



*Preserving America's Heritage*

**Frequently Asked Questions  
Regarding Use of the ACHP's  
*Program Comment for Communications Projects on Federal Lands and  
Property*  
September 2017**

**1. What is a Program Comment?**

A Program Comment is an alternate way for federal agencies to meet their Section 106 obligations for a category of undertakings instead of conducting individual reviews under §§ 800.4 through 800.6 of the Section 106 regulations (36 CFR Part 800). Program Comments can alter this standard process to better align with federal agency programs or types of undertakings. While a request for a Program Comment typically comes from a federal agency, a Program Comment also can be issued by the ACHP at its own initiative. Program Comments are voted on and issued by the ACHP membership. More information on Program Comments can be found here: <http://www.achp.gov/altguidance/#introduction>.

**2. What is the purpose of this *Program Comment for Communications Projects on Federal Lands and Property*?**

The purpose of the Program Comment is to establish efficient and effective procedures for the consideration of historic properties in the deployment of communications projects and activities, including broadband and next generation technologies (e.g. 5G infrastructure), on federal land and property, particularly in rural and underserved communities. Many of these efficiencies are based on procedures already established under ACHP Program Alternatives, including Nationwide Programmatic Agreements (NPAs) and other Program Comments.

**3. Who can use this Program Comment?**

This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, or assisted by the following federal land managing agencies: U.S. Forest Service; National Park Service; Bureau of Land Management; Fish and Wildlife Service; Bureau of Indian Affairs; Department of Homeland Security and its components; General Services Administration; Department of Veterans Affairs; and Department of Commerce.

Where the Federal Communications Commission (FCC) has Section 106 responsibility over a proposed communication deployment undertaking that also requires a license, permit, approval, or assistance from a Federal Land Managing Agency (LMA) or Federal Property Managing Agency (PMA), the Federal LMA or PMA shall fulfill the Section 106 review requirements for the undertaking on behalf of both the FCC and itself and may utilize the terms of this Program Comment, including applicable exemptions. FCC shall have no further Section 106 responsibilities for that undertaking.

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Other agencies such as the Department of Agriculture's Rural Utilities Service can use the Program Comment after completing the notification process outlined in the Program Comment when they propose to provide loans and grants to the private sector and tribal communities for communication deployment undertakings that may have an effect on federal lands and properties. Other federal agencies may also use the Program Comment to satisfy their Section 106 responsibilities after completing the notification process.

The ACHP will post all acknowledged requests from other federal agencies to use the Program Comment on its website at [www.achp.gov](http://www.achp.gov). In addition, the ACHP will post all written agreements between Indian tribes and LMAs/PMAs regarding use of the Program Comment on tribal lands.

#### **4. When a communication deployment undertaking involves multiple federal agencies, can there be a Lead Federal Agency for Section 106 purposes?**

Yes. If more than one federal agency is involved in a communication deployment undertaking, a Lead Federal Agency can be designated by some or all of the LMAs/PMAs and other federal agencies. The Lead Federal Agency shall act on the behalf of the other agencies, fulfilling their collective responsibilities under Section 106 for the particular undertaking. Those agencies that do not designate a Lead Federal Agency remain individually responsible for their Section 106 compliance responsibility for that undertaking. Where the Lead Federal Agency is authorized to use the Program Comment, it may utilize its terms to fulfill the Section 106 responsibilities for the undertaking on behalf of the other agencies.

#### **5. What roles do the SHPOs, THPOs, Indian tribes, and NHOs play in this Program Comment?**

The federal agency consults with the appropriate State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Indian tribes, or Native Hawaiian organizations (NHOs) when 1) confirming the APE for each individual undertaking and providing notification of its intent to follow this Program Comment; 2) its Records Check identifies no information on the presence of historic properties within the Area of Potential Effects (APE) to determine whether the APE includes areas that have a high probability of containing National Register-eligible properties; 3) review of the site avoidance plan when applicable; 4) where high probability areas within an APE cannot be avoided; 5) a discovery plan needs to be developed and implemented; and 6) reviewing the proposed removal of obsolete communications equipment and towers where applicable. When the terms of the Program Comment do not apply to an undertaking and the resolution of adverse effects is required, the Federal LMAs and Federal PMAs must consult with the SHPOs, THPOs, Indian tribes, NHOs, as appropriate, and other consulting parties in accordance with 36 CFR §§ 800.3 to 800.7 or under 36 CFR §§ 800.14.

In addition, the National Conference of State Historic Preservation Officers (NCSHPO), National Association of Tribal Historic Preservation Officers (NATHPO), tribal representatives, NHOs, and industry representatives will be invited to participate in annual meetings with Federal LMAs, Federal PMAs, and the ACHP to re-examine the effectiveness of the Program Comment based on findings in the Federal LMAs' and Federal PMAs' annual reports, which will summarize activities carried out under the Program Comment by the respective agencies.

#### **6. What is the duration of this Program Comment?**

The Program Comment will expire **December 31, 2027**, unless it is amended to extend the duration prior to that date.

**7. Does my agency have to use this Program Comment to review the deployment of communications infrastructure on federal land or on federal property?**

No. While this Program Comment provides an alternate method for Federal LMAs and Federal PMAs to meet their Section 106 responsibilities in a flexible manner for communication deployment undertakings, the agencies can still use the standard process for each individual undertaking as set out in 36 CFR §§800.3 through 800.7. In addition, the Federal LMAs and Federal PMAs can use other applicable program alternatives developed pursuant to 36 CFR § 800.14 to meet their Section 106 responsibilities for such undertakings.

**8. Does this Program Comment apply to all federal land?**

No. This Program Comment is not applicable to communication deployment undertakings proposed to be carried out, permitted, licensed, funded, or assisted by any federal agency that would occur on or may affect, in whole or in part, National Historic Landmarks (or the portion thereof that is located on federal land), National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, and National Battlefields. Should federal agencies or applicants want to propose communication deployment undertakings on or affecting these federal lands and federal properties, the federal agency must follow the standard Section 106 process under 36 CFR §§ 800.3 through 800.7 or other applicable program alternatives outlined in 36 CFR § 800.14. The review of such undertakings should be carried out in consultation with the applicant, SHPO/THPO, Indian tribes, Native Hawaiian organizations (NHOs), and other consulting parties.

**9. Does this Program Comment apply on tribal lands?**

It can in certain circumstances. The federal agency proposing to carry out, permit, license, fund, or assist any communication deployment undertaking that would occur on or affect historic properties on tribal lands must have the prior, written agreement of the relevant Indian tribe and must notify the ACHP, NCSHPO, NATHPO prior to utilizing this Program Comment.

**10. What is the relationship between this Program Comment and the FCC's Nationwide Programmatic Agreements?**

This Program Comment draws upon the successful practices within the two FCC NPAs for wireless communications projects, executed in 2001 and 2004. These NPAs have been successful in establishing efficiencies in the Section 106 review of tower construction and collocations, approaches which other federal agencies are interested in following for their communications activities on federal land and property. This Program Comment incorporates terms and exclusions from the NPAs. The most recent amendment to the FCC NPA for the Collocation of Wireless Antennas occurred in August 2016 to address deployment of distributed antenna systems and small cells related to 5G networks.

In certain instances, Federal LMAs and Federal PMAs may use the Program Comment when complying with the requirements of Section 106 for public-private undertakings. As stated above, FCC would have no further Section 106 responsibility for an undertaking for which a Federal LMA or Federal PMA also has review responsibility and may be utilizing the terms of this Program Comment.

**11. What are some of the efficiencies built into the Program Comment?**

The first efficiency is to promote a consistent and predictable procedure to avoid and minimize effects on historic properties when deploying communications undertakings on federal property. Early coordination among the federal agency, applicant, SHPO/THPO, and others; use of noninvasive techniques for testing below ground properties; and the siting of projects in previously disturbed areas are encouraged.

A second efficiency is in the process of identifying historic properties located in the undertaking's area of potential effects (APE) for communications deployment, particularly broadband. This Program Comment calls for the agency, or its applicant, to review existing records to see what is known about historic properties within the APE. If nothing is known, then qualified professionals help to determine whether the APE includes areas that have a high probability of containing National Register-eligible properties. If so, those areas within the APE will be avoided. If they cannot be avoided, the Federal LMA/PMA and applicant will consult with the SHPO/THPO, Indian tribes, or NHOs to determine whether a survey or monitoring program should be developed and implemented.

The third efficiency is a series of exempt activities that do not require Section 106 review when certain thresholds are met. These conditionally exempt activities include the following: 1) the placement of above-ground communications and cable lines on existing poles or structures; 2) the placement of above-ground connections to, and collocations on, federal buildings and buildings located on federal land; 3) collocation of communications antennae on replacement or new towers; and 4) the installation of buried communications cable on federally managed lands. Building on the experience gained from implementing the FCC's two NPAs and the 2015 Amendment to the Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification, it was clear that the vast majority of broadband deployment activities have limited potential to affect historic properties. Since these activities typically will avoid effects to historic properties when the conditions are met, it should help expedite communication deployment undertakings.