

1 Proposed Amendment to the Program Comment for Communications Projects on Federal
2 Lands and Property
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5 **I. Background**
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7 The 2020 coronavirus pandemic reinforced all Americans’ need for reliable internet at
8 sufficient speeds, and highlighted the digital divide created by barriers to high-speed
9 broadband access. The 2021 Infrastructure Investment and Jobs Act provided a historic
10 investment of \$65 billion to help close the digital divide and ensure that all Americans
11 have access to reliable, high speed, and affordable broadband. This “Internet for All”
12 initiative will deploy or upgrade broadband networks to connect everyone in America,
13 across all states and territories, generating an unprecedented volume of communications
14 infrastructure projects subject to environmental review and permitting, including
15 compliance with Section 106 of the National Historic Preservation Act (NHPA). For
16 example, the Broadband Equity, Access, and Deployment (BEAD) program alone may
17 generate hundreds, possibly thousands, of communications infrastructure projects in each
18 state and territory that must be built within four years of proposal acceptance.
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20 The ACHP has historically coordinated with federal agencies permitting, assisting, or
21 licensing broadband projects and responded to the high volume of telecommunications
22 undertakings licensed or assisted by federal agencies, along with the often-minimal
23 effects on historic properties from these projects, by supporting the development of a
24 range of program alternatives to optimize the efficiency and effectiveness of Section 106
25 reviews. Notably, in 2015, the ACHP worked with the White House Office of Science
26 and Technology and an interagency Working Group comprised of representatives from
27 the U.S. Department of the Interior’s Bureau of Land Management, National Park
28 Service (NPS), Fish and Wildlife Service; Department of Defense; the U.S. Department
29 of Agriculture’s Forest Service and Rural Utilities Service (RUS); and the Federal
30 Communications Commission (FCC) to explore how best to accelerate the deployment of
31 communications projects, particularly broadband activities, on federal lands and
32 properties. After evaluating the Section 106 program alternatives outlined in 36 CFR
33 800.14 through two years of interagency collaboration and following requisite
34 consultation, the ACHP issued the 2017 *Program Comment for Communications Projects*
35 *on Federal Lands and Property* (2017 Program Comment), 82 Fed. Reg. 23818 (May 24,
36 2017).
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38 For the past several years, certain federal land and property managing agencies have
39 implemented the 2017 Program Comment to address Section 106 compliance for the
40 collocation of antennae on existing communications towers, including the mounting or
41 installation of an antenna on an existing tower, building, or structure; installation of aerial
42 communications cable; burying communications cable in existing road, railroad, and
43 utility rights-of-way (ROW); construction of new communication towers (facilities), and
44 removal of obsolete communications equipment and towers (hereinafter, communication
45 deployment undertakings). Consistent with the 2022 Permitting Action Plan, the ACHP
46 and broadband funding agencies identified the need to extend the applicability of the

47 2017 Program Comment to create uniform Section 106 rules for all broadband projects
48 regardless of location. As proposed, the amendment would not substantially change the
49 procedures established in the original program comment, although it does include the
50 addition of a dispute resolution stipulation in the event that a federal agency and a
51 consulting party are unable to reach consensus at various points within the Program
52 Comment’s implementation. Informed by a substantial record of NTIA and RUS Section
53 106 reviews for these types of undertakings, the ACHP believes expanding the
54 availability of the program comment to undertakings proposed on state and private lands
55 through this amendment would create efficiencies for all consulting parties, streamline
56 reviews, and increase predictability while appropriately taking into account the effects of
57 broadband projects on historic properties.

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59 The purpose of this amendment is to assist federal agencies in efficiently permitting and
60 approving the deployment of next generation technologies of communications
61 infrastructure, including 5G, to connect all communities with reliable, high-speed
62 Internet. The 2017 Program Comment provides a process for its amendment in section
63 XVIII. The ACHP is utilizing that process to propose the following revisions. The
64 amended Program Comment would provide an alternative way for federal agencies to
65 comply with Section 106 to take into account the effects of their undertakings on historic
66 properties and afford the ACHP a reasonable opportunity to comment on them. Federal
67 agencies are encouraged, but not required, to follow the efficiencies set forth in this
68 amended Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7
69 for individual undertakings falling within its scope.

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72 **II. Proposed Amendment to the Program Comment**

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74 The following would amend the Program Comment to read as follows:

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76 **Program Comment for Federal Communications Projects**

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78 Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108
79 (Section 106), requires federal agencies to “take into account” the effects of their
80 undertakings on historic properties and to provide the Advisory Council on Historic
81 Preservation (ACHP) a reasonable opportunity to comment with regard to such
82 undertakings. The ACHP has issued regulations that set forth the process through which
83 federal agencies comply with these duties. Those regulations are codified under 36 CFR
84 part 800 (Section 106 regulations).

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86 Under section 800.14(e) of those regulations, agencies can request the ACHP to
87 provide a “Program Comment” on a particular category of undertakings in lieu of
88 conducting separate reviews of each individual undertaking ~~under such category, as set~~
89 ~~forth in~~ following 36 CFR §§ 800.3 through 800.7. Federal ~~agencies~~ Land Managing
90 Agencies (LMAs) and Federal Property Managing Agencies (PMAs) can meet their
91 Section 106 responsibilities with regard to the effects of particular undertakings by taking
92 into account this Program Comment and following the steps set forth therein.

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93 **I. Introduction**

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95 The purpose of ~~issuing~~proposing this amended Program Comment is to assist ~~f~~Federal
96 LMA/PMAsagencies in permitting and approving the deployment of next generation
97 technologies of communications infrastructure, e.g. 5G, more efficiently. This amended
98 Program Comment ~~would~~establisheses uniform procedures for addressing Section 106
99 compliance for the collocation of antennae on existing communications towers, including
100 the mounting or installation of an antenna on an existing tower, building, or structure;
101 installation of aerial communications cable; burying communications cable in existing
102 road, railroad, and utility rights-of-way (ROW); construction of new communication
103 towers (facilities), and removal of obsolete communications equipment and towers
104 (hereinafter, communication deployment undertakings). These undertakings ~~would~~
105 typically not result in adverse effects to historic propertiestypically result in similar
106 effects to historic properties, should they be present within the undertaking's Area of
107 Potential Effect. Federal LMA/PMAsagencies may elect to follow the efficiencies set
108 forth in this proposed amended Program Comment in lieu of the procedures in 36 CFR §§
109 800.3 through 800.7 for individual undertakings falling within its scope. Public
110 involvement remains a critical aspect of the Section 106 process; therefore, it is the
111 responsibility of the ~~f~~Federal LMA/PMAsagencies to determine their method for public
112 engagement based on the agency's established protocols for their communications
113 programs. In addition, for the purpose of this proposed amended Program Comment,
114 ~~f~~Federal LMA/PMAsagencies are encouraged to identify a single point of contact and
115 designate a Lead Federal Agency for the purpose of carrying out Section 106 reviews
116 when communications projects involve multiple federal agencies.

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118 In addition to expanding the existing 2017 Program Comment, t~~t~~his amended
119 Program Comment builds upon the precedent of two Nationwide Programmatic
120 Agreements (NPAs) for wireless communications projects executed in 2001 and 2004,
121 respectively, among the Federal Communications Commission (FCC), the ACHP, and
122 the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs
123 have been successful in establishing efficiencies in the Section 106 review of tower
124 construction and collocations, and apply to facilities that support the use of FCC-licensed
125 spectrum and are located on private lands. The applicability of the NPAs ~~was~~erehave
126 previously-been expanded to cover federally-funded communications activities through
127 the ACHP's issuance of the 2009 Program Comment to Avoid Duplicative Reviews for
128 the Wireless Communications Facilities Construction and Modification, as further
129 amended in 2015 and 2020, which allows

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131 ~~Many State Historic Preservation Officers (SHPOs), Tribal Historic Preservation~~
132 ~~Officers (THPOs), Indian tribes, and Native Hawaiian organizations (NHOs) have been~~
133 ~~accustomed to reviewing applications for wireless communications facilities under the~~
134 ~~terms of the NPAs. As such, the NPAs were expanded to cover communications activities~~
135 ~~funded under the American Recovery and Reinvestment Act of 2009, through the~~
136 ~~ACHP's issuance of a Program Comment for the Broadband Initiatives Program and the~~
137 ~~Broadband Technology Opportunities Program. The 2009 Program Comment allows the~~
138 U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of

139 Commerce, National Telecommunications and Information Administration; and the U.S.
140 Department of Homeland Security, ~~Federal Emergency Management Agency and its~~
141 ~~components; Federal Railroad Administration (FRA); Federal Transit Administration~~
142 ~~(FTA); FirstNet;~~ and the Office of Surface Mining and Reclamation, to rely on the
143 FCC’s review of tower and collocation undertakings under the NPAs, thereby eliminating
144 duplicative reviews for undertakings supporting the use of subject to-FCC licensed
145 service or registration. ~~In 2015, the ACHP extended the Broadband Program Comment~~
146 ~~for an additional 20 years and expanded it to allow additional agencies that fund~~
147 ~~communication facilities, including the Department of Homeland Security (DHS) and its~~
148 ~~components, Federal Railroad Administration (FRA), Federal Transit Administration~~
149 ~~(FTA), and FirstNet, to utilize its terms to comply with Section 106 for those~~
150 ~~undertakings.~~

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152 Since the FCC NPAs do not apply on federal lands, Federal LMAs/PMA can
153 benefit from the use of this Program Comment for the deployment of communications
154 infrastructure and facilities. The recommendation for developing such a program
155 alternative on federal lands derived from the implementation of Executive Order 13616,
156 Accelerating Broadband Infrastructure Deployment (77 FR 36903, June 20, 2012). Once
157 Executive Order 13616 was issued, a Federal Property Working Group (Working Group)
158 was established to expedite reviews and implement efficiencies for the deployment of
159 broadband infrastructure on federal property. Subsequently the Broadband Opportunity
160 Council (BOC) was established to produce specific recommendations to increase
161 broadband deployment, competition, and adoption through actions within the scope of
162 existing agency programs, missions, and budgets. The efforts of the BOC aligned with
163 those of the Working Group, reaffirming the commitment to implement activities and
164 policies that support increased broadband deployment, particularly in rural and
165 underserved communities. Finally, the importance of broadband infrastructure
166 deployment was reaffirmed with the issuance of Executive Order 13766, Expediting
167 Environmental Reviews and Approvals for High Priority Infrastructure Projects (82 FR
168 8657, January 30, 2017). This Executive Order requires infrastructure decisions to be
169 accomplished with maximum efficiency and effectiveness, while also respecting property
170 rights and protecting public safety. Further, all infrastructure projects, especially projects
171 that are high priority for the nation, such as improving U.S. electric grids and
172 telecommunications systems and repairing and upgrading critical port facilities, airports,
173 pipelines, bridges, and highways are the focus of this executive order.

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175 This amended Program Comment provides an alternate method for ~~the f~~Federal
176 LMAs/PMA agencies to meet their Section 106 responsibilities in a flexible manner for
177 communications undertakings. It does not modify the responsibilities of ~~f~~Federal
178 LMAs/PMA agencies to comply with Section 110(a) of the NHPA. Nor does it relieve
179 ~~f~~Federal LMAs/PMA and other federal agencies who utilize the amended Program
180 Comment from completing Section 110(a) surveys when they are appropriate on federal
181 lands.

182 **II. Applicability**

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185 This amended Program Comment applies to communication deployment
186 undertakings that are carried out, permitted, licensed, funded, ~~or~~-assisted or approved by
187 ~~any f~~Federal agency ~~the following LMAs: the U.S. Department of Agriculture's (USDA)~~
188 ~~U.S. Forest Service (USFS); the Department of the Interior's (DOI) National Park~~
189 ~~Service (NPS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS),~~
190 ~~and Bureau of Indian Affairs (BIA); and the following PMAs: the Department of~~
191 ~~Homeland Security and its components, Department of Commerce; Department of~~
192 ~~Veterans Affairs; and the General Services Administration. Other federal agencies~~
193 ~~responsible for carrying out, permitting, licensing, funding, or assisting in the deployment~~
194 ~~of communications activities, such as FCC and the USDA Rural Utilities Service (RUS),~~
195 ~~may utilize this Program Comment to satisfy their Section 106 responsibilities on federal~~
196 ~~lands after completing the process set forth in Section XVIII.B. below.~~

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198 Federal ~~LMAs/PMAs~~agencies may have existing procedures in place, such as a
199 Memorandum of Understanding or consultation protocol with a SHPO, THPO, Indian
200 tribe, or NHO to coordinate consultation ~~or to expedite Section 106 reviews~~, or a program
201 alternative developed pursuant to 36 CFR § 800.14 that addresses agency compliance
202 with Section 106 for certain types of undertakings. If such procedures exist, the ~~f~~Federal
203 ~~LMAs/PMAs~~agency may be encouraged to coordinate with the signatories of those
204 agreements or program alternatives to determine whether applying the terms of this
205 Program Comment can substitute for those procedures.

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207 This amended Program Comment is not applicable to undertakings proposed to be
208 carried out, permitted, licensed, funded, ~~or~~-assisted or approved by any federal agency
209 that would occur on or affect ~~the following federally owned lands: National Historic~~
210 ~~Landmarks (or the portion thereof that is located on federal land), National Monuments,~~
211 ~~National Memorials, National Historical Parks, National Historic Trails, National~~
212 ~~Historic Sites, National Military Parks, and National Battlefields, unless .Should federal~~
213 ~~agencies or applicants want to deploy communications facilities that will affect these~~
214 ~~properties,~~ the responsible federal agency must consults with the SHPO, Tribes, the
215 National Park Service, and other consulting parties to determine whetherif application of
216 the amended Program Comment will reasonably take into account the effects of the
217 agency's undertaking on historic properties, or whether following the standard Section
218 106 process under 36 CFR §§ 800.3 through 800.7 ~~(or another applicable Program~~
219 ~~Alternative under 36 CFR § 800.14 is more appropriate) is necessary to assess effects to~~
220 ~~those propertiesfor the review of such undertakings in consultation with the applicant,~~
221 ~~SHPO/THPO, Indian tribes, NHOs, and other consulting parties.~~

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223 This amended Program Comment is not applicable to undertakings proposed to be
224 carried out, licensed, permitted, ~~or~~-assisted, or approved by any federal agency that would
225 occur on or affect historic properties located on Tribal lands without the prior, written
226 agreement between that Indian tribe and the federal agency, and notification by the
227 relevant ~~f~~Federal ~~LMA/PMA~~agency to the ACHP, NCSHPO, and NATHPO.

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229 Should a dispute arise over applicability the implementation of this amended
230 Program Comment, or its use for any particular undertaking, the ~~f~~Federal

231 ~~LMA/PMA~~agency will consult with the objecting party to resolve the dispute. Should
232 resolution not be reached, the federal agency should request the ACHP to provide its
233 advisory comments to resolve the dispute, and take the ACHP’s comments into account
234 before finalizing its approach to complying with Section 106. ~~and should consider~~
235 ~~following the standard Section 106 process under 36 CFR §§ 800.3-800.7.~~ The ~~f~~Federal
236 ~~LMA/PMA~~agency shall notify all consulting parties regarding its ~~preferred~~ approach to
237 complying with Section 106 for a communications undertaking that is the subject of a
238 dispute.

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240 **III. Definition of terms**

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242 A. Agency official – It is the statutory obligation of the federal agency to fulfill the
243 requirements of Section 106 and to ensure that an agency official with jurisdiction
244 over an undertaking takes legal and financial responsibility for Section 106
245 compliance in accordance with 36 CFR part 800. The agency official has approval
246 authority for the undertaking and can commit the federal agency to take
247 appropriate action for a specific undertaking as a result of Section 106
248 compliance. The agency official may be a state, local, or tribal government
249 official who has been delegated legal responsibility for compliance with Section
250 106 in accordance with federal law.

251 B. Antenna – An apparatus designed for the purpose of emitting radio frequency
252 radiation, to be operated or operating from a fixed location, for the transmission
253 of writing, signs, signals, data, images, pictures, and sounds of all kinds, including
254 the transmitting device and any on-site equipment, switches, wiring, cabling,
255 power sources, shelters or cabinets associated with that antenna and added to a
256 tower, structure, or building as part of the original installation of the antenna.

257 C. Applicant – The party submitting an application for federal communications
258 permitting, licensing, approval or lease, and/or recipients of federal funding ~~on~~
259 federally managed lands or federally managed property.

260 D. Area of Potential Effects (APE) – The geographic area or areas within which an
261 undertaking may directly or indirectly cause alterations in the character or use of
262 historic properties, if any such properties exist. The APE is influenced by the
263 scale and nature of an undertaking and may be different for different kinds of
264 effects caused by the undertaking (source: 36 CFR § 800.16(d)). For purposes of
265 this Program Comment the APE includes the ROW, access routes, and staging
266 areas as defined below.

267 E. Collocation – The communications industry’s term for the construction of a new
268 antenna ~~or tower~~, or the mounting or installation of an antenna on an existing
269 tower, building, or structure, for the purpose of transmitting and/or receiving radio
270 frequency signals for communications purposes. It includes any fencing,
271 equipment, switches, wiring, cabling, power sources, shelters, or cabinets
272 associated with that antenna or tower.

273 F. Consulting Parties – The parties with whom federal agencies consult in the
274 Section 106 process. Consulting parties “by right” are those parties a federal
275 agency must invite to consult and include the ACHP, and the relevant SHPO;
276 THPO; Indian tribes, including Alaskan Native villages, Regional Corporations,

277 or Village Corporations; and Native Hawaiian organizations (NHOs);
278 representatives of local governments; and applicants for federal assistance,
279 permits, license and other approvals. “Certain individuals and organizations with
280 a demonstrated interest in the undertaking” may, at the discretion of the relevant
281 agency, also participate as consulting parties “due to their legal or economic
282 relation to the undertaking or affected properties, or their concern with the
283 undertaking’s effects on historic properties” (source: 36 CFR § 800.2(c)).

284 G. Effect and Adverse Effect – “Effect means alteration to the characteristics of a
285 historic property qualifying it for inclusion in or eligibility for the National
286 Register of Historic Places” (source: 36 CFR § 800.16(i)). “An adverse effect is
287 found when an undertaking may alter, directly or indirectly, any of the
288 characteristics of a historic property that qualify the property for inclusion in the
289 National Register in a manner that would diminish the integrity of the property’s
290 location, design, setting, materials, workmanship, feeling, or association” (source:
291 36 CFR § 800.5(a)(1)).

292 H. Facility – Means the secured area including the building, tower, and related
293 incidental structures or improvements, ~~located on federal land.~~

294 I. Ground Disturbance – Any activity that moves, compacts, alters, displaces, or
295 penetrates the ground surface of previously undisturbed soils. “Undisturbed soils”
296 refers to soils that possess significant intact and distinct natural soil horizons.
297 Previously undisturbed soils may occur below the depth of disturbed soils.

298 J. Historic Property – Any prehistoric or historic district, site, building, structure, or
299 object included in, or eligible for inclusion in, the National Register maintained
300 by the Secretary of the Interior. This term includes artifacts, records, and remains
301 that are related to and located within such properties. The term includes
302 traditional cultural properties (TCPs) and properties of traditional religious and
303 cultural significance to an Indian tribe, Alaskan Native village, Regional
304 Corporation or Village Corporation, or NHO that meet the National Register
305 criteria (source: 36 CFR § 800.16(l)(1)).

306 K. Indian tribe – An Indian tribe, band, nation, or other organized group or
307 community, which is recognized as eligible for the special programs and services
308 provided by the United States to Indians because of their status as Indians. It
309 includes a Native village, Regional Corporation, or Village Corporation, as those
310 terms are defined in section 3 of the Alaska Native Claims Settlement Act (43
311 U.S.C. § 1602).

312 L. Property Managing Agency – Executive branch agencies and independent
313 agencies that have authority to hold smaller swaths of land to support facilities
314 that are necessary to the agency’s mission and vision.

315 M. Land Managing Agency – Executive branch agencies that have the authority to
316 hold broad swaths of land for the agency’s mission and other particular purposes
317 such as management and administration of activities undertaken to support the
318 agency.

319 M.N. Funding Agency - Executive branch agencies and independent agencies
320 that grant or loan federal funds to an applicant or recipient.

321 N.O. Tribal lands – Defined in 36 CFR § 800.16(x) as including “all lands
322 within the exterior boundaries of any Indian reservation and all dependent Indian

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communities.”

O.P. Pole – A pole is a non-tower structure that can hold utility, communications, and related transmission lines.

P.Q. Right of Way – An easement, lease, permit, or license to occupy, use, or traverse public lands (source: Federal Land Policy and Management Act of 1976, As Amended 2001, Title V). For the purposes of this Program Comment, ROW includes a construction, maintenance, road, railroad, or utility ROW.

Q.R. Records Check – For the purpose of this Program Comment, a “Records Check” means searching SHPO/THPO, tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO/THPO, for any information about whether the following kinds of properties are known to exist within the APE: pProperties listed on or formally determined eligible for the National Register; pProperties that the SHPO/THPO certifies are in the process of being nominated to the National Register; pProperties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a federal agency or local government representing the Department of Housing and Urban Development; pProperties listed and identified in the SHPO/THPO iInventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and pProperties in their files that the SHPO/THPO considers eligible.

R.S. Staging Area – For the purpose of this Program Comment, a staging area is an area designated for short term use, not to exceed the duration of the project, and is often used for storing and assembling building materials equipment, and machinery, and for parking vehicles, temporary mobile offices, and staging area entrance/exit.

S.T. Substantial Increase in Size – This occurs when there is an existing antenna on a tower and:

1. Mounting of the proposed additional or replacement antenna would result in an increase of the existing height of the tower by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph, if necessary to avoid interference with existing antennae; or
2. Mounting of the proposed additional or replacement antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved (not to exceed four), or more than one new equipment shelter; or
3. Mounting of the proposed additional or replacement antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater), except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

368 3.4. The mounting of the proposed antenna would expand the boundaries of
369 the current tower site by more than 30 feet in any direction or involve
370 excavation outside these expanded boundaries. The current tower site is
371 defined as the current boundaries of the leased or owned property
372 surrounding the tower and any access or utility easements currently related
373 to the site.

374 F.U. Native Hawaiian organizations — Defined as “any organization which
375 serves or represents the interests of Native Hawaiians; has as a primary and stated
376 purpose the provision of services to Native Hawaiians; and has demonstrated
377 expertise in aspects of historic preservation that are significant to Native
378 Hawaiians” (source: 36 CFR § 800.16(s)(1)). “Native Hawaiian” means any
379 “individual who is a descendant of the aboriginal people who, prior to 1778,
380 occupied and exercised sovereignty in the area that now constitutes the state of
381 Hawaii” (source: 36 CFR § 800.16(s)(2)).

382 U.V. State Historic Preservation Officer — The state official appointed or
383 designated pursuant to Section 101(b)(1) of the NHPA to administer the state
384 historic preservation program or a designated representative.

385 V.W. Tribal Historic Preservation Officer – The tribal official appointed by the
386 tribe’s chief governing authority or designated by a tribal ordinance who has
387 assumed the responsibilities of the SHPO for purposes of Section 106 compliance
388 on tribal lands in accordance with Section 101(d)(2) of the NHPA.

389 X. Tower — Any structure built for the sole or primary purpose of supporting
390 antennae, including the on-site fencing, equipment, switches, wiring, cabling,
391 power sources, shelters, or cabinets associated with that tower, but not installed as
392 part of an antenna as defined herein (source: Nationwide Programmatic
393 Agreement for Review of Effects on Historic Properties for Certain Undertakings
394 Approved by the Federal Communications Commission, September 2004).

395 W.Y. Qualified Professional — A person or person(s) meeting, at a minimum,
396 the Secretary of the Interior’s Professional Qualifications Standards (48 FR
397 44716, 44738-39, September 29, 1983) in the appropriate discipline. These
398 qualification requirements do not apply to individuals recognized by THPOs,
399 Indian Tribes, and NHOs to have expertise in the identification, evaluation,
400 assessment of effects, and treatment of effects to historic properties of religious
401 and cultural significance to their Tribes or NHOs.

402 403 **IV. Roles and responsibilities for Section 106 review of communication deployment** 404 **undertakings**

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406 A. For each proposed undertaking subject to this Program Comment, the ~~f~~Federal
407 ~~LMA~~s/~~PM~~A~~s~~agency shall:
408 1. Consult with the SHPO/THPO, Indian ~~T~~ribes, or NHO to confirm the
409 APE for each individual undertaking and provide notification to the
410 appropriate SHPO/THPO, Indian ~~t~~ribes, or NHO of intent to follow this
411 Program Comment. See Sections IX, X, and XI of this Program Comment
412 regarding the determination of APEs for installation of buried

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- communications cable, communications tower replacement, and new communications tower construction.
2. Identify known eligible or listed historic properties within the relevant APE that may be affected by the proposed communications undertaking by completing a Records Check. If a Records Check reveals no information on the presence of historic properties within the APE, the qualified professional (see Section ~~XIII.Y~~ below) will consult with the SHPO/THPO, Indian tribes, or NHO to determine whether, based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible properties. If so, those areas within the APE will be avoided and the ~~f~~Federal ~~LMA/PMA~~agency shall have no further Section 106 responsibility for the undertaking. If they cannot be avoided, the ~~f~~Federal ~~LMA/PMA~~agency and applicant will consult with the SHPO/THPO, Indian ~~T~~ribes, or NHO to determine whether a survey or monitoring program should be carried out to identify historic properties, and to determine if any of the conditional exemptions listed in Sections VI-XI apply. Any request for additional information, and any request for monitoring, will include the basis for the request. ~~fff~~
 3. Consider whether any of the below criteria apply to a proposed undertaking and if so, notify consulting parties that no further Section 106 review will be required for any undertaking subject to this Program Comment that is proposed to occur within an APE:
 - a. that has been previously field surveyed (acceptable to current state standards or within the past 10 years) and there are no known historic properties located within the APE ~~whose National Register qualifying characteristics would be adversely affected~~; or
 - b. that has been previously disturbed to the extent and depth where the probability of finding intact historic properties is low; or
 - c. that is not considered to have a high probability for historic properties by qualified professionals and based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.
- If none of these criteria apply to the undertaking, proceed to consider whether the conditional exemptions listed in Sections VI-XI are applicable.
4. Use existing agency procedures for implementation of this Program Comment which may include procedures for delegation of authority to the applicant, as appropriate.
 5. Use qualified professionals for the disciplines under review in accordance with Section 110 of the NHPA and Section ~~XIII.Y~~ of this Program Comment.
 6. Document use of this Program Comment in the Section 106 review, and how it reached its decisions about the scope and level of effort for any historic property identification, for the undertaking's administrative record.

- 458 7. Where a Lead Federal Agency has been designated, and the Lead Federal
459 Agency is in compliance with its responsibilities under this Program
460 Comment, the other non-lead fFederal LMA/PMA agencies responsible
461 for the subject undertaking shall also be deemed to be in compliance with
462 Section 106 under this Program Comment.
- 463 B. The Applicant, on behalf of the fFederal LMA/PMA agency, shall:
- 464 1. Notify the fFederal LMA/PMA agency of its proposed application or
465 request for assistance at the earliest possible opportunity in project
466 planning.
- 467 2. Carry out and comply with the procedures for any delegation of authority
468 to the applicant if established by the fFederal LMA/PMA agency.
- 469 3. Assist the fFederal LMA/PMA agency to determine the APE in
470 consultation with the SHPO/THPO, Indian tTribes, and NHO.
- 471 4. Conduct a Records Check to identify known historic properties within the
472 APE, when requested by the fFederal LMA/PMA agency.
- 473 5. Notify the fFederal LMA/PMA agency if the undertaking is not proposed
474 to be located within or immediately adjacent to a known historic property.
- 475 6. Document the recommended determination of effect to historic properties
476 for and subject to the Ffederal LMA/PMA agency's approval when
477 requested by the Ffederal LMA/PMA agency.
- 478 7. Where appropriate to avoid adverse effects to historic properties, ensure
479 the site avoidance plan has been approved by the Ffederal
480 LMA/PMA agency and SHPO/THPO, Indian tTribes, and NHO. In
481 addition, avoidance areas should be clearly marked during staging and
482 construction activities, so construction crews are properly notified.
- 483 C. The fFederal LMAs/PMA agencies, SHPOs, THPOs, Indian tTribes, and NHOs shall
484 ~~carry out their Section 106 responsibilities in a timely manner and~~ adhere to the
485 timeframes outlined in the FCC NPAs or 36 CFR §§ 800.3 to 800.7. This will avoid
486 delays in the deployment of communications undertakings ~~on federal lands and~~
487 ~~property~~.
- 488 D. Where FCC has Section 106 responsibility over a proposed communication
489 deployment undertaking that also requires a license, permit, approval, or assistance
490 from a fFederal LMA/PMA agency named in the Broadband Program Comment, the
491 fFederal agency may elect to apply the Broadband Program Comment by following
492 its provisions, ~~the Federal LMA/PMA shall be responsible for the Section 106~~
493 ~~compliance for that undertaking and may utilize the terms of this Program Comment,~~
494 ~~including any applicable exemptions. FCC shall have no further Section 106~~
495 ~~responsibilities for that undertaking.~~
- 496 D.E. Where FCC has Section 106 responsibility over a proposed communication
497 deployment undertaking that also requires a license, permit, approval, or assistance
498 from another federal agency not named in the Broadband Program Comment,
499 Federal LMA/PMA, the fFederal agency-LMA/PMA shall be responsible for the
500 Section 106 compliance for that undertaking and may utilize the terms of this
501 Program Comment, including any applicable exemptions. FCC shall have no further
502 Section 106 responsibilities for that undertaking.
- 503

504 **V. Project planning considerations**

505

506 A. The Applicant shall coordinate early with the ~~f~~Federal ~~LMA/PMA~~agency regarding
507 project planning activities. In the event the Applicant proposes a public-private
508 project, the carrier, tower company, or others who may be recognized as the
509 Applicant shall involve the ~~relevant f~~relevant Federal ~~LMA/PMA~~agencies in pre-application
510 meetings to 1) ~~decide~~determine whether this Program Comment will be used; 2)
511 consider the scope of work for the identification of historic properties; 3) discuss
512 protocols for consulting with Indian tribes or NHOs; and 4) discuss alternatives and
513 alternative routes for the undertaking.

514 B. Noninvasive techniques are encouraged for identification and evaluation of all
515 property types, if feasible, and for testing, including geotechnical testing, at
516 archaeological sites, TCPs, and other sites important to Indian tribes.

517 C. Siting projects in previously disturbed areas is encouraged.

518

519 **VI. Collocation of communications antennae**

520

521 A. A ~~f~~Federal ~~LMA/PMA~~agency~~ies~~ may elect to use applicable exclusions
522 established in the Nationwide Programmatic Agreement for the Collocation of
523 Wireless Antennas, as amended ~~August 2016~~July 2020.

524 B. A tower collocation requires no further Section 106 review so long as:

- 525 1. It will not result in a substantial increase¹ in size of the existing tower; and
526 2. There are no Section 106 requirements in an existing special use permit,
527 easement, or communications use lease for that site.

528 C. Collocations on non-tower structures ~~on federal land~~require no further Section
529 106 review so long as one of the following conditions apply to the undertaking:

- 530 1. The structure is less than 45 years old; or
531 2. If more than 45 years old, the structure has been previously evaluated and
532 determined not eligible for listing on the National Register; and
533 a. The structure is not adjacent to or within the boundary of a
534 National Register-listed or previously determined eligible historic
535 district; and
536 b. The structure is not designated as a National Historic Landmark or
537 State Historic Landmark; and
538 c. Indian tribes or NHOs have not indicated there are known historic
539 properties of traditional religious and cultural significance within
540 the APE and there will be no cumulative effects to such historic
541 properties.

542

543 **VI. Above-ground communications connections to and collocations on federal**
544 **buildings, regardless of ownership including federal buildings and buildings located**
545 **on federal land**

546

¹ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 547 A. A ~~f~~Federal LMA/PMA agency may elect to use applicable exclusions established
548 in the Nationwide Programmatic Agreement for the Collocation of Wireless
549 Antennas, as amended ~~August 2016~~July 2020, ~~for collocations on federal~~
550 ~~buildings and non-federal buildings located on federal lands.~~
- 551 B. Communications connections to buildings that have been determined not eligible
552 for listing on the National Register via a previous Section 106 consultation
553 completed in the past 15 years require no further Section 106 review.
- 554 C. Communications connections to and collocations on buildings listed in or eligible
555 for listing in the National Register require no further Section 106 review, so long
556 as:
- 557 1. All construction complies with the Secretary of the Interior's Standards for
558 Rehabilitation; for example, when a new building entry is required
559 because no entry points exist; and
 - 560 a. Communications connections and collocations are placed on
561 buildings behind parapets or the roof's edge in such a manner so
562 that the connections and collocations are not visible from ground
563 level; and existing communications or utility entry points and
564 infrastructure are used to the greatest extent feasible, in and on the
565 historic building; or
 - 566 b. If existing communications or utility entry points and infrastructure
567 cannot be used for the subject collocation, any additional entry
568 points and infrastructure required in or on the historic building are
569 installed in such a way as to minimize adverse effects to historic
570 materials.

571
572 **VIII. Placement of above-ground communications and cable lines on existing poles**
573 **or structures**

- 574
- 575 A. The placement of above-ground communications and cable lines on existing poles
576 or structures requires no further Section 106 review, as long as:
- 577 1. No new structures or poles need to be added to accommodate the new
578 lines; and
 - 579 2. The structure or pole is not a historic property and does not contribute to
580 the significance of a historic district.
- 581 B. When replacement of structures or poles is planned, the undertaking requires no
582 further Section 106 review, as long as:
- 583 1. The replacement structures or poles can be located within the same hole as
584 the original structure and there is no new ground disturbance outside of
585 previously disturbed areas associated with temporary support of the lines;
586 and
 - 587 2. The replacement structures or poles are within an existing ROW or
588 easement which has been surveyed; and
 - 589 3. The replacement structures or poles are consistent with the quality and
590 appearance of the originals; and
 - 591 4. Any proposed height increase of the replacement structures or poles is no
592 more than 10 percent of the height of the originals; and

- 593 5. The original pole or structure is not a historic property and does not
594 contribute to a historic district.
- 595 C. When infill structures or poles need to be added along an extant line, the
596 undertaking requires no further Section 106 review, as long as:
- 597 1. The addition of new structures or poles within existing ROWs or corridors
598 is not proposed within the boundary of a known historic property ~~as~~
599 ~~identified by the Federal LMA/PMA~~; and
- 600 2. The additional structures or pole(s) are 100 feet or more beyond the
601 boundary of any National Register listed or previously determined eligible
602 historic districts significant for their visual setting; and
- 603 3. The additions are of generally consistent quality and appearance with the
604 originals; and
- 605 4. The height of any added structure or pole is no greater than 10 percent
606 taller than the height of the originals.

607

608 **IX. Installation of buried communications cable ~~on federally managed lands~~**

609

- 610 A. The APE for installation of buried cable will be the width of the construction
611 ROW plus any additional areas for staging or access.
- 612 B. The installation and maintenance of new or replacement communications cable
613 and new or replacement associated vaults for cable access along or solely in
614 previously disturbed areas or in existing communications or utilities trenches
615 within existing road, railroad, and utility ROWs requires no further Section 106
616 review.
- 617 C. The installation of new or replacement vaults for cable access that are outside of
618 existing road, railroad, and utility ROWs but located solely in previously
619 disturbed soils requires no further Section 106 review so long as there are no
620 known historic properties within the APE for the vaults.
- 621 D. The installation of new or replacement buried communication connections from
622 road, railroad, and utility ROWs or vaults to a facility requires no further Section
623 106 review, so long as:
- 624 1. There are no known historic properties within the APE for the connection;
625 or
- 626 2. The new or replacement communication connections are solely buried in
627 previously disturbed existing rights-of-way up to the existing facility or
628 building or to an overhead line that connects to the facility or building.
- 629 E. If the road, railroad, and/or utility ROW, or nearby previously disturbed area, or
630 the area from the ROW to the individual user includes a known archaeological
631 site(s), the undertaking requires no further Section 106 review so long as the
632 depth and extent of the property's intact and undisturbed deposits within the APE
633 can be predicted with relative certainty such that the cable can be directionally
634 bored below the site(s).

635

636 **X. Communications tower replacement**

637

- 638 A. For the purpose of this section, the APE for ~~direct~~physical effects for a tower,
639 compound, and associated construction is the area of potential ground
640 disturbance, any areas for staging or access, and any property, or any portion
641 thereof that will be physically altered or destroyed by the undertaking. (source:
642 2004 NPA, as amended)
- 643 B. For the purpose of this section, the APE for ~~indirect~~ visual effects is the
644 geographic area in which the undertaking has the potential to introduce visual
645 elements that diminish or alter the integrity. (source: 2004 NPA, as amended)
- 646 1. Unless otherwise established, or previously established through
647 consultation and agreement between the Federal ~~LMA/PMA~~agency and
648 SHPO/THPO, Indian ~~tribes~~, and NHO the APE for visual effects for
649 construction of new facilities or structures is the area from which the
650 tower will be visible:
 - 651 a. Within a 0.5 mile radius from the tower site if the proposed tower
652 is 200 feet or less in overall height;
 - 653 b. Within a 0.75 mile radius from the tower site if the proposed tower
654 is more than 200 but no more than 400 feet in overall height; or
 - 655 c. Within a 1.5 mile radius from the proposed tower site if the
656 proposed tower is more than 400 feet in overall height.
 - 657 2. These distances are a guideline that can be altered based on an otherwise
658 established agreement and on individual circumstances addressed during
659 consultation with the SHPO/THPO, Indian ~~T~~ribes, ~~and~~ NHOs, and
660 consulting parties.
- 661 C. Replacement of a tower within an existing facility boundary that was previously
662 reviewed pursuant to Section 106, and mitigated as necessary, requires no further
663 Section 106 review so long as:
 - 664 1. The proposed replacement tower does not represent a substantial increase²
665 in size relative to the existing tower; and
 - 666 2. The installation of the proposed replacement tower does not involve
667 ground disturbance outside the facility's boundary; and
 - 668 3. No new mitigation is required to address reasonably foreseeable
669 cumulative effects.

671 **XI. New communications tower construction**

- 672
- 673 A. For the purpose of this section, the ~~physical~~direct APE for a tower, compound,
674 and associated construction (staging area, access roads, utility lines, etc.) is the
675 area of potential ground disturbance and any property, or any portion thereof,
676 which would be physically altered or destroyed by the undertaking.
- 677 B. For the purpose of this section, the ~~indirect~~ APE for visual effects is the
678 geographic area in which the undertaking has the potential to introduce visual
679 elements that diminish or alter the integrity of a historic property, including the
680 landscape.

² Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 681 1. Unless otherwise established, or previously established through
682 consultation and agreement between the fFederal LMA/PMAagency and
683 SHPO/THPO, Indian €Tribes, and NHOs, the APE for visual effects for
684 the construction of a new tower is the area from which the tower will be
685 visible:
686 a. Within a 0.5 mile radius from the tower site if the proposed tower is
687 200 feet or less in overall height;
688 b. Within a 0.75 mile radius from the tower site if the proposed tower
689 is more than 200 but no more than 400 feet in overall height; or
690 c. Within a 1.5 mile radius from the proposed tower site if the
691 proposed tower is more than 400 feet in overall height.
692 2. These distances are a guideline that can be altered based on an otherwise
693 established agreement or following consultation with SHPO/THPO, Indian
694 €Tribes, ~~and~~ NHOs, and consulting parties.
695 C. For the purpose of this section, new construction of up to three towers within an
696 existing communications compound that has previously been reviewed pursuant
697 to Section 106, and will not adversely affect any identified historic properties
698 within the compound, requires no further Section 106 review so long as the
699 proposed new tower is not substantially larger in size³ than the largest preexisting
700 tower within the existing communications compound boundary.
701

702 **XII. Removal of obsolete communications equipment and towers**

- 703
704 A. Federal LMA/ PMAagencies may authorize the removal of obsolete existing
705 communications equipment and towers (the undertaking) and may remove the
706 existing communications equipment or tower with no further Section 106 review
707 as long as the removal undertaking would not create an adverse effect to known
708 historic properties.
709 B. Should a SHPO, THPO, Indian €Tribe, or NHO object within 30 days after
710 receiving notification that the fFederal LMA/PMAagency proposes to authorize
711 removal of obsolete communications equipment and towers, the fFederal
712 LMA/PMAagency shall comply with the requirements of 36 CFR §§ 800.3 to
713 800.7 for the proposed removal undertaking.
714

715 **XIII. Professional qualifications**

- 716
717 ~~A. All tasks implemented pursuant to this Program Comment shall be carried out by,~~
718 ~~or under the direct supervision of, a person or person(s) meeting, at a minimum,~~
719 ~~the Secretary of the Interior's Professional Qualifications Standards (48 FR~~
720 ~~44716, 44738-39, September 29, 1983) in the appropriate disciplines. However,~~
721 ~~nothing in this section may be interpreted to preclude fFederal LMAs/PMAs from~~
722 ~~using the properly supervised services of persons who do not meet the~~
723 ~~qualifications standards.~~

³ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

724 ~~B. These qualification requirements do not apply to individuals recognized by~~
725 ~~THPOs, Indian tribes, and NHOs to have expertise in the identification,~~
726 ~~evaluation, assessment of effects, and treatment of effects to historic properties of~~
727 ~~religious and cultural significance to their tribes or NHOs.~~

728

729 **XIII.V. Unanticipated discoveries**

730

731 A. If previously unidentified historic properties or unanticipated effects, including
732 audible, atmospheric, and cumulative effects, to historic properties are discovered
733 during project implementation, the contractor shall immediately halt all activity
734 within a 50 foot radius of the discovery and implement interim measures to
735 protect the discovery from looting and vandalism. Within 48 hours, the fFederal
736 LMA/PMAagency shall notify the relevant SHPO, THPO, Indian fTribes, or NHO,
737 and ACHP of the inadvertent discovery, and determine whether a Discovery Plan
738 is necessary.

739 B. Native American human remains, funerary objects, sacred objects, or items of
740 cultural patrimony found on federal or Tribal land will be handled according to
741 Section 3 of the Native American Graves Protection and Repatriation Act and its
742 implementing regulations (43 CFR part 10), and consistent with the Discovery
743 Plan.

744 C. The fFederal LMA/PMAagency shall ensure that in the event human remains,
745 funerary objects, sacred objects, or items of cultural patrimony are discovered
746 during implementation of an undertaking, all work within 50 feet of the discovery
747 will cease, the area will be secured, and the fFederal LMA/PMAagency's
748 authorized official will be immediately contacted. The fFederal agency will be
749 guided by the principles within the ACHP's Policy Statement on Burial Sites,
750 Human Remains, and Funerary Objects (adopted March 1, 2023).

751 D. The Discovery Plan for inadvertent discoveries will include the following
752 provisions.

- 753 1. Immediately halting all construction work involving subsurface
754 disturbance in the area of the find and in the surrounding area
755 where further subsurface finds can be reasonably expected to
756 occur, and immediately notify SHPO, THPO, Indian fTribes (as
757 appropriate), and NHOs of the find;
- 758 2. A qualified professional will immediately inspect the site and
759 determine the area and nature of the affected find. Construction
760 work may then continue in the area outside the find as defined by
761 fFederal LMA/PMAagency;
- 762 3. Within five working days of the original notification, the fFederal
763 LMA/PMAagency, in consultation with SHPO, THPO, Indian
764 Tribes, as appropriate, and NHOs, will determine whether the find
765 is eligible for the National Register;
- 766 4. If the find is determined eligible for listing in the National
767 Register, the fFederal LMA/PMAagency will prepare a plan for its
768 avoidance, protection, or recovery of information in consultation
769 with the SHPO, THPO, Indian fTribes, as appropriate, and NHOs.

770 Any dispute concerning the proposed treatment plan will be
771 resolved by the fFederal LMA/PMAagency.
772 5. Work in the affected area will not proceed until either:
773 a. The plan is implemented; or
774 b. The determination is made that the unanticipated find is not
775 eligible for inclusion in the National Register. Any disputes
776 over the evaluation of unanticipated finds will be resolved
777 in accordance with the requirements of 36 CFR §
778 800.4(c)(2) as appropriate.
779

780 **XIV. Emergencies**

781
782 Should the fFederal LMAs/PMAsagency determine that an emergency or natural
783 disaster has occurred during the implementation of any communications deployment
784 activities covered under this Program Comment, the fFederal LMAs/PMAsagency shall
785 notify the appropriate SHPO, THPO(s), Indian ~~†~~Tribes, ~~and~~ NHO(s), and ACHP within
786 seven days as to how they intend to repair or replace the communications equipment or
787 facilities, or undertake other relevant actions in response to the emergency or natural
788 disaster. The fFederal LMAs/PMAsagency shall ensure that any approvals, licenses, or
789 permits issued for these emergency response activities refer to compliance with the terms
790 of this Program Comment.
791

792 **XVI. Effective date**

793
794 This ~~amended~~ Program Comment ~~Program Comment~~ shall go into effect on
795 [date]May 8, 2017.
796

797 **XVII. Reporting**

798
799 A. Federal ~~agencies~~LMAs/PMAs individually will submit an annual report to the
800 ACHP, NCSHPO, and NATHPO that summarizes the number of projects
801 reviewed under the Program Comment within a calendar year as well as the
802 number of activities that resulted in adverse effects to historic properties. The
803 annual report also will indicate whether any agreements regarding the
804 applicability of this Program Comment on ~~†~~Tribal lands have been developed in
805 the past calendar year, and which Indian ~~†~~Tribes(s) is a signatory. Annual reports
806 will be submitted December 1 of each year, commencing in ~~2018~~2024.

807 B. The ACHP shall reexamine the Program Comment's effectiveness based on the
808 information provided in the annual reports submitted by the fFederal
809 LMAs/PMAsagencies, and, as needed, by convening an annual meeting with the
810 fFederal LMAs/PMAs, NCSHPO, NATHPO, tribal representatives, NHOs, and
811 industry representatives. In reexamining the Program Comment's effectiveness,
812 the ACHP shall consider any written recommendations for improvement
813 submitted by stakeholders prior to the annual meeting.

814

§15 **XVIII. Amendment**

816

817 The Chair~~man~~ of the ACHP may amend this Program Comment after consulting with the
818 ~~f~~Federal ~~LMA~~s/~~PMA~~s~~agencies~~ and other relevant federal agencies, NCSHPO,
819 NATHPO, ~~T~~tribal representatives, the National Trust for Historic Preservation, and
820 industry representatives, as appropriate. The ACHP will publish a notice in the *Federal*
821 *Register* informing the public of any amendments that are made to the Program
822 Comment.

823 ~~Should other federal agencies that propose to carry out, permit, license, fund, or assist in~~
824 ~~communications activities intend to utilize this Program Comment to satisfy their Section~~
825 ~~106 responsibilities on federal lands, they must first notify the ACHP in writing of their~~
826 ~~intention. The ACHP will acknowledge in writing the agency's notification within 30~~
827 ~~days following receipt of a request, and will put an announcement on its website when it~~
828 ~~receives such a notification. Upon receipt of the ACHP's acknowledgement, and without~~
829 ~~requiring an amendment to this Program Comment, the federal agency may utilize the~~
830 ~~Program Comment.~~

831

832 **XIXVIII. Sunset clauseDuration**

833

834 This Program Comment will expire December 31, 20~~33~~²⁷, unless it is amended
835 prior to that date to extend the period in which it is in effect.

836

837 **XIX. Withdrawal**

838

839 The Chair~~man~~ of the ACHP may withdraw this Program Comment, pursuant to
840 36 CFR § 800.14(e)(6), by publication of a notice in the *Federal Register* 30 days before
841 the withdrawal will take effect.

842