about now? Can you hear me now?

**Aubrie Morlet:** Yes, we can.

**Tara Hamacher:** OK. Sorry about that. Thank you for letting me speak. Tara Hamacher with Historic Consultants. I would also like to echo that, [4.1] the applicants should be able to be under construction while making application to this process. It's very cumbersome to link up the approval process with OHP and National Park Service and now looping in the tax authority and we all have been waiting very patiently for guidelines to come out. And we're in a situation where projects have experienced massive cost overruns and delays due to COVID and we are desperately in need of assistance to try to help fill some gaps with that. [4.2] I would like to encourage that there be some coordination with the IRS guidelines and the tax guidelines for the state because some projects could get allocated money but yet because they've been placed in service, they might not be able to take advantage of the tax credits. I know I have two projects that are up against the clock of being placed in service and if we don't have our investor on board closed prior to that certificate of occupancy being pulled, we won't be able to utilize the credits. So I would just encourage that there be some thought put to how applications are awarded this tax credit and able to use it. So perhaps some questions as on the application as to when it is placed in service so that we don't delay getting the money out on the street. So thank you. That's what I'd like to add.

33:35

**Aubrie Morlet:** Thank you. James Rolf has his hand up. You might have to unmute yourself James.

33:58

**James Rolf:** I think I am. Can you all hear me?

**Aubrie Morlet:** We can. There you are. Right.

**James Rolf:** Alright. Uh, hi, James Rolf. I'm a tax credit consultant with Rolf Preservation Works. We currently have one active project that was recently listed on the National Register in Freestone and one of my concerns upon reading the regulations was [5.1] in section 4859.04, subsection A, a building must be listed on the California Register at the time of the tax credit application submittal. Buildings not yet listed are not eligible for the credit. I would encourage the California SHPO to be more in line with the Federal application to where there's a preliminary determination of individual listing so that would not delay projects from penciling out and making sure that they're feasible. If you have that PDIL like most states do that runs concurrent with the federal credit, you should reconsider that and then also further define at the time of tax credit application submittal, some states, I think it's Georgia, asked that you have it individually listed or at least preliminary listed by the time you take your part three photos. You know different states have different takes on it but as you all know at SHPO it does take some doing to get a property listed on the National Register, so if something is pretty apparent that it is eligible for listing, the project developer should be allowed to plan to be able to take advantage of both the state and the federal credit. And that's it. Thank you.

35:52

**Aubrie Morlet:** Thank you. All right. Is there anyone else that would like to speak right now? Well, we are here for three hours, so you can choose at anytime. Would you like to speak?

**Gina Rodriguez [present in the room]:** yeah.

**Aubrie Morlet:** Yeah, I'll turn it around [laptop camera].

36:32

**Gina Rodriguez:** He just wanted me to, I'm Gina.

**Aubrie Morlet:** Oh, I thought that was him. So that was someone else?

**Gina Rodriguez:** Yeah, I was looking for Albert. [6.1] He's concerned about the work having to commence 180 days after approval as it can take much longer than that for projects to start. So the 180 days was, that was a concern.

36:57

**Aubrie Morlet:** What was his name?

**Gina Rodriguez:** Albert Rex. R E X.

**Aubrie Morlet:** Thank you.

**Gina Rodriguez:** Thank you.

37:15

**Aubrie Morlet:** I'll see if I can see. I don't see anyone else. All right, well, this going to sound funny, but we're here until 4:00, so if anyone would like to speak in the meantime, please raise your hand. Otherwise, we will be silently observing.

37:44

**Aubrie Morlet:** She spoke earlier. Are you there? Tara, were you wishing to speak again?

37:57

**Tara Hamacher:** Yeah, I was just wondering when will we hear some information from the tax authority, on when they're going to come out with their guidelines?

38:11

**Julianne Polanco:** So, so I could take that question. The tax authority will have guidelines out. We don't have any information on the timing of that. You can just follow their website. I'm sure they will post them there once they are available, but we don't have any information specifically on the timing.

**Gina Rodriguez:** Are you with FTB?

38:32

**Aubrie Morlet:** No, this is Julianne Polanco, our State Historic Preservation Officer.

38:37

**Gina Rodriguez:** I didn't get to see you before. Because the tax credit form is out for 2022.

**Aubrie Morlet:** Right.

**Gina Rodriguez:** Interestingly.

**Aubrie Morlet:** Yes, yeah.

38:51

**Tara Hamacher:** The tax credit form from the at the CTCAC?

**Gina Rodriguez:** No, from the franchise tax board to be able to claim a California tax credit.

39:02

**Tara Hamacher:** OK. Thank you.

39:07

**Gina Rodriguez:** They released it. I had hoped they had talked to you first, but that maybe didn't happen?

39:11

**Mark Huck:** Well, they didn't.

39:27

Someone had their, oh, there we go.

39:30

**Aubrie Morlet:** Teresa Grimes, I opened up your mic. You're free to speak. You'll have to unmute yourself, I think.

39:41

**Teresa Grimes:** Hi, I wasn't actually planning on speaking. I was just here to listen and I will send my comments in writing. But, since you're available, [8.1] I noticed that well actually I didn't notice a review period in the regs like the federal tax credit process where there's a 30 day period. I didn't know if that was a missing something or if that was intentional, but I do feel like having some sort of review period is comforting to applicants because they have some indication of the length of the process. And then I also had a question or a comment about the application fees. [8.2] If the application fees are in the regulations and the regulations are adopted, will that make it difficult for you all to update them in the future if you feel like that's necessary? So that's that. Thank you. That's that was it.

40:50

**Aubrie Morlet:** Thank you so much. okay, I don't see any other hands for right now. I'll keep looking.

42:54

**Gina Rodriguez:** The review period for comments ends June 20th?

**Aubrie Morlet:** Yes.

**Gina Rodriguez:** Okay and then what's happening? 30 days, 60 days or what are you looking at after comments? You'll released the all the comments publicly and on your website?

43:13

**Julianne Polanco:** Yeah, all the information will be posted on our website for this public meeting. We're not answering questions. We have to keep it just to the comments. But all the information about the process will be posted on our website.

43:28

**Gina Rodriguez:** Oh right, No. My question is will the comments be posted on the website? The public comments? Most agencies do post them but.

43:36

**Aubrie Morlet:** Yes, they're in our final statement of reasons that will be posted to our site. Yes

43:42

**Gina Rodriguez:** So after June 20th, are you anticipating going to the OAL when? By the end of the year.

**Aubrie Morlet:** Oh. Yes, Yes.

**Gina Rodriguez:** OK.

45:30



**Aubrie Morlet:** Just to remind everyone in the room, if anyone wants to speak, please raise your hand. And if you're on the phone, you can raise your hands by using \*5.

46:56

**Aubrie Morlet:** Tara, I undid your mike. Did you want to speak again?

**Tara Hamacher:** Yeah. Uh. Tara Hamacher Historic Consultants. I'm reading through the appeals section, [9.1] section 4559.07. I would make the recommendation that there be additional paragraph put in there that would defer to the National Park Service appeal process should it be a federal project as well as a state tax credit project. And how those two agencies, NPS and OHP would interact in that situation. Thank you.

**Aubrie Morlet:** Thank you.

**Julianne Polanco:** Aubrie, I think we need to keep the comments to three minutes per speaker total and if there are any additional comments they need to submit them in writing just so we keep it even for everybody.

**Aubrie Morlet:** Understood.

**Julianne Polanco:** Thank you.

50:03

**Aubrie Morlet:** I noticed someone just joined us so if you would like to speak at the hearing, please raise your hand. If you are calling in, you need to use a \*5 to raise your hand.

52:11

**Aubrie Morlet:** Hello John.

**John:** Hi this is John. I'm just planning on listening in. I'm not planning to testify or ask any questions. I'm just here to listen, sorry for the confusion.

**Aubrie Morlet:** No problem.

**John:** I'll go back to mute.

58:34

**Aubrie Morlet:** Hello. Someone new just joined the group, so I thought I'd let you know, if you would like to speak, please raise your hand.

1:00:16

**Aubrie Morlet:** Hello. For our new attendee that just joined the room, if you'd like to speak, please raise your hand and we'll unmute you.

1:00:29

**Aubrie Morlet:** Hello, William Wilcox, you are unmuted. You'll have to unmute yourself. There you go.

1:00:36

**William Wilcox:** Hi, thank you so much for taking comments on this important set of regulations. I wanted to speak about the state historic preservation credits and specifically section 8, section 4859.05 F project commencement, completion, and certification. I am the tax exempt bond program manager for the Mayor's Office of Housing and Community Development for the City and County of San Francisco. We have a number of projects that have gone in for federal historic credits. Previously I lead all of our rehabilitation work of historic mostly single room occupancy hotels that serve some of our most vulnerable residents and that are some of the most challenging construction projects we've taken on in the city for affordable housing, including major steel retrofits of unreinforced masonry buildings that are historic, sometimes individually landmarked buildings such as the Ambassador Hotel which I'm currently overseeing. [10.1] The current section requires that all projects complete their initial applications for state historic credits before any rehabilitation or other construction work has begun. We would request that an additional sentence included at the end of section 4859.05 F that projects will also be eligible to apply if they are for deed restricted affordable housing that qualifies for Low Income Housing Tax Credits and have already been approved for Federal Historic Credits. That's by OHP and NPS as of 7-1-23, but have not yet placed in service or selected a completion date. This aligns with the statement and a reason for Section 4859.05 which notes that the procedure should align with the federal process In order to avoid duplication of effort by applicants. The federal historic Tax credit program allows for projects to apply at any time before the project is completed/placed in service. This is also the case for 29 other states that have state historic credits, which constitutes the vast majority of the programs, over 80%. I did read the regulations for every other state's historic tax credit programs. It was a really fun week. We would ask that OHP align with federal and other state programs to allow for this flexibility, either ongoing or simply for projects currently in process because as these regulations have been so delayed and we expected them and made financial decisions assuming they would be made. The proposed changes a narrow exception for the badly needed affordable housing projects that expected state historic credits. After surveying a large number of affordable housing organizations across the state, I believe there are only three to four affordable housing projects in construction in the state of California that would be pursuing these credits. I have reached out to the Nonprofit Housing Association of Northern California, the Southern California Association of Nonprofit Housing Developers, San Diego, the Housing California, every single financial consultant in the state and I think these projects really would benefit from it. And we hope that you can add this flexibility and thank you so much for your time.

1:03:50

**Aubrie Morlet:** Thank you.

1:17:09

**Aubrie Morlet:** Hello. Someone new joined the group, so I'll just let you know if you'd like to speak, please raise your hand and I will unmute you.

1:18:00

**Mike Garavaglia:** Hi, it's Mike Garavaglia. I primarily wanted to listen in. I've been, I'm very late because I had a field visit to do. Are you continuing with presentations at this point or are you just taking questions?

1:18:24

**Aubrie Morlet:** OK. Sorry, we are just taking public comments and recommendations at this time, Mike.

1:18:30

**Mike Garavaglia:** OK. I again apologize for not hearing the presentation so some of this might have been repeated. I think for me a couple things that came forward in the reading some of the information that's provided is the idea that, I believe I read that, [11.1] you have to be on the state register to be able to apply for the state credit. I would like to hope that the national, federal credit and the state credit are highly aligned as much as possible so that that when trying to explain this to developers or them using it that it would be an easy application. So being on the state register before application doesn't necessarily coordinate with the National Register process of determining eligibility and then being able to actually get on the register at a later date. That would be beneficial. It seems that that ~~utilization for the~~ utilization respects a potentially a reluctant developer group. As an aside, I this has more to do with the volume of applications and the amount of dollars that have been set aside. I know that the \$50 million is a first, a first effort. With all the talk about housing and the need for housing and the idea of adaptive use, it would be great to be able to see a much bigger increase in that amount for housing if need be so that there's a definite benefit. Pairing the state credit with the federal credit can be very powerful as far as the financial tool and I think that some of the state housing laws have talked about requiring prevailing wage to use those bonuses. [11.2] I do not think any prevailing wage requirement for the credits should be established because it for most prevailing wage projects it's just going to the increase in construction costs is just going to eat up the credit without any benefit to the overarching project. So those are really just a couple of initial thoughts and I'll wait to see what others might have to say or whoever else might come online.

1:21:16

**Aubrie Morlet:** Thank you.

1:21:27

**Aubrie Morlet:** Christina Lake, I have unmuted you.

**Christina Lake:** Hi, yes, Christina Lake from Louisiana. I just have a quick question I think for clarification. Are you able to answer clarification questions at this time?

**Aubrie Morlet:** No, unfortunately we are not.

**Christina Lake:** OK. Well, I guess my question is if this credit is meant for owner occupied residences, is that correct? Can you answer that?

**Aubrie Morlet:** The legislation does allow for homeowners to apply.

**Christina Lake:** OK, so how is that going to be paired with the federal credit since the federal credit does not allow for owner occupied buildings?

1:22:22

**Aubrie Morlet:** Is that your only question you wanted to submit, Christina?

**Christina Lake:** Yes, ma'am.

**Aubrie Morlet:** OK. Thank you so much.

1:33:01

**Aubrie Morlet:** Mike, I saw you had your hand up. I'll unmute you quickly, but I know you already spoke, so hopefully you have something that will only take a moment or you can send it in writing. I've unmuted you.

1:33:16

**Mike Garavaglia:** Thank you. It was a different topic. It had to do with the type of registered historic district under the federal rules that establish the use of the tax credit for local districts. I don't know exactly what the Code sections are, but there is an option that's rarely used from what I understand that allows local jurisdictions to help administer the tax credit. And I think that again has a lot of potential utilization and wondering or hoping that the state tax credit aligns with the federal guidelines and that same type of resource. So it's not national, it's not actually on the National Register in that case, but it is deemed eligible for the National Register in the process and it's listed at a local level so that was all.

1:34:06

**Aubrie Morlet:** OK. Thanks.

**Mike Garavaglia:** Thank you.

1:52:17

**Aubrie Morlet:** Andrea, I am unmuting you. You're free to speak. Are you there?

1:52:23

**Andrea Mauk:** I am here. Thank you so much. The silence was killing me. I really came to listen. Ohh my goodness.

**Aubrie Morlet:** We were joking about that. We should have had, you know, named this architectural style photos or something.

**Andrea Mauk:** right? Exactly.

**Aubrie Morlet:** Something extra.

**Andrea Mauk:** Yeah.

1:52:41

**Andrea Mauk:** Anyway, I want to say that I think that the purpose of this tax credit is to make adaptive reuse be feasible at a meaningful level. And after so many delays from the last several years due to the COVID-19 pandemic and the closures of certain government offices and the backlog, so much backlog, I just want to piggyback on what has been mentioned about [14.1] allowing the buildings that are national or state register eligible to be allowed to apply for the tax credit. I think that's so important. By doing so, it will allow more developers to feel that applying for the state tax credit along with the federal tax credit and also any possible local credits for the creation of low income housing or transit oriented development, makes adaptive reuse more attractive than building from the ground up, you know, so our

carbon footprint is less by aligning this tax credit with the federal credit and allowing potential projects to be registered at the state level before completion, our state can actually realize the true environmental benefits of adaptive reuse at a meaningful level, and that is so important to me. I forgot to say I am a real estate agent and a neighborhood preservation advocate. I live in Los Angeles, and I'm watching it get torn down before my eyes. And I took up like a minute and a half of the silence. Thank you very much.

1:54:22

**Aubrie Morlet:** Thank you so much.

2:07:03

**Aubrie Morlet:** Hello. For a guest that just entered the room, if you're interested in speaking, please just raise your hand and I will unmute you. Thanks.

3:11:16

**Aubrie Morlet:** Alright, well, it's almost 4:00 o'clock. Thank you everyone for attending this public hearing and I look forward to speaking more about the tax program in the future. I hope everyone has a good afternoon.

3:11:57

Ended.

ATTACHMENT 4 to FINAL STATEMENT OF REASONS

Summary of Comments Received and responses including collected correspondence during Public Comment Period from April 18, 2023, through June 20, 2023  
 OAL FILE NUMBER 2023-1016-03S

**Summary of Comments Received during 45-Day Public Comment Period from April 18 through June 20, 2023**

*Note: the responses to the comments below are contained in the Final Statement of Reasons. A copy of the submitted written comments is attached for the rulemaking record; the letters with comments are bracketed to identify the individual comments by the corresponding comment number that is identified below.*

Commenter Organization/ Name	Comment Number	Comment Summary	Response
Benzi Blatman Wilson Meany 5/9/23	1.1	Requests clarification whether there is a \$25K cap on tax credit projects or is it the lesser of 20-25% QRE cost or \$25K.	§4859.01(a) has been revised to clarify the allocation limit for Qualified Residence and the 20% and 25% allocation for all other projects in current draft.
Maya DeRosa AICP CDD City of Helena 5/9/23	2	Does the state offer tax credits to residential property owners to rehabilitate their historic property consistent with the SOIS to help offset costs.	No action required.
Roy Oldenkamp W. Hollywood Preservation Alliance 5/9/23	3	Comments that it is logical for OHP to be the steward of this program, and that OHP's familiarity with cultural assets throughout California over the years is an invaluable asset that is without peer.	No action required.
Nancy Runyon Treasurer, Monterey Preservationist Alliance 5/10/23	4	Thanks OHP, CPR, AIA and others who helped establish the tax credit.	No action required.
Tom Brandeberry 5/16/23	5.1	4859.05(f) states that Projects in construction or completed are not eligible. Consider allowing "in construction".	4859.05(f) has been deleted and replaced with 4859.01(e), disqualifying projects completed before January 1, 2022, and thereby permitting projects 'in construction' at that time.

	5.2	No language that a project using the federal tax credit could apply for the state tax credit with few if any additional actions.	4859.03(c)(6) is added to include the submission of the state Initial Project Application when applying for the federal tax credit.
Mark Stivers CA Housing Partnership 5/17/23	6.1	4859.05(f): Suggest revision to make projects already in construction to be eligible for credits.	See comment response 5.1.
	6.2	4859.05(l) requires construction to commence within 180 days of allocation award by the CTCAC. Consider a longer construction date to allow incentives from LIHTC and CDLAC to be awarded.	4859.05(l) has been deleted and replaced with 4859.03(l) revising the start date of construction to be no longer than 365 days.
	6.3	4859.07(d) "appeals" should consider adding a deadline for its response to an appeal.	4859.06(h) has been added to the current regulation draft defining the OHP appeals review as 45 days from receipt of the request.
Greg Reading Weideman Group 5/23/23	7.1	Tax credits passed in 2019 and \$50M was allocated in 2022. Was there another allocation for 2023 and are the allocations additive?	No action required.
	7.2	Question whether program is on track to open in late 2023 or early 2024.	No action required.
	7.3	Will the application be solely through OHP or are there additional actions taken with the CTCAC?	No action required.
John Howard Kramer 6/6/23	8	Supports incentives for tax credits.	No action required.

Rodney Fong, Operator Marconi Conference Center 6/13/23	9	Supports incentives and offers to be a partner in placemaking.	No action required.
Evanne St. Charles Senior Associate Architectural Resources Group 6/14/23	10.1	4859.05(f) excludes projects that are completed or in progress. Request to make regulations align with federal regulations 36 CFR 67.6(a)(1) that allows proposed, in progress or completed projects to apply as long as there is sufficient documentation showing initial conditions.	See comment response 5.1.
	10.2	Clarification requested whether allocations are awarded upon receipt of OHP approval or approval at completed project.	No action required.
	10.3	Requests clarification whether \$50M allocations have accrued from 2022 and 2023 allocations, to equal \$150M.	No action required.
Naomi Miroglio, Principal Architectural Resources Group 6/15/23	11.1	4859.905(f) excludes projects that are completed or in progress. Request to make regulations align with federal regulations 36 CFR 67.6(a)(1) that allows proposed, in progress or completed projects to apply as long as there is sufficient documentation showing initial conditions.	See comment response 5.1.
	11.2	Clarification requested whether allocations are awarded upon receipt of OHP approval or approval at completed project.	No action required.
	11.3	Requests clarification whether \$50M allocations from 2022 and 2023 allocations, to equal \$150M.	No action required.
Chris Cummings TNDC 6/15/23	12.1	Make the state historic credit available to affordable projects already under construction.	See comment response 5.1.
	12.2	Provide a waiver for the first two rounds of state historic credits to allow affordable housing projects to secure state historic credits during construction if OHP does not allow TNDC's priority recommendation. It would allow an appropriate transition period.	Priority is defined by legislation as 'first come, first serve'. No action required.



	12.3	Provide a preference to affordable housing projects applying for the state historic tax credit.	See comment response 12.2.
Denton Kelley Downtown Railyard Venture LLC 6/16/23	13.1	Revise 4859.05(f) to align with 36 CFR 67.6(a)(1) to allow completed and in-progress projects to qualify for the state tax credit.	See comment response 10.1.
	13.2	Clarification requested whether allocations are awarded upon receipt of OHP approval or approval at completed project.	See comment response 10.2.
	13.3	Requests clarification whether \$50M allocations have accrued from 2022 and 2023 allocations, to equal \$150M.	See comment response 10.3.
Adam Markwood 6/18/23	14.1	§4859.05(f) as currently written prevents projects under construction from qualifying. This will result in many otherwise deserving projects not being able to benefit from the California HTC, even though they are meeting the intent of the program.	See comment response 5.1.
Jennifer Hembree Page + Turnbull 6/19/23	15.1	Recommend that §4859.04(a) be revised to allow for an owner to request certification of historic significance, as determined by a qualified preservation professional, that a) property not yet listed on the California Register appears to meet California Register criteria; or that b) a property located within a potential California Register historic district appears to contribute to the significance of such district.	The request describes a resource to be nominated for listing on the CR, which is a separate process. No action required.
	15.2	Recommend that the state application process be streamlined and combined with the federal tax credit application, promoting the dual use of both state and federal incentives.	See comment response 5.2.
Frederic Knapp Knapp Architects 6/19/23	16.1	State in 4859.06 (g) whether a successful appeal of denial at the federal level also reverses denial for the project denied at the state level, or otherwise split decisions.	4859.06(j) has been added to the current regulation draft defining how OHP appeals decisions may vary from NPS decisions.

	16.2	Clarify whether all requirements and best practices of the NPS review also apply to state tax credit project review.	4859.02(f) has been added to the definitions in the current regulation draft defining a “dual project” state review equivalent to the federal review. It is the same review.
	16.3	Clarify the relationship between the federal Part 1, 2, and 3 applications and the State Initial Project Application and Completed Project Application.	4859.03(c)(2) already defines the functions of the Initial and Completed Project Applications. No action required.
	16.4	4859.05(f): Clarify whether state tax credits allocated by CTCAC on a specific date instead of a rolling basis as the federal credits would necessitate proceeding with construction without knowing if allocations from CTCAC are approved, creating an incentive to apply for a phased project, begin construction, and include future phases in their applications.	The requested clarification depends on hypothetical circumstances and CTCAC regulations. No action required.
	16.5	Clarify whether paragraph 4859.05(i) means that properties that are contributors to districts will be reviewed as if they were individually eligible, which might be allowed for federal tax credit projects but won't be under the state credits.	4859.05(i) has been deleted as unnecessary.
	Equity Community Builders 6/19/23	17.1	§4859.04(a) “A building must be listed on the California Register at the time of the tax credit application submittal. Buildings not yet listed are not eligible for the credit.” Confirm that buildings determined eligible for listing, but not yet listed, are eligible to apply for state HTC mirroring the federal HTC program.
	17.2	Confirm that a building on the National Register is automatically listed in the California Register. Confirmation that contributing buildings to a District are also eligible for the state register.	4859.04(a) notes that all individual properties and historic districts listed on the National Register are automatically listed on the California Register.
	17.3	§4859.05(f) “Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits...”. Confirm that projects under construction are permitted under the CA State HTC program mirroring the Federal HTC program for unphased work.	See comment response 5.1.

	17.4	§4859.05(l) “Applicants must commence rehabilitation within 180 days after issuance of the tax credit allocation...”. Define issuance of tax credit allocation.	See comment response 6.2.
	17.5	Clarify the timeframe and process to approve tax credit allocation once an application has been submitted.	4859.03(c)(7) has been added to the current regulation draft to specify a 30 day review period.
	17.6	Will applications be ranked by an established priority or determined by application receipt date (first come first serve)?	4859.03(c)(4) states that applications are logged in their order of arrival, as required by the legislation. No action required.
	17.7	Is there a maximum tax credit allocation amount per application?	Tax credit allocation amounts are defined in the legislation and the CTCAC regulations. No action required.
	17.8	Will the full amount of credits requested in an application be awarded, or will partial amounts be distributed?	Credit distribution is not determined by the OHP. No action required.
Rick Chavez Zbur Assembly Member California Legislature 6/19/23	18.1	§4859.05(f) of the proposed regulations, expressly disqualifies projects begun before the effective date of the regulations. This section raises serious concerns regarding the eligibility of rehabilitation projects begun after January 1, 2021 but prior to the submission of an application for the tax credits authorized by SB 451. Proposed language included: “(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021, are eligible to apply for the State tax credit.”	See comment response 5.1.
Christine French SF Heritage 6/20/23	19.1	Buildings determined eligible for listing, but not yet listed, should be eligible to apply for the state HTC (mirroring the federal HTC program);	4859.03(a)(1)(A) states that projects having NPS signed Part 1 “Determination of Significance” forms qualify for state tax credits, because a finding of eligibility for listing on the NR by a federal action automatically lists the property on the California Register.

	19.2	Clarification that buildings on the National Register are automatically listed in the California Register, including contributing buildings within a listed district;	See comment response 17.2.
	19.3	Projects under construction are permitted for access the CA State HTC program (mirroring the Federal HTC program for unphased work);	See comment response 5.1.
	19.4	Better definition of the method of ranking applications (whether by established priority or determined by application receipt date, for example);	See comment response 17.6
	19.5	Definition of the timeframe and process to approve the tax credit allocation once an application has been submitted	See comment response 17.5.
	19.6	Framework for awarding of the credits (in full amount requested or partial amounts for distribution, for example).	See comment response 17.8.
Woody LaBounty SF Heritage 6/20/23	20.1-20.6	Letter with same questions recapped in email above.	See comment responses 19.1 through 19.6.
Ben Allen Senator 24 <sup>th</sup> District 6/20/23	21.1	§4859.05(f) of the proposed regulations, expressly disqualifies projects begun before the effective date of the regulations. This section raises serious concerns regarding the eligibility of rehabilitation projects begun after January 1, 2021 but prior to the submission of an application for the tax credits authorized by SB 451. Proposed language included: “(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021, are eligible to apply for the State tax credit.”	See comment response 18.1
Tara Hamacher Historic Consultants 6/20/23	22.1	4859.02 - Definition of Key Terms: Suggest that there be a definition for "commercial", as residential is included.	All definitions needed are present and agree with NPS definitions. No action required.

	22.2	Clarify the description in 4859.02(n)(2) include "interior" as well as "exterior".	This definition is the same as the definition in the legislation. No action required.
	22.3	4859.02 Definition of Key Terms: Clarify that a property that is a contributor to a National Register District is also automatically listed in the California Register.	See comment response 17.2.
	22.4	4859.03 Certifications of significance, rehabilitation, and information collection: "information collection" is not necessary in the title. The title could read "Certifications significance and scope of work"	No action required.
	22.5	4859.03(b), How to apply: Clarify that the goal is to mirror the 20% federal NPS process.	The application process closely follows the NPS application process, but not all state tax credit applicants need to meet the federal application requirements. No action required.
	22.6	4859.03(b): Clarify that use of the Part 1, 2, 3 forms do not require State applications to be submitted.	State applications must be submitted to receive tax credits. No action taken.
	22.7	4859.03(b)(1): The text "state tax credit application" is vague. This could be defined better as "20% state rehabilitation tax credit for historic properties".	4859.01(a) defines the state tax credit as 20% or 25% in the current regulation draft.
	22.8	4859.03(b)(2): The text "Initial Project Application and Completed Project Application" description is vague. Clarify if these correspond to Parts 1, 2, and 3.	See comment response 16.3.
	22.9	§4859.03(b)(2)(A): The text "Initial Project Application" is as stated above the name of the application. Clarify the last sentence stating that "Information requested in the application is required to obtain a benefit".	Same language as legislation. If information requested is missing in the application then allocation is not awarded.

	22.10	§4859.03(b)(2)(B): Clarify how the final qualified rehabilitation expenditure is verified.	Verification of the final QREs is a function of the CTCAC. No action required.
	22.11	§4859.03(c) states that "State tax credit applications are available from the OHP on the OHP website" and then goes on to list 3 other criteria that will be required. Clarify if the title is also a criteria.	4859.03(c) is complete as stated. No action required.
	22.12	§4859.03: provide the hyperlink to the OHP website where material is available.	Hyperlinks will function when all parts of the program are in place on the website. No action required.
	22.13	4859.03: Clarify how documentation is submitted electronically.	Instructions for electronic submission are included in the Instructions v. 5/24 document with the current rulemaking package.
	22.14	4859.03: Provide a timeframe for review. Confirm that it is the same as the federal timeframe.	See comment response 17.5.
	22.15	4859.03: Clarify how applicants can confirm their property is listed on the California Register.	4859.03(a)(2) describes the procedure for researching and listing a resource on the California Register in the current regulation draft.
	22.16	4859.4(a): Clarify whether an approved federal Part 1 lists the property on the California Register.	See comment response 17.2.
	22.17	4859.04(b): Is a commercial building also considered a historic structure?	See comment response 22.1.
	22.18	4859.04(b)(2): Clarify "additional information as described in the Initial Application". The description is vague.	4859.04(c)(2) has been added to the current regulation draft that provides further detail of requirements.

22.19	4859.05(f): Disagree with "Projects in construction or completed are not eligible to apply for the State tax credit except in the case of project also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun."	See comment response 5.1.
22.20	4859.05(g): "Initial Project Application" should be the same as the title of application.	The circumstances listed are adequate for application purposes. No action required.
22.21	4859.05(j)(1): Clarify "work undertaken within the 5 year compliance period that is not reviewed or approved may result in a denial....."	This regulation mirrors the NPS requirement for review after certification and has the same meaning. No action required.
22.22	4859.05(j)(3): what is an advisory determination? now where else is this spelled out and it basically reads that a single issue can't be reviewed without knowing the overall context of the project.	This regulation mirrors the NPS review of completed phases as requested by the owner and has the same meaning. No action required.
22.23	4859.05(l): Clarify when the construction start deadline begins.	4859.05(l) specifies the start date as 365 days "after issuance of the tax credit allocation by CTCAC." No action required.
22.24	4859.05(n): Use the same name for the Completed Application in the regulations as the title of the application.	4859.05(a) identifies the "Completed Project Application" for use section No action required.
22.25	4859.06(g): Consider revising wording of the program to "State Historic Rehabilitation Tax Credit".	Section 4859.06 has been deleted. No action required.
22.26	4859.08 Fees: Suggest that fees be based on the QRE cost similar to the NPS. Clarify how fee payments are made.	Section 4859.08 "Fees" has been deleted and fee calculation and payment methods are defined in the Instructions v. 5/24 in the current rulemaking package.

<p>Scott Landman 6/20/23</p>	<p>23.1</p>	<p>4859.05(f) as proposed penalizes projects still in construction. The paragraph is suggested to be “(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021 are eligible to apply for the State tax credit.”</p>	<p>See comment response 5.1.</p>
<p>Universal Music Group 6/20/23</p>	<p>24.1</p>	<p>4859.05(f) disqualifies Rehabilitation projects commenced after January 1, 2021 but prior to the submission of an application for the tax credits. Revised language is suggested to allow qualification of projects that were in construction at the time of adoption of the tax credit into law: “(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021 are eligible to apply for the State tax credit.”</p>	<p>See comment response 5.1.</p>
<p>William Wilcox San Francisco Mayor’s Office of HCD Ed Holder Mercy Housing CA J.T. Harechmak Non-Profit Housing Association of Northern CA 6/20/23</p>	<p>25.1</p>	<p>4859.05(f): Concern for projects not qualifying for tax credit in construction at time of legislation adoption. Requesting additional language to read “Projects will also be eligible to apply if they are for deed restricted affordable housing that qualifies for Low Income Housing Tax Credits and have already been approved for Federal Historic Tax Credits by OHP and NPS as of 12/31/2023 but have not yet received an approved Part III application from OHP and NPS as of 3/1/2023.”</p>	<p>See comment response 5.1.</p>
<p>Albert Rex Principal Ryan 6/20/23</p>	<p>26.1</p>	<p>4859.04 (a): “A building must be listed on the California Register at the time of the tax credit application submittal.” Requiring listing on the California Register prior to applying creates a number of issues for a developer from a timing and ownership perspective. Recommend following the federal program with a concept like the Preliminary Determination process that exists at the federal level.</p>	<p>See comment response 17.1.</p>
	<p>26.2</p>	<p>4859.05 (f): Concern for projects not qualifying for tax credit in construction at time of legislation adoption. Suggest striking this section or refining it to be more open to the realities of the industry that projects may have started but are early enough in the process that when completed could still meet the Standards.</p>	<p>See comment response 5.1.</p>
	<p>26.3</p>	<p>Concern about the need for work on the project to commence within 180 days of the approval. Recommend removing this requirement and or extending it to a longer period of time.</p>	<p>See comment response 6.2.</p>



	26.4	Better define the application process.	Section 4859.03 has been rewritten to clarify the application process.
	26.5	Clarify how the projects will be rated on a competitive basis.	See comment response 12.2.
	26.6	Clarify the review time period.	See comment response 17.5.
	26.7	Clarify whether a full 20% or 25% allocation is guaranteed if a project is selected.	Allocation verification is not a part of the design review process to determine if the Standards for Rehabilitation are met. No action required.

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, May 9, 2023 1:40 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Benzi Blatman <BBlatman@wilsonmeany.com>  
**Sent:** Tuesday, May 9, 2023 10:01 AM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Cc:** Dan Fedder <DFedder@wilsonmeany.com>; Andrew Lin <ALin@wilsonmeany.com>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [bblatman@wilsonmeany.com](mailto:bblatman@wilsonmeany.com). [Learn why this is important](#)

Hi Aubrie,

**[1.1]** Just read the most recent proposed state tax credit regulations and wanted to get some clarification on whether or not there will be a \$25,000 limit on the tax credit that can be awarded to a single project? In other words, the tax credit for a given project would be the lesser of 20-25% of qualified rehab expenditures and \$25,000.

I didn't see it personally, but came across [this post](#) by Novogradac that seemed to indicate that this might be the case.

Thanks,

**Benzi Blatman**

—

**Wilson Meany**  
615 Battery, 6<sup>th</sup> Floor  
San Francisco, CA 94111  
C: 415 318 6264  
[wilsonmeany.com](http://wilsonmeany.com)

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, May 9, 2023 4:17 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: State tax credits question

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Maya DeRosa <MDeRosa@cityofsthelena.org>  
**Sent:** Tuesday, May 9, 2023 3:15 PM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Subject:** State tax credits question  
**Importance:** High

You don't often get email from [mderosa@cityofsthelena.org](mailto:mderosa@cityofsthelena.org). [Learn why this is important](#)

[2] Hello, we have a public meeting tomorrow discussing our HP Overlay and I would like to know if the State offers any tax credits to residential property owners who desire to rehabilitate their property consistent with the SOS, to help offset costs?

**MAYA DEROSA, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
City of St. Helena | Community Development Department  
1088 College Avenue | St. Helena, CA 94574  
Direct: (707) 967-2783 | [mderosa@cityofsthelena.org](mailto:mderosa@cityofsthelena.org) | <http://cityofsthelena.org/planning>



## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, May 9, 2023 12:34 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: CTCAC

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Happy Tuesday!

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Roy Oldenkamp <roy.oldenkamp@mobsce.com>  
**Sent:** Tuesday, May 9, 2023 9:59 AM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Subject:** RE: CTCAC

You don't often get email from [roy.oldenkamp@mobsce.com](mailto:roy.oldenkamp@mobsce.com). [Learn why this is important](#)

**[3]** Regarding the proposed regulations to provide the OHP the authority and discretion to regulate the State Historic Rehabilitation Tax Credit Program in conjunction with the California Tax Credit Allocation Committee (CTCAC), it makes perfect, logical sense for OHP to be the steward and guardian of this program. OHP's familiarity with cultural assets throughout California over the years is an invaluable asset that is without peer. The high profile of OHP assures fair assessment and informed opinion, without bias.

Roy Oldenkamp  
Founding Board Member  
West Hollywood Preservation Alliance  
Member Society of Architectural Historians  
Cell (323) 875-5657

## Morlet, Aubrie@Parks

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**From:** Morlet, Aubrie@Parks  
**Sent:** Friday, August 25, 2023 9:26 AM  
**To:** Morlet, Aubrie@Parks  
**Subject:** RE: 4859 PUBLIC COMMENT

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**From:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Sent:** Thursday, May 11, 2023 9:21 AM  
**To:** Morlet, Aubrie@Parks <[Aubrie.Morlet@parks.ca.gov](mailto:Aubrie.Morlet@parks.ca.gov)>  
**Subject:** FW: 4859 PUBLIC COMMENT

Happy Thursday!

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** [nancy@nancyrunyon.com](mailto:nancy@nancyrunyon.com) <[nancy@nancyrunyon.com](mailto:nancy@nancyrunyon.com)>  
**Sent:** Wednesday, May 10, 2023 6:40 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [nancy@nancyrunyon.com](mailto:nancy@nancyrunyon.com). [Learn why this is important](#)

[4] Thank you OHP, CPR, AIA and all who helped establish this tax credit to promote historic preservation of California's treasures.

Gratefully,

Nancy Runyon, Treasurer  
Alliance of Monterey Area Preservationists (AMAP)  
P.O. Box 2752  
Monterey, CA 93942  
Website: [www.amap1.org](http://www.amap1.org)  
Email: [nancy@nancyrunyon.com](mailto:nancy@nancyrunyon.com)

## Morlet, Aubrie@Parks

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**From:** Tom Brandeberry <brandeberrytom@gmail.com>  
**Sent:** Tuesday, May 16, 2023 12:02 PM  
**To:** Morlet, Aubrie@Parks  
**Cc:** Office of Historic Preservation General Inbox  
**Subject:** Re: California Tax Credit Allocation Committee (CTCAC)

Ms. Morlet, thank you for the quick response. Regarding calling, the Notice of Rulemaking, under contact persons does say for "Inquiries" and it appears I misunderstood the meaning. I took it to mean questions.

Regarding the federal HTC, I am well aware of this program, and is the main reason for my request to discuss the State version.

Regarding California Tax Credit Allocation, since I am unable to ask questions I do have some comments:

**[5.1]** 1. I am concern regarding the language in the proposed regulations that state a project would be ineligible:

*(f) Projects in construction or completed are not eligible*

I can understand completed, however, I see no real value to include *in construction*. Construction period can be years, and unforeseen costs could lead to the need for these funds. I would ask that you consider removing *in construction* from these regulations.

**[5.2]** 2. I would hope, but did not see any language stating this, that the State program follows the federal program to the degree that if a project is going through the three part federal application process to gain federal HTC, that the state's process adds little additional regulatory requirements. I project successfully gains federal HTC should be basically eligible for State HTC with some limited, additional requirements.

For example, if a building is determined to be federally recognized as a historic property, the building therefore meets the State requirements and is automatically recognized by the State.

I am presently working on the renovation of a federally registered historic property. The plans & specs have been approved by the State, your office, and we are awaiting final review/approval by the feds. While I do not think regulations should be written for one project, I think certain projects can help to make informed decisions and weed out possible unintended consequences.

Thank for your consideration,

Tom Brandeberry

(916) 281-7638

On Tue, May 16, 2023 at 9:38 AM Morlet, Aubrie@Parks <[Aubrie.Morlet@parks.ca.gov](mailto:Aubrie.Morlet@parks.ca.gov)> wrote:

At this time, we can not discuss the State Historic Rehabilitation Tax Credit program.

I can answer questions about the Federal Historic Preservation Tax Incentives program.

Aubrie Morlet

Cultural Resources Program Supervisor

Architectural Review and Environmental Compliance Unit

California Office of Historic Preservation

1725 23<sup>rd</sup> St, Ste 100, Sacramento CA 95816

916-893-8270 phone

[Aubrie.morlet@parks.ca.gov](mailto:Aubrie.morlet@parks.ca.gov)

[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Thomas Brandeberry <[brandeberrytom@gmail.com](mailto:brandeberrytom@gmail.com)>

**Sent:** Tuesday, May 16, 2023 9:35 AM

**To:** Morlet, Aubrie@Parks <[Aubrie.Morlet@parks.ca.gov](mailto:Aubrie.Morlet@parks.ca.gov)>

**Subject:** Re: California Tax Credit Allocation Committee (CTCAC)

Do I understand you correctly that you will not be calling me back?

Tom Brandeberry

(916) 281-7638

On May 16, 2023, at 9:31 AM, Morlet, Aubrie@Parks <[Aubrie.Morlet@parks.ca.gov](mailto:Aubrie.Morlet@parks.ca.gov)> wrote:

Good morning.

Your comment/question has been received by the Office of Historic Preservation. At this time, we only compile comments/questions that will be addressed in the Final Statement of Reasons following the end of the public comment period.

Thank you for your patience.

Aubrie Morlet

Cultural Resources Program Supervisor

Architectural Review and Environmental Compliance Unit

California Office of Historic Preservation

1725 23<sup>rd</sup> St, Ste 100, Sacramento CA 95816

916-893-8270 phone

[Aubrie.morlet@parks.ca.gov](mailto:Aubrie.morlet@parks.ca.gov)

[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

---

**From:** Tom Brandeberry <[brandeberrytom@gmail.com](mailto:brandeberrytom@gmail.com)>

**Sent:** Monday, May 15, 2023 10:20 AM

**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>

**Subject:** California Tax Credit Allocation Committee (CTCAC)

You don't often get email from [brandeberrytom@gmail.com](mailto:brandeberrytom@gmail.com). [Learn why this is important](#)

Good morning,

I called Aubrie Morlet on Friday morning but did not receive a call back. I had a couple of questions regarding the above proposed regulations before making comments, if at all.



If it's not possible for Ms. Morlet to call me back, is it possible for an alternative staff to call?

With appreciation,

Tom Brandeberry

916-281-7638

[brandeberrytom@gmail.com](mailto:brandeberrytom@gmail.com)



May 17, 2023

Ms. Aubrie Morlet  
California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

**RE: Comments to Historic Tax Credit Proposed Regulations**

Dear Ms. Morlet:

Thank you for the opportunity to comment on the draft regulations released on May 8, 2023, relating to the historic state tax credits.

In Section 4859.05(f) we strongly urge the Office of Historic Preservation (OHP) to make credits available to projects already in construction but not yet complete. We are aware of a number of conversions of historic structures to affordable housing that are under construction but, in this highly inflationary environment, may not be able to complete absent additional resources. Access to historic credits will ensure the final preservation of these historic structures.

Section 4859.05(l) requires rehabilitation to commence within 180 days of issuance of a credit. While this is a reasonable standard for most types of projects, it does not necessarily fit for affordable housing developments also seeking Low-Income Housing Tax Credits (LIHTC), which are offered at limited times each year and highly competitive. In some cases, applicants must apply in a few rounds to secure a LIHTC allocation, with construction commencing per Tax Credit Allocation Committee (TCAC) and Debt Limit Allocation Committee (CDLAC) regulations, within 180 or 194 days of award. We recommend that OHP defer rehabilitation deadlines to TCAC and CDLAC for developments seeking LIHTC financing.

In Section 4859.07(d) we recommend that OHP establish a deadline for it to respond to an appeal.

**SAN FRANCISCO**  
369 Pine Street, Suite 300  
San Francisco, CA 94104  
Tel: (415) 433-6804

**LOS ANGELES**  
600 Wilshire Blvd., Suite 890  
Los Angeles, CA 90017  
Tel: (213) 892-8775

**SACRAMENTO**  
Sacramento, CA 95814\*  
Tel: (916) 683-1180

**SAN DIEGO**  
San Diego, CA 92117\*  
Tel: (858) 617-0579

**SANTA BARBARA**  
Santa Barbara, CA 93103\*  
Tel: (805) 914-5401

\*Mailing address: SF office

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mark Stivers". The signature is fluid and cursive, with the first name "Mark" and last name "Stivers" clearly legible.

Mark Stivers  
Director of Advocacy  
[mstivers@chpc.net](mailto:mstivers@chpc.net)

## Morlet, Aubrie@Parks

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**From:** Greg Reading <Greg@weidemangroup.com>  
**Sent:** Tuesday, May 23, 2023 3:04 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** A Few Questions on Historic Rehabilitation Tax Credit

You don't often get email from greg@weidemangroup.com. [Learn why this is important](#)

Good Afternoon Aubrie,

My name is Greg Reading, and I am reaching out on behalf of one of our clients who is starting to get into the historical renovation space and they had a few questions I am hoping you can provide clarity on. Each question is laid out below. Also, if it is easier, happy to set up a quick call to go over this as well.

1. California passed the historic tax credits in 2019, but the funding has not been allocated until this year. So our client is wondering if the available funding for this year is \$50 million, or is there any accumulation above \$50 million due to the multi-year delay?
2. I see on the SHPO website that the program is expected to be up and running and accepting applications in late 2023/early 2024. Are you all still on track for this estimated time? Also, do you have any insight on what the timeline would look like for the application review process, approval, and dispersal of funds? A rough idea would be sufficient.
3. Last question, when finalized, will this application be just through the SHPO process created with the CTCAC? Or will there be some other steps an organization needs to go through separately with CTCAC to submit and receive funding from the SHRTC program?

Thank you so much for your time and please let me know if you have any clarifying questions or if you would like to just chat over the phone instead.

**Greg Reading**

Account Executive  
Weideman Group, Inc.  
(916) 316-8846  
[greg@weidemangroup.com](mailto:greg@weidemangroup.com)

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Wednesday, June 7, 2023 8:40 AM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 public comment

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
Monica.Newman@parks.ca.gov

<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ohp.parks.ca.gov%2F&data=05%7C01%7CAubrie.Morlet%40parks.ca.gov%7C7e79f39d3aaa4be1fc3208db676d755d%7C06fd3d24656448018226b407c4d26b68%7C0%7C0%7C638217492035436213%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikh1aWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=3HYI02MV3%2BmHE52aD0rzbjUVpU6BnQfTB20AILdjsY%3D&reserved=0>

-----Original Message-----

**From:** John Howard Kramer <[johnhkramer@gmail.com](mailto:johnhkramer@gmail.com)>  
**Sent:** Tuesday, June 6, 2023 6:24 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Subject:** 4859 public comment

[You don't often get email from [johnhkramer@gmail.com](mailto:johnhkramer@gmail.com). Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

I am writing in support of tax credits for preservation of historic structures and spaces. Our historic legacies provide Californians with a unique sense of place, so important in this increasingly homogenized culture. Our historic structures need economic incentives like tax breaks to overcome economic pressures that favor replacement or demolition over preservation. Owners of historic structures faced with demolition or preservation decisions should be encouraged to restore irreplaceable qualities that define our path through history to the present day.

Sent from my iPhone

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, June 13, 2023 4:58 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT  
**Attachments:** image0.webp

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

---

**From:** Rodney Fong <rodney@nativesince1898.com>  
**Sent:** Tuesday, June 13, 2023 4:15 PM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [rodney@nativesince1898.com](mailto:rodney@nativesince1898.com). [Learn why this is important](#)

Dear California Office of Historic Preservation,

Historic Preservation and storytelling California's history is California's future. We believe that historic preservation is education and education is the engine room of the American Dream.

As the California State Parks Operator of the recently restored Historic Marconi Conference Center California State Park in Marshal CA. We support the new Historic Rehabilitation Tax Credit Program. The Marconi Conference Center, soon to be called the Lodge at Marconi on Tomales Bay will support 47 hotel rooms, conference buildings, meeting and event space in addition to daily public access to trails and vista points. This is a historic site and the rehabilitation of the Historic Marconi Hotel is our end goal project.

Guglielmo Marconi, (born April 25, 1874 - died July 20, 1937) was the inventor of wireless communications: the short and long wave radio. This is significantly important to California as you can see direct ties to modern wireless technology.

Ultimately, as a leisure and hospitality company, we would love to share this unique California story, through placemaking, historic buildings rehabilitation & restoration, walking trails and tours and provide the public with education, interpretation and inspiration for creativity and ingenuity that California is known for.

Please continue to refine the regulation for the Historic Rehabilitation Tax Credit Program to allow fair and equitable distribution of funds to projects throughout the State that have emphasis on educating the youth of California, our future.

Thank you,

Marconi Hospitality  
Rodney Fong, Partner

[Rodney@NativeSince1898.com](mailto:Rodney@NativeSince1898.com)



Architectural  
Resources Group

360 E. 2nd Street, Suite 225  
Los Angeles, California 90012

[ABGcreate.com](http://ABGcreate.com)

June 14, 2023

California Office of Historic Preservation  
Attn: Aubrie Morlet  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via e-mail: [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

RE: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, State Historic Preservation Tax Credit Program

Dear Ms. Morlet:

Thank you for the opportunity to provide comments on the proposed regulations and procedures related to the State Historic Preservation Tax Credit Program. After reviewing the draft regulations and procedures, we've prepared the following comments and requests for clarification.

*Comment*

Pursuant to Sub-section 4859.05(f) of the proposed Historic Preservation Certifications Under the California Revenue and Taxation Code, projects currently under construction or completed are not eligible to apply for the state tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.

We request that the State consider expanding eligibility to projects that have begun work or have completed construction. We request that this sub-section be revised to align with 36 CFR 67.6(a)(1), which states that the tax credit application "may describe a proposed rehabilitation project, a project in progress, or a completed project."

Revising this sub-section to align with 36 CFR 67.6(a)(1) would allow projects that have structured their financing to include the state tax credit and that have been anticipating implementation of the tax credit program since 2019 to take advantage of this much-needed funding.



*Requests for Clarification*

As described in Senate Bill No. 451, Chapter 703 and reiterated in the OHP's Initial Statement of Reasons pertaining to the historic preservation tax credit program, the tax credit will be allocated on a first-come-first-served basis.

We request clarification on whether this determination on allocation of the credits will be made upon receipt of OHP approval of the proposed rehabilitation or upon OHP approval of the completed project.

As described in Senate Bill No. 451, Chapter 703, Section 17053.91(i)(1): The aggregate amount of credits that may be allocated in any calendar year pursuant to this section and Section 23691 shall be an amount equal to the sum of all of the following: (A) Fifty million dollars (\$50,000,000) in tax credits for the 2021 calendar year and each calendar year thereafter, through and including the 2026 calendar year. (B) The unused allocation tax credit amount, if any, for the preceding calendar year.

We request confirmation that the tax credit will be cumulative from 2021 since they have been unused, meaning that there would be \$150M available in credits once OHP begins accepting applications.

Sincerely,

A handwritten signature in blue ink that reads "Evanne St. Charles". The signature is written in a cursive, flowing style.

Evanne St. Charles, LFA, LEED AP O+M  
Senior Associate, Architectural Resources Group



Architectural  
Resources Group

360 E. 2nd Street, Suite 225  
Los Angeles, California 90012

[ARGcreate.com](http://ARGcreate.com)

June 15, 2023

California Office of Historic Preservation  
Attn: Aubrie Morlet  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via e-mail: [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

RE: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, State Historic Preservation Tax Credit Program

Dear Ms. Morlet:

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*Comment*

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Revising this sub-section to align with 36 CFR 67.6(a)(1) would allow projects that have structured their financing to include the state tax credit and that have been anticipating implementation of the tax credit program since 2019 to take advantage of this much-needed funding.

*Requests for Clarification*


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We request confirmation that the tax credit will be cumulative from 2021 since they have been unused, meaning that there would be \$150M available in credits once OHP begins accepting applications.

Sincerely,



Naomi Miroglio, FAIA  
Principal



June 15, 2023

Ms. Aubrie Morlet  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
Via email to [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

Re: Comments to State Historic Tax Credit Proposed Regulations

Dear Ms. Morlet,

The Tenderloin Neighborhood Development Corporation (TNDC) thanks you and your staff for providing us the opportunity to comment on the state historic tax credit regulations.

Financing the rehabilitation of historic affordable housing properties has been extremely challenging in California in recent years given the lack of dedicated financial resources for these projects. It is critical that the state historic tax credit regulations match the federal historic tax credit regulations so that affordable housing developers can utilize them.

### **Requests and Rationale**

**1. Make the state historic credit available to affordable projects already under construction.** This is TNDC's highest priority request. It is crucial that affordable housing developers can apply for the state historic tax credit after construction closing – just as they can with the federal historic tax credit. TNDC urges OHP to make the credit available to projects under construction, regardless of whether the project is single phased or multi-phased.

**2. Provide a waiver for the first two rounds of state historic credits to allow affordable housing projects to secure state historic credits during construction.**

This would be in the case that OHP is not amenable to accepting TNDC's priority recommendation, and it would allow an appropriate transition period for existing affordable historic properties to take advantage of this new funding opportunity. TNDC and other affordable developers have been awaiting the availability of the state historic tax credit since SB451 was signed in 2019. SB451 was approved with the framing that the state historic tax credit application process would be available in late 2022 or early





2023. We have structured the financing of ongoing rehabilitations around the availability of the credit, whose rollout has been pushed out further each year, and we feel that it is OHP's responsibility to ensure that these ongoing projects have access to the state historic credit.

If TCAC and The Office of Historic Preservation (OHP) are concerned with an onslaught of state historic tax credit applications in this scenario, the TNDC team thinks this is unlikely. Per the NPS<sup>1</sup>, there was \$641 million in Qualified Rehabilitation Expenses (QREs) in federal historic tax credit projects in California in the past 5 fiscal years (2018-2022). On average, that equates to \$128 million per year, which would only translate to \$32 million per year in state historic tax credits (at the 25% rate). Since QREs in single-phased projects need to be incurred within a 24-month period, this means there is an approximate maximum of \$64 million in possible state historic tax credit demand if any projects under construction are allowed to apply. Furthermore, only a portion of the projects referenced above are affordable housing. If OHP were to limit the application to allow only affordable projects under construction to apply for the credit, the risk of a blitz on state historic tax credits is non-existent.

**3. Provide a preference to affordable housing projects applying for the state historic credit.** The TNDC team urges OHP to ensure a preference for 100% affordable housing projects applying for the state historic credits. The state historic tax credit presents a unique opportunity for qualifying rehabilitation projects to access much needed funds – and we believe that 100% affordable housing should be first in line.

**Case Study: the Yosemite Apartments (CA-22-056)**

Despite the difficult financing environment for acquisition/rehabilitation projects in recent years, TNDC has worked diligently to advance a handful of complex priority portfolio rehabilitations. These projects include the rehab of the Yosemite Apartments (480 Eddy Street), a 9% geographic tax credit and federal historic tax credit project that closed on March 23, 2023. The Yosemite Apartments is a 32-unit property in the heart of the Tenderloin. It was one of TNDC's original building acquisitions back in 1981 and this is its' first comprehensive rehab under our ownership.

By implementing the two requests TNDC outlined above – allowing projects under construction to apply for the state historic credit and providing a preference for affordable housing projects – OHP will nearly guarantee that affordable acquisition/rehab projects like the Yosemite can take advantage of this limited

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<sup>1</sup> <https://www.nps.gov/subjects/taxincentives/upload/report-2022-annual.pdf>





financing source.

It took TNDC many years and substantial effort to get the Yosemite under construction. Most recently, prior to moving forward as a 9% project, the Yosemite put in a failed bid at 4% credits and bonds as part of a scattered site project (Yosemite Folsom Dore) in Q3 2020 in the CDLAC Other Affordable pool. The Yosemite also narrowly missed the cut-off for AHSC funding in 2016.

The Yosemite's financing includes the federal historic tax credit. The Part II application was approved in September 2020. From the time that Governor Newsom signed SB451, the state historic tax credit bill, into law on October 9, 2019, TNDC intended to use the state historic credit at the Yosemite. The Yosemite's tax credit investor showed TNDC maximum flexibility by allowing the team the option to layer in state historic credits after the closing of construction financing due to the extended rollout timeline of the program.

TNDC's ability to move future portfolio rehabilitations forward depends on our ability to access the state historic tax credit for Yosemite, as well as our upcoming Sierra Madre Apartments project. One of the main drivers for TNDC's success in moving portfolio rehabs forward in recent years is the availability of \$14 million in cash-out excess proceeds created by the refinancing of our Turk and Eddy properties (the "Turk/Eddy Proceeds"). The TNDC team worked with the San Francisco Mayor's Office of Housing and Community Development (MOHCD) to craft a cash-out waiver request (that later served as the framework for MOHCD's cash out policy).

The Turk/Eddy Proceeds have served as the gap funding on all the rehab projects that TNDC put forth in recent years – so far, the Ambassador 9%, the Ambassador Ritz 4%, and the Yosemite Apartments. All projects that also utilized federal historic tax credits. Without the Turk/Eddy Proceeds, TNDC could not have moved these rehabs forward in today's financing climate.

However, the Turk/Eddy Proceeds are finite. Certain market conditions – such as increased interest rates, rising construction costs, escalation, and a decrease to HUD Fair Market Rents at the Ambassador – increase TNDC's draw on the Turk/Eddy Proceeds. Without state historic tax credits, the Yosemite will use between \$8.6 to \$9.1 million of the Turk/Eddy Proceeds, and there will be no Turk/Eddy Proceeds available for future TNDC rehabs. Our team very thoughtfully and carefully "made room" for state historic credits in the financing stack of the Yosemite Apartments with the goal of further stretching our hard-earned internal resources to continue improving the safety





and quality of the many historic properties in our portfolio to better serve our low-income residents.

**Conclusion**

TNDC remains serious about addressing the most critical rehabilitation needs in our portfolio. The ability of our projects under construction to access the state historic tax credit will allow us to continue this work.

We request that you please give this request careful consideration, and we are open to discussing any of these points with you and your team.

Sincerely,

Chris Cummings  
Director of Housing Development  
Tenderloin Neighborhood Development Corporation





June 16, 2023

California Office of Historic Preservation  
Attn: Aubrie Morlet  
1725 23rd Street, Suite 100  
Sacramento, CA 95816  
Via e-mail: [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)  
Email Subject: 4859 PUBLIC COMMENT

RE: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, State Historic Preservation Tax Credit Program

Dear Ms. Morlet:

Thank you for the opportunity to provide comments on the proposed regulations and procedures related to the State Historic Preservation Tax Credit Program. After reviewing the draft regulations and procedures, Downtown Railyard Venture, LLC, the Owner and Developer of the Sacramento Railyards, has prepared the following comments and requests for clarification.

*Comment*

Pursuant to Sub-section 4859.05(f) of the proposed Historic Preservation Certifications Under the California Revenue and Taxation Code, projects currently under construction or completed are not eligible to apply for the state tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.

We request that the State consider expanding eligibility to projects that have begun work or have completed construction. We request that this Sub-section be revised to align with 36 CFR 67.6(a)(1), which states that the tax credit application “may describe a proposed rehabilitation project, a project in progress, or a completed project.”

Revising this sub-section to align with 36 CFR 67.6(a)(1) would allow projects that have structured their financing to include the state tax credit and that have been anticipating implementation of the tax credit program since 2019 to take advantage of this much-needed funding.

3140 Peacekeeper Way  
McClellan, CA 95652

Phone: 916-965-7100  
Fax: 916-568-2764

---



*Requests for Clarification*

As described in Senate Bill No. 451, Chapter 703 and reiterated in the OHP's Initial Statement of Reasons pertaining to the historic preservation tax credit program, the tax credit will be allocated on a first-come-first-served basis.

We request clarification on whether this determination on allocation of the credits will be made upon receipt of OHP approval of the proposed rehabilitation or upon OHP approval of the completed project.

As described in Senate Bill No. 451, Chapter 703, Section 17053.91(i)(1): The aggregate amount of credits that may be allocated in any calendar year pursuant to this section and Section 23691 shall be an amount equal to the sum of all of the following: (A) Fifty million dollars (\$50,000,000) in tax credits for the 2021 calendar year and each calendar year thereafter, through and including the 2026 calendar year.  
(B) The unused allocation tax credit amount, if any, for the preceding calendar year.

We request confirmation that the tax credit will be cumulative from 2021 since they have been unused, meaning that there would be \$150M available in credits once OHP begins accepting applications.

Sincerely,



Denton Kelley  
Manager

Cc: Josh Leachman Frank Myers  
Amanda Frazier  
Jay Heckenlively

## Morlet, Aubrie@Parks

---

**From:** Office of Historic Preservation General Inbox  
**Sent:** Monday, June 19, 2023 8:39 AM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

---

**From:** Adam Markwood <[adam@wishneff.com](mailto:adam@wishneff.com)>  
**Sent:** Sunday, June 18, 2023 9:31 AM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>  
**Cc:** Kim Duncan <[kim@wishneff.com](mailto:kim@wishneff.com)>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [adam@wishneff.com](mailto:adam@wishneff.com). [Learn why this is important](#)

I am writing with a comment on the proposed California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5. My specific comment/suggestion is to §4859.05(f).

As that section is currently written, projects under construction would not qualify. Having worked on Historic Tax Credit (HTC) projects all over the country for over 15 years now, my experience is that this will result in many otherwise deserving projects not being able to benefit from the California HTC, even though they are meeting the intent of the program (i.e. renovating an historic building in a manner that complies with the Secretary's Standards, thereby preserving the history for future generations to enjoy).

For example, many tax-exempt entities that are renovating historic buildings incorrectly assume they cannot benefit from federal/state HTC programs, and thus begin construction without contemplating/pursuing HTCs are part of their funding sources. We have had dozens of clients like this (including theaters, museums, community centers, etc.), where we approached them during the construction project and informed them that they are in fact complying with the federal and respective state HTC program requirements, and thus are entitled to the benefits of the programs. These projects then were able to access and realize the benefit of the HTC programs to which they were entitled, because their projects met all of the physical and legal/financial

requirements. As this section 4859.05(f) is currently written, this could not happen, and many otherwise deserving projects would lose out on the ability to use the California HTC.

I'm not sure the intent of this language, (i.e. what problem is it trying to fix), but it seems to me the simplest solution would be to eliminate the language altogether. That said, another approach might to only contemplate *completed* projects being ineligible for the program (a reasonable position for the state to have). That language may look something like this:

*(f) Completed projects are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.*

I appreciate your consideration of my comment and I would be happy to get on a call to discuss, if that would be helpful.

Thanks again,

Adam Markwood

Director of Investments

Brian Wishneff & Associates

30 W. Franklin Rd, Suite 503

Roanoke, Virginia 24011

c. 540-520-6902

[www.wishneff.com](http://www.wishneff.com)

June 19, 2023

Aubrie Morlet  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
email: [info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)

RE: "4859 PUBLIC COMMENT"

Dear Ms. Morlet,

Thank you for the opportunity to provide comments on the proposed California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5 which provides the Office of Historic Preservation the authority and discretion to regulate the State Historic Preservation Tax Credit Program in conjunction with the California Tax Allocation Committee. These written comments are in addition to our verbal comments which were relayed at the public hearing of May 31, 2023.

**Page & Turnbull** was established in 1973 to provide architectural and preservation services for historic buildings, resources, and civic areas. We were one of the first architecture firms in California to dedicate our practice to historic preservation. Our practice emphasizes the re-use of existing buildings through the assessment and treatment of the most significant architectural and historical spaces and elements while incorporating the thoughtful application of new design. We ensure that projects comply with the *Secretary of the Interior's Standards for Rehabilitation* for local, state, and federal agency review.

Our longtime experience has consistently proven that historic tax incentive programs can provide the often-crucial working capital required for clients to successfully realize their projects. We are thrilled that California joins 35 states in providing incentives for investment in local economies and the rehabilitation of historic buildings. We understand the proposed regulations' purpose is to facilitate the rehabilitation and reuse of public and private historic resources as determined through conformance with the *Secretary of the Interior's Standards for Rehabilitation*. Our staff has reviewed the proposed regulations and have recommendations specific to the following sections:

- 1) *§4859.04. Certifications of historic significance.*
  - (a) *A building must be listed on the California Register at the time of the tax credit application submittal. Buildings not yet listed are not eligible for the credit.*

We are aware the Office of Historic Preservation is in an ongoing effort to help preserve and tell the full story of California including the stories of underrepresented communities. Recent new historic context statements have been developed with associated communities and organizations and include for example, "Latinos in Twentieth Century California," "Asian Americans and Pacific Islanders in California 1850-1950," and "Native Americans and the California Mission System."

We therefore recommend that §4859.04.(a) be revised to allow for an owner to request certification of historic significance, as determined by a qualified preservation professional, that a) property not yet listed on the California Register appears to meet California Register criteria; or that b) a property located within a potential California Register historic district appears to contribute to the significance of such district.

To promote and tell the full story of California and to increase the number of recognized historic properties significant to underrepresented communities, we believe it is important to allow for properties not yet listed in the California Register to be eligible to apply for state historic preservation tax credits. Historic preservation tax incentives generate jobs, enhance property values, create affordable housing, and can restore vacant or underutilized schools, warehouses, factories, apartments, churches, farms, to name a few, therefore meaningfully impacting communities that otherwise may have limited resources or have been disenfranchised.

We recommend that the State regulations align with the *federal 36 CFR § 67.4 Certifications of historic significance*, thereby allowing, for example, for applications for preliminary determinations for individual listing in the California Register.

2) § 4859.03. *Certifications of significance, rehabilitation, and information collection.*

*(b)How to apply:*

*A) The Initial Project Application shall be used to confirm a certification of historic significance, request approval of a proposed rehabilitation project, and qualify for an allocation of the state tax credit. Information requested in the application is required to obtain a benefit.*

The Legislature has stated that when used in conjunction with the federal historic preservation tax credits, state historic rehabilitation tax credits prove to be an important financial incentive for reinvestment in the historic cores of communities. To ensure the reinvestment in historic core communities, the regulations should therefore promote the dual-use or coupling of the new state historic preservation tax credits with the federal historic preservation tax credits.

We recommend the state application process be streamlined and user-friendly, thereby inspiring the dual use of and application for both state and federal incentives. This is especially important, given

there is an anticipated state project cap as outlined in the proposed CTAC regulations and given the state program is also first-come, first-served. These parameters result in an uncertainty of the needed additional capital to bring projects to fruition.

We recommend dual federal and state applicants utilize a simplified Initial Application form that initiates the application for California historic preservation tax credit review, resulting in one submission package for both federal and state review.

In addition, a nominal fee to OHP is recommended for all state applicants. Given the uncertainty of an allocation at the outset, a nominal fee lessens the upfront financial burdens on projects, which may otherwise deter certain applicants.

In conclusion, with the above revisions, we feel the California historic preservation tax credit program can stimulate economic activity in all communities of California ensuring its full story is preserved.

Please take these comments into consideration when making any adjustments to the final regulations.

Regards,

A handwritten signature in blue ink, appearing to read "J. Hembree", with a long, sweeping flourish extending to the right.

Jennifer F. Hembree  
Cultural Resources Planner

Cc: H. Ruth Todd, FAIA, AICP, LEED AP  
Principal



## Memorandum

Date 19 June 2023  
Project California Historical Tax Credits  
To Aubrie Morlet  
From Frederic Knapp, AIA  
Topic Proposed Tax Credit Regulations  
Copied Mark Huck  
Via Email

Thank you for moving the state tax credit program forward. I would like to submit the following questions about the proposed regulations:

What happens if NPS approves a project or an aspect of a proposed project for federal credits and OHP rejects it? It would be helpful to state in 4859.06 (g) whether a successful appeal of staff denial at the federal level can nevertheless leave a project denied at the state level.

Do all the NPS regulations and practices for tax credit applications, including ones from projects in other states, apply to the state credits? For example, federal tax credit projects must provide finished floor, wall, and ceiling surfaces inside a building—will this and similar requirements apply to the state credits?

It would be helpful to explain the relationship between the federal Part 1, 2, and 3 applications and the State Initial Project Application and Completed Project Application—especially if any of the state or federal forms can be used interchangeably.

It would be informative if OHP could explain how paragraph 4859.05 (f) is intended to work. Because state tax credits will be allocated by CTCAC on a specific date, instead of on a rolling basis as the federal credits are approved, wouldn't project sponsors who need to proceed with construction without waiting to see whether their projects will receive allocations from CTCAC—but who also want state credits—have an incentive to apply for a phased project, begin construction, and then include all future phases in their applications for the California credit?

Does paragraph 4859.05 (i) mean that properties that are contributors to districts will be reviewed as if they were individually eligible, such that changes which would have little or no effect on the district (for example, alteration of the interior or of exterior features not visible from

public vantage points in the district) which might be allowed for federal tax credit projects may not be allowed under the state credits?

It would be helpful to have additional explanation of the phrase economic feasibility where Paragraph 4859.06 (b) says the Standards shall be applied in a reasonable manner “taking into consideration economic...feasibility.” Paragraph (d) which follows seems to mean that economic feasibility is taken into account only if the proposed project conforms to the Standards without consideration of economic factors. It might help to clarify whether economic factors will be treated differently for the state program from the way they are treated for federal tax credits.

It would be helpful to confirm in Section 4859.08 whether fees paid for an application that is approved by OHP but which reaches CTCAC after the available tax credits have been allocated to other projects can be refunded or applied to the next round of allocations by the Legislature.





Equity Community Builders (ECB) is a San Francisco based real estate developer, financing consultant and project manager founded in 1994 that specializes in in-fill residential, commercial, and historic rehabilitation projects in Northern California. ECB's three core business lines include financing consulting services including Historic Tax Credit (HTC) and New Market Tax Credit (NMTC) consulting, development for our own account and development management/project management for others. Since 2006, we have structured and closed 11 HTC and 35 NMTC transactions totaling over \$640 million in qualified equity investments. Our role as tax credit consultant includes structuring of the financing, identifying investors, selecting consultants, leading the due diligence process, facilitating the close of tax credit financing, and assisting with tax credit reporting throughout the compliance period.

ECB is submitting the following comments to the proposed state regulations for the California State Historic Rehabilitation Tax Credit

**§4859.04(a) – A building must be listed on the California Register at the time of the tax credit application submittal. Buildings not yet listed are not eligible for the credit.**

Confirmation that buildings determined eligible for listing, but not yet listed, are eligible to apply for state HTC mirroring the federal HTC program. Confirmation that a building on the National Register is automatically listed in the California Register. Confirmation that contributing buildings to a District are also eligible for the state register.

**§Section 4859.05(f) - Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.**

Confirm that projects under construction are permitted under the CA State HTC program mirroring the Federal HTC program for unphased work.

**Section 4859.05(l) - Applicants must commence rehabilitation within 180 days after issuance of the tax credit allocation. If rehabilitation is not commenced within this time period, the tax credit allocation shall be forfeited, and the credit amount associated with the tax credit allocation shall be treated as an unused allocation tax credit amount.**

Define issuance of tax credit allocation



General –

What is the timeframe and process to approve tax credit allocation once an application has been submitted?

Will applications be ranked by an established priority or determined by application receipt date (first come first serve)?

Is there a maximum tax credit allocation amount per application?

Will the full amount of credits requested in an application be awarded, or will partial amounts be distributed?

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, June 20, 2023 3:45 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT  
**Attachments:** CA.HistoricTaxCredit.6.20.23.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

---

**From:** Christine Madrid French <cfrench@sfheritage.org>  
**Sent:** Tuesday, June 20, 2023 3:43 PM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Cc:** Woody LaBounty <wlabounty@sfheritage.org>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [cfrench@sfheritage.org](mailto:cfrench@sfheritage.org). [Learn why this is important](#)

ATTN: Aubrie Morlet, California Office of Historic Preservation

Hello,

Please see attached and below for our comment regarding California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5.

\*\*

San Francisco Heritage is a nonprofit 501(c)(3) whose mission is to preserve and enhance San Francisco's unique architectural and cultural identity. Since 1971, we have protected the city in the face of rapid change. Our work includes advocacy for historic resources, educational programming, and the preservation and interpretation of two landmark properties.

We are writing today to comment on the proposed California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, to provide OHP the authority and discretion to regulate the State Historic Preservation Tax Credit Program in conjunction with the California Tax Allocation Committee.

SF Heritage is supportive of the California State Historic Tax Credit. However, we echo the sentiments of our colleagues by requesting greater flexibility in the regulations and utilizing the well-established and successful federal historic credit program as a model for California.

We encourage further clarification of the regulations, and in particular the following:

- Buildings determined eligible for listing, but not yet listed, should be eligible to apply for the state HTC (mirroring the federal HTC program);
- Clarification that buildings on the National Register are automatically listed in the California Register, including contributing buildings within a listed district;
- Projects under construction are permitted for access the CA State HTC program (mirroring the Federal HTC program for unphased work);
- Better definition of the method of ranking applications (whether by established priority or determined by application receipt date, for example);
- Definition of the timeframe and process to approve the tax credit allocation once an application has been submitted
- Framework for awarding of the credits (in full amount requested or partial amounts for distribution, for example).

Thank you for your attention to this matter and for the opportunity to comment.

\*\*

Christine French

*Christine Madrid French*  
*Director of Advocacy, Programs & Communications*

SAN FRANCISCO HERITAGE | [SFHeritage.org](https://sfheritage.org)  
On Unceded Ramaytush Ohlone Land  
415-228-7117 (cell) | 415-441-3000 (office)  
[cfrench@sfheritage.org](mailto:cfrench@sfheritage.org)

June 20, 2023

Aubrie Morlet  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816

RE: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5

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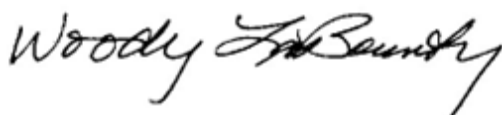
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- Clarification that buildings on the National Register are automatically listed in the California Register, including contributing buildings within a listed district;
- Projects under construction are permitted for access the CA State HTC program (mirroring the Federal HTC program for unphased work);
- Better definition of the method of ranking applications (whether by established priority or determined by application receipt date, for example);
- Definition of the timeframe and process to approve the tax credit allocation once an application has been submitted
- Framework for awarding of the credits (in full amount requested or partial amounts for distribution, for example).

Thank you for your attention to this matter and for the opportunity to comment.



Woody LaBounty  
President & CEO

June 20, 2023

Aubrie Morlet  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816

RE: California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5

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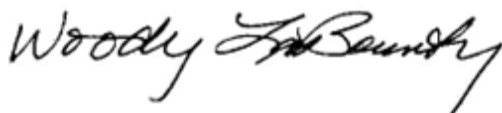
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- Clarification that buildings on the National Register are automatically listed in the California Register, including contributing buildings within a listed district;
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- Definition of the timeframe and process to approve the tax credit allocation once an application has been submitted
- Framework for awarding of the credits (in full amount requested or partial amounts for distribution, for example).

Thank you for your attention to this matter and for the opportunity to comment.



Woody LaBounty  
President & CEO

CAPITOL OFFICE  
1021 O STREET, SUITE 6610  
SACRAMENTO, CA 95814  
TEL (916) 651-4024  
FAX (916) 651-4924

DISTRICT OFFICE  
2512 ARTESIA BLVD., SUITE 320  
REDONDO BEACH, CA 90278  
TEL (310) 318-6994  
FAX (310) 318-6733

WWW.SENATE.CA.GOV/ALLEN  
SENATOR.ALLEN@SENATE.CA.GOV

# California State Senate

SENATOR  
BEN ALLEN

TWENTY-FOURTH SENATE DISTRICT



COMMITTEES  
ENVIRONMENTAL QUALITY, CHAIR  
ELECTIONS & CONSTITUTIONAL AMENDMENTS  
JUDICIARY  
NATURAL RESOURCES & WATER  
TRANSPORTATION  
JOINT COMMITTEE ON THE ARTS, VICE-CHAIR  
ENVIRONMENTAL CAUCUS, CO-CHAIR

June 20, 2023

California Office of Historic Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

To Whom It May Concern,

I write to urge your consideration of a modification to proposed regulations for implementing SB 451 (Chapter 703, Statutes of 2019), specifically §4859.05(f). Your draft language states:

Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.

The historic preservation tax credits offered by SB 451 of 2019 were clearly intended to support iconic rehabilitation projects like the one underway at the Capitol Records Tower Building in my district. Yet the proposed §4859.05(f) raises serious concerns regarding the eligibility of rehabilitation projects begun after January 1, 2021 (the effective date of SB 451 of 2019), but prior to the submission of an application for the tax credits authorized by that law.

Since its construction in the 1950s, the Tower has been an iconic Hollywood landmark where some of the world's most famous artists have recorded their work. The Tower, the world's first circular office building, still operates as the west coast headquarters of Capitol Records and it is an important fixture of the entertainment industry. Following the 2015 passage of City Ordinance 183893, which requires reinforced concrete buildings built before 1977 to undertake structural seismic upgrades, the Tower Building began a lengthy rehabilitation effort. The project has been meeting deadlines well ahead of required timeframes.

Under your proposed regulations, the Tower Building would not qualify for the tax credits. We believe this is an error, as the nature of a historic building's structural condition and business occupancy considerations that necessitate proactive and timely rehabilitation should not disqualify such a project for historic tax credits. We urge you to modify §4859.05(f) of the proposed regulations as such:

Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021, are eligible to apply for the State tax credit.

Thank you for your consideration of this important request. If you have any questions regarding this letter, please do not hesitate to contact my office at [senator.allen@senate.ca.gov](mailto:senator.allen@senate.ca.gov) or (310) 318-6994.

Sincerely,

A handwritten signature in black ink that reads "Ben Allen".

BEN ALLEN  
Senator, 24<sup>th</sup> District

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, June 20, 2023 4:57 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Tara Hamacher <Tara@HistoricConsultants.com>  
**Sent:** Tuesday, June 20, 2023 4:43 PM  
**To:** Office of Historic Preservation General Inbox <info.calshpo@parks.ca.gov>  
**Cc:** Tara Hamacher <tara@historicconsultants.com>  
**Subject:** 4859 PUBLIC COMMENT

You don't often get email from [tara@historicconsultants.com](mailto:tara@historicconsultants.com). [Learn why this is important](#)

Attn: Aubrie Morlet

RE: The California Office of Historic Preservation (OHP) seeks public comment on proposed California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5, to provide OHP the authority and discretion to regulate the State Historic Preservation Tax Credit Program in conjunction with the California Tax Allocation Committee.

The regulation's purpose is to facilitate the rehabilitation and reuse of public and private historic resources as determined through conformance with the Secretary of the Interior's Standards for Rehabilitation. The public review period is now open until June 20, 2023.

**4859.02 - Definition of Key Terms.** Section (l) (1 & 2). Should there not also be a definition for "commercial" as well as residential? This section address's non-profits and residential, but leaves commercial silent. Additionally, should the description in (2) include "interior" as well as "exterior" as currently described?

**4859.02 - Definition of Key Terms.** Section (m). What about a property that is a contributor to a National Register District? I believe that would make a resource automatically listed in the California Register, but the general public doesn't understand this and it might be helpful to just say "California Register and National Register".



**4859.03 - Certifications of significance, rehabilitation, and information collection.** (a ) Who may apply (b) How to apply:

For the title to the section, the words "information collection" is implied and I don't think its necessary in the title. The application will have project data as typical. Title could read, "Certifications significance and scope of work"

In section (b) How to apply: This section is confusing to read. I believe the goal is to mirror the 20% federal NPS process. If we are going to be allowed to use Part 1, 2, 3 forms and not have to duplicate State applications then the process and forms should be described the same.

**(b) (1)** The text "state tax credit application" is to vague. This could be mistaken for housing tax credits. It should be defined better **"20% state rehabilitation tax credit for historic properties"**.

**(b) (2)** The text "Initial Project Application and a Completed Project Application" description is vague. As mentioned above is this a Part 1, 2, 3? This only describes two phases.

**(b) (2) (A)** The text "Initial Project Application" is as stated above re: name of application. Last sentence *"Information requested in the application is required to obtain a benefit"* What does this mean? Clarify or delete sentence. A Part 2 application by nature would be a full description of the project and again if it follows the federal process the correspondence and approval / denial process would also follow the same.

**(b) (2) (B)** The text "Completed Project Application" is a mentioned above for description of application.

"and verify the final qualified rehabilitation expenditure". Will there be a new form for this? Again if following the NPS process, the Part 2 form has the QRE's on cover page. If you need QRE estimate at end of construction this should be spelled out better. Most developers are not prepared to give the QRE's at the Part 3 application as the cost certification the accountants do is on a separate track by this time in the project. If a new form is required, then that should be provided upfront and described better in the regulations as it will likely need job count numbers or other data for capture for the CACTC committee reports if that is the goal of this data.

**4859.03 - Certifications of significance, rehabilitation, and information collection.**

section (c) *"State tax credit applications are available from the OHP on the OHP website."* Continues to discuss submission process. This section talks about applications are available, and then goes on to list 3 other criteria that will be required, but technically the title is also a criteria.

How about **"section (c) 20% state rehabilitation tax credit application process"**.

(1) *applications are available from the OHP on the OHP website [www.](http://www.)*

(2) *application must be submitted electronically. etc.....*

(3) *when adequate documentation is not provided.....etc* "A review period longer than expected does not waive or alter any certification requirement." - You have not defined any time frames in this document. Should there be some if you are going to say you can't be held to them? Again will this mirror the federal process?

(4) *"Applicants must submit confirmation of listing on the California Register with a the description of the proposed project as part of their Initial Project Application. Reviews will not be processed until the property is confirmed as listed in the California Register."* - As mentioned earlier about accepting listing on the National Register, this should be added here as additional qualifying criteria. You should also list where people can get this information because people have no idea where to look this up. OHP needs to list how the general public can look this up so they don't get a ton of calls / inquiry requests. Direct people to their local planning department perhaps? Use the local authority as a point of

reference as the property owner is likely coordinating with them anyway on plan review and permits and this would be a way of leveraging city staff to help OHP.

#### *4859.04 Certifications of historic significance.*

(a) "A building must be listed on the California Register.".... If mirroring the Part 1 application then it wouldn't be listed yet. Add wording for this.

(b) "considered a certified historic structure or a qualified residence"..... what about commercial? or is that a historic structure?

(b)(2) last sentence.... "the applicant must submit additional information as described in the Initial Application" - the description is vague and the term initial application should match the title as mentioned above, ex. Part 2?

(e) I see in this paragraph that the term "**State Historic Rehabilitation Tax Credit**" was used to describe program. This was my comment above and just wanted to mention that this is the first place its described like this and what I think should be corrected throughout the document.

#### *4859.05 Project commencement, completion, and certification*

(f) "Projects in construction or completed are not eligible to apply for the State tax credit except in the case of project also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun." - I do not think this should be different then the federal process. It is always at the owners risk that they start the project, but this State program is very slow to roll out and a project cannot stop because they are applying for the potential to get State tax credits. This rule is very unfair and should be stricken in its entirety and again should follow the federal regulations.

(g) correct wording of "Initial Project Application" based on what is decided for title of application.

(j) correct wording of "Initial Project Application" based on what is decided for title of application.

(j) (1) This paragraph is confusing to read. I think you are trying to say that work undertaken within the 5 year compliance period that is not reviewed or approved may result in a denial..... if that is the case, try rewording to be more clear like the federal NPS wording.

(j) (3) "an advisory determination" - what is an advisory determination? now where else is this spelled out and it basically reads that a single issue can't be reviewed without knowing the overall context of the project. If that is the case try rewording.

(l) "*Applicants must **commence** rehabilitation within 180 days after issuance of the tax credit allocation. If rehabilitation is not commenced within this time period, the tax credit allocation shall be forfeited, and the credit amount associated with the tax credit allocation shall be treated as an unused allocation tax credit amount.*" - This is very problematic and needs to be revised. What does "**commenced**" mean? This needs to be clear upfront and there should be extension language built in upfront that would allow an applicant to update and provide reasoning for not being "commenced" or under construction. Applicants often need this money to close on their financing and to expect the lenders and everyone to be complete 180 days from what OHP and the CTCAC approve a project is not reality in this market. Perhaps other States like Ohio that have a policy that works could be looked at.

(n) "Complete Project Application" - Update with title as chosen.

#### **4859.06 Standards for Rehabilitation**

(g) update wording of program to "***State Historic Rehabilitation Tax Credit***"

**4859.07 Appeals**

This section needs to acknowledge the NPS appeal process and mirror this process on the State level if Federal credits are being applied in tandem. State only can have some deviation but again should be consistent.

**4859.08 Fees for processing certification requests**

I suggest that fees should be set in QRE range like NPS does because if you base you fee off of QREs you will not be able to predict revenue very well, applicants also cannot predict the application fee, and you may find you are not charging enough money to fund the necessary item OHP needs from the program. It should also be easy for staff to process. The estimates outlined in (a)(1 - 8) are confusing and to technical in nature.

Payments should be able to be made by credit card and this should be mentioned.

Thank you for the opportunity to contribute to the public comment period to make the program better. Please feel free to reach out if I can be of further assistance.

--

Best regards,

Tara J. Hamacher  
President

Historic Consultants

[www.HistoricConsultants.com](http://www.HistoricConsultants.com)

256 S. Robertson Blvd, # 2401 | Beverly Hills, CA 90211

213-379-1040 cell | [tara@historicconsultants.com](mailto:tara@historicconsultants.com)

June 20, 2023

To: California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, California 95816  
Attention: Aubrie Morlet  
Email: info.calshpo@parks.ca.gov

Re: 4859 Public Comment

This comment relates to Section 4859.05(f) of the Proposed Regulations<sup>1</sup> which states:

*(f) Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.*

Specifically, the concern with such section, as raised by several of the speakers at the May 31, 2023 public hearing before the Office of Historic Preservation, is the ineligibility of Rehabilitation projects (or the applicable phase of such project) commenced after January 1, 2021 (i.e., the effective date of the HTC Law (as defined below) but prior to the submission of an application for the tax credits (“Historic Tax Credits”) authorized by California Senate Bill 451 passed during the 2019-2020 legislative session (as amended, the “HTC Law”). The stated intent of the HTC Law is to allow for an allocation of Historic Tax Credits for Qualified Rehabilitation Expenditures for projects undertaken from and after January 1, 2021 through December 31, 2026, and upon a \$50,000,000 appropriation for the Historic Tax Credits for the 2021-2022 budget year, taxpayers justifiably relied on the availability of Historic Tax Credits in undertaking Qualified Rehabilitation Expenditures. The fact that an historic building’s structural condition and business occupancy considerations necessitated commencement of an appropriate historically sensitive Rehabilitation project prior to the adoption of final regulations, but which was commenced in anticipation of, and reliance on, the availability of Historic Tax Credits, should not prevent the allocation of (or application for) Historic Tax Credits which would otherwise qualify for such tax credits. Such a prohibition was not contemplated or intended by the HTC Law, and the impact of such prohibition is arbitrary as the same is only a consequence of the delay (i.e., in excess of 4 years after the passing of the HTC Law) in the promulgation of regulations. Conversely, by allowing projects which commenced construction during the period intended to be covered under the tax credit law, i.e., 2021 through 2026, to receive Historic Tax Credits, the stated purposes of the HTC Law – that is, the preservation and restoration of Certified

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<sup>1</sup> Capitalized terms used herein have the meanings ascribed to such terms in the Officer of Historic Preservations Proposed Text of Regulations, Title 14, Division 3, Chapter 11.5, New Section 4859 (the “Proposed Regulations”), unless the context indicates otherwise

Historic Structures, the continued viability of income-producing properties and the incorporation of Rehabilitated historic properties as economic drivers in underserved communities – will be advanced in a manner consistent with the intent and objectives of the HTC Law. Further, numerous municipalities in California have mandated improvements to historic structures in order to address seismic vulnerability concerns – and the availability of Historic Tax Credits to fund Rehabilitation expenditures undertaken prior to the finalizing of the application process to address such concerns advances the goal of such public policy.

The proposed Section 4858.05(f) – that projects which have commenced prior to the submission of an application are not eligible for Historic Tax Credits — contradicts the language, and certainly the intent, of the HTC Law. As indicated by Section 4859.05(l) of the Proposed Regulations (which requires commencement of rehabilitation within 180 days after the issuance of the tax credit allocation), there is a stated desire for the expeditious undertaking of Rehabilitation projects. As such, Section 4859.05(f) of the Proposed Regulations should be modified to allow eligibility for Rehabilitation projects which were commenced after January 1, 2021, without regard to whether such projects were commenced prior to the submission of an application, as follows:

*(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021 are eligible to apply for the State tax credit.*

As modified above, the thoughtful and detailed criteria set forth in the Proposed Regulations – such as compliance with federal Standards for Rehabilitation and approval of the applicant project by OHP (including confirmation that the historic qualities and integrity of historic structures will be maintained) - will still ensure that only appropriate projects commenced after January 1, 2021 will qualify for an allocation of Historic Tax Credits.

Thank you,

Scott Landman

To: California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, California 95816  
Attention: Aubrie Morlet  
Email: info.calshpo@parks.ca.gov

Re: 4859 Public Comments

## **COMMENTS OF UNIVERSAL MUSIC GROUP**

Universal Music Group (“UMG”) submits comments as it relates to Section 4859.05(f) of the Proposed Regulations<sup>1</sup> which states:

*(f) Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.*

### **Introduction**

Universal Music Group is the world leader in music-based entertainment, with a broad array of businesses engaged in recorded music, music publishing, merchandising and audiovisual content. Featuring the most comprehensive catalogue of recordings and songs across every musical genre, UMG identifies and develops artists and produces and distributes the most critically acclaimed and commercially successful music in the world. Committed to artistry, innovation and entrepreneurship, UMG fosters the development of services, platforms, and business models in order to broaden artistic and commercial opportunities for our artists and create new experiences for fans.

As a business with strong connections to California, UMG is proud to be the tenant, and conscientious steward, of the iconic Capitol Records Tower (“the Tower”) located in Downtown Hollywood. Since 1956, musical legends from Frank Sinatra to Nat King Cole, from the Beatles to the Beach Boys, from Tina Turner to Katy Perry, from Sam Smith to Beck, and countless more have recorded albums in the Tower. In 2006, the Tower was designated by the LA Cultural Heritage Commission as an Historic Cultural Monument and continues to contribute to the State’s vibrant entertainment industry and economy. As mandated by the Division 95, Article 1, Chapter IX of the Los Angeles Municipal Codes, UMG (with its partner) began planning seismic upgrades to the Tower in 2015 and commenced retrofit work of the historical building in early 2023.

UMG offers the following comments to address proposed Section 4859.05(f), and the eligibility of Rehabilitation projects which commenced construction during a period intended to be covered under the tax credit law to receive Historic Tax Credits.

### **Comments**

During the public hearing before the Office of Historic Preservation (“OHP”) on May 31, 2023, several groups raised issue with the proposed Section 4859.05(f) for disqualifying Rehabilitation projects commenced after January 1, 2021 but prior to the submission of an application for the tax credits (“Historic Tax Credits”) authorized by California SB-451 (“the HTC Law”). UMG shares similar concerns

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<sup>1</sup> Capitalized terms used herein have the meanings ascribed to such terms in the Officer of Historic Preservations Proposed Text of Regulations, Title 14, Division 3, Chapter 11.5, New Section 4859 (the “Proposed Regulations”), unless the context indicates otherwise.

with such section, considering the intent of the HTC Law is to allow for an allocation of Historic Tax Credits for Qualified Rehabilitation Expenditures for projects undertaken from and after January 1, 2021 through December 31, 2026, and upon a \$50,000,000 appropriation for the Historic Tax Credits for the 2021-2022 budget year, businesses justifiably relied on the availability of Historic Tax Credits when undertaking Qualified Rehabilitation Expenditures.

As a Certified Historic Structure, the Tower's structural condition and business occupancy considerations necessitated immediate commencement of an appropriate and historically sensitive Rehabilitation project prior to the adoption of final regulations. The Rehabilitation project was commenced in anticipation of, and reliance on, the availability of Historic Tax Credits, and should not be precluded the application for Historic Tax Credits which would otherwise qualify for such tax credits.

Moreover, the proposed Section 4859.05(f)—that projects which have commenced prior to the submission of an application are not eligible for Historic Tax Credits—contradicts the language, and certainly the intent, of the HTC Law. As indicated by Section 4859.05(l) of the Proposed Regulations—which mandates commencement of rehabilitation within 180 days after the issuance of the tax credit allocation—there is a stated desire for the expeditious undertaking of Rehabilitation projects.

For these reasons, we urge OHP to modify Section 4859.05(f) of the Proposed Regulations to allow eligibility for Rehabilitation projects which were commenced after January 1, 2021, without regard to whether such projects were commenced prior to the submission of an application, as follows:

*(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021 are eligible to apply for the State tax credit.*

As modified above, the standards set forth in the Proposed Regulations—such as compliance with federal Standards for Rehabilitation and approval of the applicant project by OHP (including confirmation that the historic qualities and integrity of historic structures will be maintained)—will still ensure that only appropriate projects commenced after January 1, 2021 will qualify for an allocation of Historic Tax Credits.

Thank you for the opportunity to submit comments in this important matter.

## Morlet, Aubrie@Parks

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**From:** Office of Historic Preservation General Inbox  
**Sent:** Tuesday, June 20, 2023 2:34 PM  
**To:** Morlet, Aubrie@Parks  
**Subject:** FW: 4859 PUBLIC COMMENT  
**Attachments:** OHP State HTC Comment Group Letter 6.20.23 Signed.pdf

Monica Newman  
Executive Secretary  
California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816  
916-445-7000  
[Monica.Newman@parks.ca.gov](mailto:Monica.Newman@parks.ca.gov)  
[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

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**From:** Wilcox, William (MYR) <[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)>  
**Sent:** Tuesday, June 20, 2023 12:44 PM  
**To:** Office of Historic Preservation General Inbox <[info.calshpo@parks.ca.gov](mailto:info.calshpo@parks.ca.gov)>; Polanco, Julianne@Parks <[Julianne.Polanco@parks.ca.gov](mailto:Julianne.Polanco@parks.ca.gov)>  
**Cc:** J.T. Harechmak <[jt@nonprofithousing.org](mailto:jt@nonprofithousing.org)>; Christine Anderson <[Christine.Anderson@mercyhousing.org](mailto:Christine.Anderson@mercyhousing.org)>; Rich Ciraulo <[RCiraulo@mercyhousing.org](mailto:RCiraulo@mercyhousing.org)>  
**Subject:** 4859 PUBLIC COMMENT

Some people who received this message don't often get email from [william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org). [Learn why this is important](#)

Dear California Office of Historic Preservation Staff and State Historic Preservation Officer Polanco,

On behalf of the San Francisco Mayor's Office of Housing and Community Development, the Nonprofit Housing Association of Northern California, and Mercy Housing California, I am attaching a comment letter on the proposed regulations for the State Historic Tax Credits. The current regulations as written will negatively impact existing affordable housing projects that were financially reliant on state tax credits being available. These projects assumed they would be able to access the credits based on statements from TCAC and OHP about the timing of the credits. Given the small number of high priority affordable housing projects impacted, we are hopeful you will accordingly adjust the regulations.

Please feel free to reach out to myself or others copied here if you have any questions.

Best,

William

William Wilcox  
Tax-Exempt Bond Program Manager  
Mayor's Office of Housing & Community Development  
1 South Van Ness Avenue, 5th Floor San Francisco, CA 94103  
[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)





6/1/2023

Dear State Historic Preservation Officer Polanco, OHP Staff and TCAC Staff,

On behalf of the undersigned organizations we would like to comment on the Office of Historic Preservation's (OHP) proposed regulations on State Historic Tax Credits (Section 4859). We have shared similar comments with the California Tax Credit Allocation Committee (TCAC) and will forward these comments to them as well.

We overall believe these regulations will greatly support the rehabilitation of historic affordable housing projects across California. However, there is one issue based on the timing of these regulations that we would like to see addressed through a small regulation change:

*Section 4859.05(f): Project commencement, completion and certification*

This section currently requires that all projects complete their initial application for State Historic Tax Credits before any rehabilitation or other construction work has begun. We would request that the additional sentence is included at the end of §4859.05(f):

*Projects will also be eligible to apply if they are for deed restricted affordable housing that qualifies for Low Income Housing Tax Credits and have already been approved for Federal Historic Tax Credits by OHP and NPS as of 12/31/2023 but have not yet received an approved Part III application from OHP and NPS as of 3/1/2023.*

This aligns with the statement of reason for section 4859.05 which notes that the procedures should "align with the federal process in order to avoid duplication of effort by applicants." The Federal Historic tax credit program allows for projects to apply at any time before the project is completed/Placed In Service. This is also the case for 29 other states that have State Historic Tax Credits, which constitutes the vast majority of state programs (over 80%). We would ask that OHP align with Federal and other State programs to allow for this flexibility, either ongoing or simply for projects currently in process, which is the impact of the language included above.

The proposed change is a narrow exception for badly needed affordable housing projects that expected State Historic Credits to be available in time for their construction based on the timing of the original legislation and earlier communication from OHP and TCAC. After surveying a large number of affordable housing organizations – we believe there are only three to four affordable housing projects already in construction in the entire state that would be pursuing these credits. These projects expected State Historic Tax Credits would be available based on the timing of the original legislation and have made financial decisions accordingly. Each project is also receiving Federal Historic Tax Credits and thus has already been reviewed and approved by OHP. Given the small number of projects, the high priority for funding affordable housing, and

that OHP has already reviewed these projects for compliance under the Federal program, we would ask that these projects be grandfathered in and allowed to apply for State Historic Tax Credits while in construction.

Thank you for the opportunity to comment and we look forward to continuing the work of housing all Californians. Please let us know if we can clarify any of our points or provide any additional information.

Sincerely,

*William R Wilcox*

San Francisco Mayor's Office of  
Housing and Community Development  
William Wilcox  
Tax-Exempt Bond Program Manager  
[william.wilcox@sfgov.org](mailto:william.wilcox@sfgov.org)



Mercy Housing California  
Ed Holder  
Vice President  
[eholder@mercyhousing.org](mailto:eholder@mercyhousing.org)



Non-Profit Housing Association of Northern California (NPH)  
J.T. Harechmak  
Policy Manager  
[jt@nonprofithousing.org](mailto:jt@nonprofithousing.org)



June 20, 2023

California Office of Historic Preservation  
Attn: Aubrie Morlet  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

One International Place  
100 Oliver Street  
Suite 1840  
Boston, Massachusetts 02110  
Main 857.362.7522  
Fax 781.791.2626

[www.ryan.com](http://www.ryan.com)

Re: Comments on California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5

To Whom It May Concern:

I am providing comments on the above noted regulations. I am the Principal of the Historic Tax Credit group at Ryan. Our group includes thirty-five plus practitioners all meeting the Secretary of the Interior Standards for Architectural History. We have worked on thousands of projects across the country including in the state of California. I have been involved with the historic tax credit industry for 19 years and prior to that was a preservation advocate for 10 years. I believe that the historic tax credit programs around the country and at the federal level are the greatest tools for saving our countries historic built environment as well as generating significant economic development and contributing to efforts to battle climate change through the retention of embodied carbon.

As a historic consultant, preservation advocate and vice chair of the Historic Tax Credit Coalition (HTCC), I was excited to see the passing of a state historic tax credit program as typically the creation of a state historic tax program generates more historic preservation and increases the use of the federal historic preservation tax credit. The increase in use of the federal program by the creation of the state program typically stems from the state program adding additional funds to the capital stack of the development project to support the development budget. There is often a “but for” test at the state level relative to the state historic credit being the last piece of financing needed for the project to move forward.

In reviewing the proposed regulations for the California State Historic Rehabilitation Tax Credit, I am providing the following comments on behalf of my group:

1. Under 4859.04 (a) “*A building must be listed on the California Register at the time of the tax credit application submittal.*” This requirement is not consistent with the federal historic tax credit program and limits the use of the program. Requiring listing on the California register prior to applying creates a number of issues for a developer from a timing and ownership perspective. The program allows for non-owners to apply with a letter of recognition, which is consistent with the federal program, but does not allow for a preliminary determination of individual listing (PDIL) where a building can be found eligible and go through a parallel process of getting listed while be reviewed for historic tax credit. This will limit the number of users and not promote the addition of buildings to

Comments on California Code of Regulation CCR Section 4859, Title 14, Chapter 11.5  
Albert Rex, Ryan  
June 20, 2023

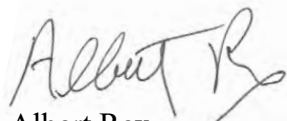
the California or National Registers, which seems counter to the program's intentions. Any additional step required or that adds time to the process is one that makes it less likely for a developer to use. We would recommend following the federal program with a concept like the PDIL process that exists at the federal level.

2. Under 4859.05 (f) "*Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.*" This is also not consistent with the federal historic tax credit program where projects may have started and realized the availability of this additional funding. We would suggest striking this section or refining it to be more open to the realities of the industry that projects may have started but are early enough in the process, such as during environmental remediation, that when completed could still meet the Standards.
3. Our firm also has a concern about the need for work on the project to commence within 180 days of the approval by COHP. Our experience has been that closing on transactions as complicated as a historic tax credit projects can extend beyond 180 days. This is especially true post the COVID 19 pandemic and the subsequent rise of interest rates. Six months seems like a long period, but projects can often take 9-12 months to move from Part 2 approval or allocation of state historic tax credits to a financial closing and a construction start. We would recommend removing this requirement and or extending it to a longer period of time.

Having worked with all the state historic tax credit programs in the country and with more than twenty years of experience with the federal program, we would just add that our clients, real estate developers, are often fine with hearing "no", but what they are really looking for is predictability and ease of use. The above comment is in reference to the program overall. Anything that can be done to define the application process, how the projects will be rated on a competitive basis, what is the timing of the process and is an allocation a guaranteed full 20% or 25% if a project is selected? Anything that can be done to provide clarity and predictability to the program and the process will increase the likelihood of its use and help the preservation of more of California's historic assets.

Thank you for the opportunity comment on this important program.

Sincerely,



Albert Rex  
Principal, Historic Tax Credits  
Ryan

# Assembly California Legislature



**RICK CHAVEZ ZBUR**  
ASSEMBLY MEMBER, FIFTY-FIRST DISTRICT

June 19, 2023

California Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816

Re: 4859 Public Comment

To Whom It May Concern:

I am writing to request a change in proposed regulations implementing SB 451 (Atkins) of 2019, which allows for the allocation of historic preservation tax credits.

The proposed regulations released by the Office of Historic Preservation (OHP), specifically §4859.05(f) of the proposed regulations, expressly disqualifies projects begun before the effective date of the regulations:

f) Projects in construction or completed are not eligible to apply for the State tax credit except in the case of projects also applying for federal tax credits where phased work has already begun, and state tax credits are being requested for future phases for which work has not begun.

This section raises serious concerns regarding the eligibility of rehabilitation projects begun after January 1, 2021 – the effective date of SB 451 – but prior to the submission of an application for the tax credits authorized by SB 451.

The historic preservation tax credits offered by SB 451 were clearly intended to support iconic rehabilitation projects – projects like the one currently underway in my district at the Capitol Records Tower Building. Since its construction in 1955 – 1956, the Tower has become a prominent Hollywood landmark recording the work of the world’s most famous artists from Frank Sinatra and Nat King Cole to the Beattles and the Beach Boys, from Tina Turner to Katy Perry and more.

The Tower was the world’s first circular office building. The spire, which sits just off-center on the roof of the Tower, is topped by a red light that continuously blinks the word “Hollywood” in Morse code. It was switched on in 1956 by Leila Morse, granddaughter of Samuel Morse.

**RECEIVED**

JUN 22 2023

**OHP**



The Tower still operates as the west coast headquarters of Capitol Records, making it an important fixture of the entertainment industry to this day. In response to the passage of ordinance 183893 by the City of Los Angeles in 2015, which requires existing reinforced concrete buildings built prior to 1977 to undertake structural seismic upgrades, the Tower Building began a lengthy rehabilitation project. The project, while still underway, has been meeting deadlines well ahead of required timeframes.

With the current state of the proposed regulations, the Tower Building, due to its proactive approach in handling mandated renovations, would not qualify for the tax credits offered by SB 451. We believe the proposed regulations have erred in that regard. The nature of a historic building's structural condition and business occupancy considerations necessitating the commencement and timely progress on the building's rehabilitation should not disqualify such a project for historic tax credits.

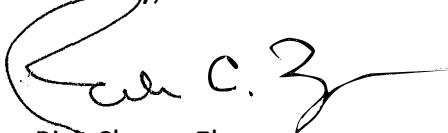
As such, §4859.05(f) of the proposed regulations should be modified to allow eligibility for projects commenced after January 1, 2021, without regard to whether such projects were commenced prior to the submission of an application:

(f) Projects, and any phase of a multi-phase project for which an application for federal tax credits will be submitted, commenced on or after January 1, 2021, are eligible to apply for the State tax credit.

Once modified, the proposed regulations will ensure that all appropriate projects will be eligible to qualify for the historic tax credits offered by SB 451.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick C. Zbur". The signature is stylized and written in a cursive-like font.

Rick Chavez Zbur  
Assemblymember, District 51

Assembly  
California Legislature

**RICK CHAVEZ ZBUR**

ASSEMBLYMEMBER, FIFTY-FIRST DISTRICT  
STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0051

SACRAMENTO CA 957

20 JUN 2023 PM 1 L

**RICK CHAVEZ ZBUR**

ASSEMBLYMEMBER, FIFTY-FIRST DISTRICT  
CALIFORNIA LEGISLATURE  
CAPITOL OFFICE  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0051

*for*

California Office of Historic  
Preservation  
1725 23rd Street, Suite 100  
Sacramento, CA 95816