



ADVISORY COUNCIL ON HISTORIC PRESERVATION SUMMER BUSINESS MEETING

JULY 17-18, 2024



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Attachment: Working Draft of Proposed Exemption for Indigenous Knowledge-Informed
Activities by Native Hawaiian Organizations



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
July 18, 2024

PROVISIONAL AGENDA

Call to Order 9 a.m. EDT

- I. Chair's Welcome
 - A. Reflections on St. Elizabeths Tour
 - B. Report on Recent Activities
- II. Executive Director's Report
- III. Regulations and Governance
 - A. Chair's Initiative on Government-wide Program Comments
 - 1. Housing
 - 2. Clean Energy
 - 3. Energy Efficiency
 - 4. Climate-Friendly Transportation
 - B. Status of Other Nationwide Program Alternatives Under Development
 - C. Update on Implementation of Nationwide Cultural Resource Mapping Initiative
- IV. Policy and Legislative Affairs
 - A. ACHP Comments on Legislation
 - 1. FY 2025 Federal Budget, Including Historic Preservation Fund Funding and Reauthorization
 - 2. Enhancing the Historic Tax Credit and Considering Other Tax Incentives for Reusing Existing Buildings
 - 3. National Defense Authorization Act
- V. Tribal and Indigenous Peoples
 - A. Proposed Exemption for Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations
- VI. New Business
- VII. Adjourn



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
July 18, 2024
Kennedy Caucus Room 325
Russell Senate Office Building
Washington, D.C.

ANNOTATED AGENDA

Call to Order 9 a.m. EDT

- I. Chair's Welcome
 - A. Reflections on St. Elizabeths Tour. *Chair Sara Bronin will reflect upon the previous day's member visit to the West Campus of St. Elizabeths in Washington, D.C.*
 - B. Report on Recent Activities. *Chair Bronin will provide an update on her activities since the spring business meeting.*
- II. Executive Director's Report. *Executive Director Reid Nelson will report on the status of FY 2024 budget expenditures, the FY 2025 justification, the FY 2026 budget estimate, staff recruitment, and ACHP operations.*
- III. Regulations and Governance
 - A. Chair's Initiative on Government-wide Program Comments (*discussion*). *Chair Bronin will provide an overview of her efforts to develop individual program comments on Housing, Clean Energy, Energy Efficiency, and Climate Friendly Transportation. The overview will include a summary of the need for and goals of these program alternatives, comments received through consultation to date, and a timeline for their completion. Members will be asked to provide their input on the development and content of the program comments.*
 - 1. Housing
 - 2. Clean Energy
 - 3. Energy Efficiency
 - 4. Climate-Friendly Transportation
 - B. Status of Other Nationwide Program Alternatives Under Development. *Regulations and Governance Committee Chairman Jordan Tannenbaum will provide an update on other program alternatives currently under development by other federal agencies.*
 - C. Update on Implementation of Nationwide Cultural Resource Mapping Initiative. *Committee Chairman Tannenbaum and Executive Director Nelson will update the members on efforts to develop a GIS-based nationwide map of historic properties to inform Section 106 reviews on infrastructure and other projects.*

IV. Policy and Legislative Affairs

- A. ACHP Comments on Legislation (*action needed*). *Policy and Legislative Affairs Committee Chair Erica Avrami will summarize the committee's consideration of ACHP comments on key historic preservation issues and draft legislation, and propose that the ACHP advise Congress on the items below.*
1. FY 2025 Federal Budget, Including Historic Preservation Fund Funding and Reauthorization
 2. Enhancing the Historic Tax Credit and Considering Other Tax Incentives for Reusing Existing Buildings
 3. National Defense Authorization Act

V. Tribal and Indigenous Peoples

- A. Proposed Exemption for Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations (*action needed*). *Tribal and Indigenous Peoples Committee Chair Amelia Marchand and Chair Bronin will provide a summary of the efforts to develop a Section 106 Exemption for Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations. The members will be asked to discuss the proposed exemption and offer their views in preparation for the development of a final document that will be considered for adoption via unassembled vote following the business meeting.*

VI. New Business. *There is none at this time.*

VII. Adjourn. *The meeting will adjourn at noon EDT.*



CHAIR'S INITIATIVE ON GOVERNMENT-WIDE PROGRAM COMMENTS

Background. In 2023, the ACHP adopted a Policy Statement on Climate Change and Historic Preservation and a Policy Statement on Housing and Historic Preservation, which together suggested that Section 106 program alternatives be used to enable federal agencies to more effectively advance historic preservation while also meeting the Administration's goals. In spring 2024, Chair Sara Bronin began preliminary conversations with federal agencies and ACHP members to discuss potential program alternatives that could improve the efficiency of Section 106 reviews related to undertakings identified in the respective policy statements.

During the May ACHP committee meetings, Chair Bronin announced her intention to develop four program comments related to housing, climate-friendly transportation, clean energy, and energy efficiency. The proposed program comments were conceived to help facilitate the delivery of unprecedented federal infrastructure investments, promote best practices already identified in prior program alternatives, and improve the efficiency and effectiveness of the Section 106 review process for these categories of undertakings. By clarifying preferred approaches to covered undertakings, these proposed program comments could also ensure federal and state staff have more time and resources to focus on undertakings with greater potential adverse effects on historic properties.

The following sections summarize the proposed scope of these program comments.

Housing. The proposed program comment on housing would cover undertakings subject to Section 106 which involve the creation, rehabilitation, and maintenance of housing, including modifications to existing housing and conversion of existing buildings to residential uses (including commercial buildings such as institutional buildings, office buildings, religious buildings, and manufacturing buildings). The proposed program comment would streamline reviews of certain types of undertakings by excluding some routine maintenance activities from review, expediting reviews for activities that typically result in few or no adverse effects, and/or establishing standard approaches for other common housing repair and rehabilitation activities.

Undertakings that could be covered in the proposed program comment on housing could include the following:

- Routine maintenance and repair (to exteriors, interior surfaces and finishes)
- Interior configurations and renovations (e.g., moving interior walls or updating kitchens and bathrooms)
- Mechanical upgrades (to HVAC systems, elevators, plumbing, and electrical utilities)
- Security and fire suppression upgrades
- Environmental hazard remediation (for asbestos, lead, and radon)
- Certain landscaping and sitework
- Americans with Disabilities Act (ADA) compliance

The proposed program comment on housing is being drafted to exclude undertakings that affect National Historic Landmarks, National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, or National Battlefields. It is also being drafted to exclude the demolition of buildings, and to exclude activities taking place in soils not previously disturbed.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Climate-Friendly Transportation. The proposed program comment on climate-friendly transportation would cover federal climate-friendly transportation, such as pedestrian and micro-mobility infrastructure, pavement enhancements, streetscape projects, transportation improvements, and safety improvements. Such activities support climate change mitigation goals by encouraging the use of low- or zero-emission transportation and are compatible with existing historic fabric. The proposed program comment would streamline reviews of certain types of undertakings by excluding some routine maintenance activities from review, expediting reviews for activities that typically result in few or no adverse effects, and/or establishing standard approaches for other common transportation repair and rehabilitation activities.

Undertakings that could be covered in the proposed program comment on climate-friendly transportation could include the following:

- Pedestrian and micro-mobility infrastructure (such as separated bike lanes, bike share facilities and racks, curb cuts/ramps, pedestrian bridge crossings, accessible paths to transit-oriented developments)
- Pavement enhancements (such as permeable pavement, cool pavement, high friction surface treatments, ADA enhancements)
- Streetscape projects (such as street furniture, bioswales and pollinator gardens, wayfinding and signage)
- Transit improvements (such as bus stops, bus shelters, small transit facilities, small bus rapid transit activities, light rail activities)
- Safety improvements (such as intersection improvements, signaling improvements, rumble strips, traffic calming, maintenance activities)

The proposed program comment on climate-friendly transportation is being drafted to exclude infrastructure development more likely to necessitate case-by-case reviews, such as the construction of new rail lines in nonurbanized and not previously disturbed areas. It is not anticipated to cover highways or car infrastructure, nor would it cover undertakings that affect National Historic Landmarks, National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, or National Battlefields. It is also being drafted to exclude the demolition of historic buildings.

Clean Energy. The proposed program comment on clean energy would cover certain activities that relate to the implementation and research of clean energy infrastructure. Such activities support climate change mitigation goals by encouraging the use of low- or zero-emission energy generating facilities while ensuring compatibility with existing historic fabric. The proposed program comment would streamline reviews of certain types of undertakings by excluding some routine maintenance activities from review, expediting reviews for activities that typically result in few or no adverse effects, and/or establishing standard approaches for other common clean energy infrastructure-related repair and rehabilitation activities.

Undertakings that could be covered in the proposed program comment on clean energy could include the following:

- Solar energy (including rooftop and building-mounted solar and related storage, solar shingles, and solar hot water heaters).
- Other small-scale distributed generation and storage (including community-scale wind and solar, fuel cells, stand-alone energy storage, distributed generation and storage assets that support microgrids, and previously listed projects paired with distribution system upgrades necessary for project interconnection)
- Electricity delivery system research and development and demonstration projects

- Transmission activities (including upgrades and rebuilds of existing transmission equipment, vegetation management, and certain activities related to National Interest Electric Transmission Corridors)
- Geothermal heating and cooling
- Offshore wind (specifically addressing visual adverse effects on non-Tribal resources)

The proposed program comment on clean energy is being drafted to exclude infrastructure development more likely to necessitate case-by-case reviews. It is not anticipated to cover landscape-scale onshore solar and wind farms, nor would it cover undertakings that affect National Historic Landmarks, National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, or National Battlefields. It is also being drafted to exclude resource extraction and mining.

Energy Efficiency. The proposed program comment on energy efficiency would cover certain improvements that improve the energy efficiency of buildings, including adjustments to insulation, window and door enhancements, roofing repair and maintenance, painting, base load reductions, water conservation, and weatherstripping, among other activities. Such activities support climate change mitigation goals by facilitating the decarbonization of the building sector and can be highly compatible with existing historic fabric and long-term building reuse. The proposed program comment would streamline reviews of certain types of undertakings by excluding some routine maintenance activities from review, expediting reviews for activities that typically result in few or no adverse effects, and/or establishing standard approaches for other common energy efficiency repair and rehabilitation activities.

Undertakings that could be covered in the proposed program comment on energy efficiency could include the following:

- Insulation (including thermal insulation in walls and attics; duct sealing, repair, and replacement; band joist insulation; and the sealing of vents and pipes)
- Windows and doors (including storm windows, screen doors, and replacements)
- Roofing (including reflective roof coating, green roofs, cool roofs, and roof upgrades or replacements)
- Electric base load reductions (including appliance replacements to Energy Star or similar, energy efficient bulbs and fixtures, energy efficient exit signs, electric circuit upgrades, the replacement of electric equipment, and the installation of photo controls, occupancy sensors, humidity sensors, thermostats, light meters, and other building sensors)
- Energy audits and feasibility studies
- Weatherization of mobile homes and trailers
- Caulking and weather-stripping
- Water conservation measures
- Installation of water heater tanks and pipes
- HVAC systems (including replacement and repair of existing systems, ductwork, and building control systems, and the installation of adjustable speed drives)

The proposed program comment on energy efficiency will not apply to historic property types other than buildings. It would not cover undertakings that affect National Historic Landmarks, National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, or National Battlefields. It is also being drafted to exclude the demolition of historic buildings.

Status. In June, the ACHP hosted four public listening sessions to discuss the development of program comments on these issues. Two additional sessions were available specifically for Indian Tribes and Native Hawaiian organizations, which had no attendees. Representatives of the Department of Housing

and Urban Development (HUD) and the Department of Transportation provided opening remarks in the housing and climate-friendly transportation listening sessions, respectively. Comments shared during the listening sessions were almost exclusively raised by State Historic Preservation Officers (SHPOs), with only six non-SHPO representatives (two federal agency representatives and four private parties) speaking. Many SHPOs raised questions regarding potential overlap with existing program alternatives. They also reiterated that it is the general position of SHPOs to oppose program comments. The ACHP noted that while some of the undertakings proposed to be considered in the program comments may be addressed in current program alternatives, existing alternatives do not cover all geographies or agencies that are engaging in such undertakings, nor do existing alternatives include as their primary goal the achievement of housing or climate policies laid out in the recent ACHP policy statements. During the listening session, HUD also noted that the large number of housing-related program alternatives presented significant administrative burdens. Private parties commenting during the energy efficiency listening session presented interesting ideas about the need to consider a building's overall energy performance, which may shape provisions related to mitigation. A private party commenting during the housing listening session urged the ACHP to include climate change mitigation measures in a program comment. In addition to the listening sessions, written comments to date have included comments from transportation advocates, representatives of city governments, economic development professionals, and Main Street America which indicated challenges with Section 106 reviews, including delays and unnecessary reviews, and which pointed to specific types of infrastructure that should be included in the respective program comments.

Based on these comments as well as any written comments that may be received, the ACHP will consider how to incorporate or address this feedback into proposed program alternatives, as well as develop accompanying consultation plans.

Action Needed. Members should be prepared to discuss these proposals, and as appropriate, provide input to inform any drafting. In addition, members should be prepared to offer ideas about expanding public engagement with these program comments, including by identifying organizations, academics, and professionals, as well as representatives of disadvantaged and underserved communities and communities with environmental justice concerns, who might provide the ACHP with insights affecting their development.

July 2, 2024



SECTION 106 PROGRAM ALTERNATIVES UNDER DEVELOPMENT Office of Federal Agency Programs

Introduction. The Office of Federal Agency Programs (OFAP) is currently representing the ACHP in a variety of consultations on the development of nationwide program alternatives. An overview of these program alternatives and some points for discussion are provided for members to consider as part of the Regulations and Governance Committee meeting and business meeting.

National Park Service (NPS): Nationwide Programmatic Agreement (NPA) for Cultural Resources Financial Assistance Programs. NPS is consulting on the development of an NPA to address its compliance with Section 106 for its cultural resources financial assistance programs, including grants provided by the Historic Preservation Fund. Over the winter, NPS had consultation meetings and requested comments on a draft of the NPA by the end of February. NPS revised the draft NPA based upon comments received during the last comment period and subsequent consultation with the Signatories. At the beginning of June, NPS provided the final draft of the NPA for review by the other Signatories (ACHP and NCSHPO).

NPS: Program Comment for Stewardship and Management of NPS Mission 66-Era Facilities (1945-1972). NPS is developing an agency request for a program comment to facilitate the continued use and preservation of Mission 66-era historic properties by allowing park superintendents to consider them as eligible for the National Register, and by reducing or eliminating external Section 106 reviews for certain proposed undertakings. Park use of the proposed program comment would be optional, prohibited in certain circumstances, and it would not amend or otherwise change the existing NPA for the National Park System (2008) nor any other Section 106 agreements. NPS anticipates the program comment will help parks utilize Mission 66-era historic properties to meet mission needs, fulfill legislated mandates to improve the visitor experience and accessibility, address longstanding deferred maintenance, and advance ongoing stewardship efforts.

After more than a year of internal coordination and informal stakeholder meetings, NPS formally initiated consultation in October 2023. NPS had six consultation meetings between late 2023 and early 2024, with their final comment period closing at the end of last month. NPS is summarizing comments received, finalizing materials, and plans to submit their request to the ACHP in mid-August. More information is available on the [ACHP Member OneDrive](#) and the NPS's dedicated website: https://parkplanning.nps.gov/mission_66_program_comment. Members should be prepared to share feedback on the proposal, including any concerns with the timeline NPS proposes to complete this effort.

National Aeronautics and Space Administration (NASA): NPA for Management of Facilities at NASA Centers. NASA has proposed the development of an NPA that will provide a tailored consultation process for the identification and evaluation of historic properties, including highly technical and scientific facilities at NASA Centers, as well as a process for the assessment and resolution of adverse effects related to undertakings, which include actions such as routine maintenance and operation, modernization, demolition, and new construction. The NPA also includes programmatic mitigation for specific classes of adverse effects, and will identify Heritage Zones where avoidance and minimization alternatives will be prioritized. NASA has conducted several meetings with State Historic Preservation Offices (SHPOs) to discuss their comments on the draft NPA. NASA has extended the existing draft

review period while it completes individual SHPO meetings with the plan to finalize the NPA later in 2024. Members are encouraged to share any reactions to NASA's proposal.

Bonneville Power Administration (BPA), Southwestern Power Administration (SWPA), Tennessee Valley Authority (TVA), and Western Area Power Administration (WAPA): NPA for Routine Transmission Operations and Maintenance. BPA, SWPA, TVA, and WAPA (agencies) have proposed an NPA for routine operations and maintenance of existing federally owned and operated transmission assets. The agencies have determined these activities are repetitive in nature with avoidable or similar effects to historic properties and would benefit from a tailored Section 106 process. The agencies engaged in early coordination with the ACHP, National Conference of State Historic Preservation Officers (NCSHPO), and the National Association of Tribal Historic Preservation Officers (NATHPO) throughout 2023 and early 2024. On June 7, 2024, the agencies formally initiated Tribal consultation. Consultation with the ACHP and NCSHPO was recently initiated. Members are invited to share any observations they may have on this proposal.

U.S. Department of Transportation (DOT): Prototype PA. On behalf of several of its Operating Administrations, the DOT has had preliminary meetings with ACHP staff to discuss the development of a prototype PA (PPA). The PPA would focus on a list of activities from the Federal Railroad Administration, Federal Transit Administration, Federal Aviation Administration, Federal Highway Administration, and Pipeline and Hazardous Materials Safety Administration that do not require further review under Section 106, while any other actions would require compliance with the standard four-step Section 106 review. DOT intends to begin early coordination efforts shortly, including consideration of how this PPA may intersect with the chair's proposed Program Comment on Climate-Friendly Transportation.

Department of Veterans Affairs (VA): Standard Treatments for National Cemeteries. VA is working with the ACHP to determine if a standard treatment would be the appropriate mechanism to assist with interpretation of [an NPS policy](#) that states all National Cemeteries are historic properties regardless of age. This initiative seeks clarity on the NPS policy as it relates to the assessment of effects in order to assist with the effective development and operation of National Cemeteries. VA had preliminary meetings with representatives of NPS and the Army regarding their National Cemeteries, with the Keeper of the National Register to discuss the NPS policy, and the ACHP on the development of a white paper. VA has proposed meetings to take place before the ACHP summer business meeting with NCSHPO and NATHPO to discuss this proposal and will be meeting with the ACHP to review case studies.

VA: Program Alternative Regarding Major Leasing Actions. In anticipation of a significant increase in leasing actions for VA facilities, the agency proposes to develop a program alternative to establish a more efficient process to consider the potential effects of these leasing actions on historic properties. VA had preliminary meetings with ACHP staff on the development of a white paper. Meetings with NCSHPO and NATHPO to discuss this proposal and appropriate consultation protocols have been proposed to take place before the ACHP summer business meeting. VA expects to decide on the appropriate program alternative after conducting a first round of consultations.

VA: NPA for the State Home Construction Grant Program. In response to the COVID-19 emergency, VA proposes to develop an NPA for the State Home Construction Grant Program, a partnership between VA and State Veterans Affairs agencies. The NPA would outline a predictable Section 106 process to follow during emergencies, integrate the Section 106 process into the earliest project planning stages, and provide comprehensive guidance for grant applicants. VA has consulted with the ACHP on the development of a white paper and, at the time of meeting book publication, has proposed meetings with NCSHPO and NATHPO to discuss this proposal and future consultation protocols. Members are invited to provide observations on VA's proposal to inform the first round of consultations.

Department of Homeland Security (DHS): NPA for Climate Resiliency and Sustainability

Undertakings on DHS-Owned Facilities. Over the last two years, DHS has been consulting on an NPA that would address maintenance, repairs, and upgrades that address climate resiliency and sustainability requirements at DHS-owned facilities. Throughout consultation, DHS worked to address concerns raised by consulting parties relating to Tribal consultation, post-review discoveries, training, and the location of these facilities. The NCSHPO Board voted to sign the NPA on June 6, 2024, at which time DHS submitted it to the ACHP for execution. By the time of the summer business meeting, it is anticipated that this NPA will have been executed and made available on the ACHP's website.

National Endowment for the Arts (NEA): Amendment to the NPA for Arts Program Grants. Since 2014, NEA has utilized an NPA for the administration of its Arts Program grants. As currently written, the NPA will expire on December 31, 2024. However, NEA has requested that the ACHP and NCSHPO consider an amendment to extend its terms by another five years. Based on NCSHPO's comments, other minor revisions will be made to the document to clarify activities that do not require any further review under the NPA's terms. Overall, the signatories agree that the NPA is working effectively and minimizes effects to historic properties for NEA's grant programs; therefore, an amendment to extend its terms is reasonable. While the amendment does not require ACHP membership approval, members should be aware of the amendment.

July 2, 2024



DIGITAL MAPPING INITIATIVE

Office of Federal Agency Programs

Background. In April, the ACHP received an award of \$750,000 from the Environmental Review Improvement Fund of the Federal Permitting Improvement Steering Council (Permitting Council) for the first phase of an effort to develop a nationwide map of identified, nonsensitive historic properties out of data contributed by federal agencies.

Accessible and reliable historic properties data is a key to efficient federal infrastructure project reviews, including the roughly 10,000 environmental assessments and 200 Environmental Impact Statements carried out under the National Environmental Policy Act and the 120,000 reviews carried out under Section 106 of the National Historic Preservation Act annually. The project represents an effort to respond to the planning needs of such federal and federally assisted infrastructure projects and would focus on data about eligible properties, which are not currently accessible on a national map. It would only include information suitable for viewing by the public and exclude information on properties of religious and cultural significance to Indian Tribes and Native Hawaiian organizations as well as some archaeological resources. It would be designed to allow data from all federal agencies to eventually populate the system.

The project would be advanced in two stages. In the first, currently funded phase, the ACHP will research the current data landscape, including applicable standards and policies, to develop a set of requirements for the creation of a nationwide map populated with historic properties data supplied by federal agencies. It also would identify federal agencies suitable for a pilot map. In a second phase, yet to be funded, the ACHP would build out the map and expand it to encompass all federal agencies and a wider variety of projects.

Status. The ACHP is currently looking for partners and information to help carry out Phase 1 of the project, including adding staff or contracting support. Recent conversations with the Washington State Historic Preservation Office, the National Technical Information Service, and the Department of the Interior/US Geological Survey and Council on Environmental Quality staff who managed the creation of the American Conservation and Stewardship Atlas have helped the ACHP understand how similar GIS mapping projects have proceeded and offered insight into successful project management strategies.

The ACHP is also exploring options for funding Phase 2 of the project with the hope that such funding could be identified by the time Phase 1 concludes with the production of a set of requirements for the buildout of the map. Phase 1 will begin as soon as required agreements and logistical arrangements are in place.

Action Needed. Members will be asked to share any experiences they have in the development of analogous systems and advice on three pilot agencies to provide data during Phase 1.

July 2, 2024



**PROPOSED ACHP ACTION ON LEGISLATIVE PRIORITIES:
PRESERVATION FUNDING AND TAX INCENTIVES
Office of Policy and Legislative Affairs**

Introduction. The remaining months of the 118th Congress will include development of FY 2025 appropriation bills and initial discussion of tax legislation that is anticipated in the next Congress. Funding for the Historic Preservation Fund (HPF) and the United States African-American Burial Grounds Preservation Program will be considered, and the tax discussions may offer an opportunity to promote enhancement of the Historic Tax Credit (HTC). Staff is recommending that the members consider taking action to advise Congress on these issues, consistent with the legislative priorities for the 118th Congress adopted by the ACHP.

FY 2025 Federal Budget, Including HPF Funding and Reauthorization. The HPF—which funds State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices (THPOs), and preservation grant programs—does not have a permanent funding level and thus is subject to increases or decreases annually. The table below shows that overall funding has dropped since FY 2023 and would decrease further under the President’s Budget for FY 2025. (Note that the President’s Budget includes no funding for Congressionally Directed Spending projects, aka earmarks.)

	FY 2024 Appropriation (in millions)	FY 2025 President’s Budget (in millions)	FY 2025 Preservation Advocates Proposal (in millions)
SHPOs	\$62.15	\$62.15	\$70
THPOs	\$23	\$23	\$34
Competitive Grants	\$83.75	\$66.25	\$121
Congressional Directed Spending	\$19.76	—	—
Total	\$188.66 (\$204.51 in FY23)	\$151.40	\$225

The President’s Budget proposes holding SHPO and THPO funding steady. However, given inflation and periodic growth in the number of THPOs, flat funding effectively is a decrease. For FY 2025, the National Conference of State Historic Preservation Officers, the National Association of Tribal Historic Preservation Officers, the National Trust for Historic Preservation, and other preservation advocates are asking Congress for more robust funding of \$225 million.

The FY 2024 appropriations bill extended authorization of the HPF for one year (through September 30, 2024) since its previous multi-year authorization had expired. The President’s Budget for FY 2025 proposes extending that authorization for two more years.

The ACHP previously has written to Congress to support adequate funding for the HPF and its (preferably permanent) reauthorization. Doing so again would be consistent with the following ACHP legislative priorities for the 118th Congress: supporting preservation-friendly programs and funding; and reauthorizing and making permanent the HPF.

Development of the FY 2025 budget also provides an opportunity to fund the National Park Service's United States African-American Burial Grounds Preservation Program, which Congress created in FY 2023 but did not fund in FY 2024. The President's budget proposes \$3 million to launch the program.

In June, the ACHP had a listening session regarding the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects as it relates to the African American community. Please see the paper in Tab 2 for information about this meeting with thought leaders regarding African American burial grounds. Participants agreed that ACHP support for funding of the African-American Burial Grounds Preservation Program was desirable. In 2022, the ACHP wrote to Congress to support creating the program. Advising that funds be included in the FY 2025 budget would be consistent with that previous support, the ACHP burial policy, and the following ACHP legislative priorities for the 118th Congress: supporting designation or protection of historic properties that reflect the full American story and discouraging proposals that would destroy or diminish diverse histories; and supporting preservation-friendly programs and funding.

Staff suggests that the Policy and Legislative Affairs Committee consider recommending ACHP adoption of the following motion:

Moved, that: The ACHP supports an increase in HPF appropriations in FY 2025, preferably to at least \$225 million; supports inclusion in appropriations legislation of at least a two-year reauthorization of the HPF, pending separate legislation to address long-term reauthorization; urges Congress to fund the United States African-American Burial Grounds Preservation Program; and directs the chair to so advise the Congress.

Enhancing the HTC and Considering Other Tax Incentives for Reusing Existing Buildings. The Tax Cuts and Jobs Act of 2017 was major legislation that made many changes across the tax code. Elimination of the HTC was considered during development of the legislation, but ultimately the credit was only slightly reduced in value by extending the period over which it is claimed. This and other changes continue in perpetuity unless changed; however, a number of other key provisions will expire at the end of 2025. This sets the stage for passage of a major tax bill next year, which could be a vehicle for enhancing the HTC or exploring other tax incentives for rehabilitation of existing buildings.

Legislation to augment the HTC already is pending in Congress. The Historic Tax Credit and Growth Opportunity Act (HTC-GO) Act ([S. 639/H.R. 1785](#)) would increase the HTC from 20 percent to 30 percent for smaller projects; lower the substantial rehabilitation threshold, making more buildings eligible to use the HTC; make the HTC easier to use by nonprofits; and eliminate the requirement that the value of the HTC must be deducted from a building's basis, thus increasing the value of the credit and making it easier to pair with the federal Low Income Housing Tax Credit. The ACHP [wrote to Congress](#) in August 2023 in support of the bill.

Prior to passage of the Tax Cuts and Jobs Act, the HTC also included an option to take a 10 percent credit for rehabilitation of older, nonhistoric buildings. This credit was available for rehabilitation of pre-1936 buildings that were not deemed historic, including noncontributing buildings in historic districts. Recent interest in Congress regarding the possibility of creating tax incentives to address the housing shortage and climate adaptation needs may provide an opportunity for the ACHP to promote a return of the 10 percent credit. Likewise, the ACHP could seek to influence discussion of other proposed credits to ensure they address rehabilitation of existing buildings, not just new construction. Care would need to be taken, however, to consider the potential impact of new credits on developer interest in the HTC.

Urging Congress to include the HTC-GO Act in any major tax bill next year and to address reuse of existing buildings would be consistent with: the ACHP's recent stated support for the HTC-GO Act; past

ACHP support in general for the HTC; and a ACHP legislative priority for the 118th Congress: maintaining and enhancing tax incentives for historic preservation. Staff suggests that the Policy and Legislative Affairs Committee consider recommending ACHP adoption of the following motion:

Moved, that: The ACHP reiterates its support for the HTC-GO Act and recommends its inclusion in any upcoming comprehensive tax bill; urges incentivizing reuse of existing buildings, particularly in any housing- or climate-related tax credits; and directs the chair to so advise the Congress.

Action Needed. The Policy and Legislative Affairs Committee should consider recommending to the full membership the adoption of the two motions previously noted. The Committee also needs to consider the motion described in the Tab 1 paper “Proposed ACHP Action on Legislative Priorities: National Defense Authorization Act.

July 2, 2024



**PROPOSED ACHP ACTION ON LEGISLATIVE PRIORITIES:
NATIONAL DEFENSE AUTHORIZATION ACT
Office of Policy and Legislative Affairs**

Introduction. Negotiations are underway in Congress to develop the annual National Defense Authorization Act (NDAA). The House passed its version of the bill ([H.R. 8070](#)) on June 13. The Senate reported its version out of committee the same day. Of particular interest to the ACHP, both the House and Senate versions address Section 106 review for historic housing and other facilities.

House Version. The House bill would:

- **Defer the Department of Defense’s (DoD’s) responsibilities under Section 106 to review project effects on post-1975 housing and landscape features until those properties are at least 60 years old, and require DoD to report to Congress on a strategy for the demolition or management of such properties created from 1975-1985 (Section 2834).** In accordance with the regulation (36 CFR Part 60) for the National Register of Historic Places, properties generally must be at least 50 years old to be eligible for listing, so federal agencies use that baseline age in evaluating what properties need to be considered during Section 106 review. The bill would exempt DoD in perpetuity from needing to identify and address effects to post-1975 housing and landscape features for an additional 10 years beyond what is currently required.
- **Authorize a pilot program (through 2029) wherein the Army and the Navy would each pick an installation where repair and maintenance projects at pre-1919 housing and operational facilities would be managed in accordance with the Secretary of the Interior’s Standards “for preservation and maintenance” without compliance with Section 106. (Section 2835).** This provision has been rendered redundant for housing by the recent adoption of the [Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features](#). (The House bill was marked up by the House Armed Services Committee only three working days after the Program Comment was adopted, suggesting that the Committee likely was not aware of that action.) However, this provision also would apply to “operational facilities” in addition to housing, a concept not addressed in the program comment. This would exempt the Army and the Navy from complying with Section 106 for repair and maintenance projects at both housing and operational facilities at the pilot installations for five years.
- **Authorize (through 2029) use of imitative substitute building materials without Section 106 review for maintenance, repair, rehabilitation, or renovation of pre-1919 DoD housing and operational facilities when the project addresses quality of life, health and safety issues, or when use of in-kind materials is not financially feasible (Section 2837).** As above, this issue is now addressed—for Army housing only – by the recently adopted program comment. This provision would go further and exempt DoD from Section 106 review for relevant projects at operational facilities, as well, for five years.

The [Committee Report accompanying the bill](#) also directs DoD to brief the House Armed Services Committee no later than April 2025 on operating and maintenance costs for historic housing and “related

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quality of life challenges.” Included among a list of topics to be addressed at the briefing are costs of completing the Section 106 process; and interaction of the military service branches with State Historic Preservation Officers regarding steps to reduce operation and maintenance costs.

Senate Version. The Senate bill was marked up by the Senate Armed Services Committee on June 14. The text of the bill has not yet been released. However, Committee staff confirms that it includes a section addressing the treatment of Army historic housing and associated historic properties. Exact language obviously is not yet available; however, the ACHP understands the ideas below were under discussion during the mark up process. They address Section 106 review for Army housing dating from 1941-1948 and post-1975. These are the only segments of Army housing not currently covered by a program comment.

- **Address Section 106 review for Army housing constructed after 1975 by applying (through 2045) the terms of the existing [Army Program Comment for Vietnam War Era Historic Housing, Associated Buildings and Structures, and Landscape Features \(1963-1975\)](#).** This Program Comment, adopted in 2023, governs Army management activities (including demolition) for Vietnam War period housing. For most undertakings covered by the program comment, the Army does not have to go through individual, case-by-case Section 106 reviews, instead using procedures for decision making and materials selection established by the program comment. More than 500 “Properties of Particular Importance” are identified that require further review should they be proposed for demolition.
- **Address Section 106 review for Army housing constructed 1941-1948 by applying the terms of the existing [Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features \(1949-1962\)](#).** This program comment, adopted in 2002, governs management activities for thousands of housing units built to almost identical designs and construction standards to address a post-World War II Army housing shortage. As above, the Army does not have to go through individual, case-by-case Section 106 reviews for these properties, instead using procedures for decision making and materials selection established by the program comment.

If the Senate bill is released before the business meeting, members will be updated as to whether the above ideas are indeed included and will be provided with the section’s exact wording.

Advising Congress. Offering comments to Congress on the NDAA would be consistent with the following ACHP legislative priorities for the 118th Congress: fostering stewardship of historic properties on federal lands or under federal management; and balancing regulatory/permitting reform and streamlining with protection of historic properties. As reflected by a number of recent letters from the ACHP to Congress, the ACHP generally advises against legislative action that exempts projects from Section 106 review or otherwise legislates an outcome to the Section 106 process for specific projects or programs. Administrative options already exist to achieve these goals, as demonstrated by the multiple existing program comments addressing Army housing.

The ACHP is in a position to advise Congress that the House bill’s provisions addressing pre-1919 housing are unnecessary for Army housing, given the recently adopted program comment. The ACHP also could point out that alternatives exist through the ACHP regulations to assist DoD in streamlining Section 106 review of projects involving pre-1919 operational facilities and post-1975 housing and landscape features, and that legislated relief is not necessary. The House proposal regarding post-1975 properties is particularly problematic, since it would negate for a subset of federal properties the long-established “50-year” rule regarding historic property significance that is a foundational principle of the National Register program. This would set a troubling precedent.

Assuming for the sake of further discussion that the Senate bill includes the provisions previously described, it raises concerns regarding the treatment of World War II era housing (1941-1948). It would be very difficult to adequately address the significance of such properties under the Capehart and Wherry era program comment even if the program comment was amended. Architectural styles and management needs for World War II era housing are much more varied than the later Capehart and Wherry era housing, which was designed and built in large quantities using a series of identical designs. In contrast, another existing program comment, the [Army Program Comment for Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features \(1919–1940\)](#) would be a much better fit for amendment to also cover World War II era housing, since it addresses a broader range of property designs and construction techniques than the later Capehart and Wherry era.

Existing program comments for Army historic housing were tailored to specific subsets of housing with unique issues regarding construction and historic significance. The ability to amend the program comments would be critical to potential expansion of their applicability to other time periods.

Staff suggests that the Policy and Legislative Affairs Committee consider recommending ACHP adoption of the following motion:

Moved, that: The ACHP:

- wishes to draw the Congress’s attention to the fact that Section 106 streamlining proposed in both the House and Senate versions of the FY 2025 NDAA is not necessary, since existing and potential administrative options already are available to address the issues referenced;
- urges removal of Sections 2834, 2835, and 2837 of the House version, since they would exempt projects from review under Section 106 and run counter to the regulations governing the National Register;
- recommends that, if the Senate bill proposes addressing 1941-1948 Army housing through application of an existing program comment, that the Army Program Comment for Inter-War Era Historic Housing, Associated Buildings and Structures, and Landscape Features (1919–1940) be referenced; and
- directs the chair to so advise the Congress.

Action Needed. The Policy and Legislative Affairs Committee should consider recommending to the full membership the adoption of this motion. The Committee also needs to consider the motions described in the Tab 1 paper, “Proposed ACHP Action on Legislative Priorities: Preservation Funding and Tax Incentives.”

July 2, 2024



**PROPOSED EXEMPTION FOR INDIGENOUS KNOWLEDGE-INFORMED ACTIVITIES BY
NATIVE HAWAIIAN ORGANIZATIONS
Office of Tribal and Indigenous Peoples**

Background. For more than three decades, the ACHP has worked to expand the participation of Native Hawaiian organizations (NHOs) in the historic preservation review process under Section 106 of the National Historic Preservation Act (NHPA). In 1992, Congress amended the NHPA to specify that properties of religious and cultural importance to NHOs may be eligible for listing in the National Register of Historic Places. In fulfilling their Section 106 responsibilities, federal agencies must consult with any NHO that imparts religious and cultural significance to historic properties that may be impacted by their undertakings. Recognizing the special responsibilities that federal agencies have in consulting NHOs, in 2008 the ACHP adopted the ACHP Policy Statement on the ACHP’s Interaction with NHOs, committing to fully include NHOs with the opportunity to effectively participate in the federal historic preservation program. In addition, the policy articulates the ACHP’s appreciation of Native Hawaiian values, including a deep appreciation and comprehension of the terrain and respect for the impactful forces of nature, while also recognizing the considerable contribution Native Hawaiians make toward enhancing this nation.

The ACHP believes that Native ways of knowing are relevant to a full understanding of historic properties that must be recognized in the Section 106 review process. Accordingly, the ACHP published the 2021 *Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants* document to keep federal agencies apprised of their duty to incorporate Traditional Knowledge in Section 106 decisions. Most recently, in March 2024, the ACHP adopted a policy statement on Indigenous Knowledge and Historic Preservation calling for greater respect for Indigenous Knowledge at all levels of the Section 106 review process. In particular, Principle 3 of this policy describes “Indigenous Knowledge” for purposes of Section 106 to include the “experiences, insights, and knowledge held by Indian Tribes and NHOs that can assist federal agencies in identifying, evaluating, assessing, and resolving adverse effects to historic properties that may be of religious and cultural significance to them.” Moreover, Principle 4 of the policy explains that Section 106 involvement in historic properties of religious and cultural significance to an Indian Tribe or NHO should recognize Indigenous Knowledge in informed decision making while Tribal or NHO representatives participate in ongoing review or consultation.

The proposed Exemption for Indigenous Knowledge-Informed Activities By Native Hawaiian Organizations aims to advance the recognition of Indigenous Knowledge in informed decision making by federal agencies. The exemption further advances the ACHP’s application of principles within the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation described above as well as related ACHP documents and statements.

Status. In mid-April, Chair Sara Bronin met with many representatives of NHOs while visiting several historic sites on Oahu with leaders from the Office of Hawaiian Affairs, Historic Hawaii Foundation, and the Department of the Interior (DOI) Office of Native Hawaiian Relations. Chair Bronin and ACHP Indian Tribe Member Reno Keoni Franklin met with numerous Native Hawaiians on Maui, including the Cultural Monitor of Federal Emergency Management Agency recovery efforts in Lahaina. During these meetings, Chair Bronin and Chairman Franklin heard comments about improving the Section 106 process for NHOs assisting federal agencies.

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In mid-May, Chair Bronin announced her intent to draft an NHO Exemption at the ACHP Tribal and Indigenous Peoples Committee meeting with the stated support of Chairman Franklin and commitment from a proposed working group consisting of ACHP Vice Chairman Jordan Tannenbaum and representatives of the Departments of Homeland Security, Defense, and Interior; National Trust for Historic Preservation (NTHP), and National Association of Tribal Historic Preservation Officers (NATHPO).

After circulating a draft of the NHO Exemption to the above-referenced working group on May 16, Chair Bronin met with NATHPO and NTHP. Based on these meetings and exchanges among the working group, Chair Bronin addressed comments and incorporated feedback into the draft. On May 22, ACHP staffer Bill Dancing Feather distributed to the ACHP's NHO database a Notice of Intent to propose an NHO Exemption, including a link to the ACHP's webpage explaining the proposal, a notification of two NHO consultations and one public meeting on the proposal, along with a notice that written comments would be taken until July 7. After Chair Bronin met with Hawaii State Historic Preservation Officer Dawn Chang on May 28 to discuss the draft NHO Exemption, the final draft of the Exemption consolidating all preliminary input was posted on the ACHP website.

The ACHP and Chair Bronin promoted the proposal and opportunities for public engagement and NHO consultation on social media, including LinkedIn, X, and Facebook. Chair Bronin published an op-ed in Hawaii's largest newspaper, the *Honolulu Star-Advertiser*, describing the proposed exemption, explaining its history and rationale, and inviting public comment. This newspaper piece was promoted on the above-referenced social media platforms.

On May 31, a second notice of the proposed NHO Exemption was distributed to the ACHP's NHO database, restating key information in the May 22 notice and pointing out that the final draft of the proposed NHO Exemption had been posted on the ACHP website. Chair Bronin further explained the proposed exemption while urging feedback and ACHP engagement in a webinar of the American Planning Association Division on Urban Design and Historic Preservation on May 22. More than 1,000 people registered for this event. On June 12, Chair Bronin led a public engagement meeting about the proposed exemption with participating members including representatives of federal agencies, the State of Hawaii State Historic Preservation Division, and members of the general public. Chair Bronin addressed comments and questions from participants, including several representatives of the State of Hawaii Historic Preservation Division, a Federal Preservation Officer, and a cultural resources specialist.

To meet the consultation requirements in 36 CFR § 800.14(c), the ACHP developed and executed a plan to consult with NHOs. Chair Bronin led a first NHO consultation meeting on June 14, and a second meeting on June 27. At the first consultation meeting, representatives of NHOs were in attendance, including the President of the Kauhako Ohana Association, the Ahupua'a Accelerator Initiative Coordinator of the Hawai'i Conservation Alliance, and the President of the Ali'i Pauahi Hawaiian Civic Club. Chair Bronin addressed comments and questions from the audience, and those unable to attend had the opportunity to contact staff through a dedicated email address monitored by staff to guarantee a timely response. Chair Bronin and ACHP staff have reviewed the comments and questions while making adjustments as needed in preparation for the final draft of the exemption. The written comment period will close on July 7.

Action Needed. Members are expected to discuss the attached draft of the exemption at the Tribal and Indigenous Peoples Committee meeting. A final draft of the exemption will be informed by comments received by the July 7 deadline and member discussions. That final draft will be shared with the members on July 22 with a vote scheduled through an unassembled meeting ending at 5 p.m. EDT on August 2.

Attachment: Working Draft of Proposed Exemption for Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations



Working Draft of Proposed Exemption for Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations

IMPORTANT NOTE: ACHP staff is distributing a working draft of the exemption to members to review it and be prepared to discuss it in advance of next week's committee meetings. This document is not final, and it should not be circulated beyond the ACHP as it is deliberative and predecisional. The comment period remains open until July 7, 2024, and this working draft will be updated and re-sent to members to reflect the latest comments once the comment period closes.

Section A. Background

For more than three decades, the Advisory Council on Historic Preservation (ACHP) has been working to expand the participation of Native Hawaiian organizations (NHOs) in the historic preservation review process under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, 36 C.F.R. part 800 (Section 106). In 1992, Congress amended the NHPA to clarify that properties of religious and cultural importance to NHOs may be eligible for listing in the National Register of Historic Places and that federal agencies, in carrying out their Section 106 responsibilities, must consult with any NHO that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The ACHP incorporated the provisions in the Section 106 regulations, [36 C.F.R. Part 800, "Protection of Historic Properties."](#)

The ACHP in 2008 adopted the [ACHP Policy Statement on the ACHP's Interaction with Native Hawaiian Organizations](#). This policy set forth the ACHP's commitments to ensure that NHOs are fully included and allowed the opportunity to effectively participate in the federal historic preservation program. The policy also set forth the ACHP's consideration of Native Hawaiian values, such as a deep love and understanding of the land and a respect for the powerful forces of nature, also recognizing the significant contribution Native Hawaiians make toward the enrichment of this nation. In 2010, President Barack Obama announced U.S. support for the United Nations Declaration on the Rights of Indigenous Peoples, and in 2013 the ACHP became the first agency to formally adopt its intent with the [ACHP Plan to Support the U.N. Declaration on the Rights of Indigenous Peoples \(Declaration\)](#). The plan calls for the ACHP to incorporate the principles and aspirations of the Declaration into its work regarding Native Hawaiian historic preservation issues.

The ACHP published the 2021 [Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#) to help inform federal agencies of their obligation to incorporate traditional knowledge in Section 106 decision making and noting the ACHP believes that Native ways of knowing are important to a full understanding of historic properties that must be considered in the Section 106 review process. In 2023, the White House Office of Science and Technology Policy and the Council

on Environmental Quality issued government-wide [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#).

To further elaborate, advance, and encourage Indigenous Knowledge in the Section 106 process, the ACHP adopted the [ACHP Policy Statement on Indigenous Knowledge and Historic Preservation](#). The policy includes principles that should be applied by federal agencies, state and local governments, and nongovernmental institutions, including private contractors, to advance the integration of Indigenous Knowledge into historic preservation decision making. Principle 3 of that policy states:

For purposes of Section 106, the term “Indigenous Knowledge” includes, but is not limited to, the experiences, insights, and knowledge held by Indian Tribes and NHOs that can assist federal agencies in identifying, evaluating, assessing, and resolving adverse effects to historic properties that may be of religious and cultural significance to them. While the NHPA directs federal agencies to make the final decisions in the Section 106 review, the law also directs agencies to consult with Indian Tribes and NHOs in carrying out the review process. Deference can and should be provided to the expertise of designated representatives about Indigenous Knowledge that is provided to inform decision making in the Section 106 process. A reasonable and good faith effort includes the responsibility that federal agencies, consistent with 36 CFR § 800.2(c)(2)(ii)(A), consider Indigenous Knowledge in a successive and cumulative manner throughout the four-step Section 106 process.

Principle 4 of that policy states: “Section 106 agreement documents and program alternatives that relate to or include the identification of, assessment of effects to, or resolution of adverse effects to historic properties of religious and cultural significance to an Indian Tribe or NHO should include language or stipulations that address the role of Indigenous Knowledge in informed decision making and how designated representatives would be involved in any ongoing reviews or consultation.”

This exemption constitutes a Section 106 program alternative that is designed to advance the recognition of Indigenous Knowledge in informed decision making by federal agencies and advances the ACHP’s application of these and other principles within the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation and prior relevant ACHP documents and statements.

Section B. Exemption Concept and Criteria

In 1999, following amendments to the NHPA in 1992, the ACHP regulations were clarified to require consultation with Indian Tribes and NHOs that attach religious and cultural significance to historic properties. In 2024, the ACHP approved its Policy Statement on Indigenous Knowledge and Historic Preservation outlining, in part, the uses of Indigenous Knowledge in Section 106 reviews. Following approval of that policy statement, the chair of the ACHP identified that certain federal agencies reviewing undertakings involving NHOs, specifically those utilizing Indigenous Knowledge, were experiencing challenges in meeting Section 106 requirements despite clear compliance with the broad goals and outlines of federal historic preservation policy. Such projects have included, in the past, federal grant activities, federal mitigation projects, and federal land management actions. ACHP members consulted with and took into account the views of stakeholders—including federal and state officials, NHOs, historic preservation organizations, and individuals—to develop a limited set of undertakings whose potential effects upon historic properties are foreseeable and likely to be minimal or not adverse and where exemption of the undertakings would be consistent with the purposes of the NHPA.

In adopting this exemption, the ACHP determined that it meets these criteria. The exemption aligns with the requirements of the NHPA reflecting an effort to promote historic preservation by enabling types of

restoration and rehabilitation projects that are essentially preservation activities. As described below, the exemption will be restricted to only specific activities undertaken with or by NHOs, and to those projects that benefit historic preservation and cultural perpetuation by reconstructing, interpreting, restoring, rehabilitating, and preserving historic properties significant to NHOs, and that have effects that are foreseeable and likely to be minimal or nonadverse.

The ACHP has also determined that the exemption is an appropriate choice among the program alternatives available because of the nature of the activities and the consistency with the Policy Statement on Indigenous Knowledge and Historic Preservation, which recognize Indigenous Knowledge as “valid, sound, and self-supporting.” Further, Indigenous Knowledge-informed activities, as outlined in this exemption, consist exclusively of historic and cultural preservation and perpetuation activities. This exemption offers NHOs engaged with federal agencies the ability to identify the appropriate paradigm, cultural methods, and practices in which proposed undertakings shall be carried out in order to support the cultural perpetuation goals as well as meeting the policy principles within the ACHP’s Policy Statement on Indigenous Knowledge.

Section C. Public Participation and Consultation

—Forthcoming—

Section D. Text of the Exemption

Section I. Exemption from Section 106

Except as noted in Section IV, all federal agencies are exempt from the Section 106 requirements of taking into account the effects of undertakings identified in Section III.

Section II. Applicability of Exemption

This exemption applies only to undertakings identified in Section III. This exemption applies to undertakings where, prior to [date of adoption], the relevant federal agency has not yet made a final decision about carrying out, licensing, or assisting the undertaking, as applicable. Federal agencies are strongly encouraged to use the applicable amendment provisions of Section 106 Memoranda of Agreement or Programmatic Agreements executed prior to [date of adoption] for undertakings that would otherwise be covered by this exemption, to consider making such agreements consistent with this exemption.

Before a lead federal agency may use this exemption, it must first request and receive from the relevant NHO a formal statement detailing how such activities meet the terms of this exemption. Such a formal statement must include the following:

- a. An attestation that the entity meets the definition of an NHO in the NHPA. ~~if the entity is not listed on the Department of the Interior Office of Native Hawaiian Relations’ Native Hawaiian Organization Notification List.~~
- b. A description of the NHO’s proposal, direction, authorization, or support vis a vis the covered activities.
- c. A description of the rehabilitation, preservation, restoration, or reconstruction, as identified consistent with the cultural practices of the NHO.
- d. A statement identifying the individual (such as a chair, executive director, president, or other person) who is authorized to represent and submit on behalf of the NHO.

Commented [1]:

BOEM said: “This attesting process could be problematic and burdensome for NHO’s if they must attest to being an NHO every time they wish to support an undertaking. There’s already an NHO list maintained by DOI. BOEM suggests that those NHOs on the list not have to attest that they meet the definition.”

However, the DOI list is not vetted by DOI and uses a separate definition from the NHPA. One NHO recommended even more robust procedures (e.g., ACHP review) than tying to the NHPA.

Suggest leaving this language as is.

e. A statement identifying the property at issue as a property of religious or cultural significance to the NHO, if such property is neither listed on, nor previously been found eligible for inclusion in, the National Register of Historic Places.

~~f. A statement indicating that, to the best of the knowledge of the NHO and its authorized representative, no other NHO has asserted or would likely assert that the covered activities are or would be contrary to or limiting of the Indigenous Knowledge-informed traditional cultural practice of another NHO.~~

~~fg. A signature or other attribution by the above-mentioned authorized personrepresentative.~~

Commented [SCB2]: DoD suggested that this statement address the knowledge of an NHO about potentially competing claims.

Section III. Covered Activities

This exemption applies to the following undertakings when they are (1) proposed, directed, or authorized by an NHO, ~~(2)or~~ substantially led, designed, or managed by an NHOs, ~~(32)~~ informed by Indigenous Knowledge of that NHO, ~~(3)~~ related to traditional cultural practices of Native Hawaiians, and ~~(54)~~ preceded by the submission of the statement described in Section II by the NHO to the relevant federal agency:

a. Conduct of landscaping practices or activities including, but not limited to, arboreal practices, invasive species removal, and other landscape maintenance, re-establishment, or facilitation.

b. Conduct of agricultural practices or activities including, but not limited to, planting and crop rotation, harvesting, native species propagation, and soil management.

c. Rehabilitation, preservation, restoration, or reconstruction of any the following: ~~of~~
i. Water features and systems including, but not limited to, fishponds and other traditional aquaculture.

~~ii. H~~

~~d. Rehabilitation, preservation, restoration, or reconstruction of h~~istoric pathways using natural materials.

~~e. Rehabilitation, preservation, restoration, or reconstruction of siii.~~

Sacred and traditional sites including, but not limited to, heiau, burial sites, walls, shrines, ahu, and similar structures and objects.

~~ivf. Rehabilitation, preservation, restoration, or reconstruction of t~~Traditional Native Hawaiian buildings and structures built and designed primarily by Native Hawaiians (including, but not limited to, palaces and residences).

~~g. Rehabilitation, preservation, restoration, or reconstruction of v.~~

Properties with religious or cultural significance to NHOs, as defined by NHOs.

d. New construction, using traditional techniques and primarily natural materials, of the following, to the extent such new construction is for the express purpose of maintaining or re-establishing traditional cultural or religious practices informed by Indigenous Knowledge:

i. Hale.

ii. Hālau wa'a.

iii. Fencing to protect sacred and traditional sites or burial sites.

e. Minor adaptations to the elevation, dimension, and location of the buildings, structures, and sites related to any of the covered activities enumerated in Section III, subsections c and d, where such adaptations are necessary to mitigate the impact of sea level rise, increased precipitation, erosion, and wildfire.

hf. Installation of interpretive signage related to any of the covered activities enumerated in Section III, subsections a through ge.

Commented [SB3]: Damien Kenison-Kauhako (NHO Representative) suggested that fencing to protect sacred areas be included in this Exemption.

Trisha Kehaulani Watson (NHO Representative) suggested that new construction can sometimes further traditional cultural or religious practice. Consider adding hale and halau.

~~ig.~~ The transfer of federal property or interest in federal property to an NHO or the grant of a nonpossessory interest in real property to an NHO for temporary use of the property, in order to carry out any of the covered activities enumerated in Section III, subsections ~~a~~ through ~~hf~~.

While the preceding categories of action have been identified as appropriate activities for this exemption, nothing in this section should be construed as to suggest that practices not herein contained are not in line with traditional practices informed by Indigenous Knowledge.

For the avoidance of doubt, the return or incorporation of Indigenous names to streets, monuments, or other locations is not an undertaking requiring Section 106 review, even if such renaming involves federal agency action (including, but not limited to, permitting, licensing, funding, or other assistance).

Section IV. Activities Not Covered and Exceptions

This exemption shall not cover:

- a. Demolition or removal of properties listed or known to be eligible for listing on the National Register of Historic Places, unless the demolition or removal decision ~~was~~ previously reviewed pursuant to Section 106.
- b. The construction of new buildings or structures ~~that are not for the express purpose of maintaining or reestablishing traditional cultural or religious practices informed by Indigenous Knowledge not enumerated in Section III.d.~~
- c. The treatment or disposition of burial sites, human remains, and funerary objects in a manner contrary to the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.
- d. Components of an undertaking beyond those listed in Section III, including components added after the undertaking was first initiated or conceived.
- e. ~~Federal agency decisions to provide or retract permission to access agency owned or controlled land.~~
- f. ~~Undertakings known by a federal agency or the relevant NHO, prior to the approval of the undertaking by the federal agency, to be contrary to or limiting of the Indigenous Knowledge-informed traditional cultural practice of one or more other NHOs, or Native Hawaiian cultural practice more generally.~~

The federal agency will remain responsible for Section 106 compliance with regard to any activities not covered by this exemption, including appropriate identification, scoping, evaluation, and consultation activities, among others. Each federal agency remains responsible for considering the effects of undertakings on historic properties other than those directly addressed by the activities covered by this exemption (such as adjacent historic properties or archaeological sites that may lie within undisturbed areas) in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative executed pursuant to 36 C.F.R. § 800.14.

Section V. 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, provided, however, that federal agencies are strongly encouraged to use the applicable amendment provisions of Section 106 Memoranda of Agreement or Programmatic Agreements executed prior to [date of adoption] for undertakings that would otherwise be covered by this exemption, to consider making such agreements consistent with this exemption. This exemption does not modify, preempt, or replace any ~~other federal laws, or any~~

Commented [4]:
Jessica Puff asked about whether federal agencies' decision to allow parties to access federal land would be covered. We said no. This is added to the list of exceptions.

Commented [SB5]: Provision added to account for situations where the federal agency knows there will be a dispute between NHOs - in such a case, the proponent NHO's purported IK-informed practice will not be covered.

Commented [JM6]: The language at the end of this section was added following questions raised by commenters on scope of exemption and consideration of effects to historic properties not of significance to NHOs. It is modeled after language used in the interstate highway exemption.

Commented [SB7]: Pua'ala Pascua (NHO Representative) requested information about how this exemption might interact with other federal laws (including the Wild and Scenic Rivers Act). Adding "other federal laws" here can clarify.

applicable state or local laws or regulations, including, but not limited to, Chapter 6(E) of the Hawaii Revised Statutes.

Commented [SB8]: A commenter on June 27 suggested that we clarify whether this applies to Section 6E. Since we did get this question a few times, it seems like a reference might be useful.

Section VI. Termination

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

Section VII. Amendments

This exemption may be amended by the ACHP membership. Such amendments must be consistent with the criteria at 36 C.F.R. § 800.14(c)(1) and preceded by consultation appropriate to the scope of the amendments. Notwithstanding the foregoing, after one year after the approval of this exemption, a subcommittee of the ACHP membership consisting of the chair, the Secretary of the Interior or his or her designee, the Secretary of Agriculture or his or her designee, the Secretary of Defense or his or her designee, the ACHP Indian Tribe or Native Hawaiian member, and the chair of the National Association of Tribal Historic Preservation Officers or his or her designee may, through a majority vote, amend: Section II of this exemption to expand the applicability of the exemption to Indian Tribes; or Section III to modify the list of covered activities; provided that any such amendment shall be preceded by consultation appropriate to the scope of such amendment.

Commented [SCB9]: Suggestion by the DoD, which has a significant number of undertakings in Hawaii.

Section VIII. Confidential Information

Nothing in the terms of this exemption shall be construed to require the disclosure of confidential information or sensitive information, or the publication of Indigenous Knowledge. Federal agencies shall follow the guidance contained in the ACHP 2016 Frequently Asked Questions on Protecting Sensitive Information about Historic Properties Under Section 304 of the NHPA and shall comply with applicable laws regarding the protection and dissemination of records.

Section IX. Annual Reports and Evaluations

For five years after the date of the adoption of this exemption, the federal agencies that use this exemption will provide a report to the ACHP for the previous reporting year. Each agency's annual report will provide a brief summary of the locations and nature of covered activities, any significant issues that arose while implementing the exemption, the manner in which such issues were addressed, and suggestions to avoid such issues in the future. Federal agencies are invited to include an assessment of the overall effectiveness of the exemption in meeting its intent in this report.

Commented [SB10]: Trisha Kehaulani Watson suggested that ACHP make efforts to track how the Exemption is going and publicize notices of its use.

DoD suggested periodic review and reporting processes.

The ACHP will schedule a meeting with the federal agencies that used the exemption during the relevant reporting year, and invite representatives of the State of Hawaii Historic Preservation Division, NHOs, Federal Preservation Officers, and others it deems appropriate, to discuss implementation of the exemption. The meeting shall provide an opportunity for attendees to provide their views on the overall effectiveness of the exemption in meeting its intent and may inform decisions such as those regarding amendments to the exemption. Annual meetings may take place in-person, by phone, virtually using electronic meeting platforms, or any combination of such means.

Section IX. Definitions

WORKING DRAFT | JULY 2, 2024 | DELIBERATIVE AND PREDECISIONAL

This exemption uses the definitions found in 36 C.F.R. § 800.16, and for convenience these definitions are provided here, provided that in the event of any conflict between these definitions and the definitions in 36 C.F.R. § 800.16, the latter definitions shall prevail:

- a. Agency:** An agency as defined by 5 U.S.C. 551, including state, local, or Tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.
- b. Historic property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization that meet the National Register of Historic Places criteria.
- c. Indian Tribe:** An Indian Tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- d. Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii.
- e. Native Hawaiian organization (NHO):** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.
- f. Tribal lands:** All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.
- g. Undertaking:** A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.