



[External] Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

From Marullo, Sam (Federal) <SMarullo@doc.gov>
Date Wed 09-Oct-24 7:00 PM
To Program Alternatives <program_alternatives@achp.gov>

The Honorable Sara Bronin
Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, D.C. 20001-2637

RE: Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin,

On behalf of the U.S. Department of Commerce, I am writing to offer comments on the Advisory Council on Historic Preservation's (ACHP) efforts to promote Accessible, Climate-Resilient, and Connected Communities through the program comment proposed on August 8, 2024. The proposal would support the Department's mission to promote economic growth, innovation, and sustainability while balancing the needs of our nation's historic properties. In addition, the comment is aligned with the Department's strategic goals. Finally, the proposed program comment would support the Department's ability to maintain a modern workspace as a tenant of federal buildings.

Federal projects that promote growth require a nimble regulatory framework. The efficiencies the program comment offers to affordable housing development, sustainable transportation, and energy-efficient infrastructure align with three of Department's core strategic goals.^[1]

- Strategic Goal 1: Drive U.S. innovation and global competitiveness
- Strategic Goal 2: Foster inclusive capitalism and equitable economic growth
- Strategic Goal 3: Address the climate crisis through mitigation, adaptation, and resilience efforts.

Expediting the Section 106 review process for projects such as affordable housing development, sustainable transportation, and energy-efficient infrastructure, supports investments which increase U.S. global competitiveness. Streamlined reviews would help foster innovation by reducing delays.

The proposed program comment includes measures to help promote equitable access to housing and infrastructure and climate-friendly transportation infrastructure, which could help meet the Department of Commerce's goal of fostering inclusive capitalism. The Department is also committed to addressing the climate crisis by advancing projects that mitigate climate impacts, promote adaptation, and build community resilience. Swift implementation of projects that reduce energy consumption, cut greenhouse gas emissions, and enhance climate resilience would support this goal.

In 2023, the Department requested that the ACHP issue the Program Comment for Communications Projects on Federal Lands and Property^[2] to provide NTIA with an appropriately scaled solution to address the tens of thousands of Section 106 reviews that will be triggered by almost \$50 billion dollars in broadband funding. The communications projects program comment, issued in March 2024, established uniform Section 106 procedures for a variety of common communications deployment types, including addition or modification of new equipment on existing communication towers or other structures, installation of aerial fiber cable, burying fiber cable in existing rights of way, and construction of new communication towers in certain circumstances. The communications program comment supports the Department's work advancing broadband infrastructure projects across the country and helping to close the digital divide and support economic growth. The Department expects the newly proposed program comment will similarly support an appropriately scaled Section 106 approach for the significant range of undertakings in its covered areas.

Finally, the Department manages 466 buildings for its own use, including 2 National Historic Landmarks and 45 buildings that are either eligible for or listed on the National Register of Historic Places. The Department spends on the order of \$100 million annually on building maintenance and repair. The efficiencies proposed by the program comment would assist the Department in maintaining the viability of its assets and the productivity of its workforce. Many Department buildings require modernization to improve energy efficiency and climate resilience. The flexibility offered through streamlined Section 106 reviews could help the Department meet its sustainability goals, reduce operating costs, and ensure facilities are equipped to handle future challenges.

Thank you for considering the Department's comments.

Thank you,
Sam Marullo

[1] U.S. Department of Commerce, Strategic Plan 2022-2026, available at <https://www.commerce.gov/sites/default/files/2022-03/DOC-Strategic-Plan-2022%E2%80%932026.pdf>.

² Advisory Committee on Historic Preservation, Amendment to the Program Comment for Communications Projects on Federal Lands and Property (2024), available at https://www.achp.gov/sites/default/files/program_comments/2024-04/Communications%20Project%20PC%20amendment%20-%2020240313%20letterhead_SIGNED.pdf.

[1] U.S. Department of Commerce, Strategic Plan 2022-2026, available at <https://www.commerce.gov/sites/default/files/2022-03/DOC-Strategic-Plan-2022%E2%80%932026.pdf>.

[2] Advisory Committee on Historic Preservation, Amendment to the Program Comment for Communications Projects on Federal Lands and Property (2024), available at https://www.achp.gov/sites/default/files/program_comments/2024-04/Communications%20Project%20PC%20amendment%20-%2020240313%20letterhead_SIGNED.pdf.



[External] ACCC PC

From Beth Savage - PA0C <beth.savage@gsa.gov>

Date Wed 09-Oct-24 6:14 PM

To Program Alternatives <program_alternatives@achp.gov>

ACHP team,

GSA appreciates the opportunity to provide comments on the proposed Advisory Council on Historic Preservation's (ACHP) Program Comment on Accessible, Climate Resilient, Connected Communities" (PC), pertaining to certain housing-related, climate-smart building-related, and climate-friendly transportation infrastructure-related activities.

GSA supports alternative Section 106 compliance vehicles developed in consultation in accordance with the goals of the National Historic Preservation Act, 36 CFR Part 800, and ACHP guidance on such. We appreciate the goal of effectively streamlining the Section 106 process appropriately to meet the intent of the NHPA in service to implementing national priorities and federal agency missions, while respecting the roles of State Historic Preservation Officers, Tribal Historic Preservation Officers, preservation organizations, and the public.

The unprecedented nature, scope, and complexity of the currently proposed ACHP program comment has elicited an unprecedented comment response from many parties, which seems to underscore the need for collaborative reconciliation through consultation to sharpen and clarify the PC to build consensus around its scope and process.

As HUD and DOT are the primary agencies that would predominantly use appendices A and C related to compliance for implementation of their program missions, GSA defers to them for detailed comments on those respective sections.

Extensive comments have already been submitted to assist in clarifying many aspects of the document to improve the ungainliness and navigation of the draft, so GSA will not repeat those herein.

Regarding the use of this PC, GSA does not understand how this PC could be used for parts of projects to improve efficiency of Section 106 compliance.

Regarding determinations of eligibility, that section should be revised to require the determination of historic properties as required in 36 CFR Part 800 to determine if there is an undertaking and for the application of appropriate appendices. This will clarify the PC by allowing for the deletion of much irrelevant and repetitive text.

Regarding definitions, they should be limited specifically to the PC and not already established in existing regulations and guidance, and they should be honed by practitioners to ensure accuracy and consistency.

Regarding appendices:

- Exempted activities should only be applied to known historic structures as required.
- Appendices should be clear and self-contained with all exempted activities defined. Currently the appendices cross-reference other appendices and appendix parts, making the document difficult to follow.
- Greater attention should be given to the specific activities under each appendix to ensure they are appropriate to that appendix.
- Recommend a limited, defined depth for all activities with ground disturbance.
- Recommend universally revising all stipulations addressing abatement of hazardous materials as the process of abatement is neither reversible nor temporary.
- To be applicable for implementation by federal agencies, any accessibility stipulation should include a reference to the Architectural Barriers Act Accessibility Standards (ABAAS), which are similar but not identical to ADA standards.
- Other Activities, which are not undertakings or are already considered no adverse effect to historic properties, should be deleted from each appendix to lessen confusion.
- Recommend evaluating additional activities (from the DHS Resilience NPA) for Appendix B applicability to address new climate-related technologies (window replacements, shades, films, insulating panels, etc.).
- Recommend re-evaluating activities listed in Appendix C for applicability in Appendix B.

GSA looks forward to continuing working to assist the ACHP in developing a PC (or PCs) to address the identified national priorities while reconciling the wealth of substantive comments submitted in order to build consensus for a PC (or PCs) furthering effective and efficient preservation compliance pathways responsive to stakeholders.

Regards,

Beth L. Savage (she/her)
Director, Center for Historic Buildings &
Federal Preservation Officer (PA0C)
Office of Architecture & Engineering
GSA, Public Buildings Service
1800 F Street, NW, Rm. #6400
Washington, DC 20405
202.208.1936; gsa.gov/historicpreservation

U.S. Department of Housing and Urban Development (HUD) Comments – ACHP Draft Program Comment on Accessible Climate-Resilient and Connected Communities (submitted 10/9/24)

HUD appreciates the opportunity to review the ACHP's draft *Program Comment on Accessible, Climate-Resilient and Connected Communities* issued on August 8th, 2024 with a comment deadline on October 9th, 2024. The draft provides federal agencies with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA), and its implementing regulations, 36 C.F.R. part 800 (Section 106). It focuses on actions specifically associated with housing, climate-smart building, and climate friendly transportation.

As the Department responsible for creating strong, sustainable and inclusive communities and quality affordable homes for all, HUD supports efforts such as this, that help ensure that we can meet our mission critical responsibilities while also meeting our historic preservation responsibilities. HUD believes that a Program Comment that reduces project-specific coordination and consultation for repetitive and routine actions can help better allow for meaningful consultation where it truly matters and better balance both affordable housing and historic preservation priorities.

HUD is working with communities across the country to address the affordable housing shortage while simultaneously upholding the compliance requirements that accompany federal investments, including the environmental and cultural resource laws like the National Historic Preservation Act (NHPA) and the NHPA, Section 106 review process. The scale of HUD's challenges in maintaining and upgrading existing public housing is considerable. For instance, the Office of Public and Indian Housing counts 907,539 housing units within 6,308 public housing projects. Over 64% of the public housing inventory is over 50 years of age. Of that, 36% were built from 1950-1969 and 25% were built prior to 1950. In addition to the challenges facing the Office of Public and Indian Housing, HUD's Office of Housing, which encompasses both Multifamily and Single-family Programs, estimates that its HUD assisted and insured multifamily portfolio contains 23,068 properties which hold a total of 1,472,552 units. Of those, 5,991 properties, holding 601,113 units, have a vintage date of 1979 or earlier.

As we have discussed previously in other correspondence with the ACHP, HUD's Responsible Entities, via delegated legal authority, conduct environmental reviews for project related to 24 CFR Part 58, and would rely on this Program Comment in assist in those important decisions. As a result, HUD intends to strategically and thoughtfully build both awareness of the terms therein and to develop the tools and training necessary to successfully utilize it nationwide, if passed by the Council. HUD intends to train and to build those necessary tools and guidance materials to ensure appropriate and consistent application of the final Program Comment's terms and conditions as the communities HUD serves make decisions according to it.

In our review of the draft Program Comment, HUD commends the ACHP for incorporating all repairs and renovations that HUD requested be considered for a Program Comment or similar nationwide streamlining tool in our letter dated November 29th, 2023. This includes interior repairs, upgrades to

critical systems, abatement and mitigation actions to minimize hazardous materials, such as radon, and the installation of access ramps under the Americans with Disabilities Act (ADA).

As HUD reviews the entirety of activities proposed within the Program Comment, it offers the below recommendations with the intent of reducing potential complexity by those partners who will be responsible for implementing it.

1. **HUD recommends ACHP further refine language within the Program Comment regarding the Program Comment’s potential to “effect” historic properties:** The document should more directly address whether the Program Comment, when implemented, will have an effect on historic properties consistent with 36 CFR 800.14(e)(1). With multiple appendixes, the potential for effect exists (in HUD’s review) depending on the type of activity delineated within each appendix. For example, actions in *Appendix A-1: Housing-Related Activities Not Requiring Further Review*, have “no potential to effect,” in HUD’s read, but actions outlined in *Appendix A-2: Housing-Related Activities Not Requiring Further Review After the Satisfaction of Conditions, Exclusions, or Requirements* do have the potential to effect historic properties, and for that reason require additional oversight and project mitigation to minimize it as specified in that Appendix. HUD recommends further clarification in the body of the Program Comment to describe the potential for effect by each Appendix. This clarity would help align the Program Comment against language and process that the historic preservation community is accustomed to, current national training and guidance utilized by HUD and other parties, and alignment with traditional requirements of the NHPA regulations.
2. **HUD recommends ACHP further refine language within the Program Comment regarding determinations of National Register of Historic Places (NRHP) eligibility for specific undertakings:** Appendix A-2 presupposes that NRHP eligibility determinations are made for a subset of the activities therein. Such actions are specifically listed in Appendix A-2; in sections: 2.a & 2.b. However, the process by which that eligibility determination is made remains unclear within the Program Comment. HUD requests further clarification regarding the NRHP eligibility determinations for those properties with a proposed undertaking as described in Appendix A-2. HUD remains unclear as to whether that determination step remains the traditional process as already articulated in 36 CFR 800.4 and related to 36 CFR Part 60: National Register of Historic Properties. HUD anticipates that the ACHP does not intend for the action agency to determine necessary NRHP eligibility status without appropriate oversight of such partners as SHPOs and THPOs, if such an eligibility determination is necessary.
3. **HUD recommends ACHP consider “previously disturbed ground/no new ground disturbance” activities be moved from Appendix A-1 to Appendix A-2.** HUD recommends ACHP’s consideration of the removal of ground disturbance from any Appendix 1 (A-1, B-1, and C-1) activities in light of the complexity of determining “previously disturbed” without a professional’s guidance and judgement to assist. This transition of activity type from Appendix A-1 to Appendix A-2 would prevent the risk of “disturbance”

being misinterpreted, resulting in damaged archaeological sites being impacted by activities inadvertently.

4. **HUD recommends further clarification and language regarding the expectations of Tribal Consultation for individual proposed undertakings included within the Program Comment.** HUD seeks further guidance and clarity on the process and timing, in accordance with the Program Comment, by which an agency official is expected to consult at the project-level with Federally-recognized Tribes and Native Hawaiian Organizations (NHOs) to “determine whether this Program Comment would affect a site of religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, including Tribal identified sacred sites, the federal agency shall consult with the relevant Indian Tribe or Native Hawaiian Organization to determine if the Program Comment should apply to the undertaking” (III.B.). HUD requests clear language in the Program Comment that ensures consistency of this expectation. For instance, does the Program Comment intend for an agency official to follow steps already outlined in 36 CFR 800.3-800.4 to notify Tribes/NHO’s of 1) each individual undertaking, 2) an agency’s request for a Tribe to be a consulting party, and 3) an effort to identify historic properties based on Indigenous Knowledge for actions detailed in both Appendix A-1 (specific only to ground disturbing activities) and Appendix A-2 (for all actions listed therein)? It is important to fully understand the intent of ACHP’s tribal consultation in adherence to the Program Comment for project level activities.
5. **HUD requests revisions to the Program Comment annual reporting requirements to better align with the authorities of Responsible Entities.** HUD’s Responsible Entities (RE’s) assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA (to include NHPA). This authority is detailed in 24 CFR Part 58.4 and 58.5. Further, and specifically described in 24 CFR Part 58.5, the Responsible Entity must certify that it has complied with the requirements that would apply to HUD under laws and authorities (including NHPA) and must consider the criteria, standards, policies and regulations of these laws and authorities. As such, annual reporting requirements should rest with the Responsible Entity, not with HUD, for those actions undertaken in accordance with regulation. Therefore, HUD requests ACHP revise the language within XI.A.
 - **Suggested language:** *Federal agencies and those entities to whom an agency has delegated legal authority to comply with NHPA, shall be responsible for submitting annual reports directly to the ACHP. Federal agencies may develop protocols and guidance to assist in this effort.*



[External] Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities

From Henry, Caroline D <caroline_henry@ios.doi.gov>

Date Fri 16-Aug-24 3:07 PM

To Sara Bronin <sbronin@achp.gov>

Cc Michael Martinez <michael_martinez@ios.doi.gov>; Reid Nelson <rnelson@achp.gov>; Margrette Thompson <margrette_thompson@ios.doi.gov>; Jaime Loichinger <jloichinger@achp.gov>; Joy Beasley <joy_beasley@nps.gov>; Kelly Yasaitis Fanizzo <kfanizzo@achp.gov>; Rushing, Robert W <robert_rushing@ios.doi.gov>

Dear Chair Bronin:

The Department of the Interior appreciates the opportunity to provide input on the Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. We value the initiative that the Advisory Council on Historic Preservation (ACHP) is taking and support your efforts to advance Administration priorities. In an effort to achieve the ACHP goals, while best managing and preserving diverse historic resources, we offer the following comments from the Department and the National Park Service on the August 8, 2024 "Draft for Public Comment."

General observations are followed by specific comments

Tailoring Section 106 Recommendations to Specific Articulated Needs

A statement of need is important to define the full scope of the challenges and ensure that "solutions" developed are the most appropriate in scale and content. Meaningful improvements to Section 106 practice are typically need based. Relying on the ACHP policy statements, alone, as justification for Section 106 program alternatives is narrowly focused, foregoing the opportunity to examine actual concerns and consider tailored solutions. Moreover, federal agencies have their own policy frameworks which may, in some cases, not fully align with the policy statements of the ACHP.

Seemingly absent is consideration of what other efforts could be made to address the broader goals. For example, effective and efficient Section 106 review is reliant on the knowledge of all participants in the process. This includes not only the federal agencies, but states, local governments, contractors, the public etc. Many "impediments" identified in the Section 106 process result from the lack of knowledge or experience of the participants. Consideration should be given to the extent to which training and guidance, targeting specific project/program areas, could improve the Section 106 process for all participants, negating the need to recreate the process through wide-sweeping program alternatives.

There also seems to be an overall assumption (without supporting data) that Section 106 review, in its current form, is an impediment to implementation of other policy priorities. The scale of this proposed Program Comment, initiated by the ACHP itself and with potential applicability to vast numbers of resources and programs, seems to imply that the ACHP believes that the Section 106 compliance process is an impediment to project and program implementation. As the "regulatory agency" for the Section 106 process, the ACHP risks sending a message that undermines the validity of its own regulations. If the ACHP believes its regulations are problematic when applied to numerous types of

programs and resource types, then the ACHP could undertake revision of its regulations through standard procedure, rather than contriving workarounds.

Program Alternative Recommendations

Program alternatives are tied to agencies with repetitive management actions with a large inventory of similar historic properties or that have programs that generate a large number of similar undertakings. In contrast, the proposed program alternative is not tied to a specific agency, action, or property type. As a result, the proposed document attempts to cover broad topics that span multiple federal agencies, thus lacking in cohesion. Streamlined compliance could be more effective when tailored to specific funding programs. Adaptation of compliance mechanisms could be more impactful when responsive to identified procedural, resource, or undertaking needs. Many federal agencies and states have developed strong working relationships that have resulted in program alternatives that provide for efficient compliance and program management. Many existing program alternatives already apply to project, program and/or resource types covered by this proposed Program Comment, making this new effort somewhat duplicative. A wide-sweeping nationwide approach could create unintended conflicts with existing program alternatives (project-specific memoranda of agreement, programmatic agreements, Program Comments, etc.).

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Detailed Comments

- The Program Comment should include a list of programs and/or agencies to which it applies, perhaps as an appendix. The Program Comment does not currently include sufficient information on applicability.
- The Program Comment's two "Alternative Compliance Approaches" appear to conflict with each other: the first exempts actions with "no or minimal potential to adversely affect historic properties", while the second exempts activities that "adversely affect historic properties but whose potential adverse effects can be avoided, minimized, or mitigated."
- The proposed Integrated Program Comment's 45-year-old age exemption ignores the fact that a property may be eligible for listing in the National Register as a property that has achieved significance within the last fifty for its exceptional importance. The proposal appears to assume activities (ground disturbances, building modifications) done within the past 45 years were done as part of a Federal undertaking and thus reviewed in a 106 consultation, however, this is often not the case. Is the 45-year-old age exemption premised on the typical federal agency practice of not considering a property potentially historic until it reaches the age of 50-years-old? Clarification is needed.
- The enumerated site activities, primarily addressing site furnishings and transportation surfaces, are assumed to have limited ground disturbing affect. This assumption may be, however, flawed. For example, removal of playground equipment is not a simple construction project when heavy equipment is involved to remove building materials and dirt below grade.
- The following comments relate to the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOI Standards) and the proposed Program Comment's intersection with

them:

- The draft Program Comment definition of *primary space* as it relates to character-defining features and historic character is much more restrictive/narrow than what is used in guidance produced by the National Park Service's National Register of Historic Places and Technical Preservation Services.
 - *Primary view* is, it seems, a new term introduced in the draft program comment. It is important to note that some buildings are meant to be seen "in the round," meaning that they have equally important façades on the front, sides, and rear, for example, related to their historic significance (e.g., a county courthouse sitting in a public square that is surrounded by commercial buildings on all four sides, or a Midcentury tract house with little fenestration on the front and all glass on the back). The historic use of a building could make multiple façades important (e.g., an industrial building with a loading dock for trucks on one side and loading dock for train spur on another).
 - *In-kind building materials* are defined as matching "in all possible respects, including their composition, design, color, texture, and other physical and visual properties," but not specifically material or size/dimensions. In the context of the SOI Standards, the word "design" includes dimensions; however, the definition of *replacement* in the Program Comment allows for a change in "size, dimension, location, and configuration." Further clarification in the definition of *in-kind replacement* would be useful. (For example, should it also need to closely match, including in terms of size, dimension, location, and configuration? In the SOI Standards, replacement is defined as the "substitution of a new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part.")
 - The Program Comment defines *substitute building materials* as "modern, industry standard, natural, composite, and synthetic materials that simulate the appearance, physical properties, and related attributes of historic materials well enough to make them alternatives for use when historic building materials require replacement." There's no requirement for how closely they need to match the historic material or what aspects need to match (e.g., design, color, texture, visual appearance, etc.). For example, asphalt shingle manufactured with a brick pattern was meant to be a substitute for the look of brick but would not be considered an appropriate substitute material. A substitute *industry standard* for wood siding would mean cement board, regardless of dimensions, lap/exposure, finish, trim/end board details, etc.
- The following comments relate to Appendix A-1: Housing-Related Activities Not Requiring Further Review:
 - This appendix is confusing in parts due to mixing/matching of non-historic and historic properties, and character-defining features and non-character-defining features. Is the intent for the draft program comment to provide a compliance path for buildings with undetermined National Register-eligibility status? And further, to avoid submittal of so-called "consensus determinations of eligibility" to the SHPO? Clarification is needed.
 - Sitework: All the items listed in Subsection a, relative to properties less than 45 years old, could be character-defining features of a historic property less than 45 years old.
 - Exterior: Some of the treatments listed in Subsection a could negatively affect historic features, character, and appearance. Further, some of the individual treatments like seismic and foundation work, should only pertain to minor repairs, as some foundation work and seismic work can be quite extensive and intrusive.

- Exterior: Subsection e(iii) allows placement of solar panels anywhere, even visible from the public right of way, regardless of visibility, significance of the property, or if there are other, less prominent locations on the building that would be suitable. In addition, this section should distinguish between solar panels and solar roof shingles (which are much larger than regular shingles and are highly reflective).
 - Exterior: Subsection g addresses abatement; the effects of this work on historic properties is unclear. In addition, windows can be character-defining features in buildings less than 45-years old.
 - Interior: The definitions/descriptions in Subsection a are inconsistent with guidance provided by the National Register of Historic Places and the National Park Service Technical Preservation Services. Consistency in requirements and expectations is important across preservation programs to ensure clear understanding by users.
 - Interior: Subsection b and c allows installation of new systems related to HVAC (ducts, pipes, etc.), sprinklers, etc. in any location of historic properties, including primary spaces, without regard for character-defining spaces and features. Taken together, this seems excessive to include in a blanket exclusion from Section 106 review/consultation.
 - Interior: Subsection d appears to allow such activities as furring out and other changes to primary spaces and exterior walls for insulation without regard to the impact on historic character, trim, wainscot, decorative plaster, etc. Further, this section allows changes for abatement and ADA compliance without regard to the impact to character-defining features or spaces, or, significantly, consideration of alternatives to minimize impacts. This seems excessive to include in a blanket exclusion from Section 106 review/consultation.
 - Mobile and Manufactured Homes: For those properties determined eligible for the National Register of Historic Places, the treatments listed in this section may be inconsistent with preserving character-defining features (e.g., exterior insulation).
- We recommend the duration of the Program Comment be no more than 10 years.
 - Annual reporting requirements are described in detail for agencies using the Program Comment. However, the Program Comment does not describe how the ACHP will use this data to assess the effectiveness/usefulness of the Program Comment or inform a process for proposed revisions.
 - We recommend program comment definition of terms not commonly used or understood, such as “transit infrastructure”, “green infrastructure” and “clean energy technologies”.
 - The term “minimal potential” to adversely affect historic properties warrants definition?

While we appreciate the opportunity to offer improvements to this draft Program Comment, the ACHP has given short notice and turnaround time for comments on drafts. We encourage the ACHP to allow ample time for all partners to respond thoroughly to the proposed Program Comment drafts.

We look forward to the opportunity to study the comments of other ACHP Members and stakeholders following public review and consultation. This novel use of a Program Alternative has the potential to provide improvement in the Section 106 compliance process and prioritize important initiatives. The Department of the Interior looks forward to future collaboration with the ACHP and offers the expertise of our staff to assist in this effort.

Caroline D. Henry
Federal Preservation Officer
Department of the Interior
202/513-0795
caroline_henry@ios.doi.gov




[External] DOT comments on the ACHP proposed program comment

From Vaughn, Colleen (FHWA) <colleen.vaughn@dot.gov>

Date Wed 09-Oct-24 3:55 PM

To Program Alternatives <program_alternatives@achp.gov>

Cc Shikany, Ann (OST) <ann.shikany@dot.gov>

 1 attachments (457 KB)

USDOTComments.pdf;

Good afternoon,

USDOT appreciates the opportunity to provide comments on the ACHP Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities and support the ACHP's efforts to further the administrations priorities. Attached and below are comments for consideration. We look forward to discussing these comments with you.

1. Appendix C-1 5(a)(i) contains language regarding exempt activities and railway right-of-way. The language is unclear if the exemption only pertains to the act of leasing, refinancing, acquisition or purchase.
Suggestion: Include more clarity that the exempt activity is related to land leasing, refinancing, acquisition, or purchase and not related to any construction or ground disturbing activities.
Suggested change: In order for the activities under Appendix C-1 5(a) to apply to federal agencies who may not directly take these actions, but for which federal funding or approval may be involved, suggest editing to "Leasing, refinancing, acquisition, or purchase as part of a federal action of..."
2. Appendix C-2 4(b) could be interpreted to mean that a new rail bridge (i.e. transit) could be constructed to include new ground disturbance, outside of the ROW (because Appendix C-2 does not state otherwise), – without any Section 106 review or consultation. Appendix C-2 is not clearly connected to existing ROW, while Appendix C-1 is clearly connected to existing ROW. The same observations for Appendix C-2 sections 2 and 3. This conflicts with the ACHP's Program Comment for Rail ROW.

Appendix C-2 should be clarified whether it applies within the right-of-way (as Appendix C-1 is specific) or if this is applicable within and outside the right-of-way.

Thank you.

Colleen

Colleen Vaughn
Federal Preservation Officer
US Department of Transportation
1200 New Jersey Ave, SE

10/9/24, 4:40 PM

Mail - Jaime Loichinger - Outlook

Washington, DC 20590
202.366.7098

PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND CONNECTED COMMUNITIES

This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on [date of adoption], pursuant to 36 C.F.R. § 800.14(e), and went into effect on that date. It provides all federal agencies with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. part 800 (Section 106), regarding the effects of certain housing-related, climate-smart building-related, and climate-friendly transportation-related activities.

I. INTRODUCTION

A. Background

Historic preservation can play an important role in meeting Americans' housing needs, reducing energy use and greenhouse gas (GHG) emissions, and developing climate-resilient buildings served by climate-friendly transportation.

Recognizing this, in 2023, the ACHP adopted a Policy Statement on Housing and Historic Preservation (Housing Policy Statement) and a Policy Statement on Climate Change and Historic Preservation (Climate Change Policy Statement), which suggested that the ACHP explore new opportunities to use program alternatives to enable federal agencies to more effectively advance historic preservation while also meeting the nation's housing and climate goals.

Following the adoption of these policy statements, the ACHP developed this government-wide Program Comment to help accelerate the review of federal agency actions to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs in response to climate concerns, and to rehabilitate or create new climate-friendly transportation infrastructure. Further, consistent with the National Historic Preservation Act, this Program Comment promotes actions that will allow "historic property [to] exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations."

B. Current Federal Agency Action

While the entire scope of the federal government's role in supporting housing production, climate-smart buildings, and climate-friendly transportation is difficult to quantify, it is clearly vast. [To add info about existing programs, abbreviated from what is found on the Program Comment website.]

Together, these programs support housing projects for millions of residents and preserve the viability, affordability, energy efficiency, and climate resiliency of the nation's building stock. They seek to reduce building energy cost burdens and prepare our buildings for a broad range of climate change impacts. And they make significant investments to reduce greenhouse gas emissions while bolstering the resilience of America's transportation infrastructure.

C. Prior ACHP Action

The ACHP's statutory duties under the National Historic Preservation Act include advising the President and Congress on historic preservation policy issues and overseeing the Section 106 process.

[To add info about existing programs, abbreviated from what is found on the Program Comment website.]

Commented [DOT1]: This seems to be a different format from existing Program Comments - is this a new direction?

Commented [DOT2]: Please include a sentence that explains how this historic preservation plays this role. Maybe there is content that could be used from the policy statements?

Commented [DOT3]: Please describe in more detail.

Commented [DOT4]: Please define.

Commented [DOT5]: Data to explain the need for the program comment would be helpful.

Commented [DOT6]: Please add an explanation of how historic properties are to be preserved with the execution of this comment.

Commented [DOT7]: Would be helpful to be more specific here.

Commented [DOT8]: Agencies will need to provide comment on this content.

Commented [DOT9]: Uncertain the meaning of this sentence. Please clarify.

Commented [DOT10]: The activities described in this program comment have to do with infrastructure development rather than resilience efforts.

Commented [DOT11]: Agencies will need to comment on this content.

Section 106 of the National Historic Preservation Act and its implementing regulations in 36 C.F.R. part 800 require federal agencies to take into account the effects of projects they carry out, permit, license, fund, assist, or approve (i.e., undertakings) on historic properties, and to provide the ACHP with a reasonable opportunity to comment on such undertakings. ...

This Program Comment is guided in part by the mechanisms, provisions, and approaches in prior program alternatives that are most consistent with the ACHP's recently adopted Housing Policy Statement and Climate Change Policy Statement. In expanding beyond these prior program alternatives, this Program Comment creates a more consistent and holistic approach for Section 106 review across the federal government, reducing complexity and equipping federal agencies to more effectively and efficiently address our nation's needs.

D. Justification

Many types of activities relating to the programs identified in Part I.B., and other similar programs, require review under Section 106 of the National Historic Preservation Act.

The development of this Program Comment is driven by the nation's pressing needs to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce its energy consumption and greenhouse gas emissions, improve climate resiliency, and cut energy costs; and to decarbonize its transportation sector – needs that have received high levels of attention from Congress, as well as state, local, and Tribal governments and private parties.

Recognizing the extent of federal action in the housing, building, and transportation sectors, and the volume and repetitive nature of such action, the ACHP is seeking to issue this Program Comment on its own initiative, pursuant to 36 C.F.R. § 800.14(e), enabling federal agencies to meet their Section 106 responsibilities regarding the effects of covered undertakings, in lieu of conducting individual reviews of those undertakings under 36 C.F.R. §§ 800.4 through 800.7. Moreover, the ACHP is making this Program Comment available to any federal agency engaged in covered undertakings, whether or not specifically listed in the above programs. By clarifying preferred approaches to reviewing these covered undertakings, this Program Comment will help ensure that federal agencies can focus on other undertakings with greater potential for adverse effects on historic properties, reducing taxpayer costs and facilitating project delivery – while enabling the production and rehabilitation of housing, the reduction of energy use and GHG emissions, the preparation of buildings to be climate-resilient, and the decarbonization of the transportation sector.

E. Goal

The ACHP's goal for this Program Comment is to provide a tailored programmatic compliance approach to Section 106 for certain repetitive activities carried out, permitted, licensed, funded, assisted, or approved by federal agencies. Federal agencies are able to apply this Program Comment to such activities in lieu of conducting individual project-by-project reviews, in order to achieve objectives laid out in ACHP policy statements, to more effectively advance historic preservation goals, and to help satisfy the nation's pressing need to expand access to housing, to ensure buildings reduce their energy use and GHG emissions and are climate resilient, and to promote climate-friendly transportation.

Ultimately, it aims to benefit the people who live in the housing, work in the buildings, and move using the transportation infrastructure being created or assisted by federal agencies.

Commented [DOT12]: Recently adopted by whom? Agencies?

Commented [DOT13]: Please explain how this Program Comment accomplishes this to help avoid confusion.

Commented [DOT14]: Please list in this document.

Commented [DOT15]: It would be helpful to have an appendix that is a crosswalk of this program comment and existing program alternatives.

Commented [DOT16]: Please provide examples, even in a footnote.

Commented [DOT17]: Please include a sentence on how this Program Comment accomplishes that and how federal agencies identified this need.

Commented [DOT18]: Many agencies already have programmatic approaches in place.

Commented [DOT19]: Please explain how the program comment will accomplish this.

Commented [DOT20]: Can this also be connected back to agency needs?

II. SCOPE

A. Overall Effect

This Program Comment provides an alternative way for federal agencies to comply with their Section 106 responsibility to take into account the effects on historic properties of their activities with regard to the covered undertakings. [The Program Comment also provides the ACHP a reasonable opportunity to comment regarding covered undertakings.]

Commented [DOT21]: Please explain purpose for clarity.

B. Effect on Other Applicable Laws

This Program Comment does not modify, preempt, or replace any other federal laws, or any applicable state, local, or Tribal laws or regulations.

C. Effect on Existing Agreements

A federal agency that already has a Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) in effect that addresses covered undertakings is not required to utilize this Program Comment. Such an agency can either:

Commented [DOT22]: The language in this section seems to suggest use of a Program Comment may be a requirement; Program Comments and Alternatives are generally optional but important tools.

1. Follow this Program Comment, rather than such MOA or PA for a class of covered undertakings for the life of this Program Comment. Before making a decision to do so, the agency must first consult with the signatories of such MOA or PA and then provide them written notice of the decision to apply this Program Comment to a class of covered undertakings; or
2. Continue to implement the existing MOA or PA regarding such covered undertakings, rather than this Program Comment.

Federal agencies may pursue amendments to such MOAs or PAs per their stipulations, to incorporate, in whole or in part, the terms of this Program Comment; [federal agencies may also consider terminating such MOA or PA and follow this Program Comment to satisfy their Section 106 responsibility for the covered undertakings.]

Commented [DOT23]: Would recommend removing this.

A federal agency that already has a Section 106 program comment or program comments in effect for covered undertakings [shall follow the terms of those program comments to the extent those program comments address the undertakings covered by this Program Comment. This Program Comment does not in any way supersede, replace, or change the terms of other program comments. Federal agencies may pursue amendments to their existing program comments following the amendment procedures in those program comments, to incorporate, in whole or in part, the terms of this Program Comment.]

Commented [DOT24]: For consistency this language should match the above regarding the PA and MOA.

D. Effect on Tribal Lands

This Program Comment does not apply on Tribal lands, or to activities that may affect historic properties located on Tribal lands, unless the Indian Tribe, as defined in Section XII., Tribal historic preservation officer, or a designated representative of the Indian Tribe has provided prior written notification to the Executive Director of the ACHP that the Tribe allows the use of the Program Comment on the Tribe's lands. Indian Tribes can agree to such use of the Program Comment by issuing an authorization for such use in a format substantially similar to the format contained in Appendix D to this Program Comment, and by submitting the completed authorization to the Executive Director of the ACHP. This Program Comment is applicable on those Tribal lands on the date of receipt by the Executive Director of the ACHP, who shall ensure notice on such authorization is included on the website of the ACHP. An Indian Tribe may terminate its

authorization to use this Program Comment by notifying the Executive Director of the ACHP in writing. Such a termination will be limited to the Program Comment's applicability to undertakings that would occur on or affect historic properties on the Tribal lands under the jurisdiction of the Indian Tribe.

E. Standard Section 106 Review

A federal agency shall follow the Section 106 review process under 36 C.F.R. §§ 800.3 through 800.7 or 36 C.F.R. § 800.8(c) if:

1. The federal agency elects not to utilize this Program Comment for a covered undertaking for which alternative compliance approaches are prescribed in Section III of this Program Comment. An agency may decline to utilize this Program Comment for any reason, including the existence of an existing agreement addressing the covered undertaking, such as those identified in Section II.C.
2. The undertaking is not an undertaking covered by this Program Comment.
3. The undertaking would occur on or have the potential to affect the following historic properties:
 - a. Any National Monument, National Historic Site, National Historic Trail, National Historical Park, National Military Park, National Battlefield, National Battlefield Park, or National Battlefield Site.
 - b. Any site, object, building, or structure individually designated as National Historic Landmarks or designated as a contributing property to a National Historic Landmark district, or found within the boundaries of a National Historic Landmark archaeological district.
 - c. Sites of religious and cultural significance to Indian Tribes or Native Hawaiian Organizations, including Tribal sacred sites.

Commented [DOT25]: How will sites listed on the national register be treated? Is there a process for those where concerns are flagged by tribes/SHPOs?

Commented [DOT26]: Consider removing "identified" so this sentence does not encompass sites that are identified to the Tribe but are not communicated to the Agency. The 2021 MOU Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites defines "sacred sites" as sites that have been identified to the Agency.

III. ALTERNATIVE COMPLIANCE APPROACHES

A. Available Alternative Compliance Approaches

This Program Comment authorizes alternative compliance approaches for covered undertakings, as follows:

1. For undertakings or components of undertakings with no or minimal potential to adversely affect historic properties, as set forth in Appendix A-1, B-1, or C-1 of this Program Comment, a federal agency may proceed with the undertaking without conducting further review under Section 106.
2. For undertakings or components of undertakings that may adversely affect historic properties but whose potential adverse effects can be avoided, minimized, or mitigated if the federal agency satisfies certain conditions, exclusions, or requirements, as set forth in Appendix A-2, B-2, or C-2 of this Program Comment, a federal agency may proceed with the undertaking if it satisfies the conditions, exclusions, or requirements prescribed in that Section and it documents the manner in which it has satisfied the conditions, exclusions, or requirements.

Commented [DOT27]: How is this going to be determined.

B. Consultation with Indian Tribes and Native Hawaiian Organizations

To determine whether this Program Comment would affect a site of religious and cultural significance to Indian Tribes and Native Hawaiian Organizations, including Tribal sacred sites, the federal agency shall consult with the relevant Indian Tribe or Native Hawaiian Organization to determine if the Program Comment should apply to the undertaking. When a federal agency conducts such consultation, or any other consultation required by this Program Comment, the agency shall conduct its consultation in accordance with the National Historic Preservation Act, Section VI of this Program Comment, the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.

C. The Use of Qualified Authorities

Undertakings covered by this Program Comment do not require the use of a qualified authority except where explicitly stated, or except where, in the reasonable judgment of the federal agency in consideration of various factors, the use of a qualified authority is necessary to fulfill the intent of the National Historic Preservation Act or necessary or useful to inform the federal agency's decision-making.

When the federal agency chooses to use a qualified authority, the type of qualified authority must be appropriate to the circumstances. For example, a person recognized by the relevant Indian Tribe or Native Hawaiian Organization, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of effect, and treatment of effects to historic properties of religious and cultural significance to their Tribes or to Native Hawaiians, respectively, should be consulted to inform the identification, effects determination, and other matters involving historic properties significant to that Indian Tribe or Native Hawaiian Organization.

D. Determinations of Eligibility

Undertakings listed in Appendix A-1, B-1, or C-1 shall not require a federal agency to determine whether an involved or affected property is listed on or eligible for the National Register of Historic Places due to the nature of the undertaking and its potential effects except where explicitly stated.

IV. ASSISTANCE TO CONSULTING PARTIES

This Program Comment does not require a federal agency to pay any consulting party for providing its views or comments in response to 36 C.F.R. part 800 responsibilities, including invitations to consult in a Section 106 review; to respond to the proposed area of potential effects, scope of identification efforts, eligibility findings, assessment of effect; or to consult to seek ways to resolve any adverse effects or to develop a memorandum of agreement or programmatic agreement to conclude the Section 106 review finding or determination.

If, however, a federal agency asks an Indian Tribe, Native Hawaiian Organization, or any consulting party to do more than respond to its findings and determinations pursuant to 36 C.F.R. part 800 in connection with this Program Comment, the federal agency will enter into an appropriate arrangement to provide the Indian Tribe, Native Hawaiian Organization, or consulting party reasonable payment for such services, if and to the fullest extent the federal agency has the authority to enter into such an arrangement and pursuant to its policies and procedures. Examples of services include requests to:

Commented [DOT28]: The activities within the program comment or the program comment itself?

Commented [DOT29]: Reads that agencies are required to consult with Tribes to implement the Program Comment; is this correct?

Commented [DOT30]: Required to use this Program Comment since the Program Comment cannot be required?

Commented [DOT31]: Recommend comparing this language to that in existing ACHP program comments.

Commented [DOT32]: Please define.

Commented [DOT33]: It is not in the NHPA that an SOI qualified person must make the determinations, unless this is applied on tribal land in which case the tribe determines if an individual is qualified.

Commented [DOT34]: Does this mean identify historic properties or make a formal eligibility determination? Clarifying language might help.

Commented [DOT35]: This seems atypical.

How would this work? Is the intention that a non-CR professional can make a determination?

Is it suggesting that "SOI-qualified" individuals are optional? "Agency official" under 36 CFR 800? The legal usage of "qualified authority" referring to a quorum?

Commented [DOT36]: How was it determined that these are reasonable and foreseeable impacts that result in minimal or not adverse effects?

Commented [DOT37]: Is this in line with 36 CFR 800.3(a)(1)?

Commented [DOT38]: Please provide examples of other consulting parties? Does this include SHPOs?

Commented [DOT39]: How is this defined?

Commented [DOT40]: Does this language follow the ACHP Guidance on Assistance to Consulting Parties in the section 106 review process?

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- A. Conduct an archaeological, ethnographic, or other inventory or field survey to identify historic properties that may be affected by the undertaking.
- B. Perform a records check on behalf of the federal agency.
- C. Conduct research and make preliminary assessments of National Register eligibility on behalf of a federal agency, as opposed to responding to determination of eligibility.
- D. Provide an assessment of the potential effects of the undertaking on historic properties, as opposed to responding to such an assessment.
- E. Carry out mitigation measures, including conducting additional research or monitoring ground disturbing activities as part of a mitigation plan.
- F. Curate artifacts or records recovered or made as part of historic property identification, evaluation, or mitigation efforts.
- G. Design or develop a specific plan or specifications for an undertaking that would meet the Secretary of the Interior's Standards for Rehabilitation or otherwise avoid, minimize, or mitigate effects to historic properties.
- H. Contribute substantially to any of the above activities carried out by a third party.

A request during consultation by an Indian Tribe or Native Hawaiian Organization to conduct such services itself does not preclude reasonable payment for services simply because the request was made during consultation. A federal agency shall consider entering into an arrangement, in accordance with this Section, with any Indian Tribe or Native Hawaiian Organization making such a request.

Commented [DOT41]: Would the Program Comment still apply given these circumstances.

V. UNANTICIPATED DISCOVERIES

A. Immediate Response Requirements

If previously unidentified historic properties or unanticipated effects, including audible, atmospheric, and cumulative effects, to historic properties are discovered during implementation of the undertaking, the federal agency shall immediately halt all activity that could affect the discovery and institute interim measures to protect the discovery from looting, vandalism, weather, and other threats. The agency shall then follow the procedures set forth in 36 C.F.R. § 800.13(b) and shall incorporate the special expertise of Tribes or Native Hawaiian Organizations and the information provided by designated holders of Indigenous Knowledge and shall follow those procedures accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. A federal agency that has historic property discovery procedures in existing management plans pertaining to historic properties may follow its existing management plan procedures.

Commented [DOT42]: Would this negate the Program Comment?

Commented [DOT43]: As applicable.

Commented [DOT44]: Shall implies a requirement; cannot be a requirement because not regulation.

B. Response to the Discovery of Human Remains, Funerary Objects, Sacred Objects, or Items of Cultural Patrimony

The federal agency shall ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an undertaking, all work within 50 feet of the discovery will cease, the area will be secured, and the federal agency's authorized official, local law enforcement, and coroner/medical examiner in accordance with any applicable state statute(s) will be immediately contacted. The federal agency shall be guided by the

Commented [DOT45]: Does this negate the Program Comment.

Commented [DOT46]: Sane concern as above regarding "shall"

principles within the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. The federal agency will comply with Section 3 of the Native American Graves, Protection and Repatriation Act and its implementing regulations, 43 C.F.R. part 10, in regard to any human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or Tribal land.

VI. CONSULTATION WITH INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS

A. Overview

The United States government has a unique legal and political relationship with Indian Tribes as set forth in the Constitution of the United States, treaties, statutes, court decisions, and Executive Orders. The United States recognizes the right of Indian Tribes to self-government. Tribes exercise inherent sovereign powers over their members and territories. In drafting this Program Comment, the ACHP is committed to strengthening the government-to-government relationship between the United States and Indian Tribes.

B. Potential Effects on Indian Tribes and Native Hawaiian Organizations

It is important to recognize that while this Program Comment has been drafted to limit impacts on historic properties, including Tribal sacred sites, with traditional religious and cultural significance to, an Indian Tribe or Native Hawaiian organization, covered undertakings could directly or indirectly affect such properties.

C. Federal Agency Obligations to Indian Tribes and Native Hawaiian Organizations

1. Consultation-Related Obligations

If the federal agency determines that an effect on the properties identified in Section VI.B. may occur, it must meaningfully collaborate, communicate, and cooperate with Indian Tribes and Native Hawaiian Organizations through consultation. During consultation, the federal agency shall make a good faith effort to identify any resources that may have traditional religious and cultural significance through consultation with Indian Tribes and Native Hawaiian Organizations. Based on the location of the undertaking and the area of potential effects, the federal agency shall utilize the knowledge and expertise of agency Tribal liaison staff, historic maps, information gathered from previous consultations pursuant to Section 106, historic maps, information gathered from previous consultations pursuant to Section 106, databases of Indian Tribes and Native Hawaiian Organizations, the Bureau of Indian Affairs Tribal Leader List, U.S. Department of Interior Native Hawaiian Organization List, the National Park Service Tribal Historic Preservation Program contact database, National Association of Tribal Historic Preservation Officers, the U.S. Housing and Urban Development Tribal Directory Assistance Tool, and state historic preservation officer databases to identify the appropriate Indian Tribes and Native Hawaiian Organizations to be engaged for further consultation. Consultation with identified Indian Tribes and Native Hawaiian Organizations shall incorporate the special expertise of holders of Indigenous Knowledge in accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.

Commented [DOT47]: If there is an effect, does the Program Comment still apply?

2. Confidentiality-Related Obligations

Consistent with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, federal agencies should consider information regarding historic properties with traditional religious

Commented [DOT48]: Please explain how this would work?

and cultural significance, sacred sites, or Indigenous Knowledge shared with the federal agency by Indian Tribes or Native Hawaiian Organizations as sensitive, unless otherwise indicated by the Indian Tribe or Native Hawaiian Organization. The federal agency must keep sensitive information provided by Indian Tribes or Native Hawaiian Organizations confidential to the extent authorized by applicable federal laws such as Section 304 of the National Historic Preservation Act.

D. Effect of Finding of Potential Effect on Certain Properties

Should it be determined through consultation or otherwise that a proposed undertaking otherwise covered in this Program Comment could potentially result in an effect on a historic property with traditional religious and cultural significance to an Indian Tribe or Native Hawaiian Organization, including a Tribal sacred site, the federal agency may not use this Program Comment and shall instead follow the Section 106 review process under 36 C.F.R. §§ 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or another applicable program alternative.

Commented [DOT49]: Any effect, or just adverse?

Commented [DOT50]: Is this exception only for historic properties linked to Tribes or NHOs?

VII. DISPUTE RESOLUTION

Should a dispute arise over the implementation of this Program Comment or its use for any particular undertaking, the federal agency shall consult with the objecting party to resolve the dispute for not more than 60 days. Any disputes over the evaluation of unanticipated discoveries will be resolved in accordance with the requirements of 36 C.F.R. § 800.4(c)(2) and Section V of this Program Comment, as appropriate.

Should resolution not be reached within 60 days, the federal agency may forward to the ACHP all documentation relevant to the objection, including the federal agency's proposed resolution if any, request the ACHP to provide within 30 days its advisory comments to resolve the dispute, and take the ACHP's comments into account before finalizing its approach to complying with Section 106. The federal agency shall notify all consulting parties regarding its approach to complying with Section 106 for an undertaking that is the subject of a dispute. The federal agency's decision regarding the resolution will be final. Following the issuance of its final decision, the federal agency may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

Commented [DOT51]: How would disputes outside of unanticipated discoveries arise? Reporting requirements below are annual and not to the public, just to ACHP.

Commented [DOT52]: The only consulting parties pursuant to 800.2 for this program comment are Tribes/NHOs. This should be specific to the type of potential disputes with implementation

The ACHP shall monitor such disputes, and from time to time, the Executive Director of the ACHP may issue advisory opinions about the use of this Program Comment to guide federal agencies.

Commented [DOT53]: Please specify.

VIII. DURATION

This Program Comment will remain in effect from the date of adoption by the ACHP through December 31, 2044, unless prior to that time the ACHP withdraws the Program Comment in accordance with Section X of this Program Comment. On any date during the six-month period preceding the expiration date, the ACHP Chair may amend the Program Comment to extend its duration in accordance with Section VIII.A. of this Program Comment. If an Indian Tribe authorizes the use of this Program Comment on its Tribal lands in accordance with Section II.D. of this Program Comment, such authorization will be in effect from the date of the issuance of the authorization until the termination of such authorization by the Indian Tribe or the expiration or withdrawal of this Program Comment, whichever is earlier.

Commented [DOT54]: Would like to understand how this duration was decided.

IX. AMENDMENT

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The ACHP may amend this Program Comment after consulting with federal agencies and other parties as it deems appropriate and as set forth below.

A. Amendment by the Chair, ACHP

The Chair of the ACHP, after notice to the rest of the ACHP membership and federal agencies may amend this Program Comment to extend its duration. The ACHP will notify federal agencies and will publish notice in the Federal Register regarding such amendment within 30 days after its issuance.

Commented [DOT55]: Please explain how this process was decided; this suggests that agency and stakeholder engagement or public involvement could be excluded from the process?

B. Amendment by the Executive Director, ACHP

The Executive Director of the ACHP, after notice to the ACHP membership and other federal agencies may amend this Program Comment to adjust due dates and make corrections of grammatical and typographical errors. The ACHP will notify federal agencies and will publish notice in the Federal Register regarding such amendments within 30 days after their issuance.

C. All Other Amendments

Amendments to this Program Comment not covered by subsections A or B above, will be subject to ACHP membership approval.

Commented [DOT56]: If approved, the subsequent process needs to be detailed.

X. WITHDRAWAL

If the ACHP determines that the consideration of historic properties is not being carried out in a manner consistent with this Program Comment, the Council may withdraw this Program Comment. The Chair of the ACHP will then notify federal agencies and will publish notice in the Federal Register regarding withdrawal of the Program Comment within 30 days of the decision to withdraw. If this Program Comment is withdrawn, federal agencies shall comply with the Section 106 review process under 36 C.F.R. §§ 800.3 through 800.7, or 36 C.F.R. § 800.8(c), or use another applicable program alternative for individual undertakings covered by this Program Comment.

XI. REPORTS AND MEETINGS

A. Federal Agency Annual Reports

The federal agencies that use this Program Comment during the relevant year will provide an annual report to the ACHP for the previous reporting year regarding the use of this Program Comment, provided that any federal agency shall include in its report the activities, if any, of entities to which it has delegated legal responsibility for compliance with Section 106 in accordance with federal law. Each agency's annual report will provide examples of undertakings covered by Section III.A.1. of this Program Comment, provide information about the manner or extent to which the agency satisfied the conditions, exclusions, and requirements to proceed with the undertakings covered by Section III.A.2., and identify any significant issues that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future. The annual report will also include an assessment of the overall effectiveness of the Program Comment in meeting its intent, and a summary of professional assistance and compliance monitoring activities. The ACHP encourages federal agencies to also propose for ACHP consideration amendments and refinements to this Program Comment based on their experience implementing it. Annual reporting will occur for five years beginning December 31, 2024, and annual reports will be due on September 30 of each year starting September 30, 2025.

Commented [DOT57]: Recommend establishing performance measures to meaningfully track.

Commented [DOT58]: How will this be conducted? Assume it will be ACHP led and produced rather than requiring additional agency workload.

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After the first five years of annual reporting and for the remaining duration of this Program Comment, information on implementation of this Program Comment will be reported every three years through federal agencies' submission to the ACHP Section 3 Report to the President under Executive Order (EO) 13287, "Preserve America," or, for federal agencies not otherwise required to submit a Section 3 report to the ACHP, a stand-alone triennial report to be delivered to the ACHP on September 30 of the relevant year. Similar to the annual reports, these triennial reports will identify significant issues that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future. The report will also include an assessment of the overall effectiveness of the Program Comment in meeting its intent.

B. Annual Meetings

By January 31 each year for five years, the ACHP will schedule an annual meeting and invite federal agencies, Indian Tribes, state historic preservation officers, Tribal historic preservation officers, Native Hawaiian Organizations and others it deems appropriate, to discuss implementation of the Program Comment. The meeting will provide an opportunity for attendees to provide their views on the overall effectiveness of the Program Comment in meeting its intent and purpose, and may inform decisions such as those regarding amendments to the Program Comment. Annual meetings may take place in-person, by phone, virtually using electronic meeting platforms, or any combination of such means.

C. ACHP Reports

At any time, but at least once during the initial three-year period during which this Program Comment is being used, ACHP staff may provide a written or oral summary of information received from federal agency reports, annual meetings, or other sources about the utility of this Program Comment and make any recommendations for amendments to the ACHP membership.

XII. DEFINITIONS

For purposes of this Program Comment, the following definitions apply:

Abate or abatement means acting or actions to eliminate, lessen, reduce, or remove.

Adverse effect, as provided in 36 C.F.R. § 800.5(a)(1), means an action that may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association; and it includes reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Area of potential effects, as provided in 36 C.F.R. § 800.16(d), means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, and is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Bicycle lane means a portion of a roadway designated by pavement markings for the use of bicyclists.

Bicycle parking means a designated area to store a bicycle, whether personal or shared, including dedicated bicycle docks used in a shared system.

Bicycle rack means a rack for a personal or shared bicycle or scooter that is typically u-shaped.

Commented [DOT59]: Will the report be made public?

Commented [DOT60]: Certain elements of this reporting may be different for DOT than other agencies as DOT does not typically own its assets.

Commented [DOT61]: Listed as 5 years above?

Commented [DOT62]: Some of the agency specific terms may have specific definitions; should ensure that the transportation terms match those used by DOT and its Operating Administrations.

Commented [DOT63]: Recommend adding a definition of Climate Adverse Effects and Resilience--need to make sure that in any situation the application of the program comment does not make the historic property less resilient to climate impacts.

Commented [DOT64]: Bicycle racks come in many styles, so may omit.

Bicycle rail means a traffic control device that provides a protective barrier between motor vehicle travel lanes and protected bicycle lanes or cycle tracks.

Bulb out means feature that extends the line of the curb into the traveled way, reducing the width of the street, also known as curb extensions or bump-outs.

Building means a constructed work created principally to shelter any form of human activity, including, for the purposes of this Program Comment, mobile and manufactured homes.

Building energy control system means a mechanical system enabling a building occupant to manage or monitor energy use and all components of such system, including but not limited to programmable thermostats, digital outdoor reset controls, occupancy sensors, UL listed energy management systems or building automation systems, demand response and virtual power plant technologies, smoke and carbon monoxide detectors, and related technologies.

Character-defining feature means an element of a historic property that demonstrates or includes the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places, including elements that contribute to the historic property's overall shape, style, design, and decorative details.

Clean energy technologies means solar energy systems, wind energy systems, battery energy storage systems, and geothermal systems.

Climate-friendly transportation infrastructure means pedestrian, bicycle, micromobility, bus rapid transit, and rail structures and facilities.

Climate-friendly transportation facility means a building or structure used for bicycle parking, micromobility parking, bus rapid transit station, or rail station.

Climate resilience is defined as the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

Climate resiliency measure means elevation to prevent flood damage, building hardening such as enhanced roofing and structural reinforcements, fire resistance measures, green infrastructure, stormwater management, enhanced energy efficiency to reduce risk of extreme temperatures, and microgrids.

Community solar system means a solar photovoltaic installation with up to 5 megawatts nameplate capacity and delivering at least 50% of the power generated from the system to buildings within the same utility territory as the facility.

Cool pavement means paving materials that reflect more solar energy, enhance water evaporation, or have been otherwise modified to remain cooler than conventional pavements.

Contributing property, as provided in National Register Bulletin 16A, means a building, structure, object, or site, as applicable, within the boundaries of a historic district that adds to the historic associations, historic architectural qualities, or archaeological values for which a property is significant because it was present during the period of significance, relates to the documented significance of the property, and possesses historic integrity or is capable of yielding important information about the period; or it independently meets the criteria for the National Register of Historic Places.

Cycle track means a protected bicycle lane that is two-way and physically separated from motor vehicle traffic, that is distinct from the sidewalk, and that is for the exclusive use of bicyclists.

Commented [DOT65]: Recommend definitions of buildings, structures, objects, sites, etc be tied to NHPA and NR Bulletin 15.

Commented [DOT66]: Please explain what makes these projects climate-friendly.

Day means calendar day, taking place from one midnight to the following midnight.

Economic feasibility means the viability, suitability, and practicality of a proposed undertaking in light of a range of considerations, including estimated construction costs (including the cost of building material and labor), estimated operational costs, available budget, and timelines for compliance review processes to the extent they impact financial conditions for the undertaking.

Effect, as provided in 36 C.F.R. §§ 800.5(a)(1) and 800.16(i), means a direct, indirect, reasonably foreseeable, or cumulative alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

Electrification means conversion of an energy-consuming device or system from non-electric sources of energy to electricity.

Emergency situation means any of the following: occurrence of a natural disaster, such as a hurricane, wildfire, flood, or excessive heat; declaration of emergency by the President, an Indian Tribe, governor, or a chief elected official of a territory or city; or recognition or report of a sudden, serious, and imminent threat to life, health, safety, or property.

Federal agency means an agency as defined by 5 U.S.C. § 551(1), and includes state, local, or Tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.

Flex post means flexible bollards or delineators used to separate motor vehicle traffic from protected bicycle lanes and designed to withstand being hit or run over by motor vehicles.

Green infrastructure means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces of substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, and evapotranspire stormwater and reduce flows to sewer systems or to surface waters, including but not limited to rain gardens, bioswales, bioretention facilities, and related approaches which mimic nature and treat stormwater as close to the source as possible and improve resiliency.

Greenhouse gas or GHG means gas that traps heat in the atmosphere, including but not limited to carbon dioxide, methane, nitrous oxide, and fluorinated gases (such as hydrofluorocarbons).

Ground disturbance means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of any soils that are not previously disturbed ground.

Ground surface material means any hard material typically used to cover soils for transportation purposes, including but not limited to asphalt, concrete, pavers, cobblestones, Belgian blocks, bricks, or wood.

Hazardous material means lead, lead-containing material (including lead-based paint), asbestos, asbestos-containing material (including floor tile, plaster, insulation, glazing putty, roofing material, and flashing material), radon, and other similar materials detrimental to human health and safety.

High friction surface treatment means application of very high-quality aggregate to the pavement using a polymer binder to restore and/or maintain pavement friction at existing or potentially high crash areas.

Historic building means a building included in, or eligible for inclusion in, the National Register of Historic Places, as an individually listed property or as a contributing property to a historic district.

Historic building material means building material used in the construction of a historic building and installed during the period of significance, and any pre-existing in-kind replacement of same.

Historic district means a geographically definable area that possesses a significant concentration of historic buildings, associated buildings and structures, and objects united historically by plan or physical development that are included in, or eligible for inclusion in, the National Register of Historic Places.

Historic property, as provided in 36 C.F.R. § 800.16(l), means 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.

Indian Tribe, as provided in 36 C.F.R. § 800.16(m), means 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 (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In-kind building materials means new building materials that are identical to historic building materials in all possible respects, including their composition, design, color, texture, and other physical and visual properties.

In-kind replacement means replacement of historic or existing building materials with in-kind building materials.

Installation means the action or process of placing or fixing something, including but not limited to materials, mechanical systems and components, appliances, and equipment, or of being installed, in a particular location.

Maintenance and repair means activities required to maintain in an operational state, or to bring back to operating condition by repair or replacement of obsolete, broken, damaged, or deteriorated features, elements, materials, and systems.

Mechanical system means any heating, cooling, indoor air quality, ventilation, dehumidification, air conditioning, plumbing, or electrical system, and the individual elements and components of each system.

Micromobility vehicle means small, lightweight vehicles such as “scooters,” which can be human-powered or electronic, privately owned or shared, and operate at low to moderate speeds of 15 to 30 miles per hour.

Micromobility parking means an area to store for micromobility vehicles, whether private vehicles or shared vehicles, including dedicated bicycle docks used in a shared system.

Mitigation measures means any existing, new, or updated materials or actions that serve to address, compensate for, or otherwise resolve adverse effects on historic properties, and may include research reports, historical documentation, recordation, and other materials and activities.

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National Historic Landmark, as provided in 36 C.F.R. § 800.16(p), means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

Native Hawaiian Organization, as provided in 36 C.F.R. § 800.16(s)(1), means 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.

Permeable pavement means system that provides a hard surface, while allowing water to flow through to the underlying soils instead of into the storm sewer.

Porous flexible pavement means a sidewalk pavement alternative made of elastic materials.

Potentially historic ground surface materials means any ground surface comprised of pavers, cobblestones, Belgian blocks, or bricks that are 45 years or older.

Previously disturbed ground means soils not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated, and does not mean plowed soils or historic urban deposits, including previously disturbed right of way.

Previously disturbed right of way means areas where previous construction or other activities have physically altered soils within the three-dimensional area of potential effects to the point where there is no potential for an archaeologically significant property to remain, including but not limited to: the entire curb-to-curb roadway, existing sidewalks, existing drains, and parking areas, including the prepared substrate constructed to support the infrastructure down to undisturbed or intact soil or subsoil. As-built drawings and plans can be used to determine the vertical and horizontal dimensions of the previously disturbed areas.

Primary space means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other space that include or demonstrate the characteristics of a historic building or historic climate-friendly transportation facility that qualify the building for inclusion in the National Register of Historic Places.

Primary view means view of the primary or front façade of a historic property and its context (such as a historic building and its landscaping, site features, and related infrastructure), but can also include views side, or rear elevations that are architecturally or historically significant.

Protected bicycle lane means an exclusive bicycle facility that is physically separated from motor vehicle traffic and is distinct from the sidewalk for the exclusive use of bicyclists and providing a higher level of safety for cyclists.

Qualified authority means a qualified professional or a person recognized by the relevant Indian Tribe or Native Hawaiian Organization, respectively, to have expertise (including Indigenous Knowledge-based expertise) in identification, evaluation, assessment of effect, and treatment of effects to historic properties of religious and cultural significance to their Tribes or to Native Hawaiians, respectively.

Qualified professional means a person who meets the relevant standards outlined in the Secretary of the Interior's Professional Qualifications Standards, as amended and annotated.

Rail infrastructure means structures, building, land, and equipment that supports land lines, including both the infrastructure that is in the rail right-of-way (such as ballast, ties, tracks, bridges,

Commented [DOT67]: Appears to have differing standards for defining previous disturbance in the document, and recommend a requirement for documentation of disturbance or review by SOI qualified archaeologists to determine.

Commented [DOT68]: Please clarify, this seems to be saying "historic urban deposits, including those in previously disturbed rights of way" but it reads like "no rights of way are covered"

Commented [DOT69]: Above language is "not likely to possess" and language here is "no potential" - why the different standard?

Commented [DOT70]: Suggest that qualified professional be stand alone and not encompassed under Qualified Authority.

and tunnels) and the infrastructure that is adjacent to the right-of-way such as signs, signals, mileposts or switches.

Recognized design manual means one of the following: Federal Highway Administration Manual on Uniform Traffic Control Devices, AASHTO A Policy on Geometric Design of Highways and Streets, NACTO Urban Street Design Guide, NACTO Urban Bikeway Design Guide, NACTO Transit Street Design Guide, NACTO Bike Share Station Siting Guide, or NACTO Urban Street Stormwater

Records check means a search of relevant Indian Tribe, state historic preservation office, Tribal historic preservation office, Native Hawaiian Organization, and federal agency files, records, inventories, and databases, or other sources recommended by such parties, for information about whether the following kinds of properties are known to exist within an area of potential effects: properties listed on, formally determined eligible for, or in the process of being nominated for the National Register of Historic Places, and properties with traditional religious and cultural significance to one or more Indian Tribes or Native Hawaiian Organizations.

Reduce energy use or GHG emissions means to take an action that lessens either the amount of energy used to perform the same task or produce the same result, that replaces one utilized fuel with another fuel with lower carbon contents, or that replaces an energy production source reliant on fossil fuels with a clean energy technology.

Rehabilitation means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

Replacement means substitution of new element for an existing element, which may require a change in size, dimension, location, and configuration, in order to improve the function and condition of the element or the broader system of which the element is a part.

Solar energy system means any addition, alteration, or improvement which is designed to utilize solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer, or some combination of these types to reduce the energy requirements of that structure from other energy sources, including but not limited solar hot water equipment, community solar systems, and solar photovoltaic equipment and all components.

State historic preservation officer, as provided in 36 C.F.R. § 800.16(v), means the official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act to administer the state historic preservation program or a representative designated to act for the state historic preservation officer.

Substitute building materials means modern, industry standard, natural, composite, and synthetic materials that simulate the appearance, physical properties, and related attributes of historic materials well enough to make them alternatives for use when historic building materials require replacement.

Technical feasibility means the viability, suitability, and practicality of a proposed undertaking in light of a range of considerations, including health, safety, energy efficiency, climate resiliency, durability of materials, and sound professional judgment (including architectural, archaeological, or engineering judgment).

Transit-oriented development building means a building within one half mile of an existing or planned transit stop to be developed or redeveloped as part of a federal program or project to promote transit-oriented development.

Tribal historic preservation officer, as provided in 36 C.F.R. § 800.16(w), means the Tribal official appointed by the Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the state historic preservation officer for purposes of Section 106 compliance on Tribal lands in accordance with Section 101(d)(2) of the National Historic Preservation Act.

Tribal lands, as provided in 36 C.F.R. § 800.16(x), means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking, as provided in 36 C.F.R. § 800.16(y), means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.

APPENDIX A-1: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW

1. Site Work

The following activities do not require further Section 106 review when conducted in areas adjacent to a building with housing units or on the same lot as a building with housing units:

a. Rehabilitation, replacement, installation, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance:

i. Concrete and asphalt ground surfaces such as streets, parking areas, driveways, and walkways, including repaving, restriping, and reducing surface size, but excluding changing surface material or vertical alignment.

ii. Park, playground, and sports equipment such as platforms, guardrails, handrails, climbers, ramps, stairways, ladders, balance beams, fitness equipment, rings, rolls, un-mechanized merry-go-rounds, seesaws, slides, swings, benches, netting, basketball hoops, drinking fountains, and ground surface materials, but excluding buildings.

iii. Fencing, except for replacement or removal of fencing that is a character-defining feature of a historic property.

iv. Wayfinding, address, and identification signage.

v. Lighting, such as building-mounted lighting and freestanding lighting in parking areas, along driveways and walkways, in park and playground areas, and in other areas, and including relamping and rewiring, except for replacement or removal of lighting that is a character-defining feature of a historic property.

vi. Water feature, such as decorative fountains, including replumbing, except for replacement or removal of a water feature that is a character-defining feature of historic property.

vii. Curb, gutter, steps, ramp, and retaining wall.

b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.

c. Any of the following landscaping, grounds, and water management activities:

i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, lawns, shrubs, bushes, and trees.

ii. Planting of grass, lawns, shrubs, and bushes, and xeriscaping.

iii. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.

iv. Removal of grass, lawns, shrubs, bushes, invasive species, and diseased or hazardous trees.

v. Removal of rocks and debris.

Commented [DOT71]: In the second appendix, the caveat of records review by qualified individual should probably apply to all ground disturbance.

Commented [DOT72]: Does there need to be a caveat about historic viewsheds?

vi. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building with housing units.

vii. Replacement of concrete or asphalt ground surfaces with permeable pavement, permeable pavers, porous flexible pavement.

Commented [DOT73]: Historic concrete pads?

d. Maintenance, repair, rehabilitation, and replacement of the following elements, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance:

i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, or other miscellaneous hardware.

ii. Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems.

Commented [DOT74]: Is a caveat needed about visual impacts? Sometimes replacing gas utilities involves changing meters etc.

e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact ground surfacing materials 45 years or older or known historic ground surfacing materials.

Commented [DOT75]: Disturbed soils only?

f. Installation and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on the exterior of a building with housing units:

a. Rehabilitation, replacement, and installation of the following exterior elements: on a building less than 45 years old and not known after a records check to be listed in or eligible for the National Register of Historic Places; on a building the federal agency or another federal agency has determined to be not eligible for the National Register of Historic Places within the preceding ten years; on the non-primary facade of a historic building or a building whose historic designation status is not known; or in a location not otherwise visible from the primary right-of-way:

Commented [DOT76]: Recommend elements below be in keeping with the appearance of the property where possible if it's historic.

i. Doors, including insulated exterior doors.

ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings or window louvers.

iii. Canopies, awnings, and solar shades.

iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs on flat roofs that are not visible from the public right-of-way; and green, sod, or grass roofs on flat roofs.

v. Improvements that address the requirements of the Americans with Disabilities Act, such as ramps and railings.

vi. Mechanical, fire alarm, fire suppression, and security systems and equipment.

vii. Solar energy systems.

viii. Elevator systems.

- ix. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
 - x. Foundations and seismic and structural repairs, with ground disturbance limited to areas within 10 feet of the building.
 - xi. Basement bulkhead doors.
 - xii. Chimneys.
 - xiii. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, frieze board vents or combustion appliance flues.
 - xiv. Siding.
 - xv. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement activities on any building with housing units, including:
- i. Maintenance, repair, and in-kind replacement of any element listed in Section 2.a. of this Appendix.
 - ii. Caulking, weatherstripping, reglazing of windows, installation of door sweeps, and other air infiltration control measures on windows and doors.
 - iii. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.
 - iv. Removal of exterior paint or graffiti using non-destructive means, limited to hand scraping, low-pressure water wash of less than 500 psi, heat plates, hot air guns, and chemical paint removal.
- c. Maintenance, repair, rehabilitation, replacement, and installation of any of the following exterior elements on or near a building with housing units, provided that such activity exclusively affects previously disturbed ground or causes no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way:
- i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, and other miscellaneous hardware.
 - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
 - iii. Foundation vents, if painted or finished to match the existing foundation material.
 - iv. Green infrastructure.
 - v. Gray water systems.
- d. Paint on previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal).
- e. Rehabilitation, replacement, and installation of clean energy technologies to address the energy needs of a building or buildings, provided that:

Commented [DOT77]: Specify distance.

Commented [DOT78]: Include natural gas here as in 1.d.ii.

Commented [DOT79]: Any caveats on paint color?

i. Such technology is located either outside the boundaries of a historic district, or on the non-primary façade side of a historic building, or in a location not otherwise visible from the primary right-of-way; and is located on the same lot as or on an adjacent lot to that building or buildings, or in the case of a community solar system, in a lot within two blocks or two thousand feet (whichever is longer) of the building or buildings served;

Commented [DOT80]: Or other viewshed?

ii. Such activity exclusively affects previously disturbed ground or causes no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way;

iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted solar energy system may be visible from the public right of way if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.

f. Maintenance and repair of clean energy technologies that address the energy needs of a building or buildings.

g. Abatement of hazardous materials where effects of the abatement are reversible or temporary or will not be visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of a historic building or a building whose historic designation status is not known; or windows 45 years or older.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of a building with housing units, and do not result in physical changes visible from the primary public right-of-way:

a. Maintenance, repair, rehabilitation, replacement, and installation, and abatement of hazardous materials, that take place: entirely within the interior of an individual housing unit; in any interior location of a building less than 45 years old and not known after a records check to be listed in or eligible for the National Register of Historic Places; on a building the federal agency or another federal agency has determined to be not eligible for the National Register of Historic Places within the preceding ten years; or in any interior space within a historic building that is not a primary space. For the avoidance of doubt, rehabilitation as used in this Section 3.a. is to be broadly construed and includes: removal, alteration (including of width, height, and location), and construction of interior walls; alteration of floors and flooring (including of material, pattern, and texture); alteration of ceilings (including of material, lighting, and height); installation of mechanical, fire alarm, fire suppression, and security systems and equipment; insulation and air sealing; removal and installation of equipment and fixtures (including bathroom, kitchen, and lighting equipment and fixtures); replacement and refurbishment of elevator cabs, system-wide upgrades to elevator mechanical systems, installation of building energy control systems; and installation of code-required signage; removal, alteration, and construction of stairs; cosmetic improvements; and improvements to address the requirements of the Americans with Disabilities Act.

b. Maintenance, repair, rehabilitation, replacement and installation of any of the following interior elements, in any location other than the locations identified in Section 3.a. of this Appendix, if such

activity does not result in physical changes visible from the primary right-of-way, and has no visual effect on the primary spaces of a historic building:

- i. Mechanical systems, including but not limited to heating, ventilating, and cooling components such as heat pumps, electric furnaces and boilers, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, ventilation systems, and refrigeration lines.
 - ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.
 - iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.
 - iv. Electronic ignition devices.
 - v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.
 - vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.
 - vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
 - viii. Building energy control systems.
 - ix. EnergyStar (or similarly rated) appliances.
 - x. Battery energy storage systems.
- c. Maintenance, repair, replacement, rehabilitation, and installation of mechanical, fire alarm, fire suppression, and security systems and equipment where such activity does not require structural alteration.
- d. Maintenance, repair, rehabilitation, replacement, and installation of any of the following interior elements:
- i. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where such insulation can be removed without damaging exterior walls, even if such insulation increases interior wall thickness.
 - ii. Spray foam that does not directly touch historic building materials, even if such insulation increases interior wall thickness.
 - iii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and mechanical systems.
- e. Maintenance, repair, and in-kind replacement of walls, flooring, ceilings, mechanical systems, insulation, structure, equipment, fixtures, stairs, improvements that address the requirements of the Americans with Disabilities Act, and cosmetic or decorative features of any building with housing units.

f. Maintenance, repair, in-kind replacement, and rehabilitation of a skylight, atrium, courtyard, or lightwell; and installation of a new skylight, atrium, courtyard, or lightwell that will not be visible from the primary public right-of-way and will not result in interior reconfigurations to primary spaces or removal of historic building materials in primary spaces.

g. Abatement of hazardous materials where effects of the abatement are reversible or temporary or will not be visible from the primary right-of-way, the abatement either exclusively affects previously disturbed ground or creates no new ground disturbance, and the abatement does not involve the permanent removal or replacement of: windows on the primary façade of a historic building or a building whose historic designation status is not known; or windows 45 years or older.

4. Work Related to Mobile and Manufactured Homes

In addition to the activities listed in Sections 1 through 3 of this Appendix, the following activities do not require further Section 106 review when conducted in or on a building that is a mobile or manufactured home not individually listed in the National Register of Historic Places and not a contributing property to a historic district listed in the National Register of Historic Places:

a. Maintenance, repair, rehabilitation, and in-kind replacement of skirting, siding, roofing (including reflective or energy efficient coating); exterior insulation; energy efficiency improvements; improvements related to electrification; white roofs or cool roofs; and green, sod, or grass roofs), trim, foundation vents, and gable vents of the mobile or manufactured building.

b. Maintenance, repair, rehabilitation, replacement, and installation of mechanical systems or clean energy technologies, where such activities either do not create ground disturbance or exclusively affect previously disturbed ground.

c. Replacement and demolition of a deteriorated or damaged mobile or manufactured home with a new mobile or manufactured home on existing pads with existing utility connections.

5. Emergency Work

The following activities related to the exterior or interior of any historic building with housing units do not require further Section 106 review when such work relates to an emergency situation and takes place within 30 days of the occurrence of the emergency situation and otherwise complies with 36 C.F.R. § 800.12:

a. Temporary stabilization that causes no permanent damage to the historic building or any other historic property, including installation of temporary bracing, shoring and tarps.

b. Emergency repair of masonry, concrete, or building façade cracks or falling elements.

c. Emergency repair of falling plaster or other elements that pose an immediate and imminent health and safety hazard.

d. Abatement of hazardous materials required to address an emergency situation.

6. Other Activities

The following activities do not require further Section 106 review:

a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of buildings.

b. Feasibility studies related to energy efficiency improvements, electrification, improvements incorporating clean energy technologies, and other topics relating to building energy use.

- c. Leasing, refinancing, acquisition, or purchase by the federal agency of a building with one or more housing units, provided that any changes in use or any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such building must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable program alternatives, including this Program Comment.
- d. Transfer, lease, or sale of a federal government-owned building with one or more housing units from one federal agency to another federal agency, provided that any changes in use or any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such building must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable program alternatives, including this Program Comment.
- e. Transfer, lease, or sale out of federal ownership or out of federal control of a historic building with one or more housing units, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).

APPENDIX A-2: HOUSING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1. Site Work

The following activities do not require further Section 106 review when conducted in areas adjacent to a building with housing units or on the same lot as a building with housing units, after the satisfaction of the identified conditions, exclusions, or requirements:

a. Replacement, installation, and removal of any of the following elements which are either less than 45 years old and create new ground disturbance in previously undisturbed soils, or 45 years or older, provided that such activity has been determined by a qualified authority to have no adverse effects on a historic property; or provided that the area of potential effects has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with Indian Tribes and Native Hawaiian Organizations without such survey or consultation identifying any historic properties:

i. Concrete and asphalt ground surfaces, such as parking areas, driveways, and walkways, including repaving, restriping, and reducing surface size, but excluding changing surface material or vertical alignment.

ii. Park, playground, and sports equipment, such as platforms, guardrails, handrails, climbers, ramps, stairways, ladders, balance beams, fitness equipment, rings, rolls, un-mechanized merry-go-rounds, seesaws, slides, swings, benches, netting, basketball hoops, drinking fountains, and ground surface materials.

iii. Fencing.

iv. Wayfinding, address, and identification signage.

v. Lighting, such as building-mounted lighting and freestanding lighting in parking areas, along driveways and walkways, in park and playground areas, and in other areas, and including relamping and rewiring.

vi. Water features, such as decorative fountains, including replumbing.

vii. Curbs, gutters, steps, ramps, and retaining walls.

viii. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, or other miscellaneous hardware.

ix. Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems.

b. Planting of a new tree 40 feet or more from the building with housing units, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian Organizations as set forth in Section IV.C. of this Program Comment, and determined that such planting will have no adverse effect (including visual effects) on a historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization.

2. Work on the Building Exterior

The following activities do not require further Section 106 review when conducted on the exterior of a building with housing units, after the satisfaction of the identified conditions, exclusions, or requirements:

a. Rehabilitation, replacement, and installation of the following elements on the exterior of: buildings 45 years or older if a qualified authority determines that the building is not eligible for inclusion in the National Register of Historic Places; or buildings 45 years or older determined by a qualified authority to be listed in or eligible for the National Register of Historic Places, if a qualified authority determines that such installation or replacement will have no or minimal adverse effects on any characteristics of that historic building qualifying it for inclusion in or eligibility for the National Register of Historic Places:

i. Any of the exterior elements listed in Section 2.a. of Appendix A-1, including elements in locations other than those identified in that Section.

b. Rehabilitation replacement, or installation of any of the following exterior elements on or near a building and serving a building or buildings, which create new ground disturbance on previously undisturbed ground, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian Organizations as set forth in Section IV.C. of this Program Comment, and determined that such activities will have no adverse effects (including visually effects) a historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization:

i. Any of the exterior elements listed in Section 2.c. of Appendix A-1, when located in locations other than those identified in that Section.

ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix A-1.

c. Replacement of exterior historic building materials of a historic building with housing units with in-kind or substitute building materials after the federal agency, with the assistance of a qualified authority as needed, conducts the following selection procedure:

i. Characterize existing historic building materials in terms of condition, design, material properties, performance (including insulation and air sealing value), safety, and presence of hazards such as lead-based paint, asbestos, or other hazardous materials;

ii. Next, determine, based on an evaluation of technical and economic feasibility, if historic building materials can be repaired or if they must be replaced;

iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical and economic feasibility;

iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute building material;

provided, however, that a federal agency may only utilize this selection procedure if such replacement or demolition will not create ground disturbance, will create ground disturbance exclusively on previously disturbed ground, or will, in the opinion of a qualified authority, have no adverse effects on any historic property.

3. Work on the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of a building with housing units, after the satisfaction of the identified conditions, exclusions, and requirements:

a. In addition to those activities listed in Section 3 of Appendix A-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such

activity results in physical changes to a historic building visible from the primary public right-of-way or has a visual effect on the primary spaces of a historic building, after a qualified authority determines such activity will have no adverse effects on any historic property.

4. Work Related to Mobile and Manufactured Homes

The following activities do not require further Section 106 review when conducted in or on a building that is a mobile or manufactured home individually listed in the National Register of Historic Places or a contributing property to a historic district listed in the National Register of Historic Places, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, or installation of skirting, siding, roofing (including reflective or energy efficient coating); exterior insulation; energy efficiency improvements; improvements related to electrification; white roofs or cool roofs; and green, sod, or grass roofs), trim, foundation vents, and gable vents, after a qualified authority determines that such activity will have no adverse effect on the mobile or manufactured home or on other historic properties; provided, however, that an analysis of adverse effects must consider technical and economic feasibility, including long-term operational costs and climate resiliency of the relevant building.
- b. Rehabilitation, replacement, or installation of mechanical systems or clean energy technologies to address the energy needs of a mobile or manufactured building or buildings, where such activities create ground disturbance on previously undisturbed ground, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian Organizations as set forth in Section IV.C. of this Program Comment, and determined that such activities will have no adverse effects (including visual adverse effects) on any historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization.

APPENDIX B-1: CLIMATE-SMART BUILDING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW

1. Site Work

The following activities do not require further Section 106 review when they are conducted in areas adjacent to a building or on the same lot as a building, and when conducted primarily to reduce energy use or GHG emissions of the building or to enhance climate resilience of the building:

- a. Rehabilitation, replacement, installation, and removal of any of the following elements less than 45 years old, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance, except for replacement or removal of any element that is a character-defining feature of a historic property:
 - i. Fencing.
 - ii. Lighting, such as building-mounted lighting and freestanding lighting in parking areas, along driveways and walkways, in park and playground areas, and in other areas, and including relamping and rewiring.
 - iii. Water feature, such as decorative fountains, including replumbing.
 - iv. Curb, gutter, steps, ramp, and retaining wall.
- b. Maintenance, repair, and in-kind replacement of any element listed in Section 1.a. of this Appendix.
- c. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, lawns, shrubs, bushes, and trees.
 - ii. Planting of grass, lawns, shrubs, and bushes, and xeriscaping.
 - iii. Replacement of a tree in its existing location and planting of a new tree within 40 feet of the building.
 - iv. Removal of grass, lawns, shrubs, bushes, invasive species, and diseased or hazardous trees.
 - v. Removal of rocks and debris.
 - vi. Maintenance, repair, rehabilitation, replacement, and installation of green infrastructure either in previously disturbed ground, in areas within 10 feet of existing paved areas, or in areas within 10 feet of the building.
 - vii. Replacement of concrete or asphalt ground surfaces with permeable pavement, permeable pavers, or porous flexible pavement.
- d. Maintenance, repair, rehabilitation, and replacement of the following elements, provided such activity exclusively affects previously disturbed ground or creates no new ground disturbance:
 - i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, or other miscellaneous hardware.

- ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
- e. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter that do not impact ground surfacing materials 45 years or older or known historic ground surfacing materials.
- f. Installation and removal of temporary construction-related structures, including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers, and restrooms.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when they are conducted on the exterior of a building and when they are conducted primarily to reduce energy use or GHG emissions of the building, or to enhance the climate resilience of the building:

- a. Rehabilitation, replacement, and installation of any of the following exterior elements: on a building less than 45 years old and not known after a records check to be listed in or eligible for the National Register of Historic Places; on a building the federal agency or another federal agency has determined to be not eligible for the National Register of Historic Places within the preceding ten years; on the non-primary facade of a historic building or a building whose historic designation status is not known; or in a location not otherwise visible from the primary right-of-way:
 - i. Doors, including insulated exterior doors.
 - ii. Windows, including storm windows, glazing treatments, window jambs, window sills, solar screens, awnings, and window louvers.
 - iii. Canopies, awnings, and solar shades.
 - iv. Roofing, including cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; white roofs or cool roofs; and green, sod, or grass roofs.
 - v. Mechanical, fire alarm, fire suppression, and security systems and equipment.
 - vi. Solar energy systems.
 - vii. Elevator systems.
 - viii. Chimneys.
 - ix. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, and frieze board vents.
 - x. Siding.
 - xi. Energy and water metering devices.
- b. Maintenance, repair, and in-kind replacement of exterior elements on any building, including:
 - i. Any element listed in Section 2.b. of this Appendix.
 - ii. Clean energy technologies that address the energy needs of a building or buildings.
 - iii. Caulking, weatherstripping, reglazing of windows, installation of door sweeps, and other air infiltration control measures on windows and doors.

iv. Repointing of mortar joints with mortar similar in composition, joint profile, color, hardness, and texture of existing mortar.

v. Removal of exterior paint or graffiti using non-destructive means, limited to hand scraping, low-pressure water wash of less than 500 psi, heat plates, hot air guns, and chemical paint removal.

c. Maintenance, repair, rehabilitation, replacement, and installation of any of the following exterior elements on or near a building and serving a building or buildings, provided that such activity exclusively affects previously disturbed ground or causes no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way:

i. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, and other miscellaneous hardware.

ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.

iii. Foundation vents, if painted or finished to match the existing foundation material.

iv. Green infrastructure.

v. Gray water systems.

d. Paint on previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal).

e. Rehabilitation, replacement, and installation of clean energy technologies to address the energy needs of a building or buildings, provided that:

i. Such technology is located either outside the boundaries of a historic district, or on the non-primary façade side of a historic building, or in a location not otherwise visible from the primary right-of-way; and is located on the same lot as or on an adjacent lot to that building or buildings, or in the case of a community solar system, in a lot within two blocks or two thousand feet (whichever is longer) of the building or buildings served;

ii. Such activity exclusively affects previously disturbed ground or causes no new ground disturbance, and further provided that such activity does not result in physical changes visible from the primary right-of-way;

iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted solar energy system may be visible from the public right of way if it is installed with methods that do not irreversibly damage historic materials, sits close to the roof, and has a profile that matches the roof profiles (including pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when they are conducted in the interior of a building and when they are conducted primarily to reduce energy use or GHG emissions of the building, or to enhance the climate resilience of the building:

a. Maintenance, repair, rehabilitation, replacement, and installation of any of the following interior elements:

i. Thermal insulation, other than spray foam, in or around walls, floors, ceilings, attics, crawl spaces, ducts, water heater tanks, water heating pipes, refrigeration lines, and foundations, where such insulation can be removed without damaging exterior walls, even if such insulation increases interior wall thickness.

ii. Spray foam that does not directly touch historic building materials, even if such insulation increases interior wall thickness.

iii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and mechanical systems.

b. Maintenance, repair, rehabilitation, replacement and installation of any of the following interior elements, if such activity does not result in physical changes visible from the primary right-of-way, and has no visual effect on the primary spaces of a historic building:

i. Mechanical systems, including but not limited to heating, ventilating, and cooling components such as furnaces, heat pumps, electric furnaces, vented space heaters, electric heat systems, electronic ignition devices, central air conditioners, window air conditioners, heat pumps, evaporative coolers, condensers, compressors, heat exchangers, air exchangers, and refrigeration lines.

ii. Waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment.

iii. Adjustable speed drives such as fans on mechanical equipment including air handling units, cooling tower fans, and pumps.

iv. Electronic ignition devices.

v. Duct and pipe systems, including return ducts, diffusers, registers, air filters, and thermostatic radiator controls on steam and hot water heating systems.

vi. Water conservation measures, such as low flow faucets, toilets, shower heads, urinals, and distribution device controls.

vii. Light fixtures, bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.

viii. Building energy control systems.

ix. EnergyStar (or similarly rated) appliances.

x. Battery energy storage systems.

4. Work Related to Mobile and Manufactured Buildings

In addition to the activities listed in Sections 1 through 3 of this Appendix, the following activities do not require further Section 106 review when conducted in, on, or near a mobile or manufactured building not individually listed in the National Register of Historic Places and not a contributing structure to a historic district listed in the National Register of Historic Places:

a. Maintenance, repair, rehabilitation, replacement, and insulation of skirting, siding, roofing (including reflective or energy efficient coating); exterior insulation; energy efficiency

improvements; improvements related to electrification; white roofs or cool roofs; and green, sod, or grass roofs), trim, foundation vents, and gable vents of the mobile or manufactured building.

b. Maintenance, repair, rehabilitation, replacement, and installation of mechanical systems or clean energy technologies, where such activities either do not create ground disturbance or exclusively affect previously disturbed ground.

5. Other Activities

a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of buildings.

b. Feasibility studies related to energy efficiency improvements, electrification, improvements incorporating clean energy technologies, and other topics relating to building energy use.

c. Leasing, refinancing, acquisition, or purchase by the federal agency of energy efficiency, electrification, and clean energy technologies, provided that any changes in use or any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such technologies must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable program alternatives, including this Program Comment.

APPENDIX B-2: CLIMATE-SMART BUILDING-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

1. Site Work

The following activities do not require further Section 106 review when conducted in areas adjacent to a building or on the same lot as a building, and when conducted primarily to reduce energy use or GHG emissions of the building or to enhance climate resilience of the building, after the satisfaction of the identified conditions, exclusions, or requirements:

a. Rehabilitation, replacement, installation, and removal of any of the following elements which are either less than 45 years old and create new ground disturbance in previously undisturbed soils, or 45 years or older, provided that such activity has been determined by a qualified authority to have no adverse effects on a historic property; or provided that the area of potential effects has been previously field surveyed (acceptable to current state or Tribal standards or within the past ten years) and, if applicable, has been subject to consultation with Indian Tribes and Native Hawaiian organizations without such survey or consultation identifying any historic properties

i. Any element listed in Section 1.a. of Appendix B-1.

ii. Any element listed in Section 1.d. of Appendix B-1.

b. Planting of a new tree 40 feet or more from the building, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian organizations as set forth in Section IV.C. of this Program Comment, and determined that such planting will have no adverse effects on any historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization.

2. Work Related to the Building Exterior

The following activities do not require further Section 106 review when conducted on the exterior of a building, and when conducted primarily to reduce energy use or GHG emissions of the building or to enhance climate resilience of the building, after the satisfaction of the identified conditions, exclusions, or requirements:

a. Rehabilitation, replacement, or installation of the following elements visible from the primary right-of-way and on the exterior of: buildings 45 years or older if a qualified authority determines that the building is not eligible for inclusion in the National Register of Historic Places; or buildings 45 years or older determined by a qualified authority to be listed in or eligible for the National Register of Historic Places, after a qualified authority determines that such installation or replacement will have no or minimal adverse effects on any characteristics of that historic building qualifying it for inclusion in or eligibility for the National Register of Historic Places; provided, however, that an analysis of adverse effects must consider technical and economic feasibility, including long-term operational costs and climate resiliency of the building upon which elements are installed or replaced:

i. Any element listed in Section 2.a. of Appendix B-1.

b. Rehabilitation, replacement, or installation of any of the following exterior elements on or near a building and serving a building or buildings, which create new ground disturbance on previously undisturbed ground, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian Organizations as set forth in Section IV.C. of

this Program Comment, and determined that such activities will have no adverse effects (including visual effects) on any historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization:

- i. Any of the exterior elements listed in Section 2.c. of Appendix B-1.
 - ii. Clean energy technologies, when located or configured in a manner other than that identified in Section 2.e. of Appendix B-1.
- c. Replacement of exterior historic building materials of a historic building with in-kind or substitute building materials to improve energy efficiency after the federal agency, with the assistance of a qualified authority as needed, conducts the following selection procedure:
- i. Characterize existing historic building materials in terms of condition, design, material properties, performance, safety, and presence of hazards such as lead-based paint, asbestos, or other hazardous materials;
 - ii. Next, determine, based on an evaluation of technical and economic feasibility, if historic building materials can be repaired or if they must be replaced;
 - iii. Next, if replacement is required, identify potential in-kind and substitute building materials and evaluate their technical and economic feasibility;
 - iv. Finally, based on such evaluation, select the most appropriate in-kind or substitute building material;

provided, however, that a federal agency may only utilize this selection procedure if such replacement or demolition will not create ground disturbance, will exclusively affect previously disturbed ground, or will, in the opinion of a qualified authority, have no adverse effects on any historic property.

3. Work Related to the Building Interior

The following activities do not require further Section 106 review when conducted in the interior of a building, and when conducted primarily to reduce energy use or GHG emissions of the building or to enhance climate resilience of the building, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. In addition to those activities listed in Section 3 of Appendix B-1, maintenance, repair, rehabilitation, replacement, and installation, and the abatement of hazardous materials, where such activity results in physical changes to a historic building visible from the primary public right-of-way or has a visual effect on the primary spaces of a historic building, after a qualified authority determines such activity will have no adverse effects on any historic property.

4. Work Related to Mobile and Manufactured Buildings

The following activities do not require further Section 106 review when conducted in, on, or near a mobile or manufactured building individually listed in the National Register of Historic Places or a contributing structure to a historic district listed in the National Register of Historic Places, and when conducted primarily to reduce energy use or GHG emissions of the building or to enhance climate resilience of the building, after the satisfaction of the identified conditions, exclusions, or requirements:

- a. Rehabilitation, replacement, or installation of skirting, siding, roofing (including reflective or energy efficient coating); exterior insulation; energy efficiency improvements; improvements

related to electrification; white roofs or cool roofs; and green, sod, or grass roofs), trim, foundation vents, and gable vents, after a qualified authority determines that such activity will have no adverse effects on the mobile or manufactured building or on other historic properties; provided, however, that an analysis of adverse effects must consider technical and economic feasibility, including long-term operational costs and climate resiliency of the relevant building.

b. Rehabilitation, replacement, or installation of mechanical systems or clean energy technologies to address the energy needs of a mobile or manufactured building or buildings, where such activities create ground disturbance on previously undisturbed ground, after a qualified authority has conducted a records check and, if applicable consulted with Indian Tribes and Native Hawaiian Organizations as set forth in Section IV.C. of this Program Comment, and determined that such activities will have no adverse effects (including any visual effects) on any historic property, including a property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian Organization.

APPENDIX C-1: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials, and they are located entirely within the previously disturbed right of way:

a. Maintenance, repair, rehabilitation, replacement, and installation of the following elements when used for or incorporated into pedestrian, bicycle, micromobility, or transit infrastructure:

i. Ground surface material, including installation of slurry seals, overlays, and seal coatings; sealing and repairing cracks; milling and re-paving; repairing potholes; and restoring after utility installation.

ii. Curb.

iii. Sidewalk.

iv. Bulb out.

v. Ramp.

vi. Crosswalk, including a raised crosswalk across a roadway.

vii. Mark on the ground surface for visibility and delineation, including striping for bicycle lanes, thermoplastic striping and paint, painted sidewalk extensions, sidewalk stencils, bicycle parking, micromobility parking, and green paint in zones of potential conflict between bicyclists and motor vehicle drivers.

viii. Detectable warning on or before a curb, entry point, crosswalk, or accessible facility.

b. Maintenance, repair, rehabilitation, replacement, and installation of the following ground surface materials:

i. High friction surface treatment.

ii. Cool pavement.

iii. Permeable pavement, permeable pavers, or porous flexible pavement.

iv. Rumble strip.

v. Traffic calming devices such as speed humps, speed tables, raised crosswalks, and raised intersections.

c. Elevation of no more than 10 inches of the existing ground surface to maintain, create, or connect pathways for pedestrians, bicyclists, or micromobility vehicle users, or to facilitate boarding and disembarking at transit facilities.

2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials or historic building materials, they are located entirely within the previously disturbed right of way, and they follow the specifications of a recognized design manual (if and to the extent covered in any such manual):

Commented [DOT81]: Would again be helpful to define what makes these actions climate friendly, vs standard infrastructure actions.

Commented [DOT82]: For all items, how is this determination of potentially historic features made? Should it be made by an SOI-qualified professional?

Commented [DOT83]: Is this applicable in a historic district?

Commented [DOT84]: Are these undertakings?

Commented [DOT85]: Please define.

Commented [DOT86]: As an undertaking?

Commented [DOT87]: This generally requires ground disturbance.

Commented [DOT88]: Why would a provision related to a "recognized design manual" would result in a activity that would not adversely affect historic properties?

a. Maintenance, repair, rehabilitation, replacement, and installation of the following elements when used for or incorporated into pedestrian, bicycle, micromobility, or transit infrastructure:

i. Bicycle rack.

ii. Micromobility parking corral.

iii. Bicycle rail or wheel stop no taller than 6 inches.

iv. Flex post no taller than 36 inches and no larger in circumference than 22 inches.

v. Bollard 12 inches or less in diameter and 48 inches or less in height.

vi. Concrete or stone block no taller than 24 inches and no wider than 6 inches, to protect bicycle parking or micromobility parking or to delineate a pedestrian pathway.

vii. Sign, signal, traffic control device, and signalization, including any such elements that address the requirements of the Americans with Disabilities Act.

viii. Ticket dispensing structure 5 feet or less in height and 2 square feet or less in cross-section area, not including provisions for solar power.

ix. Camera, intelligent transportation systems, and other technological equipment limiting, removing, or identifying unauthorized traffic from pathways dedicated to walking, biking, micromobility use, or transit use.

x. Temporary construction fencing, excluding grading, creating a soil borrow pit, or other significant excavation.

b. Maintenance, repair, rehabilitation, replacement, and installation of street furniture, including the following elements, provided that such activity does not result in the removal of potentially historic street furniture:

i. Bench.

ii. Table.

iii. Freestanding planter.

iv. Street light.

v. Shelter for transit users with a combined dimension (length plus width plus height) less than 30 linear feet and with advertising space no greater than 24 square feet visible at any one time.

c. Maintenance, repair, rehabilitation, and in-kind replacement of the following elements:

i. Catenary system.

ii. Tracks.

iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, to monitor motor vehicle traffic, or for surveillance and security purposes.

3. Work Relating to Vegetation and Landscapes

Commented [DOT89]: Does this apply in a historic district?

Commented [DOT90]: Installation of any new facilities should require review by an SOI-qualified professional.

Commented [DOT91]: Caveat could be if there is an electronic payment system that requires electricity or utility connection of some kind.

Commented [DOT92]: How were these and other dimensions throughout determined?

Commented [DOT93]: Installation should be limited to cases where it is on existing infrastructure.

Commented [DOT94]: How would you determine difference between within previous disturbance and being significant excavation?

Commented [DOT95]: Please add to definitions.

Commented [DOT96]: Within historic districts?

Commented [DOT97]: May be of concern when placed within a historic district.

Commented [DOT98]: Even if determined eligible or listed?

Commented [DOT99]: Recommend describing what comprises tracks.

Commented [DOT100]: These items are already covered in the Rail ROW Program Comment.

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The following activities occurring within the same right of way or on the same lot as climate-friendly transportation infrastructure do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials, and further provided that they exclusively affect previously disturbed ground or create no new ground disturbance:

- a. Any of the following landscaping, grounds, and water management activities:
 - i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, and maintaining, as applicable, grass, lawns, shrubs, bushes, and trees.
 - ii. Planting of grass, lawns, shrubs, and bushes.
 - iii. Replacement of a tree in its existing location and planting of a new tree on, along, or within a street that already has street trees.
 - iv. Removal of grass, lawns, shrubs, bushes, invasive species, and diseased or hazardous trees.
 - v. Removal of rocks and debris.
- b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure or landscaping to delineate pedestrian pathways or bicycle lanes, provided such green infrastructure or landscaping follows the specifications of a recognized design manual (if and to the extent covered in any such manual).

4. Work on Bridges

The following activities related to a bridge built to serve pedestrian, bicycle, micromobility, or transit use do not require further Section 106 review, provided they do not result in the demolition or removal of potentially historic ground surface materials; further provided that they exclusively affect previously disturbed ground or create no new ground disturbance; and further provided that the bridge is: either less than 45 years old and not known after a records check to be listed in or eligible for the National Register of Historic Places, or has been determined by the federal agency or another federal agency to be not eligible for the National Register of Historic Places within the preceding ten years:

- a. Maintenance, repair, rehabilitation, and in-kind replacement of drains, joints, joint seals, concrete decks, parapet, rail, concrete, steel elements, bearings, retaining walls, and bridge machinery.
- b. Cleaning and washing.
- c. Conducting electrochemical extraction and cathodic protection.
- d. Mitigating cracks, including pin-and-hanger replacement and other retrofits.
- e. Implementing countermeasures against scour.

5. Other Activities

- a. Leasing, refinancing, acquisition, or purchase by the federal agency of:
 - i. A railway right of way for the maintenance, development, or expansion of either rail-to-trail pathways or passenger rail service;
 - ii. A transit-oriented development building; or
 - iii. Fleets of bicycles, hybrid or electric vehicles, or electric locomotives,

Commented [DOT101]: FTA has very specific parameters for what landscaping is eligible funding. It must be functional, for example an eligible landscaping expense would include the installation of shade trees near a passenger station entrance.

Likewise, FTA would allow the use of grant funds to install dense shrubs surrounding the area containing the transit system's electrical equipment.

FTA would expect the grantee to select particular varieties of trees and shrubs that are well-suited for the particular location and climate.

Commented [DOT102]: Please explain.

Commented [DOT103]: This differs from DOT OA policies on what defines "clearing and grubbing" and landscaping in terms of Section 106 compliance

Commented [DOT104]: Is this an undertaking?

Commented [DOT105]: Please describe how.

Commented [DOT106]: Could this be narrowed or defined?

Commented [DOT107]: These repair and maintenance activities are all covered by the Rail ROW Program comment.

Commented [DOT108]: These are not typically considered undertakings.

provided that any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such pathways or rail service must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable program alternatives.

b. Transfer, lease, or sale of a federal government-owned climate-friendly transportation facility or transit-oriented development building from one federal agency to another federal agency, provided that any changes in use or any physical activities related to the maintenance, repair, rehabilitation, replacement, or installation of such facility must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable program alternatives, including this Program Comment.

c. Transfer, lease, or sale out of federal ownership or out of federal control of a historic climate-friendly transportation facility or transit-oriented development building, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).

d. A decision to limit motor vehicle access to, through, or on streets that remain available for walking, bicycling, or micromobility uses, including "play streets," "school streets," "safe route to school" streets, or "open streets."

Commented [DOT109]: Could you provide an example?

Commented [DOT110]: A decision is not likely considered an undertaking; the work needed to limit motor vehicle access would be.

APPENDIX C-2: CLIMATE-FRIENDLY TRANSPORTATION-RELATED ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

The following activities do not require further Section 106 review after the satisfaction of the identified conditions, exclusions, or requirements:

1. Work on Ground Surfaces

The following activities do not require further Section 106 review, if a qualified professional has determined that such activity will have no adverse effects on any historic property:

- a. Elevation of the existing ground surface by more than 10 inches to maintain, create, or connect pathways for pedestrians, bicyclists, or micromobility vehicle users, or to facilitate boarding and disembarking at transit facilities.

2. Work Involving Fixtures and Equipment

The following activities do not require further Section 106 review, if a qualified professional has determined that such activity will have no adverse effects on any historic property:

- a. Any activities listed in Section 2.a. of Appendix C-1 that may or will result in the demolition or removal of potentially historic ground surface materials or historic building materials, or may or will disturb previously undisturbed ground.
- b. Maintenance, repair, rehabilitation, replacement, and installation of a shelter for transit users with a combined dimension (length plus width plus height) 30 linear feet or more, or with advertising space more than 24 square feet visible at any one time.
- c. Installation of the following new elements:
 - i. Catenary system.
 - ii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, to monitor motor vehicle traffic, or for security purposes.

3. Work Relating to Vegetation and Landscapes

The following activities do not require further Section 106 review, even if they create new ground disturbance in previously undisturbed soils, if a qualified has determined that such activity will have no adverse effects on any historic property:

- a. Planting of a new tree on, along, or within a street that has not previously had street trees, or in other locations where such planting is intended to improve the experience for pedestrians, bicyclists, micromobility users, or transit users.
- b. Maintenance, repair, rehabilitation, replacement, or installation of green infrastructure and landscaping related to pedestrian pathway or bicycle lane delineation not otherwise covered by Section 3 of Appendix C-1.

4. Work on Bridges

The following activities do not require further Section 106 review, even if they create new ground disturbance in previously undisturbed soils, if a qualified authority has determined that such activity will have no adverse effects on any historic property:

Commented [DOT111]: How does this differ from the previous examples?

Commented [DOT112]: What is the difference between this context and C-1?

Commented [DOT113]: What is the difference between this context and C-1?

Commented [DOT114]: Not included in Rail ROW Program Comment as result of feedback through the consultation process.

Commented [DOT115]: This would be challenging as SHPO concurrence is required for all plantings, when in a historic district. There are many streets where plantings are not appropriate in a historic district.

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- a. Activities listed in Part 4 of Appendix C-1 and conducted on historic bridges.
- b. Rehabilitation, replacement, or **installation** of a bridge built to serve pedestrian, bicycle, micromobility, or transit use.

Commented [DOT116]: Installation of any new bridges is a significant construction activity and should not be an exempted activity.

APPENDIX D: FORMAT FOR AUTHORIZATION BY AN INDIAN TRIBE FOR USE OF THIS PROGRAM COMMENT ON ITS TRIBAL LANDS

On behalf of [NAME OF INDIAN TRIBE] and as a duly authorized representative of such Tribe, I authorize federal agencies to utilize the Program Comment on Housing on the Tribal Lands of the [NAME OF INDIAN TRIBE]. This authorization is in effect until the withdrawal or termination of the Program Comment or on the date of receipt by the Executive Director of the Advisory Council on Historic Preservation that [NAME OF INDIAN TRIBE] has rescinded its authorization, which it may do at any time.

For further information, please contact: [Tribal Contact; Name and Contact Information].

Signed by:

[Signature]

Name:

Title:

Date:

Acknowledged and accepted by the ACHP:

[Signature – leave blank]

Name:

Title:

Date:



Rural Development

October 9, 2024

Montana State Office

2229 Boot Hill Court
Bozeman, Montana
59715

Voice 406.585.2580
Fax 855.576.2674

Advisory Council on Historic Preservation

401 F St., NW, Suite 308

Washington, DC 20001-2637

(Submitted electronically via program_alternatives@achp.gov; no hard copy to follow)

RE: ACHP Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Council Members:

Thank you for the opportunity to comment on the ACHP's [Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities](#). USDA Rural Development in Montana greatly appreciates the Council's effort to balance the important protection and preservation of historic properties with meeting critical rural needs through grants, loans, or loan guarantees, which have generally been non- or minimal-impact projects.

Below are examples of state-administered RD programs that we feel would benefit from a streamlined 106 process:

[USDA 502 Direct home mortgage lending](#) (502) for low- and very low-income purchasers,
[USDA 504 Housing Repair](#) (504) grants (for low-income seniors) and loans,
[Renewable Energy for America](#) (REAP) renewable energy and energy efficiency grants and guaranteed loans,

In the past decade, USDA RD has helped finance the purchase or self-builds of over 8,000 homes for low- and very low-income Montanans. Over the same period, we have issued almost 300 504 Repair grants and loans, which help Tribal elders and rural seniors make minor home repairs that allow them to gracefully age in place in their communities. And, over the last 10 years, USDA Rural Development in Montana has issued over 300 REAP grants/guarantees that help agricultural producers and rural small businesses install renewable energy systems or implement energy efficiency projects in rural small businesses - manufacturing facilities, restaurants, grocery stores, and more – statewide. To our knowledge, none of these projects on buildings 45 years old or less have been determined to adversely affect historic resources.

We very much value our partnership with our SHPO, and streamlining some project categories could likely save time for both our staff and Montana SHPO staff, save the loss of construction seasons, and allow both to focus on the review,

evaluation, and mitigation where necessary, of projects that truly deserve the focus of this talent. Whether that streamlining occurs via this Program Comment or otherwise, we stand ready to assist where possible, using the lens of our experience with these specific projects to find mutually agreeable efficiencies.

USDA has established a task force (Groundbreaking Task Force) to provide clear RD-specific guidance related to projects that will not likely affect cultural resources. We look forward to working with the Council to do so. And, we appreciate the opportunity to apply this Program Comment where relevant to our programs.

We commend the Council on working to find the correct balance between review and prioritization, as well as trying to provide needed off-ramps for implementing protections both in the short-, medium- and long-term, including required reporting, annual meetings, a dispute process. It would seem that through the “living document” nature of the Comment, this approach can be honed, tested, and adjusted moving forward. It also includes important incentives for federal agency compliance. We appreciate the Council’s approach in developing their Housing Policy Statement and Climate Change Policy Statement, then developing this proposal as an outgrowth of those policies. Thank you for being a partner in these goals.

We also commend the Council for what may not be obvious. As an agency which works to build capacity and invest in families, communities, and businesses that have very little capacity to advance their interests due to being in low-capacity locations (many rural and Tribal areas), there is a justice consideration to be considered when projects that may not need extensive review are subjected to it. Those applicants who can’t afford the time, and potentially the consultants, to interface with the 106 review process should not have to make those investments if there is extremely low likelihood of impact to historic resources. In Montana, we have found that even the potential of complex review processes puts a chill on interest in our programs, and that occurs primarily with the customers and communities (low-capacity) we try to prioritize for our programs. Finding the right balance between review, protection, and practical procedural thresholds will help agencies like ours implement equity and justice in our program delivery.

We appreciate the listing of resources available to consult with Tribes. We have very close relationships with our twelve Tribes and seven Tribal Reservation governments in Montana. We found out about this comment opportunity too late to coordinate our comments and suggestions with our THPO partners and are acutely aware of their limited resources. We look forward to their input on this Comment and how we might align to maximize protection along with efficiency.

Thank you for the consideration of these comments. We reiterate that we greatly appreciate the Council’s work to balance important historic preservation with effective project review and consideration, and the elimination of unnecessary processes for

projects shown to have no or minimal impact on these important resources. We welcome additional coordination with the Council and SHPOs, especially for the State-administered programs noted above.

Please contact us if we can provide additional information on our programs or these comments. The signatories to this letter reflect the leadership of the USDA Rural Development Groundbreaking Task Force mentioned above.

Sincerely,

Kathleen Williams
Montana State Director, USDA Rural Development
Member, USDA RD Groundbreaking Task Force

Christy Davis
Kansas State Director, USDA Rural Development
Co-Lead, USDA RD Groundbreaking Task Force

Gary Bojes
Senior Advisor, USDA Rural Development
Co-Lead, USDA RD Groundbreaking Task Force