



U.S. Department of Veterans Affairs Program Comment for Vacant and Underutilized Properties

National Historic Preservation Act (NHPA)
Section 106 Compliance Alternative
Webinar

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What is Section 106 of the National Historic Preservation Act?

- VA takes into account the effects of our undertakings on *historic properties*

and...

- VA affords the Advisory Council on Historic Preservation (ACHP) a “reasonable opportunity to comment”

NHPA Section 106 Process

VA Guidance

- [VA Directive 7545](#) – Cultural Resource Management
- [VA Handbook 7545](#) – Cultural Resource Management
- [Cultural Resource Management Checklist](#)
- [Consultation Overview](#) (NHPA Section 106)
 - Provides step-by-step basic process with flow chart
- VA Office of Construction & Facilities Management houses the [Historic Preservation](#) staff, including the Federal Preservation Officer

NHPA Section 106 Process

VA Guidance

- VA online training modules and self-tests - employees may review at their own pace to learn the basic process of compliance with the NHPA implementing regulations, [36 CFR Part 800](#)
- Preservation Training on TMS
 - An introductory class is already available
 - Additional courses will soon go live
 - Please ask the Historic Preservation Office for any updates, or additional information

Overview of VA Program Comment for Vacant and Underutilized Properties



What is the VA Program Comment?

- An alternative method of compliance with NHPA Section 106 for certain properties
- The VA Program Comment was published in the Federal Register and went into effect on October 26, 2018 [[Vol.83, No.208](#)]
- The ACHP has information on the program comment available on this page:
<https://www.achp.gov/VA/VAProgramComment>

What is the VA Program Comment? (Cont'd)

- VA and ACHP agree on a specialized process for certain actions related to vacant and underutilized properties.
- These actions are subject to ACHP “comment” nationwide instead of on a case-by-case basis.
- The Program Comment only applies to qualified vacant and underutilized properties
- The standard NHPA Section 106 process still applies to all other VA properties

What will VA gain by utilizing the Program Comment?

- Assists with implementation and compliance of:
 - Presidential Memo, *Disposing of Unneeded Federal Real Estate (2010)*
 - OMB Memos Freeze the Footprint (2012, 2013) and Reduce the Footprint (2015-2020)
 - VA Mission Act of 2018, to repurpose or dispose of real property that no longer meets VA needs
- Reduces protracted consultation periods
- Removes the requirement for executing a Memoranda of Agreement for adverse effects to historic properties
- Streamlines the process for consideration of both non-historic and historic properties

Demolition/Deconstruction at Northhampton VAMC

Section 106 mitigation cost for
demolition of 12 utilitarian historic
buildings: \$48K



Additional Gains from VA Program Comment

- Reduction of unneeded real property, enables funds to be redirected for enhanced Veterans services
- Preservation of significant historic buildings (top) may become a priority for additional space for Veterans services
- Demolition of vacant utilitarian structures (bottom) will enable new space for construction of new facilities



Vacant & Underutilized Defined

Vacant – less than 50% occupied

- Majority of VA vacant assets are 100% unoccupied

Underutilized – occupied and utilized, however the occupied space does not require the entire square footage

- Example: A laundry facility only requires 2500 sq. feet to operate but is located in a building with 7500 sq. feet
- VA still pays for 100% operating costs

Vacant & Underutilized Defined, cont'd

Why Vacant and Underutilized?

- In 2017, VA Secretary David Shulkin announced a plan to repurpose or dispose of 430 vacant and 735 underutilized buildings
- These buildings were identified during a review of the Capital Asset Inventory (CAI), the VA's real property database



VA Program Comment Undertakings:

- Repair and maintenance of non-historic and utilitarian historic buildings and structures
- Leases
 - Enhanced Use Lease (EUL) [[38 U.S.C. 8161](#)]
 - NHPA Section 111 lease [[54 U.S.C. §§ 306121, 306122](#)]
- Transfer, exchange, conveyance or sale to another federal agency or a non-federal entity
- Demolition or deconstruction (parts of building may be recycled or reused)

VA Program Comment does *not* include National Historic Landmarks



Milwaukee VA Medical Center

VA Program Comment does *not* include:

- “Unevaluated” properties: properties not yet evaluated for eligibility to the National Register of Historic Places (NRHP)
- any property coming into VA’s portfolio as the result of an exchange
- archaeological sites
- properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian Organizations (NHOs)

Composite List of Vacant and Underutilized Properties

- Annually, VA reports data to the Federal Real Property Profile Management System (FRPP MS)
- This data includes individual asset details such as historic status and utilization.
- The VA Historic Preservation Office analyzed this data to develop a list of properties that qualify for the Program Comment



How to use the Program Comment

- **Before you Begin:**

- Ensure that the asset is included in the current year's Program Comment [Composite List](#).
- If not on the list, you can't use the VA Program Comment
- Verify status with VA Historic Preservation Office

- What if an asset is vacant or underutilized but not on the Composite List?

- To be eligible, a property must be recorded in the CAI as “vacant” and/or “underutilized” and then reported to the FRPP.

- **Quality Control:**

- Ensure the status of facility assets are properly recorded in the CAI.
- The composite list is updated annually.

How to use the Program Comment

First Step:

- **Complete the Program Comment Project Form**
- **Available through**
<https://www.achp.gov/VA/VAProgramComment>



Attachment 1: VA Program Comment Form 1-A

This section to be completed by facility staff

Facility Name and Location:

Building Number:

Date building vacated and/or number of years vacant:

Date building listed as underutilized and/or number of years underutilized:

VA Program Comment (PC) Process Overview

Evaluation

Step 1: Evaluate Property

1.A: Determine Historic Status

Check Composite List :

- a. National Register (NR) listed or eligible;
- b. Non-contributing element of a NR district;
- c. Not Historic;
- d. Not Evaluated

If the property is a, proceed to Step 1.D.
If the property is b or c, proceed to Step 1.B.
If the property is d, proceed to Step 1.C.

1.B: Not Historic or Historic Utilitarian

Disposal or lease, or maintenance or repair requires no additional actions by VA for consideration under Section 106. VA documents internal review and continues with the real estate transaction or repair.

Section 106 is complete.

1.C: Not Evaluated

Qualified Professional must evaluate property for National Register eligibility before proceeding with disposal or lease.

If the property is found to be NR listed or eligible, proceed to Step 1.D.

If the Property is found to be not historic, or non-contributing to a historic district, proceed to Step 1.B.

1.D: Determine Type of Historic Property

If the historic property is a utilitarian building or structure, proceed to Step 1.B.

If the historic property is not a utilitarian building or structure, proceed to Step 2.

Undertaking

Step 2: Non-Utilitarian Historic Properties

Non-utilitarian historic property will be considered for reuse via lease and/or sale, transfer, conveyance, or exchange before deconstruction or demolition.

Step 2.A: VA Transaction Evaluation

VA evaluates historic property to either:

- a. Remain under VA jurisdiction with non-VA use via **Lease -- EUL or Section 111** and/or
- b. Leave VA jurisdiction through **Sale, Transfer, Conveyance, or Exchange**
If a, proceed to Step 2.B.
If b, proceed to Step 2.E.

Step 2.B: Solicit and Evaluate Lease Proposals/Responses

VA markets its first solicitation for a minimum of 60 days at the national level via FBO. VA identifies property's contributing features in solicitation. VA evaluates responses to select developer/lessee.

If acceptable responses, proceed to Step 2.C.
If there are no acceptable responses, proceed to Step 2.D.

Step 2.C: Negotiate and Execute Lease

VA negotiates and executes contract documents and follows the procedures for consultation and mitigation in the applicable subsection of Section 5.1 of the PC.

Step 2.D: Second Solicitation

VA issues second solicitation in the state of the property's location directed to local, state, and/or tribal governments, municipalities, and nonprofit organizations for at least 60 days.

If acceptable responses, proceed to Step 2.C.
If no acceptable responses, VA will proceed to Step 2.E if property is severable.

Step 2.E: Sales, Transfers, Conveyances, or Exchanges

For disposal via Sale, Transfer, Conveyance, or Exchange, VA will attach preservation covenants or easements or negotiate other mitigation per the consultation and mitigation procedures in the applicable subsection of Section 5.2
If there are no acceptable responses, VA may proceed to Step 2.F.

Step 2.F: Deconstruction and Demolition

VA may proceed with deconstruction or demolition of the property without any further consideration of alternatives after notifying the SHPO, any additional consulting parties, and the ACHP that it is doing so. VA will follow the procedures for consultation and mitigation in Section 5.3 of the PC. More consideration is given to entire historic districts proposed for demolition.

Close-Out

Step 3: Close-Out

Step 3.A: Annual Reporting

VA will track projects using the PC via the PC Project Form and compile a summary report annually per Section 7 of the PC.

Step 3.B: Annual Meeting

VA will convene an Annual Meeting per Section 7 and Attachment 2 of the PC.

Step 3.C: Programmatic Mitigation

VA will complete public benefit document per Section 6 of the PC.

Step 1. Evaluate Property

- **Criteria to Consider Include:**
 - Historic Status (must be evaluated to use the program comment):
 - Historic = Listed on or eligible for the NRHP
 - Not Historic = Not eligible for the NRHP
 - Utilitarian or Non-Utilitarian, terms that are defined in the text of the Program Comment

Step 1: Evaluate Property

- **Utilitarian or Not Utilitarian**

- **Utilitarian** is a building/structure of practical design, usually without much architectural ornamentation
 - Determined by VA to have minor or no historic significance and/or diminished or no integrity.
 - Examples: Warehouses, garages and carports, storage sheds, or other ancillary buildings.
- **Non-utilitarian** is a building/structure that is generally of a higher quality construction and architectural detail
 - Typically provided space for hospitals, medical care, staff offices or living quarters.

Step 1: Evaluate Property

Undertakings that will affect vacant or underutilized properties that are not Historic, or Historic and Utilitarian, have streamlined compliance procedures under the Program Comment.



Step 2:

Non-Utilitarian Historic Properties

Non-utilitarian historic properties will be considered for reuse via lease and/or sale, transfer, conveyance, or exchange before deconstruction or demolition.

Non-Utilitarian Historic Property



Step 2:

Non-Utilitarian Historic Properties

- **Step 2.A.: VA Transaction Evaluation**
- **Step 2.B.: Solicit and Evaluate Lease Proposals/Responses (National)**
 - If there are acceptable responses to the 1st solicitation,
- **Step 2.C.: Negotiate and Execute Lease**
 - NHPA Section 106 is Complete
 - If there are no acceptable responses,
- **Step 2.D.: Second Solicitation (Local)**
 - If there are no viable options for leasing,
- **...Step 2.E.: Sales, Transfers, Conveyances, or Exchanges**
 - If there are no viable options for sales, transfers, conveyances, or exchanges, continue...

Step 2: Non-Utilitarian Historic Properties

- **Step 2.F.: Deconstruction and Demolition**

- VA may proceed with deconstruction or demolition of the asset without any further consideration of alternatives after mitigation
- No agreement document required (unless demolition of an entire historic district is proposed)

Process slightly different for EUL and NHPA Section 111 leases

- EULs/Office of Asset Enterprise Management (OAEM)
- NHPA Section 111/Office of Real Property (ORP)
- Contact VA Historic Preservation Office for more info

Step 3: Close-Out

VACO Requirements per Program Comment

- Will be coordinated by the Historic Preservation Office
- Reporting requirements
- An annual meeting, and
- One-time Programmatic Mitigation, which will entail:
 - Nationwide study of the relationship between VA culture, community and place

VA Program Comment (PC) Process

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Remember to fill out the VA Program Comment Form and submit to the VA FPO before each project.

Thank you for your time and interest!

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VA Historic Preservation Website: <https://www.cfm.va.gov/historic/index.asp>

