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Exemption Regarding Historic Review Process for Undertakings Involving Electric Vehicle Supply Equipment

Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (Section 106 and NHPA), requires federal agencies to consider the effects of undertakings they carry out, license, permit or assist on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. Historic properties are those that are listed in the National Register of Historic Places (National Register) or eligible for such listing.

The NHPA authorizes the ACHP to promulgate regulations for exempting undertakings “from any or all of the requirements of” Section 106. 54 U.S.C. 304108(c). The Section 106 regulations, found at 36 CFR Part 800, detail the process for the approval of such exemptions. (36 CFR 800.14(c)).

In accordance with section 800.14(c), the ACHP may approve an exemption for an undertaking if it finds that: (i) the actions within the program or category would otherwise qualify as “undertakings” as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

In 2021, two Executive Orders (EO) were issued to accelerate investment in sustainable procurement strategies, focused on clean energy and infrastructure : 1) EO 14008, Tackling the Climate Crisis at Home and Abroad, prioritizes the development of a Federal Clean Electricity and Vehicle Procurement Strategy and directs Federal agencies to upgrade the entire federal fleet to clean and zero-emission vehicles (ZEV); and 2) EO 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, sets a goal of 100 percent ZEV federal acquisitions by 2035, including 100 percent light duty vehicle federal acquisitions by 2027.

Additionally, the Infrastructure Investment and Jobs Act (IIJA) of 2021 ([Public Law 117-58](#)) appropriates \$550 billion for new infrastructure investments related to electric vehicles (EV), which are ZEVs. The IIJA includes provisions to increase investment in electric vehicle supply equipment (EVSE), alternative fuel infrastructure, EV batteries, electricity grid upgrades, and light-, medium-, and heavy-duty ZEVs and vessels. Several federal grant programs were established or received additional funding through the IIJA. The National Electric Vehicle Infrastructure (NEVI) program provides formula funding to states to install EVSE, while the Charging and Fueling Infrastructure Grant Program will provide grants on a competitive basis, with priority given to projects that expand access to EVSE within rural areas and low- and moderate-income neighborhoods. The U.S. Department of Transportation’s Tribal Transit Program received increased funding for EVSE projects on tribal lands, which will expand transportation options within tribal reservations.

Due to these requirements and investments, federal agencies are anticipated to propose activities to carry out, license, approve, or fund undertakings to electrify federal vehicles and provide EVSE that have the potential to affect historic properties and therefore, require Section 106 review.

An EV produces zero tailpipe emissions when running only on electricity, dramatically lowering smog and greenhouse gas emissions even when considering electricity generation (EV refers to both Battery Electric Vehicles and Plug-in Hybrid Electric Vehicles). In order to charge EVs, installation of EVSE is required. EVs have the potential to significantly improve federal fleet efficiency by reducing vehicle operation and maintenance costs. EVs require EVSE. Commonly referred to as charging stations, EVSE is the hardware that supplies electricity to charge an EV. There are three levels of EVSE that are defined

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by their charging capacities; EVSE can be wall- or pole-mounted, co-located or stand alone, and vary in design, size, charging speed and energy use.

II. Exemption Concept and Criteria

In considering how to address the anticipated increase in undertakings as a result of these requirements and investments, the Department of Homeland Security (DHS) assembled an ad hoc working group of Federal Preservation Officers (FPOs) to discuss EV priorities and the potential effects of expanded EVSE infrastructure programs on historic properties. Through consultation with fleet technical experts, the working group defined the undertakings to be addressed by the proposed exemption as the installation, maintenance, repair, and expansion of Levels 1, 2, and 3 EVSE as defined by the General Services Administration (GSA). After being approached by DHS with the concept of the proposed exemption, the ACHP determined it would avail itself of the regulatory process to propose the exempted category itself. The government-wide priority for fleet electrification and EVSE installation merited ACHP coordination of the proposal to ensure broad and appropriate consultation for an exemption likely to be applied across multiple federal agency programs.

The EVSE undertakings would require minimal changes to distinctive building materials, features, spaces, and spatial relationships, including landscapes and streetscapes. With few exceptions, these undertakings include co-location with existing electrical infrastructure; utilization of existing parking facilities; are incorporated within public transportation rights-of-way designs that would be compatible with the architecture, scale, and design of the facility or surrounding environments; and use reversible, non-permanent techniques to affix infrastructure. To ensure minimal or non-adverse effects, the exemption only applies to EVSE undertakings that utilize the lowest profile equipment that can supply the charging capacity needed for the location, are placed in a location that would minimize visual intrusions, and/or utilize complementary colors for the utility boxes. EVSE installation would also need to be “reversible,” which means that it would be undertaken in such a manner that, if removed in the future, the character-defining form and integrity of an historic property and its environment would be unimpaired. Due to the types of undertakings proposed and the conditions to be imposed on the undertakings, the potential effects would likely be minimal or not adverse to historic properties.

While this exemption would be available for any federal agency that will undertake the installation of EVSE, it does not eliminate the need for the agency to consider whether its undertaking includes other elements that are outside the scope of this exemption. For instance, should a project consist of the installation of substantial new electrical infrastructure, the construction of a parking facility, or the usage of canopies or photovoltaic arrays, it would not be subject to the terms of this exemption and would need to undergo a standard Section 106 review to ensure the potential effects of other elements on historic properties are appropriately considered.

The exemption uses the term “federal agencies” throughout; however, this exemption is available to be used by a state, local, or tribal government official who has been delegated legal responsibility for compliance with Section 106 in accordance with federal law. Consistent with 36 CFR 800.14(c)(1), Section 106 exemptions must meet certain criteria. The ACHP believes that the proposed exemption, which appears below, meets these criteria. The exemption aligns with the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with continued use of historic properties. As described above and in the exemption text, the EVSE will be restricted to existing footprints and levels of ground disturbance, and would use reversible, non-permanent techniques for installation, where appropriate. As such, the effects of the proposed undertakings are foreseeable and would be minimal or not adverse.

III. Public Participation and Consultation

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In accordance with 36 CFR 800.14(c)(2), public participation regarding exemptions must be arranged on a level appropriate to the subject and scope of the exemption. In order to meet this requirement, an earlier draft was published in the Federal Register on May 5, 2022. Additionally, the ACHP created a dedicated web page for the proposed exemption (www.achp.gov/program_alternatives/exempted_categories/EVSE_proposal) and conducted social media outreach. The ACHP has also consulted directly with State Historic Preservation Officers, Indian Tribes, Tribal Historic Preservation Officers, and Native Hawaiian organizations (NHOs).

IV. Response to Comments

The ACHP received comments during five consultation meetings, as well as written comments from 23 agencies and organizations, which were generally favorable to the proposed exemption and offered constructive comments and questions. Comments focused on the following themes, which are followed by the ACHP's response.

Effects to Properties of Religious and Cultural Significance to Indian tribes and Native Hawaiian organizations

The ACHP received many questions regarding potential effects from EVSE to properties of religious and cultural significance to Indian tribes and NHOs, and how agencies would determine whether the installation of EVSE in a location may affect such a property without consultation with the affected Tribe or NHO. While it is possible that some EVSE locations will be adjacent to such properties, because the exemption requires that ground disturbance be limited to the depth of previous construction and that the EVSE be minimally visible, the ACHP believes the exemption will reasonably ensure that any effects from the proposed EVSE undertakings to historic properties are minimal or not adverse. When planning EVSE projects, agencies are encouraged to discuss the projects with stakeholders, including Tribes and NHOs, to ensure that application of the exemption is appropriate. This recommendation is further strengthened by the addition of a new stipulation within the exemption, "Recommendation Outside Tribal Lands."

Coordination with State and Local Reviews

Some comments noted that it would be useful for the exemption to clarify that it did not preempt or override any applicable state or local review requirements that may be applicable to EVSE installation. Accordingly, the ACHP added clarifying language to Section IV of the exemption.

Consideration of Cumulative Effects

Several commenters noted that the installation of EVSE, particularly several EVSE within one location, could result in cumulative effects to historic properties. As written, because the exemption requires the use of existing electrical infrastructure, the amount of new EVSE that could be constructed or implemented at a given location is necessarily limited. Therefore, the ACHP believes that the number of proposed undertakings utilizing the exemption would be restricted in singular locations and unlikely to result in cumulative adverse effects on historic properties.

Limiting Ground Disturbance and Setting Maximum Dimensions

Most comments requested that the ACHP consider the incorporation of maximum dimensions and depth requirements to ensure that the EVSE undertakings do not result in adverse effects. Commenters also questioned the length, depth and width of ground disturbance that may occur in connecting to existing electrical infrastructure.

In considering these requests, the ACHP recognizes the evolving technology relating the EVSE, which challenges the ability to set static dimensions. However, additional language confirming that ground

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disturbance is limited to previously disturbed soils has been added. This would address those situations where there may be a small distance between a parking facility and existing electrical infrastructure. So long as the agency confirms that the area to be connected has been previously disturbed as a result of earlier work and that the proposed EVSE undertaking would not go below the depth or beyond the extent of the previous disturbance, the agency may utilize the exemption's terms.

Use of Qualified Professionals

Several commenters requested that the exemption utilize a professional that meets the Secretary of the Interior's Professional Qualification Standards to ensure that no adverse effects to historic properties occur from EVSE installation. However, the type of qualified professional that may be relevant to the work would vary based on the proposed location of EVSE, as some locations might contain archaeological resources to be avoided whereas others might include historic buildings or viewsheds. Accordingly, the ACHP has further specified and clarified the conditions under which the exemption may be used, so that it is possible for non-preservation professionals to appropriately utilize the exemption.

Need for Additional Definitions and Conditions

Multiple comments asked that the ACHP clarify what activities would and would not fall within the scope of the exemption to ensure that agencies consistently understand when a project may meet its terms or when a project would require a Section 106 review. To address these comments, the ACHP added language to the Exemption Concept and Criteria section of the document.

Concerns were also raised regarding the use of the term "parking areas and structures," and whether this would include unpaved parking areas as well as street parking. To ensure transparency, the ACHP added a definition for "parking facilities" to the exemption.

Similarly, some commenters requested that the ACHP further define "minimally visibly intrusive." Given the wide range of potential locations where such EVSE may be installed, it is challenging to quantify exact dimensions that could be included within the exemption. However, a reasonable interpretation of the phrase lends itself to agency officials being mindful of the height of the EVSE proposed for installation, and the exemption stresses the importance of utilizing the lowest profile EVSE. Accordingly, no additional edits were made.

Comments were also received noting that while this exemption is likely to work effectively within urban areas with adequate access to existing parking facilities and electrical infrastructure, it is more challenging to ensure that there would be minimal effects from EVSE installation within remote or rural locations, and that the ACHP should consider defining the geographic locations in which this exemption could apply. While such comments are noted, the ACHP believes that the requirement to use existing parking facilities and electrical infrastructure ensures that any effects from the installation of EVSE, including within rural areas, will be minimal or not adverse.

Opt-in/out Process for Federal Agencies

Some commenters asked whether agencies should be required to "opt in" to use this exemption, or whether there should be a provision that would allow agencies to "opt out" from using it. Consistent with other exemptions and the Section 106 regulations, the exemption is intended to be a tool available for any federal agency that may install EVSE. However, it does not mandate or require its use by every federal agency. A federal agency may choose to undertake the normal Section 106 review for the exempted installation of EVSE at any time. While no change was made to the exemption text itself, the ACHP added clarifying language within the Exemption Concept and Criteria section of the document on this topic.

Reporting

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Some comments were received requesting that agencies provide reporting at regular intervals on the usage of the exemption. However, such reporting is inconsistent with the intent of the exemption, which would result in minimal or no adverse effects to historic properties. Given the evolving technology for EVSE, though, the ACHP does commit to routinely querying federal agencies, through the triennial Federal Property Stewardship Report, on the use of the exemption to determine if amendments are necessary to ensure successful usage and to share success stories.

Unanticipated Discoveries

Several concerns were raised over potential discoveries during EVSE installation. Because the exemption limits the level of ground disturbance to previously disturbed soil, it is unlikely that discoveries would occur. No additional edits to the exemption are needed for these comments.

Removing Level 3 from the Proposed Exemption

Some commenters requested that the ACHP consider removing Level 3 EVSE from the exemption, due to its size and the extent of its electrical infrastructure. In considering this request, the ACHP also acknowledges the intent and effect of recent EOs and the IIJA on increasing the availability and use of EVs. Level 3 EVSE is needed to support the expanded usage of EVs across the country. It is likely that many Level 3 EVSE will need to undergo a traditional Section 106 review when they cannot be located within existing parking facilities or will require the installation of additional, sufficient electrical infrastructure. However, for those cases when the EVSE can be installed meeting the other conditions within the exemption, it is reasonable to still conclude that effects to historic properties would be minimal or not adverse. Finally, while the ACHP understands that previous iterations of Level 3 EVSE have traditionally been larger in size than Levels 1 or 2, the technology has evolved in recent years to support smaller sizes and to facilitate installation to walls or poles. Accordingly, inclusion of Level 3 EVSE within the exemption is maintained.

V. Text of Exemption

The full text of the exemption is reproduced below:

Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment

1. Exemption from Section 106 Requirements

Except as noted in Section II, all federal agencies are exempt from the Section 106 requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 charging stations, provided these:

- (1) take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an electrical service panel as practicable;
- (2) use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;
- (3) do not exceed previous levels of documented ground disturbance, or ground disturbance reasonably believed to have occurred;
- (4) use the lowest profile EVSE reasonably available that provides the necessary charging capacity;
- (5) place the EVSE in a minimally visibly intrusive area; and
- (6) use complementary colors, where possible.

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Each federal agency remains responsible for considering the effects of components of its undertakings not subject to this exemption on historic properties, in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

II. Application on Tribal Lands

This exemption shall not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the Tribe has provided prior written notification to the Advisory Council on Historic Preservation (ACHP) that it agrees with the use of the exemption on its lands. Indian Tribes can agree to use of the exemption by completing the attached form (Attachment A) and submitting the completed form to the ACHP. The exemption would then be applicable on those Tribal Lands when the ACHP provides notice on its WEBSITE of such agreement.

III. Recommendation Outside Tribal Lands

While the ACHP does not expect the activities within the scope of the exemption to affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations, the ACHP notes that frequently, historic properties of religious and cultural significance have not been identified as such during prior documentation efforts. The ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archeological site, feature, or district, the agency should consider coordinating with interested Indian Tribes or NHOs to further clarify if they ascribe significance to the site area. Should a Tribe or Native Hawaiian organization ascribe significance to the site area, the agency should undertake a Section 106 review in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

IV. Existing Agreements and State and Local Reviews

This exemption does not amend, invalidate, or otherwise modify Section 106 agreements in existence at the time this exemption goes into effect. This exemption does not modify, preempt, or replace any applicable state or local laws or regulations.

V. Termination

The ACHP may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not adequately met.

VI. Amendments

This exemption may be amended by the ACHP membership. Such amendments must be consistent with the criteria at 36 CFR 800.14(c)(1) and preceded by consultation appropriate to the scope of the amendments.

VII. Definitions

The following definitions shall apply to this exemption:

- a. "Section 106" means Section 106 of the National Historic Preservation Act (54 U.S. C. 306108) and its implementing regulations at 36 CFR Part 800.
- b. "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal

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agency; those carried out with Federal financial assistance; and those requiring a federal permit, license, or approval.

- c. “Electric Vehicle Supply Equipment” (EVSE) means conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE:
 - i. Level 1 - Refers to a freestanding or wall mounted charging structure that delivers a 110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle’s battery.
 - ii. Level 2 - Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle’s battery.
 - iii. Level 3 (also known as Direct Current (DC) Fast Charging) -Refers to a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output ranging between 40 kW – 500 kW delivering 50 – 1000 volts of direct current to the EV battery. Converts AC power to DC within the charging station and delivers DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 200 miles of range per 30 minutes of charging time.
- d. “Parking facility” means any building, structure, land, right-of-way, facility or area used for parking of motor vehicles.
- e. “Tribal lands” means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

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Attachment A to the Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment

The [INSERT NAME OF INDIAN TRIBE] authorizes federal agencies to utilize the attached Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment on the following Tribal Lands:

[LIST TRIBAL LANDS]

Signed by:

_____ (Signature)

_____ (Printed Name and Title)

_____ (DATE)

The [INSERT NAME OF INDIAN TRIBE] may discontinue this authorization at any time by providing written notice to the Advisory Council on Historic Preservation.

For further information, please contact: _____ (Tribal Contact; Name and Contact Information)

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