



ADVISORY COUNCIL ON HISTORIC PRESERVATION FALL BUSINESS MEETING

OCTOBER 26, 2022



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MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
October 26, 2022

Meeting in-person and via Zoom

Zoom meeting instructions will be sent in a separate email.

In order to join in, please make sure you are registered by following the instructions in the email message.

PROVISIONAL AGENDA

Call to Order 1:30 p.m. EDT

- I. Vice Chairman's Welcome and Report
- II. Acting Executive Director's Report
- III. Climate Change and Historic Preservation Task Force
- IV. Workforce Development and the Inflation Reduction Act
- V. Native American Affairs
 - A. White House Council on Native American Affairs
 - B. Updating ACHP Policy Statement on Burials, Human Remains, and Funerary Objects
 - C. Native Languages Memorandum of Agreement
 - D. Other Reports
- VI. Section 106
 - A. Electric Vehicle Supply Equipment Exemption
 - B. Army Program Comment on Vietnam War Era Historic Housing, Associated Buildings and Structures, and Landscape Features
 - C. GSA Exemption Update
 - D. Other Reports
- VII. Communications, Education, and Outreach
 - A. Career and Preservation Discussions at Historically Black Colleges and Universities
 - B. Other Reports
- VIII. Historic Preservation Policy and Programs
 - A. Traditional Trades and Potential Inflation Reduction Act Opportunities
 - B. Other Reports
- IX. New Business
- X. Adjourn



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
October 26, 2022

ANNOTATED AGENDA

- I. Vice Chairman's Welcome and Report. *Vice Chairman Jordan Tannenbaum will provide highlights of his recent activities on the ACHP's priorities and the status of the executive director position.*
- II. Acting Executive Director's Report. *Acting Executive Director Reid Nelson will report on personnel and recruitment, and provide an update on office reopening.*
- III. Climate Change and Historic Preservation Task Force. *Vice Chairman Tannenbaum will provide a summary of recent Task Force meetings and efforts to develop a policy statement on climate change and historic preservation. No action.*
- IV. Workforce Development and the Inflation Reduction Act. *Vice Chairman Tannenbaum and committee chairmen will summarize the ACHP's efforts to address workforce development challenges and opportunities available under the Inflation Reduction Act to address some of these challenges. Members will be asked to identify additional steps the ACHP and its partners can take to address this issue. No action.*
- V. Native American Affairs
 - A. White House Council on Native American Affairs. *Committee Chairman Reno Franklin will update the members on ACHP activities as a member of the White House Council on Native American Affairs. No action.*
 - B. Updating ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. *Members will be apprised of efforts to update the policy statement. No action.*
 - C. Native Languages Memorandum of Agreement. *Members will receive an update on the ACHP's participation in the development of a Native Languages Memorandum of Agreement. No action.*
 - D. Other Reports. *This will provide an opportunity for additional reports related to Native American Affairs.*
- VI. Section 106
 - A. Electric Vehicle Supply Equipment Exemption. *Committee Chairman Jay Vogt will summarize the ACHP's efforts to develop an exemption for Electric Vehicle Supply Equipment and address member input on it. Members will then be asked to vote on whether to approve it. Action required.*

- B. Army Program Comment on Vietnam War Era Historic Housing, Associated Buildings and Structures, and Landscape Features. *Members will receive an update on the ACHP's efforts to consult states, Indian tribes, Native Hawaiian organizations, and others on the Army's request for a program comment. Members will also be provided an overview of how the program comment has been adjusted to address member input. Members will then be asked to vote on whether to issue the program comment. Action required.*
 - C. GSA Exemption Update. *The members will receive an update on the development of this exemption and an anticipated schedule for its consideration by the members. No action.*
 - D. Other Reports. *This will provide an opportunity for additional reports related to Section 106.*
- VII. Communications, Education, and Outreach
- A. Career and Preservation Discussions at Historically Black Colleges and Universities. *Committee Chairman Luke Nichter will update the members on efforts to further engage students and faculty from Historically Black Colleges and Universities. No action.*
 - B. Other Reports. *This will provide an opportunity for additional reports on communications, education, and outreach issues.*
- VIII. Historic Preservation Policy and Programs
- A. Traditional Trades and Potential Inflation Reduction Act Opportunities. *Committee Chairman Rick Gonzalez will summarize the committee's discussion and recommendations on steps the ACHP might take to urge agencies receiving funding under the Inflation Reduction Act to invest in traditional trades training. Possible action.*
 - B. Other Reports. *This will provide an opportunity for additional reports related to historic preservation policy and programs.*
- IX. New Business. *There is none at this time.*
- X. Adjourn. *The meeting will adjourn by 4:30 p.m. EDT.*



CLIMATE CHANGE AND HISTORIC PRESERVATION Office of Preservation Initiatives

Since the last business meeting, the Climate Change and Historic Preservation Task Force has met twice, on July 21 and September 29. Key issues discussed at these meetings are provided below.

Development of a climate change policy statement. At the July meeting, the task force considered whether to pursue development of a policy statement on climate change and historic preservation. The group discussed the potential target audience(s); the importance of clearly defining the connection between climate change and historic places; the scope of the issues that could be addressed; and the need for any policy statement to be timely, apolitical, and have lasting value. Ultimately, the consensus of the group was to proceed with development of a policy statement for eventual consideration by the full membership.

At the September meeting, the task force reviewed an initial draft outline prepared by staff. While the policy statement would be framed to speak broadly to all parties, specific advice and examples would address federal agency concerns, including Section 106 and Section 110 issues. The document would define the scope of the problem, discussing the range of historic property types affected and the variety of climate impacts. Effects to sacred sites and other properties significant to Indian tribes and Native Hawaiian organizations (NHOs) would be highlighted, as would the disproportionate impact of climate change on historic places in underserved communities. Policy principles addressing climate change and historic preservation would include adaptation (adjusting to the changing climate), disasters, mitigation (reducing climate change), equity, flexibility, and education.

The task force agreed to move forward with the proposed outline, while offering guidance to staff on key considerations for fleshing out the text of the document as drafting proceeds.

Seeking examples of federal projects and/or planning. At the September meeting, staff briefed the task force on upcoming efforts to canvass federal agencies, State Historic Preservation Offices, Indian tribes, NHOs and other stakeholders for good examples of federal agency work to address climate change and historic properties. Such examples will help in development of the policy statement as well as having other possible uses (training, publications, social media, etc.)

Preserve America Community focus group. At the September meeting, the task force was briefed on a focus group of Preserve America Community representatives that was convened on August 2 to discuss climate change and historic preservation from the local government perspective. Guided by a set of questions developed by Office of Preservation Initiatives (OPI) summer intern Emily Stood with feedback from OPI staff, participants conversed about climate change challenges impacting their communities, recent projects, partnerships, available resources, and local needs that they thought might be met on the federal level. Participating communities included New Orleans, Louisiana; Oklahoma City, Oklahoma; Anchorage, Alaska; Santa Monica, California; St. Augustine, Florida; Calvert County, Maryland, and Kauai County, Hawaii.

Water-related impacts were a particular concern, sparking discussion of improving storm drainage, elevating buildings, use of levees and other types of water exclusion barriers, and the impact of such adaptive changes on historic resources. Other topics included the impacts of developing green energy on historic resources, including solar panels and electrical charging stations; building codes and design guidelines; the use of property tax incentives; the importance of integrating historic resources into planning, including hazard mitigation plans and development plans; and problems with updating inventories and inspecting historic properties due to private ownership and/or a lack of sufficient staff and funding. The need for more modeling to inform planning was also highlighted.

Participants expressed interest in continuing to talk with each other and in getting links to resources offered by the ACHP and other federal agencies. All expressed appreciation to the ACHP for facilitating the discussion and encouraged continued attention to the issues raised by climate change impacts on historic preservation, including the need for public education.

Climate Impacts to Indian Tribe and Native Hawaiian Sacred Sites and Historic Properties: Plan for ACHP Actions. At the July meeting, the task force members were briefed on [the final plan](#) and a summary of [the feedback received at March listening sessions](#), both of which were formally released on June 29. The Office of Native American Affairs is working actively on implementation. Feedback on the final plan has been positive, with particular appreciation for the structure of how the ACHP has and will address issues and implement goals.

Action Needed. This summary provides an update on key recent climate change work at the ACHP. No action is needed at this time.

October 12, 2022



CULTURAL RESOURCES WORKFORCE DEVELOPMENT **Office of Federal Agency Programs**

Background. Passage of the Bipartisan Infrastructure Law has generated concerns and discussion among federal agencies, State Historic Preservation Officers (SHPOs), Indian tribes, and other stakeholders about potential Section 106 workload increases regarding new and expanded infrastructure programs funded by the legislation. Subsequent passage of the Inflation Reduction Act (IRA) this summer focused attention on how some federal agencies will add staff and increase training efforts to help them meet environmental review responsibilities for infrastructure projects.

The ACHP has also championed development of an inclusive preservation program that is positioned to help all Americans document, interpret, and protect historic places that are meaningful to them. Maintaining the federal government's leadership role in nationwide preservation programs in the National Historic Preservation Act (NHPA) depends in part upon ensuring qualified professionals are in place to carry out responsibilities in the law and associated regulations. Drawing from a diverse pool of applicants serves to strengthen the preservation field.

The Federal Agency Programs and Communications, Education, and Outreach Committees discussed issues related to cultural resource workforce development at meetings in June and during recent mid-cycle calls. Members have raised a broad range of interests on this topic, from building awareness of preservation at the secondary education level (see the Education, Outreach, and Workforce Development paper in Tab 2) to recruiting and retaining professionals working in state, tribal, and federal positions focused on NHPA responsibilities. The Office of Preservation Initiatives is also tracking the potential opportunities in public lands funding included in the IRA for workforce development in the traditional trades (see Traditional Trades and Potential Inflation Reduction Act Opportunities in this tab).

Current Status. Staff has continued to gather information to inform and better target the ACHP's actions regarding cultural resource workforce development. Contacts with the American Cultural Resources Association (ACRA), the Federal Permitting Improvement Steering Council (Permitting Council), Office of Personnel Management, National Conference of State Historic Preservation Officers (NCSHPO), academic program faculty, and Federal Preservation Officers (FPOs) have yielded information about both current challenges and successes in training and recruitment of cultural resource professionals.

The IRA presents opportunities for the ACHP to work collaboratively with the Permitting Council to encourage federal agencies to consider a wide range of actions they might take to improve Section 106 reviews, including assistance to SHPOs and Indian tribes that have experienced chronic human resource constraints, as they consider augmenting their own staff. The ACHP staff has and will continue to communicate this message through participation in Permitting Council meetings and directly to several agency heads. The ACHP will also continue to work with NCSHPO and the National Association of Tribal Historic Preservation Officers to identify opportunities for federal agency partnerships and assistance to SHPOs and Tribal Historic Preservation Officers, whether on a project basis or broader scale. Such assistance might include augmenting staff to handle infrastructure project volume as well as other tools to enable efficient review processing, such as investments in improved GIS and cultural resources databases. Partnerships could be created at the statewide or regional level, or targeted data improvements might even be included in project mitigation strategies.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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FPOs identified several opportunities where the ACHP might help convene agencies around issues of shared interest, including addressing professional qualifications and how position descriptions for skillsets within the cultural resource and preservation fields are handled in federal recruitment. FPOs are natural partners for the ACHP in helping increase awareness about Section 106 and the jobs that relate to it within academic programs. FPOs could also contribute to the goal of developing core competency recommendations describing the kinds of knowledge and skills that new professionals need to start out successfully in jobs involving Section 106 review work.

Academic collaboration is a part of the ACHP's ongoing partnerships with Historically Black Colleges and Universities (HBCUs) and tribal colleges and includes programs such as Cultural Heritage in the Forest and Preservation in Practice, which are partnerships with the U.S. Forest Service and the National Park Service and the National Trust for Historic Preservation, respectively. These programs focus on bringing students of color into federal service as well as into awareness of historic preservation as a career choice.

While staff have recently initiated conversations with academic faculty outside HBCUs and tribal colleges in preservation and cultural resources programs, early discussions have yielded ideas for collaborative work to produce resources and information exchange opportunities that would raise students' awareness of historic preservation in general and knowledge of Section 106 specifically, as well as the careers that touch the review process. Staff will provide updates to members as these discussions move forward. Other stakeholders, such as ACRA, have created innovative relationships with academic programs that help bridge the gap between theory and practice in cultural resources management.

The ACHP is also working on broadening outreach efforts to engage a much wider range of audiences about the need for skilled workers in Cultural Resource Management in general, and Section 106 in particular. A first e-mailing went out to audiences ranging from (but not limited to) students, all leadership at HBCUs, career counselors, to sororities and fraternities, programs of archaeology, and schools that have historic preservation degrees. This information will also be shared via social media platforms. The ACHP will continue to expand outreach efforts in this endeavor.

Other ongoing ACHP activities support cultural resource workforce development and should be considered as part of the agency's response to this issue. These include implementation of the *Policy Statement on Promotion and Value of Traditional Trades Training* and the diversification of the ACHP's Section 106 Training Program curriculum to address the needs of Section 106 users at different levels of detail and with varying engagement in the review process. The training program tailors offerings for those entering the field via dedicated virtual classroom courses for preservation and cultural resources interns and the development of other new materials targeted to beginner audiences.

Action Needed. Members are invited to offer suggestions for additional actions the ACHP can take to support the development of a qualified, diverse, and stable cultural resources and preservation workforce.

October 12, 2022



**UPDATES TO THE ACHP'S POLICY STATEMENT REGARDING TREATMENT OF
BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS**
Office of Native American Affairs

Background. In May 2022, the Native American Affairs (NAA) Committee discussed the need to update this policy statement 15 years after its issuance. The current policy was written principally by members of the ACHP's Archaeology Task Force who drafted it primarily from the perspective of federal officials who may be required to remove human remains, typically as a part of an undertaking subject to Section 106 review. The NAA committee felt that the current policy should be expanded to consider additional scenarios, including the requested removal, return, and reburial of ancestors by Indian tribes or Native Hawaiians. Members also identified the need for this policy to address the lack of consideration for the rich histories of Indian tribes, Native Hawaiians, and other Indigenous Peoples and their diverse, unique, and complex cultural practices that have persisted since time immemorial. Subsequently, the NAA and Federal Agency Programs committees received updates in June and September on the progress of this update and have supported the proposed revisions and outreach process.

Outreach and Early Coordination. Between August and October, the ACHP carried out extensive outreach efforts to share the proposed updates, provide detailed presentations, and collect comments and recommendations. These efforts included the development of a OneDrive folder to facilitate ACHP member and staff access, placement of draft resources on a webpage for public access, distribution of draft resources to Indian tribe and Native Hawaiian organization staff contacts (including Tribal Historic Preservation Officers), and distribution to Federal Preservation Officers (FPOs) and other historic preservation personnel. Copies were also provided to State Historic Preservation Officers, and direct emails with applicable resources were shared with interested public upon request.

The following timeline summarizes outreach efforts:

- August 5 – Developed OneDrive folder for ACHP members and staff
- August 22 – Federal Preservation Officer forum
- August 26 – Draft resources shared with Indian tribes, NHOs, and THPOs
- September 3 – Development of webpage to house draft materials for public access
- September 6 – Meeting and presentation with African American community members
- September 7 – Listening session and presentation with Indian tribes, NHOs, and THPOs
- September 8 – Listening session and presentation with DOI FPOs and historic preservation personnel
- September 13 – Meeting with Department of the Navy
- September 15 – Meeting and presentation with African American community members
- September 27 – Listening session and presentation with NCSHPO and SHPOs

ACHP staff has worked to compile written and verbal comments resulting from this outreach into an Excel spreadsheet; these comments have also been integrated into a draft copy of the policy statement and are available to ACHP members and staff via the OneDrive. A summary of the comments is being drafted and will be shared with consulting parties alongside an updated draft in November or December.

Action Needed. Committee members will receive updated documents via email and should be prepared to discuss the draft policy statement and summary of comments received. While a date for the completion of this policy has not been set, members should consider the possibility that a vote to adopt this policy statement could occur via unassembled meeting between the fall business meeting and the first business meeting of 2023.

October 12, 2022



MEMORANDUM OF AGREEMENT ON NATIVE LANGUAGES Office of Native American Affairs

Background. In October 2021, President Joe Biden signed [Executive Order 14049](#) re-establishing the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (EO). This EO recognized that federally imposed educational policies—including Indian boarding schools—devastated tribal communities and forcibly suppressed Native identities, languages, traditions, and beliefs. Among other things, this EO includes provisions to expand opportunities for Native students to learn their Native languages and requires each agency serving on the [WHCNAA Education Committee](#) to prepare a plan outlining measurable actions the agency will take to advance educational equity, excellence, and economic opportunity for Native American communities.

In an effort to advance this EO, President Biden announced the Memorandum of Agreement for Native Languages (MOA) during the 2021 Tribal Nations Summit. This MOA intends to promote collaboration on programming, resource development, and policy related to Native languages across the federal government and is overseen by the WHCNAA Education Committee. The MOA includes specific interagency goals, including, but not limited to, the following:

- Identifying statutory or regulatory barriers that impede federal implementation of Native language activities;
- Identifying research that explores educational attainment and Native language retention and/or revitalization;
- Simplifying the process to integrate Native language instruction and language and other cultural activities into educational settings, including libraries, museums, cultural and historic preservation programs, and in the arts;
- Strengthening tribal consultations on the issue of Native languages.

On September 28, 2022, Vice Chairman Jordan Tannenbaum committed the ACHP to participating in the historic MOA on Native Languages via a [small signing ceremony](#) in the National Building Museum. Native American Affairs Committee Chairman Reno Franklin, Hattie Mitchell (Forest County Potawatomi), and Ira Matt participated in the signing ceremony. As a supporting agency to the MOA, and as a member of the WHCNAA Education Committee, the ACHP is committed to developing an agency-specific plan outlining measurable actions to advance educational equity, excellence, and economic opportunity for Native American communities.

Action Needed. In September, Chairman Franklin asked members to come to the October meeting prepared to suggest and discuss opportunities and examples of how the Section 106 process could advance Native languages. Members should also be prepared to identify ways that the ACHP can support the efforts of other agencies to advance Native languages in the Section 106 process.

October 12, 2022



PROPOSED ELECTRIC VEHICLE SUPPLY EQUIPMENT EXEMPTION **Office of Federal Agency Programs**

Background. As evidenced within the Infrastructure Investment and Jobs Act and recent Executive Orders, Congress and the Administration have made the use of electric vehicles a priority in their climate change response strategy. The mandates for federal agencies to transition to electric vehicles and its associated electric vehicle supply equipment (EVSE), and for agencies to support state, tribal, and local governments in a similar transition, has implications for the Section 106 review process across the federal government.

The Department of Homeland Security (DHS) initially explored potential program alternatives before reaching out to ACHP staff to consider programmatic solutions to the increased workload. In subsequent conversations with DHS and a small working group of Federal Preservation Officers (FPOs), it appeared that an exempted category would be an appropriate program alternative, and the ACHP determined it would pursue an exempted category for certain actions relating to EVSE. As discussed in the March and June business meetings, staff recommended this approach based on its belief that a wide range of actions federal agencies would likely take in carrying out or assisting related to the installation of certain EVSE would result in either no effects to historic properties or effects that were not adverse. The decision by the ACHP to propose this exemption would also ensure broad and appropriate consultation for an exemption likely to be applied across multiple federal agency programs. Exemptions are one of the five program alternatives under the regulations at 36 CFR Section 800.14, which exempt a category of undertakings from further review when their effects are reasonably anticipated and minimal or not adverse.

The proposed exemption will address the most common forms of EVSE, which range from simple wall attachments to standalone models typically seen in public areas, provided certain conditions are met. Those conditions include the following: utilizing existing electrical infrastructure and parking facilities; minimizing ground disturbance and not exceeding previous depths of disturbance; using reversible techniques to affix EVSE to buildings; and using the lowest profile, minimally visibly intrusive EVSE to achieve the needed electrical charging capacity.

Status. Consultation meetings with State Historic Preservation Officers, tribal leaders and Tribal Historic Preservation Officers, Native Hawaiian organizations, and consulting parties took place in June and August. Comments received during those meetings as well as those submitted to ACHP staff were used to refine the proposed exemption to ensure that effects to historic properties from the installation of EVSE are minimal or not adverse. The documentation sent to members on September 26, 2022, outlines the consultation process, the comments received, and a summary of revisions made to the proposal as a result of consultation. The documentation also provides the required discussion of how this category of actions meets the criteria for an exemption, as outlined in 36 CFR 800.14(c)(1).

A minor edit was made to the proposed exemption following its distribution to the members on September 26; a copy of the current version is attached showing the track changes. The edit more appropriately outlines the significant amount of federal funds that are available to state, tribal, and local governments in transitioning to EVs and their EVSE.

Staff will review the consultation and the response to comments for members during the Federal Agency Programs (FAP) Committee meeting; members will then be asked to vote on the proposal during the business meeting.

Action Needed. Members should review the background documentation and proposed exemption and share any questions or concerns during the FAP Committee meeting. Members should be prepared to vote on the proposal at the business meeting.

Attachments: Exemption Regarding Historic Review Process for Undertakings Involving Electric Vehicle Supply Equipment (full text)
Documentation Package for Members
Proposed EVSE Exemption Consultation Plan

October 12, 2022

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. [In total, the IIJA provides up to \\$7.5 billion to build out a national network of EV chargers in the United States, including on tribal lands.](#) 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 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.

Deleted: 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.

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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 a program alternative, 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 exemption can be used by “federal agencies” as indicated throughout the document; however, this exemption is also 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 has determined that the proposed exemption, which appears below, meets these criteria. The exemption aligns with the requirements of the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with the continued protection and enjoyment of historic properties. As described above and in the exemption text, the EVSE will be restricted to existing footprints and levels of previous ground disturbance, and would use reversible, nonpermanent techniques for installation, where appropriate. As such, the effects of the proposed undertakings are foreseeable and would be minimal or not adverse.

III. Text of Exemption

The full text of the exemption is below:

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

I. 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 existing electrical service panel as practicable;
- (2) use reversible, minimally invasive, nonpermanent techniques to affix the infrastructure;
- (3) minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;
- (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 colors complementary to surrounding environment, where possible.

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 Tribal Historic Preservation Officer, tribe, or a designated representative of 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 such 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 that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations (NHOs), the ACHP notes that such historic properties have not been consistently identified during prior documentation efforts. The ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential significance to Indian tribes or NHOs, the agency should coordinate with interested Indian tribes or NHOs to determine whether they ascribe significance to the site or property. Should a tribe or NHO 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 it no longer meets the criteria of 36 CFR 800.14 (c)(1).

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. "Agency" means an agency as defined by 5 U.S.C. 551, and includes state, local, or tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

- b. “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 1 or Level 2 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.
- c. “Lowest profile equipment” means EVSE that is the smallest height and width possible that meets the EV charging needs.
- d. “Minimally visibly intrusive” means that the EVSE is partially visible but does not detract from the views from or to historic properties.
- e. “Parking facility” means any building, structure, land, right-of-way, facility, or area used for parking of motor vehicles.
- f. “Tribal lands” means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

*Final Draft - EVSE Exemption
September 26, 2022*

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 Tribal Lands of the [INSERT NAME OF INDIAN TRIBE].

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)

The ACHP is proposing an exemption to remove the Section 106 review requirements for undertakings involving the installation and placement of certain electric vehicle supply equipment (EVSE). As currently proposed, the exemption will only apply to the installation of EVSE on federal lands and facilities as well as non-federal lands receiving federal licenses, funds, or approval. This exemption does not apply to tribal lands as defined at 54 U.S.C. § 300319; however, each Indian tribe has the ability to apply this exemption to their lands if it chooses. Although rarely sought, exemptions are a program alternative under 36 CFR § 800.14(c) which may be proposed by a federal agency or by the ACHP. Exempted categories must meet the following three criteria:

- (i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 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 act.

The actions are undertakings. [800.14(c)(1)(i)]

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.

While some federal agencies have had previous experience with EVs and EVSE, due to these requirements and investments, a larger number of federal agencies are anticipating an increase in activities to carry out, license, approve, or fund undertakings that electrify federal vehicles and provide EVSE that have the potential to affect historic properties and therefore, require Section 106 review. Accordingly, these actions qualify as "undertakings," meeting the first criteria for establishing an exemption.

The undertaking's potential effects are minimal or not adverse. [800.14(c)(1)(ii)]

In considering the potential effects of the installation of EVSE, ACHP staff consulted with a small working group of Federal Preservation Officers, including among others, GSA, DOT, DoD, and DHS. Based on their feedback, as well as a review of ACHP's records, it became apparent that these projects typically result in no historic properties affected or no adverse effect to historic properties. The main areas

of concern were the location of the EVSE, its size and the level of ground disturbance needed for its installation. However, with appropriate conditions and exclusions, it became apparent that the threshold for an adverse effect could be avoided by co-locating with existing electrical infrastructure; utilizing existing parking facilities; being incorporated within public transportation rights-of-way in locations that are minimally visibly intrusive; and using reversible, non-permanent techniques to affix infrastructure. While certain historic properties may experience an effect as a result of EVSE installation, with these conditions it is unlikely there would be a diminishment in the integrity of a property listed in or eligible for the National Register of Historic Places.

To ensure that the adverse effect threshold is not met, the proposed exemption excludes the installation of substantial new electrical infrastructure, the construction of a parking facility, or the usage of canopies or photovoltaic arrays.

An exemption is consistent with the purposes of the NHPA. [800.14(c)(1)(iii)]

The final criterion for an exemption requires that it be consistent with the purposes of the NHPA. Among other things, the NHPA establishes as the policy of the government to “use measures . . .to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.” 54 U.S.C. § 300101(1). The exemption aligns with the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with continued protection and enjoyment of historic properties, particularly since climate change can result in conditions that endanger historic properties. Additionally, the NHPA’s policy states that the government will “provide leadership in the preservation of the historic property of the United States and...in the administration of the national preservation program.” 54 U.S.C. § 300101(2). Given the broad demand for and adoption of EV technology, it is appropriate that the federal government demonstrate its leadership in devising approaches to integrate EVSE into the existing built environment in ways that do not harm historic properties. Accordingly, the proposed exemption meets the final criterion for an exemption.

Summary of Consultation and Public Participation [36 CFR § 800.14(c)(5)]

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, a draft of the exemption 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 via Facebook and Twitter. No comments were received through this outreach.

Seven consultation meetings were held in June and August, 2022:

- Three with State Historic Preservation Officers (SHPOs);
- Three with Tribal leaders, Native Hawaiian organizations, and Tribal Historic Preservation Officers (THPOs); and
- One for other consulting parties.

Collectively, the meetings resulted in participants from 31 states, 21 Tribes, and 3 organizations. Tribal consultation was conducted in accordance with the ACHP’s consultation pursuant to Executive Order 13175; the attached plan was shared with consulting parties to clarify how the ACHP intended to meet their government-to-government consultation responsibilities specific to this action.

Comments and questions were also submitted during consultation meetings, and via email during a comment period. Written comments were received from the following entities:

SHPOs	Tribes	Organizations	Federal Agencies
Alabama	Forest County Potawatomi	ACRA	Bureau of Indian Affairs
Arizona	White Mountain Apache	Southern California Edison	Labor
Guam		ChargePoint	Defense
Michigan		SAA	Army Corps of Engineers
Montana		NTHP	Rural Utilities Service
Oklahoma		NCSHPO	National Park Service
		WA Trust for Historic Preservation	US Geological Survey
		Preservation Idaho	
		USET	
		NATHPO	
		NAPC	

Generally, written comments could be categorized into the following 11 categories. The table below summarizes the comments by the number of commenters and the associated number of comments.

Comment Category	# of Commentators	# of Comments
Additional Detail/Definition/Condition	12	24
Support or No Comment	8	8
Other Comments	7	11
Cumulative and Other Effects	7	9
Scope of Exemption	7	8
Volumetrics and Maximum Dimensions	6	11
Discoveries and Inadvertent Effects	6	7
Use of Qualified Professionals	5	9

Reporting and Assessments	4	6
Objection	2	3

Substantive Comments Summarized (excludes editorial and project-specific comments):

Key
<ul style="list-style-type: none"> • Comment Category (# of different commentators # of comments on topic: commentators) <ul style="list-style-type: none"> ○ Summary of Comments

- Additional Detail, Definition or Condition Needed (13 | 25: ACRA, MT SHPO, Preservation Idaho, RUS, USGS, ACOE, NCSHPO, OK SHPO, MI SHPO, NPS, SAA, AL SHPO, AZ SHPO)
 - Request that phrases be further defined
 - Minimally visibly intrusive
 - Reversible
 - Existing infrastructure
 - Lowest profile
 - Parking areas
 - Add as an exemption condition that no primary facades will be used for EVSE installation.
 - Add a condition that EVSE not be placed on any NR-listed property or within NHLs or National Parks.
 - Add additional detail that the EVSE be located entirely within an existing parking facility to qualify for the exemption.
 - Condition exemption to ground-disturbing activities within existing structural sections of pavement.
 - Suggests that Level 3 EVSE be removed from proposed exemption as its size of cannot reasonably result in no adverse effects to historic properties.
- Support or No Comment (8 | 8: Bureau of Indian Affairs, Labor, Defense, Southern California Edison, ChargePoint, Washington Trust for Historic Preservation, White Mountain Apache Tribe, NAPC)
 - Support or no further comment provided.
- Other (7 | 11: SAA, USET, NCSHPO, MI SHPO, NPS, NTHP, NATHPO)
 - Questions the consequences for misapplying or abusing the exemption.
 - Requests the expansion of funding to Tribes to review EVSE installation.
 - Requests sufficient consultation with local governments and CLGs.
 - Suggests clear statement that the exemption only applies to federal NHPA review, but not other applicable state or local reviews.
 - Requests for examples or design guidelines to be referenced within the exemption.
 - Questions whether there should be an opt-in process for federal agencies, and whether there should be a requirement that they clarify how this exemption will work with other pre-existing program alternatives.
 - Questions whether agencies can rescind the exemption.
 - Proposing an exemption prior to consulting with others to determine whether it is an appropriate program alternative is pre-decisional and does not allow for free and prior informed consent.

- Cumulative and Other Effects (7 | 9: ACRA, Forest County Potawatomi, SAA, ACOE, MI SHPO, NPS, AL SHPO)
 - Unclear how the exemption ensures that properties have been considered under all four criteria for NR-eligibility.
 - Exemption does not consider effects to historic properties outside of EVSE footprint.
 - Surveys would be needed for any areas that have not had previous ground disturbance.
 - Questions whether there would be a maximum to the number of EVSE within or on a historic property.
 - Assumes that agencies are aware of properties of religious and cultural significance to Tribes
- Scope of Exemption (7 | 8: ACRA, MT SHPO, SAA, RUS, NPS, NTHP, NCSHPO)
 - Additional information is needed to clarify what other elements of EVSE may be included within the exemption (i.e., signage, connection to internet, tie-ins to existing infrastructure).
- Volumetrics/Dimensions (6 | 11: MT SHPO, NCSHPO, MI SHPO, NPS, NTHP, SAA)
 - Requests that there be maximum dimensions (HxWxD) for the EVSE, as well as maximum length or depth for ground disturbance.
 - Exemption should be clear that the previous levels of disturbance cannot be exceeded.
 - Suggests that exemption use dimensions like the FCC Collocation PA.
 - Questions how previous ground disturbance may be documented.
- Discoveries and Inadvertent Effects (6 | 7: ACRA, Forest County Potawatomi, SAA, OK SHPO, NCSHPO, NPS)
 - Suggest that the proposed exemption include a provision for addressing discoveries and inadvertent effects to historic properties, including human remains.
- Use of Qualified Professionals (5 | 9: ACRA, SAA, NCSHPO, OK SHPO, NPS)
 - SOI-qualified professionals should be used to appropriately assess site conditions and determine whether the exemption criteria have been met.
 - Need to reflect full range of historic preservation disciplines.
- Reporting/Assessment of Exemption (4 | 6: ACRA, ACOE, MI SHPO, SAA)
 - Questions how the ACHP will assess whether the exemption is being appropriately applied.
 - Requests for an annual reporting stipulation.
 - Given changing technologies, it seems advisable to include an amendment stipulation.
- Consultation with Tribes (4 | 5: ACRA, USET, ACOE, SAA)
 - Concern that the process appropriately includes Tribal consultation.
 - Consultation may be needed to determine the locations of EVSE.
- Objection to proposed exemption (2 | 3: Guam SHPO, NATHPO)
 - Exemption runs contrary to the NHPA and will result in adverse effects to historic properties.

Consideration of Comments Received during Consultation

Staff revised the proposed exemption extensively as a result of consultation. Below is a summary by comment category of how staff integrated suggestions or considered them in the revisions.

Scope of Exemption

The exemption more clearly defines the undertaking as the installation, maintenance, repair or expansion of EVSE provided it meets the necessary conditions. The exemption does not apply to other additional elements, such as signage. Those would be subject to individual Section 106 reviews.

During a consultation meeting, concerns were raised that the increased usage of EV and EVSE will require increased lithium mining, and create challenges in recycling used batteries. In acknowledging this concern, staff notes that such mining would be subject to a separate Section 106 review, and effects to historic properties would be considered in that review. The environmental issues associated with battery recycling could fall outside the scope of the NHPA, and may be better considered by agencies pursuant to the National Environmental Policy Act (NEPA).

Additional Detail, Definition or Condition

An earlier draft of the exemption used the phrase “parking areas and structures,” and stated this would include unpaved parking areas as well as street parking. To ensure transparency, staff added a definition for “parking facilities” to the exemption. While consideration was given to removing on-street parking from the exemption, it is apparent there is a need for it within many communities, particularly those that will likely use funds from the Department of Transportation. Accordingly, the definition includes on-street parking.

While requests for further detail for phrases such as “minimally visibly intrusive” and “lowest profile equipment” were made, staff believes that the other conditions within the exemption ensure that a reasonable interpretation of these phrases can be made by agency officials to be mindful of the height of the EVSE proposed for installation. However, clarification was made to the phrase “reversible” to ensure that it applied to the reversibility of effects to historic properties, and both “minimally visibly intrusive” and “lowest profile equipment” have had definitions added within the exemption.

In considering the comments that would remove Level 3 EVSE from the exemption, or exclude it when proposed for location within NR-listed properties or NHLs, staff acknowledged 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 Section 106 review when they cannot be located within existing parking facilities or will require the installation of additional electrical infrastructure. However, for those cases when the EVSE can be installed meeting the other conditions within the exemption, it is still reasonable to conclude that effects to any historic property, including an NHL, would be minimal or not adverse. Finally, while 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 was maintained.

Cumulative and Other Effects

The ACHP received comments regarding the potential for the installation of EVSE, particularly when several EVSE might be installed within one location, to 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 to the current electrical capacity. Therefore, it is unlikely to result in cumulative adverse effects on historic properties.

Further, any addition beyond the existing electrical capacity would fall outside the exemption and require Section 106 review.

While some comments requested that there be a survey requirement, the exemption relies upon existing infrastructure and parking structures. Any ground disturbance necessary to install the equipment will be limited to areas already disturbed, meaning that a survey would not likely result in the identification of historic properties that have sufficient integrity to contribute to or be individually considered eligible for listing in the National Register of Historic Places. Furthermore, there are no cost effective or reasonable measures available to carry out surveys to identify intact portions of historic properties that may be located underneath paved surfaces, and even if such intact elements did remain it is unlikely they would be further disturbed or adversely affected. Minor changes were made to the exemption's conditions to emphasize that ground disturbance should be minimized the extent possible, and that any ground disturbance should be contained within existing levels of previous disturbance.

Volumetrics and Maximum Dimensions

Several comments requested that staff 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, staff acknowledges that the evolving technology relating to EVSE challenges our ability to set static dimensions and the value of doing so. However, additional language confirming that ground disturbance is limited to previously disturbed soils has been added. This addresses 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. For transparency, the agency should clearly document in its administrative record how it determined the depth or extent of previous disturbance.

Consultation with Tribes

Comments were received regarding potential effects from EVSE to historic 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 may be placed on or near 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 will be 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."

Use of Qualified Professionals

Several comments 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. In designing the exemption for EVSE, the intent was to ensure that qualified professionals would not be needed because even if historic properties are present, they will not be affected due to the exemption's conditions. Accordingly, staff further revised and clarified the

conditions under which the exemption may be used, so that non-preservation professionals to appropriately utilize the exemption.

Reporting and Assessment of Exemption's Application

There were requests that the exemption include a provision that agencies report at regular intervals on the usage of the exemption, and that there be regular assessment to determine whether amendments may be needed. In considering revisions to the exemption, staff noted that the two exemptions currently in effect do not include such provisions. In the case of EVSE, such reporting may be unnecessary due to the minimal or non-adverse effects to historic properties and challenging to require and obtain from the myriad agencies that will be using this exemption. Accordingly, no reporting provision was added to the exemption. However, an amendment stipulation was included within the exemption, and staff is committed to routinely querying federal agencies, through the triennial Federal Property Stewardship Report or other means, on the use of the exemption.

Discoveries and Inadvertent Effects

Several comments focused on potential discoveries or inadvertent effects to historic properties during EVSE installation. Because the exemption limits the level of ground disturbance to previously disturbed sediments, it is unlikely that discoveries would occur. No additional edits to the exemption were made as a result of these comments. However, this exemption does not preclude compliance with the Native American Graves Protection and Repatriation Act and other applicable federal, state and local laws.

Other General Comments

Some comments 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, staff added clarifying language within the Exemption Concept and Criteria section of the exemption on this topic.

As for comments regarding the consequences of abusing or misusing the exemption, the NHPA is ultimately enforced through litigation. Should a SHPO, Tribe or consulting party believe that an agency inappropriately utilized the exemption, it would be able to request the administrative record for the action to be better informed. ACHP staff remains available to agencies, SHPOs, Tribes and consulting parties when there are questions as to whether the exemption's use is appropriate. No edits were made to the exemption as a result of these comments.

Comments regarding funding Tribes or providing additional examples of EVSE installation did not result in changes to the exemption. As an oversight agency, the ACHP does not provide funding, although it does support such funding when proposed by Congress. Examples of EVSE installations will continue to be posted on the ACHP's dedicated website for this effort.

Finally, a comment was made that it was pre-decisional for staff to query other federal agencies regarding a potential programmatic solution to the federal EV and EVSE requirements, and that the decision regarding the appropriate program alternative should have been made in consultation with others, including Tribes. An element of the consultation carried out by staff and ACHP leadership was to determine whether this particular program alternative was appropriate and comments were solicited in this regard. Should comments have been made requesting that a different alternative be considered, staff would have done so. Moreover, given the experience staff has had with EVSE in the past and the obligation it has to advise members on appropriate measures to address such undertakings, including its

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advice on appropriate program alternatives, it was not unreasonable for it to recommend the use of an exemption. Ultimately, ACHP members will vote to determine, among other things, whether an exemption is appropriate in these circumstances.

Objections

Two objections were made to the proposed exemption, on the basis that the proposal ran contrary to the purposes of the NHPA. However, as established in the NHPA and explained above, it is the ACHP's obligation to advise the Administration and Congress on, among other things, measures that would achieve harmony between preserving the past and looking ahead to the future. Given the exigency of climate change and the need to address its effects to historic properties, as well as the importance of supporting measures to combat these effects, this exemption was developed in part to assist the Administration in expanding the use of EVs across the country. In the view of staff, the effects of the exempted undertakings are foreseeable and likely to be minimal or not adverse, and the exemption will assist efforts to mitigate the effects of climate change.

Proposed EVSE exemption consultation plan:

- 1) Consultation invitation and information will be sent to Tribal and Native Hawaiian Leaders
 - a. A minimum of 30 days prior to the meeting request
 - b. Tribal and Native Hawaiian section 106 contacts will also be notified
- 2) Information will be sent email
 - a. hard-copy mailing will occur upon request or where applicable
- 3) Initial invitation will include:
 - a. The draft document that is the subject of the consultation
 - b. The consultation plan which will outline a proposed timeline and process
 - c. Relevant legal authorities for such action
 - d. Description of the proposed action
 - e. Analysis of potential impacts to Indian Tribes and Native Hawaiians
 - f. Agency contact information
 - g. Other relevant information and resources
- 4) Consultation events:
 - a. Will occur for 2 full hours
 - b. Will be conducted on two separate days
 - c. ACHP personnel will take notes
 - d. Chat will be copied for internal purposes
 - e. May be recorded
- 5) Post consultation actions will include:
 - a. ACHP will develop a summary of the meeting and written comments (Tribal and Native Hawaiian comments will not be shared without express permission to the extent allowable)
 - i. The summary will be placed on ACHP's website
 - ii. The summary will be shared with Tribal and Native Hawaiian Leaders and their 106 contacts
 - b. ACHP will provide Tribal and Native Hawaiian Leaders a revised document with explanation of how comments were or are being acted upon
- 6) ACHP will conduct additional consultation meetings with Tribal Governments on a case-by-case basis as requested
- 7) ACHP's Chairman will inform Tribal and Native Hawaiian Leaders of ACHP's final action in writing including copies of:
 - a. The final document
 - b. A summary of consultation
 - c. An explanation of how comments were or were not accounted for
- 8) The final document, summary of consultation, and explanation of how comments were or were not accounted for will be:
 - a. Shared with Tribal and Native Hawaiian 106 contacts
 - b. Placed on ACHP's website – (Tribal and Native Hawaiian comments will not be shared without express permission to the extent allowable)
- 9) ACHP will remain available to answer questions and share information, as appropriate, for the duration of the EVSE exemption



**ARMY VIETNAM WAR ERA (1963-1975) HISTORIC HOUSING, ASSOCIATED BUILDINGS
AND STRUCTURES, AND LANDSCAPE FEATURES PROGRAM COMMENT**
Office of Federal Agency Programs

Background. The Department of the Army (Army) has been working with the ACHP and other stakeholders to develop a Program Comment for Vietnam War Era Housing (Army PC) to assist it in carrying out a set of repetitive management actions on more than 7,500 homes built between 1963-1975. The Army identified the category of undertakings as management actions including maintenance, repair, rehabilitation, renovation, abatement of hazardous materials, mothballing, cessation of maintenance, demolition, new construction, lease, transfer, conveyance, and the use of modern industry standard building materials and methods. ACHP staff provided comments on the draft Army PC to the Army in mid-August, which the Army incorporated into the PC. The Army formally submitted its request for a program comment to the ACHP on August 26 and agreed to grant the ACHP a 60-day review period to allow additional time for consultation efforts and member action on the proposal at the fall business meeting.

Update. Following the Army's formal request on August 26 2022, to the ACHP to issue its proposed program comment, ACHP staff provided a packet to members on August 30 including the proposed PC and a summary of consultation efforts, staff review comments, and comments received by the Army from consulting parties. The ACHP hosted its own government-to-government consultation with Indian tribes regarding the PC on September 12 and 15 and consultation with State Historic Preservation Officers on September 19. Two written comments supported the efficiencies provided in the program comment, and three requested to receive notification as appropriate in the case of unanticipated discoveries. During consultation, the ACHP also heard concerns about the parameters of new construction in the context of this program comment.

Regarding the inclusion of demolition as a management action, the ACHP has maintained demolition may be considered as an appropriate management action within a PC. In fact, demolition and new construction have been addressed by many other PCs (including the first five PCs issued by the ACHP). Comments are available in the Army PC packet sent to members on August 30 and on the OneDrive at: https://achp-my.sharepoint.com/:f:/g/personal/bsemmer_achp_gov/EtqHzsQvUa5Moi_A9DckA60B-bLJzgi495AzOuTVBSKBkA

The ACHP hosted a special meeting on October 3 to provide a forum for members to discuss the Army PC and the Electric Vehicle Supply Equipment exemption and ask ACHP staff any questions. ACHP staff provided a summary of consultation and an initial response to letters the ACHP received from the National Conference of State Historic Preservation Officers (NCSHPO) and the National Trust on October 1 and 2. While the comments expressed in those letters were discussed at the meeting, ACHP staff did not have time to include them in the written consultation summary. The letters are posted on the One Drive at the link above, with other written comments. ACHP staff will provide a more complete response to the issues raised by NCSHPO and the National Trust when the members are updated by email on October 19. This email will include an updated version of the PC following further ACHP consultation with the Army following the October 3 meeting.

Action Needed. Members will have an opportunity to briefly discuss the Army PC at the Federal Agency Programs Committee meeting on October 19. Members should be prepared to ask clarifying questions and provide final comments on the Army PC. Members should also be prepared to vote on the adoption of the Army PC at the October 26 business meeting.

October 12, 2022



GSA EXEMPTION FOR MAINTENANCE AND PRESERVATION ACTIVITIES Office of Federal Agency Programs

Background. As reported during the June business and committee meetings, the U.S. General Services Administration (GSA) is developing an exemption that would release the agency from the requirement of conducting Section 106 reviews for certain maintenance and preservation categories of undertakings. GSA is relying upon its preservation expertise and staffing infrastructure to ensure implementation of the exempted undertakings will result in minimal or nonadverse effects to historic properties. At that time, Office of Federal Agency Programs staff reported that GSA was planning to submit the proposed exemption to the ACHP in September, in time for a vote at the October 26 business meeting.

Update. GSA has delayed submission of the exemption to provide additional time to address State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) comments received during the August outreach meetings. Input from SHPOs and THPOs has been generally positive and in support of the GSA exemption, in recognition of the effectiveness of GSA's overall historic preservation program, demonstrated stewardship, and professional staff. Comments have included requests to incorporate clauses for accidental discovery of archaeological historic properties, inclusion of a monitoring period, clarification regarding how preservation and routine maintenance are defined, and specialized training for GSA staff on implementation of the exemption.

GSA is reviewing comments and anticipates submitting the exemption to the ACHP later this fall. The ACHP will conduct outreach with SHPOs and government-to-government consultation with Indian tribes soon after it is received. Consultation to develop the exemption is expected to be completed in time for ACHP members to consider the proposal at the winter business meeting or during a special unassembled vote. ACHP staff will schedule a special meeting for members to discuss the proposed exemption and ask questions of ACHP staff, likely in January 2023.

Action Needed. None at this time. Members are encouraged to ask questions about the exemption development process. Staff is committed to keeping the members updated and engaged as the exemption progresses.

October 12, 2022



SUPPORTING THE WORK OF HISTORICALLY BLACK COLLEGES AND UNIVERSITIES **Office of Communications, Education, and Outreach**

Background. As a member of the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Historically Black Colleges and Universities (HBCUs), the ACHP supports the work of all HBCUs across the country.

The agency has launched programs that bring students into work with federal agencies, such as Preservation in Practice (PIP) with the National Park Service and the National Trust for Historic Preservation, and the newly launched Cultural Heritage in the Forest (CHIF) with the USDA Forest Service and HistoriCorps. In addition, the Office of Communications, Education, and Outreach (OCEO) has presented webinars that discuss topics of interest to HBCU students studying historic preservation and related subjects. Other offices in the ACHP have also supported such efforts.

The ACHP is a part of the White House Initiative's Arts, History, Humanities & Culture Cluster. The Cluster is made up of the National Endowment for the Arts, National Endowment for the Humanities, Library of Congress, Institute of Museum and Library Services, and Department of Education. The ACHP participated in HBCU Week activities during the week of September 19, including "Journey Through the Federal Government," which was an opportunity for conference attendees and students to speak directly to federal agencies during a meet and greet, and an informal Cluster meetup session, for conference attendees to find out more about what the ACHP and partner agencies can offer them.

This year the ACHP is has two Virtual Student Federal Service interns: Jasmine Lopez, an anthropology student from the University of Texas at San Antonio, and Ryane Smith, a Howard University student living and working in Italy. They will be producing the 2023 "Preserve the Past, Build For the Future" webinar series, with three episodes geared toward HBCU students, as well as two more generally directed webinars. OCEO will share the final schedule with ACHP members when it is finalized.

Discussion. The ACHP would like to continue to find ways to support these universities and colleges. One priority might be to create specific information to introduce students to historic preservation careers, as well as specialized training related to the workforce shortage that the Cultural Resources Management (CRM) fields are experiencing. Another option is to consider working with faculty and students at HBCUs to raise awareness of their own historic campuses. Such efforts might also include ACHP members and their organizations.

Action Needed. Members should be prepared to discuss the topics mentioned and be prepared to address the following questions:

- How can the ACHP and partners better assist HBCUs with member and staff support?
- Would ideas such as the ones above support the national preservation program's desire to increase visibility about careers in CRM?
- What kinds of training might help introduce these students (as well as faculty and HBCU leadership) to historic preservation career tracks?
- What ideas for partnerships with federal agencies might be considered for future work? (Along the lines of CHIF and PIP, but perhaps on a smaller scale?)

October 12, 2022



TRADITIONAL TRADES AND POTENTIAL INFLATION REDUCTION ACT OPPORTUNITIES Office of Preservation Initiatives

Introduction. The Inflation Reduction Act (IRA) (Public Law No: 117-169) provides slightly more than \$1 billion to select federal agencies to improve environmental review and permitting processes. (See Cultural Resource Workforce Development in Tab 1 for details.) However, the new law also includes \$1.2 billion in funding for conservation activities in the National Park system and on public lands. Authorized uses of these funds for conservation projects, hiring personnel, and addressing deferred maintenance suggests that the IRA might offer a unique opportunity to address the shortage of skilled craftspeople in the traditional trades.

Scope of the Funding. The IRA public lands funding can be used to do the following:

- Carry out projects for the conservation, protection, and resiliency of lands and resources administered by the National Park Service (NPS) and the Bureau of Land Management (BLM). (\$250 million; available through FY 2031.)
- Carry out conservation, ecosystem, and habitat restoration projects on lands administered by NPS and BLM. (\$250 million; available through FY 2031.)
- Hire employees to serve in units of the National Park System or national historic or national scenic trails administered by NPS. (\$500 million; available through FY 2030.)
- Carry out priority NPS deferred maintenance projects. (\$200 million; available through FY 2026.)

Context of the ACHP Traditional Trades Training Policy Statement. In October 2020, the ACHP adopted its [Policy Statement on Promotion and Value of Traditional Trades Training](#). The policy statement discusses the need for and the benefits of expanded traditional trades training; suggests key principles that should guide federal, state, and local workforce development and training efforts; and offers recommendations for federal action. Several aspects of the policy statement are germane to considering the possible traditional trades opportunities presented by the IRA public lands funding.

- The policy statement recommends promoting traditional trades training in the work of federal conservation corps. If a portion of the IRA funding for conservation projects is directed to conservation corps activities, such funding could support preservation of historic properties while also providing traditional trades training. As the policy statement notes, “[Conservation corps] projects offer important opportunities to introduce corps members to the traditional trades and provide training. Federal land-managing agencies should set an example by maximizing use of conservation corps to address historic preservation needs on public lands.”
- The policy statement discusses in broad terms the relative scarcity of workers in the traditional trades without quantifying a specific need at federal land-managing agencies; however, anecdotal

evidence suggests the problem exists. The IRA funding for NPS to “staff up” in the field potentially could result in hiring not only more park rangers, but also more craftspeople and maintenance staff adept in the traditional trades.

- The policy statement recommends including traditional trades training in implementation of the Great American Outdoors Act. That law, which was passed in 2020, made a significant multi-year investment toward addressing the deferred maintenance backlog of NPS and several other agencies. Work to address deferred maintenance at historic properties will require craftspeople trained in the traditional trades, and the policy statement notes that, “Using a small portion of the billions of dollars that will become available under the law for traditional trades training would be a strategic investment to address an immediate need as well as a way of having a lasting positive impact on the current shortage of traditional trades craftspeople.” The same can be said regarding the additional deferred maintenance funding provided by the IRA.

Action Needed. Staff seeks member input on promoting use of IRA public lands funding for workforce development in the traditional trades. Should the ACHP send correspondence to the Secretary of the Interior and the Directors of NPS and BLM to share the policy statement, encourage use of IRA funds for traditional trades hiring and training, and offer to partner with them?

Staff will work with the representatives of the Department of the Interior agencies who regularly participate in ACHP meetings to identify additional NPS and BLM staff who might contribute to the conversation; they will be invited to attend the committee meeting.

October 12, 2022