



**THE COWLITZ INDIAN TRIBE**  
**COMMENTS ON THE ADVISORY COUNCIL ON HISTORIC PRESERVATION'S**  
**PROPOSED PROGRAM COMMENT ON ACCESSIBLE, CLIMATE-RESILIENT, AND**  
**CONNECTED COMMUNITIES**

October 4, 2024

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The Cowlitz Indian Tribe appreciates this opportunity to provide written comments on the Advisory Council on Historic Preservation's (ACHP or Council) proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. In general, the Cowlitz Indian Tribe supports the federal government's efforts to streamline development of climate-friendly housing and transportation projects and understands that the Council developed this proposed Program Comment in an effort to further important climate goals. Cowlitz has grave concerns, however, that the proposed Program Comment will result in the inadequate review of potential adverse effects from transportation projects on Tribal remains and cultural and archeological resources. For that reason, the Cowlitz Indian Tribe asks that ACHP reconsider the proposed Program Comment as it affects properties of religious and cultural significance to Indian Tribes, particularly in the context of the climate-friendly transportation-related activities not requiring further Section 106 review described in Appendices C-1 and C-2 of the Program Comment.

***Section 106 Background and Proposed Program Comment***

Section 106 of the National Historic Preservation Act<sup>1</sup> requires that federal agencies consider how their actions will affect historic properties, which include sites of religious and cultural significance to Indian Tribes, including Tribally-identified sacred sites, before they spend federal funds or move ahead with a federal undertaking (*i.e.*, a project, activity, or program funded and under jurisdiction of a federal agency).<sup>2</sup> As part of the Section 106 process, the federal agency must consider public views about historic preservation issues and must consult with federally-recognized Indian Tribes about potential adverse effects on sites of Tribal religious and cultural significance when making final project decisions. The proposed ACHP Program Comment sets out "alternative" compliance approaches for federal agency undertakings as follows:

1. For undertakings that the federal agency deems will have no or minimal potential to adversely affect sites of Tribal religious and cultural significance, as set forth in several

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<sup>1</sup> 54 U.S.C. § 306108; implementing regulations at 36 C.F.R. Part 800.

<sup>2</sup> See 36 C.F.R. § 800.16(y); Proposed Program Comment at 20.

- appendices, including Appendix C-1 (transportation-related activities), the agency may proceed with the undertaking without conducting further review under Section 106.
2. For undertakings for which certain conditions or exclusions are satisfied, as set forth in the appendices, including Appendix C-2 (transportation-related activities), a federal agency may proceed with the undertaking if it satisfies the conditions, exclusions or requirements set out in the appendices, and documents how it has satisfied those conditions or requirements.

Appendix C-1 provides that activities related to bridge work, “*provided that they exclusively affect previously disturbed ground,*” do not require further Section 106 review.<sup>3</sup> Appendix C-1 also provides that work on transportation ground surfaces (including replacement of material like pavement, traffic signals, construction fencing, transit shelters, landscaping, and removal of trees) does not require further Section 106 review, if the work is “located entirely within *previously disturbed right of way.*”<sup>4</sup> Appendix C-2 provides that work on bridges does not require further Section 106 review, even if it creates “new *ground disturbance* in previously undisturbed soils, if a *qualified authority* makes a written determination that such activity will have no adverse effects on a historic property” (which includes sites of Tribal religious and cultural significance).<sup>5</sup>

### ***The Cowlitz Indian Tribe***

The Cowlitz people have lived in what is now southwestern Washington since Time Immemorial, and our Ancestors are buried throughout the region.<sup>6</sup> The Cowlitz Indian Reservation is located off Interstate 5 near Ridgefield, in Clark County, Washington. Washington and Oregon are in the process of replacing a section of Interstate 5 that spans the Columbia River and connects the two states (the Interstate Bridge Replacement (IBR) project). The Cowlitz have had a presence within the footprint of the IBR project for centuries,<sup>7</sup> which is why the Cowlitz Indian Tribe is particularly concerned about the proposed Program Comment provisions that would affect Section 106 compliance for bridge projects and their potential impact on Tribal remains and cultural resources. Last month, in fact, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), as part of the ongoing, required consultation under Section 106 of the NHPA, determined that the IBR project would have adverse effects to historic properties (which includes sites and artifacts of Tribal religious and cultural significance).<sup>8</sup> Indeed, in the 1950s, the initial

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<sup>3</sup> Proposed Program Comment, Appendix C-1 at 39-40 (*italics in original*).

<sup>4</sup> *Id.* at 37-39.

<sup>5</sup> Proposed Program Comment, Appendix C-2 at 42 (*italics in original*).

<sup>6</sup> See, e.g., U.S. Department of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 128-30 (April 2013).

<sup>7</sup> See *id.*, see also <https://www.cowlitz.org/our-story>.

<sup>8</sup> See Letter from U.S. Department of Transportation, FHWA Washington Division, FHWA Oregon Division, and FTA to Dr. Allyson Brooks, SHPO [WA], Department of Archaeology & Historic Preservation at Table 1, at 2 (Sept. 19, 2024).

construction of Interstate 5 disturbed the graves of “a minimum of 14 individuals.”<sup>9</sup> Within the last two decades, several Ancestors were reinterred within the IBR project footprint as part of an Inter-Tribal Consortium guided by the Cowlitz Indian Tribe and resulting in an Inter-Tribal Agreement, to a location that was deemed unlikely to be impacted by future development. These individuals were determined to be of Native American descent but could not be ascertained to be members of a specific Tribe. Nevertheless, given the Cowlitz historical presence in this area, there is little question that Cowlitz Ancestral remains are located within the area of the IBR project.

### ***Comments on the Proposed ACHP Program Comment***

As an initial matter, the Cowlitz Indian Tribe recommends that the ACHP Program Comment should not apply nationwide to federal agency evaluation of the effects of major infrastructure projects on sites of Tribal religious and cultural significance. Instead, the impact that major infrastructure projects may have on Tribal remains and other Tribal cultural resources should be evaluated through the full Section 106 process – there should not be a blanket exemption from Section 106 compliance in cases where a federal agency anticipates that there will be no or minimal potential for a project to adversely affect such resources.

#### No Section 106 Review for Undertakings that Affect Previously Disturbed Ground

Appendix C-1 (for transportation-related activities) and the IBR project illustrate the reasons why a blanket exemption from Section 106 review is not advisable. Appendix C-1 would exempt activities related to bridge work from further Section 106 review, provided that such activities “exclusively affect previously disturbed ground.” But the fact that ground may have previously been disturbed does not necessarily mean that there are not Tribal cultural or archeological resources or Tribal sacred sites in the disturbed area. As noted above, Native American remains were re-interred in and around the IBR project area during the initial construction of I-5 – meaning that those areas are previously disturbed – yet those same areas where there are Tribal remains would be exempted from further Section 106 compliance under the proposed Program Comment.

The proposed definitions of “previously disturbed ground” and “previously disturbed right-of-way” in the proposed Program Comment do not fix this problem – there simply should not be an across-the-board assumption that previously disturbed areas have a reduced likelihood of possessing Tribal remains or culturally significant sites or artifacts. For example, a plowed field might be considered “disturbed” in this context, as the depth of disturbance is similar to that of a paved road. However, the archaeological deposits (and the potential for encountering Native American remains) is unchanged. Everything below that depth remains intact despite years of repeated use. The same applies to an undertaking such as the IBR project. Exemptions for previously disturbed areas and determinations that there is “no or minimal potential” to adversely affect sites of Tribal religious and

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<sup>9</sup> Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Fort Vancouver National Historic Site, Vancouver, WA; Correction, 76 Fed. Reg. 35013 (June 15, 2011). In fact, the bodies found during the I-5 construction were initially thought to be those of nine individuals; the number was later increased. *See* Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Fort Vancouver National Historic Site, Vancouver, WA, 74 Fed. Reg. 24874 (May 26, 2009).

cultural significance should be made by qualified archaeologists, not by federal agency staff or project managers who may not have proper training.

The Program Comment indicates that if it is determined “through consultation with *Indian Tribes* ... or otherwise that a proposed *undertaking* covered in this Program Comment could potentially result in an *effect*” on sites with “traditional religious and cultural significant to an *Indian Tribe* ...,” that the federal agency may not use the Program Comment but instead must follow the standard Section 106 review process set out in the regulations.<sup>10</sup> This approach sets up a convoluted process to opt out of the Program Comment and puts the burden on Tribes to show that there could be an effect. It also is entirely unclear what kind and what extent of consultation would be required, which Tribes would be consulted, and how this would fit in with the usual Tribal consultation process required under Section 106, or existing programmatic agreements, like those with the FHWA, Washington Department of Transportation, and all the Tribes in Washington State. In fact, it would appear that the Program Comment would violate the existing agreement that applies to transportation undertakings in Washington State – which was carefully negotiated with all the Washington Tribes and has been effective in streamlining transportation projects, including projects like the IBR.

In addition to concerns about protecting religious and cultural resources, a blanket exemption for previously disturbed areas, particularly as drafted in the proposed Program Comment, may also be setting up federal projects for costly and lengthy delays – should Ancestral Remains or cultural artifacts ultimately be found, for example, where Section 106 compliance was not required for a bridge project because it exclusively affected previously disturbed ground. Given the Cowlitz Indian Tribe’s historical and modern presence in the footprint of the IBR project, the Tribe has serious concerns that the proposed Program Comment will effectively clear the way for further disturbance of the remains of Tribal Ancestors and may not have the desired effect of streamlining transportation and other federal climate-friendly projects. Application of this Program Comment to the IBR project could have disastrous consequences for the Cowlitz Indian Tribe, the local community, and the federal government, as occurred in 2004 at the Hood Canal Bridge graving dock project, which cost the project \$84 million in delays, and destroyed the exposed graves of Elwha Klallam Tribal Ancestors.<sup>11</sup>

No Section 106 Review for Undertakings in Previously Undisturbed Areas If a “Qualified Authority” Determines the Activity Will Have No Adverse Effects on Tribal Sites/Artifacts

Appendix C-2 raises similar concerns, by providing that bridge work does not require further Section 106 review, even if it creates new ground disturbance, if a “qualified authority” makes a written determination that such activity will have no adverse effects on sites of Tribal religious and cultural significance.<sup>12</sup> Although this portion of the Program Comment would exempt a project from further Section 106 review only if there is a written determination by a “qualified authority,” the definitions of “qualified authority” and “relevant Indian Tribe” are vague and will not ensure that

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<sup>10</sup> See Proposed Program Comment at 7-8 (italics in original).

<sup>11</sup> See, e.g., <https://www.historylink.org/File/7344>.

<sup>12</sup> Proposed Program Comment, Appendix C-2 at 42.

adverse effects on significant Tribal religious and cultural resources will not occur. For example, a “qualified authority” is defined as a “qualified professional” meeting certain Secretary of the Interior standards, or “a person recognized by the relevant Indian Tribe ... to have expertise ... in identification, evaluation, assessment ... and treatment of effects to historic properties of religious and cultural significance to their Indian Tribe.”<sup>13</sup> But the definition does not define or specify what is the “relevant Indian Tribe” for purposes of a federal undertaking. In the case of the IBR project, there are multiple Indian Tribes in Washington and Oregon that have some connection to the area surrounding the project. The Cowlitz Indian Tribe has both historical and modern connections to the area where the IBR project is being undertaken, and the Cowlitz Reservation is closest to the IBR project site -- but the Program Comment does not provide any criteria or even guidance for how a federal agency would determine which Tribe (or Tribes) will be considered “relevant” for purposes of identifying a qualified authority (who in turn would determine if the project would have adverse effects on any Tribal religious or cultural resources).

Nor does the proposed Program Comment specify who at the relevant Indian Tribe would constitute a qualified professional. The proposed Program Comment references the Secretary of the Interior’s Professional Qualifications Standards, but this document does not directly discuss knowledge of Tribes and their cultures and practices. Further, the webpage for the Professional Qualifications Standards on the Department of the Interior website specifically states that “[t]he Standards are not designed to identify the best or ideal person for any position.”<sup>14</sup> If the ACHP intends to rely on these definitions in the Program Comment, it needs to include more specific criteria for determining who is properly considered a qualified authority (and which is the relevant Tribe). These criteria are crucial in determining which Tribe and what officials will play a role in assessing whether Section 106 compliance is needed, and ultimately, what protections will be in place for Tribal traditional and cultural sites impacted by federal projects. In the case of the IBR project, Cowlitz is very concerned about the potential for adverse effects to its religious and cultural resources, without proper consultation.

## ***Conclusion***

The Cowlitz Indian Tribe appreciates the Council’s efforts in developing the proposed Program Comment, but the Tribe has serious concerns that the proposed Program Comment, as written, will not adequately protect Tribal religious and cultural resources. In the context of the IBR project, this approach could have devastating consequences for the Tribe, the federal government, and the local community, destroying the remains of Tribal Ancestors and resulting in millions of dollars of delays. The Tribe respectfully requests that the ACHP consider the Tribe’s comments and suggestions and make them part of the record for the proposed Program Comment, and further requests that ACHP not move forward with this Program Comment until these concerns are addressed. If you have further questions about any of these comments, please feel free to contact me or James Gordon,

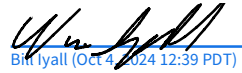
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<sup>13</sup> Proposed Program Comment at 18.

<sup>14</sup> See <https://www.doi.gov/pam/asset-management/historic-preservation/PQS>.

the Cowlitz Tribal Historic Preservation Officer, at (360) 957-3004 and [jgordon@cowlitz.org](mailto:jgordon@cowlitz.org). Thank you for your consideration.

Sincerely,

  
B. Iyall (Oct 4, 2024 12:39 PDT)

William Iyall, Chairman  
Cowlitz Indian Tribe



Outlook

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**[External] Comments of the Miami Tribe of Oklahoma on the ACCC Program Comment**

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**From** Logan York <lyork@miamination.com>**Date** Wed 25-Sep-24 11:59 AM**To** Program Alternatives <program\_alternatives@achp.gov>

2 attachments (581 KB)

ACCCProgramComment.DRAFT 8.8.24.pdf; MTOK Inadvertent Discovery Policy (5) 1 1.pdf;

aya,

Please find attached my comments on this Program Comment and our standard Inadvertent Discovery Plan. As it is written the Miami Tribe of Oklahoma objects to the entire Programmatic Comment and requests further consultation on this PC.

kikwehsitoole, 'respectfully,'

Logan York  
Tribal Historic Preservation Officer  
Miami Tribe of Oklahoma  
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Lyork@miamination.com  
[Book time with Logan York](#)

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**DRAFT 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], on its own initiative 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 infrastructure-related* activities.

## **I. INTRODUCTION**

### **A. Background**

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 use and greenhouse gas emissions, improve climate resilience, 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 these needs, in 2023, the ACHP adopted its Housing and Historic Preservation Policy Statement (Housing Policy Statement) and its Climate Change and Historic Preservation Policy Statement (Climate Change Policy Statement), which commit the ACHP to explore new opportunities to use program alternatives to enable federal agencies to advance historic preservation while meeting the nation’s housing and climate goals. These policy statements reflect increasing public awareness that historic preservation strategies — and historic properties themselves — can play an important role in addressing the three interrelated sectors covered in this Program Comment.

Following these policy statements, the ACHP developed this government-wide Program Comment to help accelerate the review of projects carried out, permitted, licensed, funded, assisted, or approved by federal agencies 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 develop new climate-friendly transportation infrastructure.

### **B. Current Federal Agency Action**

Every day, federal agencies propose to carry out, permit, license, fund, assist, or approve undertakings covered by this Program Comment, and when they do, they must comply with Section 106 of the National Historic Preservation Act. While the federal government’s role in supporting housing rehabilitation and production, climate-smart buildings, and climate-friendly transportation is difficult to quantify, an overview of current federal agency actions and investments offers insight into the scope and scale of undertakings covered by this Program Comment.

In the area of housing, federal agencies support housing for millions of Americans and preserve the viability and affordability, upgrade the energy efficiency, and enhance the climate resiliency of the nation’s housing stock. The Department of Housing and Urban Development (HUD), for example, supports 1 million housing units across 190,000 public housing buildings, with HUD spending nearly \$9 billion annually in capital and operating funds on these units, over half of which were



## Summary of Comments on ACCCProgramComment.DRAFT 8.8.24.pdf

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built before 1975. HUD also provides billions annually through the Community Development Block Grant and HOME Investments Partnership programs. In addition, the Department of Defense provides over one million units to Military Service members, including 846,000 units in military-owned barracks, while the Rural Housing Service of the Department of Agriculture provides loans to support affordable multifamily developments in rural areas and currently has over 400,000 units in its portfolio, including 17,000 units that support farm laborers. Thousands of projects are funded by other federal agencies working to ensure all Americans have safe, habitable, and affordable housing.

In the area of climate-smart buildings, federal agencies have long undertaken projects that seek to reduce energy cost burdens, cut climate pollution, and boost climate resilience of the nation's building stock. The Inflation Reduction Act — the largest climate bill in history — and the Bipartisan Infrastructure Law have accelerated these efforts. The Environmental Protection Agency \$27 billion Greenhouse Gas Reduction Fund, for example, finances zero emissions building projects and clean technology deployment nationally, including in low-income and disadvantaged communities. The Climate Smart Buildings Initiative is catalyzing more than \$8 billion of private sector investments by 2030 to perform energy efficiency upgrades in federal buildings. The \$1 billion HUD Green and Resilient Retrofit Program invests in energy efficiency, electrification, clean energy generation, climate resilience, and low-embodied-carbon materials in HUD-assisted multifamily housing. And the Department of Energy Efficiency and Conservation Block Grant Program is assisting states, local governments, and Tribes in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency, including for residential and commercial buildings.

In the area of climate-friendly transportation, the federal government's project portfolio — from sidewalks and bike lanes, to bus shelters and light rail — spans multiple Department of Transportation operating administrations as well as other federal agencies, including those that might fund such projects (such as HUD and the Environmental Protection Agency) or build such projects (such as the Department of Agriculture and the Department of Interior). Through the Bipartisan Infrastructure Law and other recent actions, the federal government is currently making significant investments to reduce greenhouse gas emissions and bolster the resilience of America's transportation infrastructure. This includes \$91 billion over five years for public transportation projects, including for transit accessibility, transit-oriented development, and expanded transit service. It also includes \$66 billion to improve the nation's rail systems, representing the largest investment in passenger rail since the creation of Amtrak, and additional funding for pedestrian and bike infrastructure, recreational trails, Safe Routes to School, and more. Other funding includes billions \$7.5 billion over five years for electric vehicle charging infrastructure, \$8.7 billion over five years for transportation infrastructure resilience, and \$2 billion to reduce the lifecycle emissions of transportation construction projects by investing in materials with lower levels of embodied carbon emissions compared to industry averages.

Many types of activities relating to these and other federal agency programs and investments require Section 106 review.

### **C. Prior ACHP Action**

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

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In its advising capacity, the ACHP has formally advised the President, Congress, and state and local governments on housing since at least 1995, when it issued its first policy statement on affordable housing. It updated this policy statement in 2006, and again in 2023. The Housing Policy Statement states that Section 106 reviews must “be grounded in a flexible yet consistent approach to ensure that housing can be developed expeditiously while still preserving the historic qualities of affected historic properties.” Also in 2023, the ACHP advised on climate change and historic preservation through its Climate Change Policy Statement. It urges action on building reuse and energy-and-emissions-saving retrofits of older and historic buildings (including enhanced electrification and increased energy efficiency standards). It also supports expediting Section 106 review of projects<sup>1</sup> addressing climate change, including clean energy and climate-friendly transportation projects.


In its oversight of the Section 106 process, the ACHP has also issued or participated in other program alternatives to create tailored review processes for certain programs and undertakings relevant to this Program Comment. At the request of Department of Defense, for example, the ACHP has issued six program comments specifically related to housing, which cover housing developed under specific congressionally appropriated programs, housing constructed during specific eras, and housing designed and built with similar form, style, and materials. The ACHP has also recently been a signatory to several statewide programmatic agreements with HUD related to projects and programs subject to 24 C.F.R. Parts 50 and 58. Prior program comments addressing housing have reduced the operational and maintenance costs of historic housing, made homes more comfortable for occupants, and facilitated the preservation and reuse of existing buildings.

With regard to climate-smart buildings, ACHP has issued several program comments, along with an exemption for the General Services Administration’s routine operations and maintenance. The ACHP has also signed a Department of Energy Prototype Programmatic Agreement for weatherization activities and a Nationwide Programmatic Agreement Regarding Climate Resiliency and Sustainability Undertakings on Department of Homeland Security Owned Facilities, which cover a broad range of energy efficiency, water efficiency, and climate adaptation-related undertakings. Prior program alternatives incorporating climate-smart building strategies have reduced the operational and maintenance costs of historic buildings, made such buildings more comfortable for occupants, and facilitated the preservation and reuse of historic buildings.

With regard to climate-friendly transportation, the ACHP has issued two program comments specifically related to transportation projects, along with a government-wide exemption for certain electric vehicle supply equipment. In addition, the ACHP has been a signatory to statewide programmatic agreements with the Federal Highway Administration, state historic preservation<sup>2</sup> offices, and state departments of transportation, covering a range of transportation-related activities. To the extent prior program alternatives have addressed climate-friendly transportation projects, they have facilitated such projects while upholding historic preservation values.


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 the scope of these prior program alternatives, this Program Comment creates a consistent and holistic approach for Section 106 review across the federal government for certain undertakings, reducing complexity and equipping federal agencies to more effectively and efficiently address the nation’s needs.

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 1:59:32 PM

These projects, which I agree should happen should not come at the expense of Historic preservation. Just because it is improving climate sustainability does not mean that the shovel won't destroy archaeological sites, graves, and or Mounds etc.

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 2:00:18 PM

Tribes are notably absent from this list.

#### **D. Justification**

Many types of activities relating to the programs identified in Section I.B. of this Program Comment, and other similar programs, require review under Section 106 of the National Historic Preservation Act. Recognizing the extent, and in some cases the increasing extent, of federal action in the housing, building, and transportation sectors, and the volume and repetitive nature of such action, the ACHP has issued this Program Comment to clarify preferred approaches to reviewing these covered undertakings. In doing so, this Program Comment enables federal agencies to 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 preparation of buildings to be climate-resilient, and the reduction of energy use and greenhouse gas emissions in the building and transportation sectors.

#### **E. Goals**

This Program Comment aims to promote actions that, consistent with the National Historic Preservation Act, 54 U.S.C. § 300101(1), “foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.”

More specifically, this Program Comment aims to achieve objectives laid out in ACHP policy statements, to advance historic preservation goals, and to help satisfy the nation’s pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation. It does so in recognition of three critical facts: that the United States has an aging housing stock, with half of existing housing units built before 1979; that more than a third of greenhouse emissions comes from the building sector, and buildings use 75% of the electricity generated annually; and that transportation sector is the largest source of greenhouse gas emissions in the United States, responsible for about one-third of all emissions.

This Program Comment also aims to leverage the embodied carbon in existing buildings and other built infrastructure by facilitating reuse and thereby avoiding the need for new construction and for construction materials that currently account for more than 15 percent of annual global greenhouse gas emissions, and in turn slowing down climate change and its impacts on our most cherished places.

Ultimately, this Program Comment aims to benefit the people who live in the housing, work in the buildings, and move using the climate-friendly transportation infrastructure projects being carried out, permitted, licensed, funded, assisted, or approved by federal agencies.

## **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 covered *undertakings*. The Program Comment also provides the ACHP a reasonable opportunity to comment regarding covered *undertakings*.

This page contains no comments

## **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* must either:

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 *federal 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*.

A *federal agency* that already has a Section 106 program comment or program comments in effect for covered *undertakings* must 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 propose to the ACHP amendments to existing program comments following the amendment procedures in those program comments, to incorporate, in whole or in part, the terms of this Program Comment.

## **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*, *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 must ensure notice on such authorization is included on the website of the ACHP. The *Indian Tribe*, *Tribal historic preservation officer*, or designated representative of the *Indian Tribe* may terminate the *Indian Tribe's* 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*.



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### E. Standard Section 106 Review

A *federal agency* must 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 agreement or program alternative, if:

1. The *federal agency* elects, for any reason, not to utilize this Program Comment for an *undertaking* for which alternative compliance approaches are prescribed in Section III of this Program Comment.
2. The *undertaking* or components of an *undertaking* that include activities not listed in the Appendices, meaning the undertaking would be subject to the Section 106 review process, but the *federal agency* could incorporate use of this Program Comment in its review of the entire *undertaking*.
3. The *undertaking* would occur on or have the potential to affect the following *historic properties*:<sup>1</sup>



- 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 a *National Historic Landmark* 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* and *Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*.


## 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* for which 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 those Appendices, and it documents the manner in which it has satisfied such conditions, exclusions, or requirements.

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 2:26:17 PM

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How could agencies possibly know if an undertaking has the potential to affect our sites beyond the regular 106 process?

## B. Consultation with Indian Tribes and Native Hawaiian Organizations

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. The ACHP drafted this Program Comment with a commitment to strengthening the government-to-government relationship between the United States and *Indian Tribes*.

### 1. Potential Effects on Properties of Significance to Indian Tribes and Native Hawaiian Organizations

It is important to recognize that while this Program Comment was drafted to limit impacts on *historic properties*, such as sites with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, covered *undertakings* could directly or indirectly affect such properties.

### 2. Consultation-Related Obligations


If the *federal agency* based on the location of the *undertaking* and the *area of potential effects*, determines that an *effect* on the *historic properties* of religious and cultural significance to *Indian Tribes* or *Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, may occur, it must make a reasonable and good faith effort to identify potentially interested *Indian Tribes* and *Native Hawaiian Organizations* and invite them to consult to assess whether use of the Program Comment for the subject undertaking is appropriate. The *federal agency's* consultation effort should be informed by and be conducted in accordance with the National Historic Preservation Act, the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects, including by recognizing the special expertise of holders of Indigenous Knowledge.

The *federal agency's* effort to identify potentially interested *Indian Tribes* and *Native Hawaiian Organizations* should be informed by, but not limited to the following: the knowledge and expertise of agency Tribal liaison staff, historic maps, information gathered from previous consultations pursuant to Section 106, databases of *Indian Tribes* and *Native Hawaiian Organizations* where accessible and appropriate, the Bureau of Indian Affairs Tribal Leader List, U.S. Department of the 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, *state historic preservation officer* databases, and other resources.

### 3. Effect of Finding of Potential Effect on Certain Properties


Should it be determined through consultation with *Indian Tribes* or *Native Hawaiian Organizations* or otherwise that a proposed *undertaking* 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

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 Number: 1 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:36:45 PM


Yet this was only provided to us during the public comment period. Despite our unique political situation. Tribal Governments are not the general public and should not be treated as such.

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 Number: 2 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:38:44 PM


How could a Federal Agency determine whether an undertaking would effect one of our sites when they often do not even know that they are there, do not know the significant of them or as just happened to us very recently reject that a site is significant at all.

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 Number: 3 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:39:24 PM

Reasonable and good faith both should be defined.

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 Number: 4 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:50:41 PM

how will they reach this point if they do not know of any site and it is exempt from 106 per this agreement at an earlier stage?

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Tribal identified sacred site or a site identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, the *federal agency* may not use this Program Comment and must 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 agreement or program alternative.

#### 4. 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 and cultural significance to *Indian Tribes* or *Native Hawaiian Organizations*, Tribal identified sacred sites, and 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*. *Federal agencies* should clearly inform *Indian Tribes* and *Native Hawaiian Organizations* of any limitations on the agency's ability to keep sensitive information confidential. *Federal agencies* 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. *Federal agencies* are encouraged to use best practices on confidentiality delineated in the 2023 Interagency Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites when implementing this Program Comment.

### C. The Use of Qualified Authorities


*Undertakings* covered by this Program Comment do not require the use of a *qualified authority*<sup>1</sup> 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<sup>2</sup> 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 the Tribe 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*. As another example, determinations regarding architectural resources and structures must be made by a *qualified professional* meeting such professional standards for historic architecture or architectural history established by the Secretary of the Interior.

### D. Determinations of Eligibility


*Undertakings* covered by this Program Comment, due to their nature and potential *effects*, do not require a *federal agency*<sup>3</sup> to determine whether an involved or affected property is a *historic property* except where explicitly stated.

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 Number: 1 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:54:42 PM


I absolutely object to this. If a project has any potential to effect a Historic property or sacred place or there is any ground disturbance whatsoever a Qualified Authority must be the one to make that call.

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 Number: 2 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:57:02 PM

They should not have the opportunity to choose to use a QA. Why if they are worried about time or funding would any agency choose to do that? Unless they themselves are interested in preservation.

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 Number: 3 Author: Logan York Subject: Sticky Note Date: 9/19/2024 2:57:40 PM

I object to this determination strategy.

#### 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 the activities listed in the preceding sentence in connection with this Program Comment, the *federal agency* or its applicant, grantee, or permittee, if applicable, must 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:

- 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. Monitor ground disturbing activities or *federal agency* treatment of unanticipated discoveries.
- I. 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* or its applicant, grantee, or permittee, if applicable, must consider entering into an arrangement, in accordance with this Section, with any *Indian Tribe* or *Native Hawaiian Organization* making such a request.



This page contains no comments

## V. UNANTICIPATED DISCOVERIES



### A. Immediate Response Requirements

If previously unidentified *historic properties* or unanticipated *effects*, including visual, audible, atmospheric, and cumulative *effects*, to *historic properties* are discovered during implementation of the *undertaking*, the *federal agency* must 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 *federal agency* must then follow the procedures set forth in 36 C.F.R. § 800.13(b); for sites with potential religious and cultural significance to *Indian Tribes* or *Native Hawaiian* organizations, the *federal agency* must request, and incorporate, if provided, the special expertise of Tribes or *Native Hawaiian Organizations* and the information provided by designated holders of Indigenous Knowledge and must follow those procedures accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation, and for sites involving burial sites, human remains, or funerary objects, the *federal agency* must follow these procedures in accordance with 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* should follow such existing procedures.

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


The *federal agency* must 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 must cease, the area must be secured, and the *federal agency's* authorized official, local law enforcement, and coroner/medical examiner in accordance with any applicable state statute(s) must be immediately contacted. The *federal agency* must be guided by the principles within the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects. The *federal agency* must 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. DISPUTE RESOLUTION


Any person may file a dispute over the implementation of this Program Comment or its use for any particular *undertaking*, by filing a notice with the relevant *federal agency*, including the *federal agency's* federal preservation officer, with a copy to the consulting parties involved in the *undertaking* and any relevant *Tribal historic preservation officer* or *state historic preservation officer*. Objecting parties may include but are not limited to *Indian Tribes*, *Tribal historic preservation officers*, *state historic preservation officers*, *Native Hawaiian Organizations*, local governments, preservation organizations, owners of historic properties, and members of the public. The *federal agency* must consult with the objecting party to resolve the dispute for not more than 60 *days*. Any disputes over the evaluation of unanticipated discoveries must 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

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 2:59:29 PM  
I will attach our standard recommended Inadvertent Discoveries plan.

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:00:51 PM  
100 is the standard minimum distance for projects. Often 100 meters is asked.

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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* must notify the objecting party and any relevant *Tribal historic preservation officer* or *state historic preservation officer* 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.

The ACHP must 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*.

## **VII. 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 IX 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.

## **VIII. AMENDMENT**

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 must notify *federal agencies* and publish notice in the Federal Register regarding such amendment within 30 *days* after its issuance.

### **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 must notify *federal agencies* and 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 Sections VIII.A. or VIII.B. of this Program Comment will be subject to ACHP membership approval.

This page contains no comments

## IX. WITHDRAWAL

If the ACHP determines<sup>1</sup> that the consideration of *historic properties* is not being carried out in a manner consistent with this Program Comment, the ACHP may withdraw this Program Comment. The Chair of the ACHP must then notify *federal agencies* and 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* must 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 another applicable agreement or program alternative for individual *undertakings* covered by this Program Comment.

## X. REPORTS AND MEETINGS

### A. Federal Agency Annual Reports


The *federal agencies* that use this Program Comment must provide annual reports regarding the use of this Program Comment during the previous reporting period, ending June 30 annually, to the ACHP, as provided in this Section. Each agency's annual report must: 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.; identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; include an assessment of the overall effectiveness of the Program Comment in meeting its intent; and summarize professional assistance and compliance monitoring activities. Annual reports are due on September 30 of each year, starting September 30, 2025 and ending September 30, 2029.

For the remaining duration of this Program Comment, the *federal agencies* that use this Program Comment must provide reports regarding the use of this Program Comment during the previous reporting period, ending June 30 triennially, to the ACHP, as provided in this Section. Each agency's triennial report must be submitted either as part of *federal agencies'* report to the ACHP pursuant to Executive Order (EO) 13287, "Preserve America," or, for *federal agencies* not otherwise required to submit such report to the ACHP, as a stand-alone triennial report. Each agency's triennial report must: identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future; and include an assessment of the overall effectiveness of the Program Comment in meeting its intent. Triennial reports are due on September 30 of every third year, starting September 30, 2032.

In any report required by this Section, the ACHP encourages *federal agencies* to also propose for ACHP consideration amendments and refinements to this Program Comment based on their experience implementing it.

In any report required by this Section, a *federal agency* must 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.

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:15:38 PM


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Would the ACHP be open to other entities such as tribes submitting that consideration is not being carried out in a proper manner.

## B. Annual Meetings

By January 31, 2026 and for four years thereafter, the ACHP must 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. At the meeting, attendees will have an opportunity to provide their views on the overall effectiveness of the Program Comment in meeting its intent and purpose. Such views 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, and every three years thereafter, ACHP staff must provide a written or  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. <sup>1</sup>

## XI. DEFINITIONS

For purposes of this Program Comment, the following definitions apply, and beginning in Section II of this Program Comment, such words are *italicized* for convenience:

*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 that has been designated by striping, signage, and pavement markings for the exclusive use by and increased safety of bicyclists.


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

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

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



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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:18:10 PM  
I believe a written summary should always be used rather than Oral for any who cannot make the meeting.

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*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 mobile and manufactured homes and *climate-friendly transportation facilities* that are *buildings*.

*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, Underwriters Laboratories 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* that qualify the *historic property* for inclusion in 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, geothermal systems, and microgrids serving a *building* or *buildings*, or serving a *climate-friendly transportation facility*.

*Climate-friendly transportation infrastructure* means pedestrian, bicycle, *micromobility vehicle*, bus (including bus rapid transit), and rail infrastructure.

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

*Climate-smart building* means a *building* that is energy efficient, electric, uses clean energy, and is resilient.

*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.

*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, “How to Complete the National Register Registration Form,” 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 bicycle facility that is physically separated from motor vehicle traffic, distinct from the sidewalk, and for the exclusive use of bicyclists.

This page contains no comments

*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 the *replacement* or conversion of an energy-consuming device or system from non-electric sources of energy to electricity; or the *replacement* or conversion of an inefficient electric appliance to an efficient electric appliance.


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

*Emergency situation* means any of the following: occurrence of a natural catastrophe, 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.


*EVSE criteria* means (1) take place in existing *parking facilities* with no new<sup>1</sup> electrical infrastructure modifications and are located as close<sup>2</sup> to an existing electrical service panel as practicable; (2) use reversible, minimally invasive<sup>3</sup>, non-permanent techniques to affix the infrastructure; (3) minimize *ground disturbance*<sup>4</sup> to the maximum extent possible, and ensure that it does not exceed previous levels of documented *ground disturbance*; (4) use the *lowest profile equipment* reasonably available that provides the necessary charging capacity; (5) place the *EVSE* in a minimally visibly intrusive area; and (6) use colors complementary to surrounding environment, where possible.

*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.


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 Number: 1      Author: Logan York    Subject: Sticky Note    Date: 9/19/2024 3:19:52 PM  
Major modifications should be defined.

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 Number: 2      Author: Logan York    Subject: Sticky Note    Date: 9/19/2024 3:20:06 PM  
How close works?

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 Number: 3      Author: Logan York    Subject: Sticky Note    Date: 9/19/2024 3:21:19 PM  
any new ground disturbance should not be exempt even in previously "disturbed" soils that have not been surveyed. I cannot count the amount of "disturbed" areas I have found intact sites in including burials.

*Flex post* means flexible bollards or delineators used to separate motor vehicle traffic from a *bicycle lane*, *protected bicycle lane*, or *cycle track*, 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 ground surface materials*, 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 other ecosystem services and nature-based solutions used to treat stormwater as close to the source as possible and improve resiliency.

*Greenhouse gas* 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, gravel surface or base, 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 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 *historic properties*.

*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.

*Housing* means any *building* containing one or more dwelling units, including but not limited to multi-unit apartment *buildings*, single-family homes, administrative and employee dwelling units, and recreation residences, in a variety of *building* types and configurations, including but not

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:22:25 PM

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I object to having this blanket statement. Often times something will be assumed to be disturbed. That does not make it true.

limited to *buildings* served by an elevator or elevators, “walk-up” *buildings*, rowhouses, semi-detached homes, mobile and manufactured homes, and freestanding homes.

*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.

*Lowest profile equipment* means EVSE that is the smallest height and width possible that meets the EV charging needs.

*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 e-bicycles and 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.

*Minimally visibly intrusive* means that the EVSE is partially visible but does not detract from the views from or to historic properties.


*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.

*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*, as provided in 36 C.F.R. § 800.16(s)(2), means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.



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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:24:15 PM

I would not phrase this the way it is. Federal recognition is simply the Federal Government recognizing the Sovereignty of Tribal Nations. Not statuses as "Indians".

*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*.

*Parking facilities* mean buildings, structures, land, rights-of-way, facilities, or areas used for parking of motor vehicles.

*Permeable ground surface materials* means permeable pavement, permeable pavers, porous flexible pavement, or other material or system that provides a hard surface, while allowing water to flow through to the underlying soils instead of into the storm sewer.

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

*Previously disturbed ground* means soils <sup>[1]</sup>likely to possess intact and distinct soil horizons and have a 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* <sup>[2]</sup>means areas where previous construction or other activities have physically altered soils <sup>[3]</sup>within the three-dimensional *area of potential effects* to the point where there is likely 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 façade* means the exterior façade of a *building* which serves as the front or the major entry point of the *building*, provided that a determination of the *primary façade* depends on a variety of factors, and one *building* may have more than one *primary façade*.

*Primary right-of-way* means the corridor, open to the public for transportation purposes, from which a person may best view the *primary façade* of a *building* or, if the *primary façade* is not visible from the public *right-of-way*, the corridor nearest the façade through which people enter the *building*.


*Primary space* means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other space that contains a *character-defining feature* of a *historic building* or historic *climate-friendly transportation facility*.

*Protected bicycle lane* means a bicycle facility that is physically separated from motor vehicle traffic and is distinct from the sidewalk for the exclusive use by and increased safety of bicyclists.


*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 *Indian Tribe* 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.

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:25:34 PM  
I do not like this definition. It should be redone.

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:26:47 PM  
I have worked in "Previously disturbed" rights of way with whole villages completely intact including burials. Unless it is proven to be disturbed and to not have any risk of burials I do not agree with this as an exemption.

*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, 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, American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets, National Association of City Transportation Officials (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 *historic properties*, including properties with traditional religious and cultural significance to one or more *Indian Tribes* or *Native Hawaiian Organizations*, are known to exist within an *area of potential effects*.

*Reduce energy use or greenhouse gas emissions* means to take an action that: lessens either the amount of energy used or *greenhouse gas* emitted to perform the same task or produce the same result; replaces an energy production source reliant on fossil fuels with a clean energy technology or upgrades a clean energy technology; or achieves *electrification*.

*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,

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durability of materials, and sound professional judgment (including architectural, archaeological, or engineering judgment).

*Transit* means mass transportation by a conveyance (including a bus, railcar, locomotive, trolley car, or light rail vehicle) that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.

*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 *Indian 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.

*Zero emissions building* means a *building* that is highly energy efficient, does not emit *greenhouse gases* directly from energy use, and is powered solely by clean energy, as further defined in the National Definition of a Zero Emissions Building.

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## 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<sup>1</sup> to or on the same lot as *housing*:

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, replacing such surfaces with *permeable ground surface materials*, and reducing surface size, but not changing vertical alignment or expanding surface size.

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 not *buildings*.

iii. Fencing<sup>2</sup>, but not *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 or walkways, or in park and playground areas, and including relamping and rewiring, but not including *replacement* or removal of lighting that is a *character-defining feature* of a *historic property*.

vi. Water feature, such as decorative fountains, including *repairing*<sup>3</sup>, but not *replacement* or removal of a water feature that is a *character-defining feature* of a *historic property*.

vii. Curb, gutter, steps, ramp, and retaining wall, but not a retaining wall that is a *character-defining feature* of a *historic property*.

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, shrubs, other plants, and trees.

ii. Planting of grass, shrubs, and other plants, and xeriscaping.

iii. *Replacement*<sup>4</sup> of a tree in its existing location and planting of a new tree within 40 feet of the *building*.

iv. Removal<sup>5</sup> of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.



- 
-  Number: 1 Author: Logan York Subject: Sticky Note Date: 9/19/2024 3:29:15 PM  
What do adjacent lots have to do with exemption? Just because a EVSE is going in a lot should not exempt a adjacent lot from anything. I object to this as it is written.
- 
-  Number: 2 Author: Logan York Subject: Sticky Note Date: 9/19/2024 3:30:47 PM  
Fencing can cause quite a bit of ground disturbance and should not be exempt Unless it is in-kind Replacement.
- 
-  Number: 3 Author: Logan York Subject: Sticky Note Date: 9/19/2024 3:31:33 PM  
Depending on how far plumbing goes and when it was done this could involve lots of ground disturbance and should not be exempt.
- 
-  Number: 4 Author: Logan York Subject: Sticky Note Date: 9/19/2024 3:33:27 PM  
I think the way that the previous tree is extracted or left in place should be defined for this exemption. Ripping a tree out of the ground disturbs quite a bit but under this would be exempt.
- 
-  Number: 5 Author: Logan York Subject: Sticky Note Date: 9/19/2024 3:33:42 PM  
The mode of removal must be defined.
-

v. Removal<sup>1</sup> of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.

vi. Maintenance, repair, rehabilitation, replacement<sup>2</sup>, and installation of green infrastructure either in previously disturbed ground, in areas within 10<sup>3</sup> feet of existing paved areas, or in areas within 10 feet of the building.

d. Maintenance, repair, rehabilitation, replacement<sup>4</sup>, and removal of the following elements serving housing, provided such activity exclusively affects previously disturbed ground or creates 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, monopole utility structures placed in auger holes, or other miscellaneous hardware.

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

iii. Vault toilets.

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

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 or near the exterior of housing:

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

i. Doors, including insulated exterior doors and basement bulkhead 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; 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 systems and fire alarm, fire suppression, and security systems and equipment.


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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:33:52 PM  
The mode of removal must be defined.


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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:34:05 PM  
In-kind replacement.

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 Number: 3      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:34:32 PM  
unless they are proven to be disturbed areas I object to these exemptions.

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 Number: 4      Author: Logan York   Subject: Sticky Note   Date: 9/19/2024 3:34:40 PM  
In-kind

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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. Chimneys.

xii. Vents, such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, or frieze board vents.

xiii. Siding.

xiv. Energy and water metering devices.

b. *Maintenance, repair, and in-kind replacement* activities on any *building*, 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, installation* and removal of any of the following elements on or near a *building*, provided that such activity exclusively affects *previously disturbed ground* or creates 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, monopole utility structures placed in auger holes, and other miscellaneous hardware.

ii. Below-ground utilities, including underground water, sewer, electric, telecommunication, 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.

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 11:39:00 AM  
This should not qualify as it does not mean that there is no intact sites there.

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 11:39:27 AM  
In-Kind

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 Number: 3      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 11:41:04 AM  
I would only accept this if those below ground Utilities had a Survey that cleared them. We do not know what they have disturbed or what they almost disturbed that new ground work would affect.

e. *Rehabilitation, replacement<sup>2</sup>, and installation of clean energy technologies, provided<sup>1</sup> that:*

i. Such technology is located either outside the boundaries of a *historic district*, or on the non-primary façade side of historic *housing*, 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 *housing*, or in the case of a *community solar system*, in a lot within two blocks or two thousand feet (whichever is longer) of the *housing* served;

ii. Such activity exclusively affects *previously disturbed ground* or creates 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 *primary 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, repair, or in-kind replacement of clean energy technologies.*

g. *Abatement of hazardous materials* where *effects* of the *abatement* are reversible or temporary or not 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 historic *housing* or *housing* whose eligibility for inclusion in the National Register 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 *housing*, and do not result in physical changes visible from the *primary right-of-way*:


a. *Maintenance, repair, rehabilitation, replacement, and installation, and abatement of hazardous materials*, that take place entirely within the interior of the *housing* and: in an individual *housing* unit; in any interior location of *housing* less than 45 years old and not known after a *records check* to be a *historic property*; on *housing* the *federal agency* or another *federal agency* has determined to be not a *historic property* within the preceding ten years; or in any interior space within historic *housing* that is not a *primary space*. Example activities covered by this Section 3.a. include: 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 systems* and 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. *Rehabilitation, replacement and installation* of any of the following elements, in any location other than the locations identified in Section 3.a. of this Appendix, if such activity does not result

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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 11:45:53 AM  
How will this clean tech project know whether there are sites of concern from tribes or archaeologists if they start out as exempt?

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 11:44:45 AM  
in kind

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in physical changes visible from the *primary right-of-way* and has no visual *effect* on the *primary spaces* of historic *housing*:

- 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; and fire alarm, fire suppression, and security systems and equipment.
  - 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.
  - xi. 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 installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
  - xii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials* and can be installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.
  - xiii. Caulk, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- c. *Maintenance, repair, and in-kind replacement* of any of the elements listed in Section 3.b., any *building* element, any improvement that addresses the requirements of the Americans with Disabilities Act, and any cosmetic or decorative features of the *housing*.
- d. *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



This page contains no comments

from the *primary right-of-way* and will not result in interior reconfigurations to *primary spaces* or removal of *historic building materials* in *primary spaces*.

e. *Abatement of hazardous materials* where *effects* of the *abatement* are reversible or temporary or not 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 historic *housing* or *housing* whose eligibility for inclusion in the National Register is not known; or windows 45 years or older.

#### 4. Emergency Work

The following activities related to the exterior or interior of any historic *housing* 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 historic *housing* 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*.
- e. *Replacement* and demolition of a deteriorated or damaged mobile or manufactured home.

#### 5. Other Activities

The following activities do not require Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies of *housing*.
- 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 *housing*, provided that any changes in use or access, or any physical activities related to the *maintenance, repair, rehabilitation, replacement, or installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- d. Transfer, lease, or sale of a federal government-owned *housing* from one *federal agency* to another *federal agency*, provided that any changes in use or access, or any physical activities related to the *maintenance, repair, rehabilitation, replacement, or installation* of such *housing* must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.
- e. Transfer, lease, or sale out of federal ownership or out of federal control of historic *housing*, provided there are adequate and legally enforceable restrictions or conditions (such as in a deed



Number: 1

Author: Logan York Subject: Sticky Note Date: 9/23/2024 11:47:38 AM

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This should be rephrased, as is it can be read as any improvement involving clean energy is exempt from 106 which I would loudly object to.

covenant) to ensure long-term preservation of the property's historic significance in accordance with 36 C.F.R. § 800.5(a)(2)(vii).

f. *Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment* satisfying the *EVSE* criteria.

This page contains no comments

## 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 <sup>1</sup> adjacent to *housing* or on the same lot as *housing*, after the satisfaction of the identified conditions, exclusions, or requirements:

a. <sup>2</sup> Replacement, installation, or removal <sup>3</sup> of any of the following elements which are either less than 45 years old and create new <sup>4</sup> ground disturbance in previously undisturbed soils, or 45 years or older; if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*; or if 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 of the elements listed in Sections 1.a. and 1.d. of Appendix A-1, including *character-defining features* of such elements.

ii. Test borings, soil sampling <sup>4</sup> well drilling, or perc tests more than eight inches in diameter, or that impact *ground surface materials* 45 years or older or known *historic properties*.

b. Planting of a new tree 40 feet or more from a *building* or replacement or installation of *green infrastructure* either in *previously disturbed ground*, in areas within 10 feet of existing <sup>5</sup> paved areas, or in areas within 10 feet of the *building*, if a *qualified authority* has made a written <sup>6</sup> determination that such planting will have no *adverse effects* on any *historic property*.

### 2. Work on the Building Exterior

The following activities <sup>6</sup> do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of *housing*, 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 a *historic property*; or *buildings* 45 years or older determined by a *qualified authority* to be a *historic property*, if a *qualified professional* makes a written determination that such *installation* or *replacement* will have no or minimal *adverse effects* on any *character-defining feature* of a *historic building*:

i. Any of the 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 elements on, or in the case of *clean energy technologies* near (as further provided below), a *building*, which create new *ground disturbance* on previously undisturbed ground, if a *qualified authority* makes a written determination that such activities will have no *adverse effects* on any *historic property*:


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

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 Number: 1 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:09:17 PM


I do not understand how being adjacent to housing would exempt a project from 106.

---

 Number: 2 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:11:23 PM

In- Kind

---

 Number: 3 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:14:18 PM


I object to this Phrasing. If it is creating new ground disturbance it needs to have a survey done. If it will be done solely in areas that are disturbed and have been proven to not contain archaeological deposits then that is fine.

---

 Number: 4 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:15:14 PM


These can all destroy sites, if they have not had a survey done, then they should not be exempt.

---

 Number: 5 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:16:54 PM

No area beyond previously disturbed areas should be exempt at any point no matter how close it is. Also the size of the tree being planted into account. a seed planting is no issue a 20 year old tree with 4 foot roots that would require a 5 foot by 3 foot hole would be completely unacceptable for exemption.

---


 Number: 6 Author: Logan York Subject: Sticky Note Date: 9/23/2024 1:17:53 PM

I object to this exemption wholly, based on current phrasing. Clean energy is something important that should be expanded however it should not come at the destruction of our history.

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 historic *housing* with in-kind or *substitute building materials* after the *federal agency*, with the assistance of a *qualified authority*, 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 feasibility* 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 feasibility* 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 does not ~~create~~  *ground disturbance*, creates *ground disturbance* exclusively on *previously disturbed ground*, or, in the opinion of a *qualified authority*, has no *adverse effects* on any *historic property*.

d. The *abatement of hazardous materials*, where such activity is irreversible or permanent or will be visible from the *primary right-of-way*, create new *ground disturbance*, or result in the permanent removal or *replacement* of: windows on the primary façade of a historic *building* or a *building* whose eligibility for inclusion in the National Register is not known; or windows 45 years or older, if a *qualified authority* makes a written determination that such activity will 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 *housing*, 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 right-of-way* or has a visual *effect* on the *primary spaces* of a historic *building*, if a *qualified authority* makes a written determination that such activity has no *adverse effects* on any *historic property*.



---

 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:20:03 PM

---

I still feel this should have at the very very least a desk survey ( better yet an actual survey) to make sure that nothing is being missed.

## 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 greenhouse gas emissions* of the *building* or to enhance *climate resilience* of the *building*:<sup>1</sup>










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*, and not including *replacement* or removal of any element that is a *character-defining feature* of a *historic property*:

- i. Fencing.<sup>2</sup>
- 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, shrubs, other plants, and trees.
- ii. Planting of any of the following that are native, naturalized, drought-adapted, drought-resistant, drought-tolerant, water-wise, or xeric: grass, shrubs, and other plants; and xeriscaping.
- iv. *Replacement* of a tree in its existing location and planting of a new tree within 40 feet of the *building*.<sup>4</sup>
- v. Removal of grass, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
- vi. Removal of rocks and debris,<sup>5</sup> but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.
- vii. *Maintenance, repair, rehabilitation, replacement,*<sup>7</sup> and *installation*<sup>6</sup> of *green infrastructure* either in *previously disturbed ground*<sup>8</sup> in areas within 10 feet of existing paved areas, or in areas within 10 feet of the *building*.<sup>9</sup>
- viii. Removal of concrete<sup>10</sup> asphalt ground surfaces or *replacement* of such surfaces with *permeable ground surface materials*.
- ix. The following activities conducted to address fire threats within 200 feet of a *building* or auxiliary structure:










- 
-  Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:24:44 PM  
I do not think being adjacent to a building effects the affect on a site.
- 
-  Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:22:09 PM  
Once again I object wholly to this exemption. The reasoning behind a project does not effect the damage it can cause and should not be a reason unless it is an emergency for exemption.
- 
-  Number: 3      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:23:38 PM  
Fencing if in previously disturbed soils and will go no further down is fine. However Fencing can be quite destructive to archaeological sites.
- 
-  Number: 4      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:26:21 PM  
A lot can change in 40 feet. if it is in the same location of a previous tree I do not see a problem with this. However that does not mean that there is not archaeology 40 feet away.
- 
-  Number: 5      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:26:43 PM  
Size and Depth should be defined.
- 
-  Number: 6      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:40:39 PM  
Does this include completely new instillation in areas outside of previously disturbed ground? If so then once again I object to this exemption.
- 
-  Number: 7      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:26:51 PM  
In kind
- 
-  Number: 8      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:27:11 PM  
I object to areas out of Previously disturbed ground.
- 
-  Number: 9      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:41:19 PM  
This is fine if it does not create new ground disturbance including foundations for these surfaces.
-

- a. Disposal of heavy accumulations of ground litter and debris.<sup>1</sup>
- b. Removal<sup>2</sup> of small conifers growing between mature trees, provided such activity exclusively affects *previously disturbed ground* or creates no new *ground disturbance*.
- d. Maintenance, repair, rehabilitation, replacement<sup>3</sup> and removal of the following elements, provided such activity exclusively affects *previously disturbed ground* or creates 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, monopole utility structures placed in auger<sup>4</sup> holes, and other miscellaneous hardware.
  - ii. Below-ground utilities, including underground water, sewer, electric, telecommunications, drainage improvements, septic systems, and leaching systems.
  - iii. Vault toilets.
- e. Test borings, soil sampling<sup>5</sup>, well drilling, or perc tests less than eight inches in diameter that do not impact *ground surface materials* 45 years or older or known historic properties.
- 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 or near<sup>6</sup> the exterior of a *building* and when they are conducted primarily to reduce<sup>7</sup> energy use or greenhouse gas emissions of the *building*, or to enhance the *climate resilience* of the *building*:

- a. Rehabilitation, replacement<sup>8</sup>, and installation of any of the following elements: on a *building* less than 45 years old and not known after a *records check* to be a *historic property*; on a *building* the *federal agency* or another *federal agency* has determined to not be a *historic property* within the preceding ten years; or on the non-*primary façade* of a *historic building* or on the non-*primary façade* of a *building* whose eligibility for inclusion in the National Register is not known and 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 systems and fire alarm, fire suppression, and security systems and equipment.
  - vi. Solar energy systems<sup>9</sup>.

- 
-  Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:43:33 PM  
As in dumping of litter and debris? I think it would really depend on the kind of Debris. If you are dumping whole trees that can gauge the ground then I do not think that should qualify. If it is simply small stones, leaf mould and small debris I do not see a issue.
- 
-  Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:44:03 PM  
If they are being cut at surface I do not see an issue. If they are being ripped up they should not qualify.
- 
-  Number: 3      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:44:22 PM  
In-kind
- 
-  Number: 4      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:44:53 PM  
Augur holes from previous poles are fine. New augur holes should not qualify.
- 
-  Number: 5      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:45:54 PM  
8 inches of boring could do a lot of damage underground. If a survey has not been through at all to determine what the situation is like I do not like this qualifying for exemption.
- 
-  Number: 6      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:46:34 PM  
Near should be defined and should also not count for exemption.
- 
-  Number: 7      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:46:55 PM  
The reasoning of a project has no bearing on the damage it can do.
- 
-  Number: 8      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:47:06 PM  
in-kind
- 
-  Number: 9      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:48:02 PM  
If they are going to cause new ground disturbance, it should not qualify. If it is going onto existing structures then that is fine.
-

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 <sup>1</sup> water metering devices.

b. *Maintenance, repair, and in-kind replacement* of the following elements on, or in the case of *clean energy technologies* <sup>2</sup> <sup>3</sup> (as further provided below), any *building*:

i. Any element listed in Section 2.a. of this Appendix.

ii. *Clean energy technologies* <sup>4</sup>.

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.

c. *Maintenance, repair, rehabilitation, replacement, installation*, and removal of any of the following elements on or near a *building*, provided that such activity exclusively affects *previously disturbed ground* or creates 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, monopole utility structures placed in augur holes, 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.

e. *Rehabilitation, replacement* <sup>5</sup>, and *installation of clean energy technologies*, 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 creates no new *ground disturbance*, and further provided that such activity does not result in physical changes visible from the *primary right-of-way*;


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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:48:27 PM  
If they are going to cause new ground disturbance, it should not qualify. If it is going onto existing structures then that is fine.


---

 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:49:18 PM  
The reasoning of a project has no bearing on the damage it can do.


---

 Number: 3      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:50:16 PM  
Near must be defined. The reasoning is not sufficient to exempt a project just because it is near a building.

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 Number: 4      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:50:43 PM  
This is not a reason to exempt a project from 106 consultation.

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 Number: 5      Author: Logan York   Subject: Comment on Text      Date: 9/23/2024 1:52:12 PM  
In- Kind

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iii. Notwithstanding Section 2.e.i. of this Appendix, a roof-mounted *solar energy system* may be visible from the *primary 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 greenhouse gas 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 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 installed and removed without damaging exterior walls, even if such insulation increases interior wall thickness.

ii. Spray foam, other than closed cell spray foam or extruded polystyrene, that does not directly touch *historic building materials*, and can be installed and removed without damaging exterior walls, 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 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.



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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/23/2024 1:56:30 PM

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While the Miami Tribe of Oklahoma does not generally object to projects that are above ground and generally not in buildings at that; from a cultural resource preservation standpoint this is an unacceptable reason to exempt a project wholly from the 106 process.

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. Other Activities

The following activities do not require 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 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 agreements or program alternatives.

d. *Maintenance, repair, rehabilitation, replacement, and installation of electric vehicle supply equipment* satisfying the *EVSE criteria*.

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## **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 greenhouse gas 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, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*; or if 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, unrestricted by any limiting conditions found in such Section.

ii. Any element listed in Section 1.d. of Appendix B-1, unrestricted by any limiting conditions found in such Section.

b. Planting of a new tree 40 feet or more from a *building*, or *replacement* or *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*, if a *qualified authority* makes a written determination that such planting will have no *adverse effects* on any *historic property*.

### **2. Work Related to the Building Exterior**

The following activities do not require further Section 106 review when conducted on, or in the case of *clean energy technologies* near (as further provided below), the exterior of a *building*, and when conducted primarily to *reduce energy use or greenhouse gas 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*, and *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 professional* determines that the *building* is not a *historic property*; or *buildings* 45 years or older determined by a *qualified professional* to be a *historic property*, if a *qualified professional* makes a written determination that such *installation* or *replacement* will have no or minimal *adverse effects* on any *character-defining feature* of a *historic building*; provided, however, that an analysis of *adverse effects* must consider *technical feasibility* and *economic feasibility*, including long-term operational costs and *climate resilience* of the *building* upon which elements are installed or replaced:

i. Any element listed in Section 2.a. of Appendix B-1, unrestricted by any limiting conditions found in such Section.

b. *Rehabilitation, replacement*, or *installation* of any of the following elements on or near a *building*, which create new *ground disturbance* on previously undisturbed ground, if a *qualified*

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*authority* makes a written determination that such activities will have no *adverse effects* on any *historic property*:

i. Any of the 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 historic building materials* of historic housing with in-kind or *substitute building materials* to improve energy efficiency after the *federal agency*, with the assistance of a qualified professional 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 feasibility* 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 feasibility* 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 does not create *ground disturbance*, exclusively affects *previously disturbed ground*, or, in the opinion of a *qualified authority*, has 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 *greenhouse gas 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 right-of-way* or has a visual *effect* on the *primary spaces* of a historic *building*, if a *qualified authority* makes a written determination that such activity will have no *adverse effects* on any *historic property*.

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## **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 vehicle*, or *transit* infrastructure:

- i. *Ground surface material*, including *installation* of slurry seals, overlays, and seal coatings; sealing and *repairing* cracks; milling and re-paving; *repair* of potholes; and restoration after utility *installation*.
- ii. Curb.
- iii. Sidewalk.
- iv. *Bulb out*.
- v. Ramp.
- vi. Crosswalk, including a raised crosswalk across a roadway and a raised intersection.
- 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 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.
- ix. Island, including a pedestrian island to reduce crossing distance or improve visibility, and a corner island to separate bicycles from motor vehicles or enable a protected bicycle queuing area or motor vehicle waiting zone.

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

- i. *High friction surface treatment*.
- ii. *Cool pavement*.
- iii. *Permeable ground surface materials*.
- iv. Rumble strip.
- vii. Traffic calming device, such as speed hump, speed table, raised crosswalk, 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.



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## 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):

a. *Maintenance, repair, rehabilitation, replacement, and installation* of the following elements when used for or incorporated into pedestrian, bicycle, *micromobility vehicle*, 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 no taller than 48 inches and no larger in diameter than 12 inches.

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, fee collection structure, interpretive wayside exhibit structure, and single-post metal or wooden sign 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 vehicle* use, or *transit* use.

x. Temporary construction fencing, but not 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 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; and *maintenance, repair, and in-kind replacement* of any other such shelter.

This page contains no comments

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

- i. Catenary system.
- ii. Tracks, including ballasts and ties.
- iii. Camera, mast, wiring, and other equipment and fixtures used for automatic traffic enforcement, tolling, monitoring of motor vehicle traffic, or security purposes.

### 3. Work Relating to Vegetation and Landscapes

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, shrubs, other plants, and trees.
- ii. Planting of any of the following that are native, naturalized, drought-adapted, drought-resistant, drought-tolerant, water-wise, or xeric: grass, shrubs, and other plants; and xeriscaping.
- 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, shrubs, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
- v. Removal of rocks and debris, but not rocks arranged in a rock wall or other feature that is a *character-defining feature* of a *historic property*.

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 vehicle*, 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 a *historic property*, or has been determined by the *federal agency* or another *federal agency* to not be a *historic property* 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.



Number: 1

Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:45:37 AM

The size and depth of disturbance must be defined. and along the same street is not acceptable.



Number: 2

Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:45:01 AM

Define size and depth allowable.

- 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

The following activities do not require Section 106 review:

- 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,



provided that any physical activities related to such properties must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or 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 agreements or program alternatives.

- 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, *micromobility vehicle*, or *transit* uses, including “play streets,” “school streets,” “safe route to school” streets, or “open streets,” provided that any physical activities related to such decisions, including but not limited to the *maintenance, repair, rehabilitation, replacement*, or *installation* of streets for the purpose of limiting motor vehicle access, must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

- e. *Maintenance, repair, rehabilitation, replacement*, and *installation* of *electric vehicle supply equipment* satisfying the *EVSE* criteria.

 Number: 1 in-kind	Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:46:44 AM
 Number: 2 in-kind	Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:46:54 AM

## 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 <sup>1</sup>qualified authority makes a written determination that such activity will have no *adverse effects* on any *historic property*:

- a. Elevation of the existing ground surface by more than 10 inches, or that will result in the demolition or removal of *potentially historic ground surface materials*: 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 <sup>2</sup>qualified authority makes a written determination 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 will result in the demolition or removal of *potentially historic ground surface materials* or *historic building materials*, or create new *ground disturbance* in previously undisturbed soils, or result in the removal of historic street furniture.
- b. *Rehabilitation, replacement,* <sup>3</sup> 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. <sup>4</sup>*Installation* of the following new elements that will result in the demolition or removal of *potentially historic ground surface materials* or *historic building materials* or that create new *ground disturbance* in previously undisturbed <sup>5</sup>soils:
  - i. Catenary system.
  - ii. Tracks, including ballasts and ties.
  - iii. 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 <sup>6</sup>qualified authority makes a written determination 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 vehicle* users, or *transit* users.
- b. *Maintenance, repair, rehabilitation, replacement,* <sup>7</sup> or *installation* of *green infrastructure* and landscaping related to pedestrian pathway <sup>8</sup> or *bicycle lane* delineation that will result in the



- 
-  Number: 1 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:48:05 AM  
What happens if the SHPO and Tribes disagree? or As happened recently in another state the SHPO and Tribes agreed that there were Adverse effects but the DOT archaeologist wanted to push the project?
- 
-  Number: 2 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:49:18 AM  
This should read all of the appropriate Qualified authorities not just any.
- 
-  Number: 3 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:49:44 AM  
in-kind
- 
-  Number: 4 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:50:24 AM  
I object to this exemption.
- 
-  Number: 5 Author: Logan York Subject: Comment on Text Date: 9/24/2024 9:51:05 AM  
This is absolutely unacceptable.
- 
-  Number: 6 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:52:01 AM  
Does this "qualified authority" include tribal peoples in every project within our homelands? If not than I object to this exemption.
- 
-  Number: 7 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:52:14 AM  
In-Kind
- 
-  Number: 8 Author: Logan York Subject: Sticky Note Date: 9/24/2024 9:53:04 AM  
This is an unacceptable reason to exempt a project. The reason behind it does not negate the damage the project will do.
-


demolition or removal of *potentially historic ground surface materials* or will create new *ground disturbance*.

#### 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* makes a written determination that such activity will have no *adverse effects* on any *historic property*:

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


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 Number: 1      Author: Logan York   Subject: Sticky Note   Date: 9/24/2024 9:54:06 AM

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No authority can make a determination from a desk in undisturbed soils that a project will not have adverse effects if it involves ground disturbance.

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 Number: 2      Author: Logan York   Subject: Sticky Note   Date: 9/24/2024 9:54:18 AM

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in-kind

**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:



Number: 1 Author: Logan York Subject: Sticky Note Date: 9/24/2024 10:12:00 AM

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As it is written I object to this entire Program Comment. This cuts out not only State Historic Preservation Officers and Qualified Authorities, that often collaborate and share resources with tribes. It also cuts Tribes and THPO's out of the consultation process and it exempts projects that have very real risks and likely hoods of destroying Historic, Archaeological, and sacred sites.

## **Miami Tribe of Oklahoma**

### **Inadvertent Discovery Policy**

#### **Created by the Miami Tribe of Oklahoma NAGPRA Committee:**

**Julie Olds, Cultural Resources Officer, Chair of NAGPRA Committee**

**Scott Willard, NAGPRA Director, Vice-Chair of NAGPRA Committee**

**Robin Lash, Miami Tribe General Counsel**

**Rebecca Hawkins, Consulting Archeologist, Algonquin Consulting**

**Morgan Lippert, NAGPRA Historian and Archivist**

#### **Introduction:**

The Miami Tribe of Oklahoma does not condone, support or initiate archeological exploration that knowingly targets ancestral human remains. Unfortunately, the inadvertent discovery of ancestral human remains occurs too frequently due to modern infrastructure construction or improvements as well as archeological exploration that was not intended to find ancestral remains. This document provides a policy roadmap for the inadvertent discovery of ancestral human remains that lie within the original homelands of the Myaamia people.

#### **Implementation:**

This policy statement shall be deemed valid for use and implementation by any federal, state or local-municipal entity that engages in ground disturbing activities for any reason. This policy also applies to universities, museums and any federally funded non-governmental institution that engages in archeological exploration for academic or non-academic purposes.

This policy is effective for ground disturbing activities in the following locations in the ancestral homelands of the Myaamia people: The entire states of Ohio, Indiana, Michigan, Illinois and Wisconsin and the Ohio river border counties in Kentucky. We also recognize the post 1846 removal territories, Miami and Linn counties in Kansas and Ottawa County in Oklahoma.

## **Initial Discovery:**

Through the process of ground disturbing activities, when the discovery of human remains occur:

- 1) All work in that area must immediately cease. Any remains or funerary objects removed from the excavation as a result of the ground disturbing work must be collected and safeguarded.
- 2) Law enforcement and the county coroner must be notified in order to determine if the remains constitute a crime scene or modern burial.
- 3) All ground disturbing work within a 100 foot radius of the discovery must cease.
- 4) Written documentation of the discovery, the condition of the remains and any detailed information that may benefit the decision making process of the Miami Tribe should be recorded.
- 5) Only LEO/Coroner personnel are authorized to take photos or make drawings of the discovery unless consent is given by the Miami Tribe in writing.
- 6) First notification of the inadvertent discovery should occur within 36 hours of discovery. A more detailed follow-up with LEO-Coroner's initial findings and any important data should be made within 72 hours following discovery.
- 7) Consultation should commence with the Miami and other interested Tribes to mutually determine how ground disturbing activities within the quarantined area will resume. Participation in the consultation may include any or all of the following: representatives from the NAGPRA Department, THPO and Tribal Government. Initial contact should be made to both the NAGPRA Department and the THPO.

Scott Willard, NAGPRA Director  
[swillard@miamination.com](mailto:swillard@miamination.com)

Diane Hunter, THPO  
[dhunter@miamination.com](mailto:dhunter@miamination.com)

## **In-Situ reburial and site avoidance:**

The preferred outcome for an inadvertent discovery would be the covering of the remains In-Situ (as well as replacing anything removed during the excavation that caused the discovery) and avoidance of the area or deviation around the site of discovery. However, the Miami Tribe recognizes that this preferred solution may not be obtainable due to the nature and scope of the work being conducted. Every reasonable option should be explored before the decision is made to remediate the ancestor.

## **Remediation Procedures:**

If the consensus determination following consultation is to remove (remediate) the ancestor(s), the following procedures should be implemented.

- 1) All remediation work must be conducted by qualified, state certified archeology personnel from a university or private firm as to be determined through consultation.
- 2) Tribal Monitors may (should) be present during the exhumation process to observe and report progress back to Tribal representatives. Monitors may also provide immediate direction should questions arise during the process.
- 3) All human remains that constitute each single individual shall be kept together, along with all funerary objects collected with that individual.
- 4) The curation facility housing the remains shall be determined through the consultation process and qualify as a secure location with experience in the handling of ancestral human remains as well as the NAGPRA repatriation process.
- 5) A preliminary inventory of remains and funerary objects, as well as standard archeological data collection should be conducted throughout the remediation process and delivered to the Tribe for study and to aid in future decisions resulting from ongoing consultation.
- 6) Photography and artistic renderings of the remediation site (including human remains and funerary objects) can only be approved through prior consultation and with the advice and consent of the Miami Tribe and other consulting Tribes.
- 7) Location identifying information (GPS coordinates) as well as any approved photography and/or artistic renderings and archeological data should be considered sensitive information not for distribution to the public or other unauthorized personnel. All information of this nature shall be quarantined and only used as needed by authorized individuals. Consultation with the Miami Tribe and other interested Tribes will determine the future use or disposition of this information.

### **Proper Care and Handling of Ancestors / Cultural Advisory:**

The Miami Tribe believes that ancestral human remains, even if affiliation cannot be determined, should be treated with the same respect and dignity as any human being should expect to be treated. The following procedures serve to present the current best practices while taking all conditions into consideration.

#### **Cultural Considerations:**

The following represent cultural guidelines that may safeguard the physical and spiritual health of the individuals remediating the ancestor. They are only guidelines, but strongly recommended for implementation.

- 1) No use or possession of tobacco products within 20 feet of the burial location or the remains themselves, Including associated funerary objects.
- 2) No food or beverages within 20 feet of the burial site or the remains themselves, including the associated funerary objects. This applies to the transport, analysis, storage and repatriation of the remains and the associated funerary objects.



- 3) No pregnant or menstruating women within 20 feet of the burial site or the remains themselves, including the associated funerary objects.
- 4) No photographs or artistic renderings of the human remains or funerary objects without the express consent of the Miami Tribe or consent of interested Tribes engaged in consultation.

### **Care and Handling of Human Remains and Funerary Objects:**

The following represent the procedures to follow throughout the remediation of the ancestor's remains and funerary objects.

- 1) The archeological team conducting the remediation will follow all standard professional processes and procedures throughout and will not deviate from standard practice without approval from all consulting parties.
- 2) The human remains will be removed in articulated sections as much as possible. Each section will be wrapped in bubble wrap and nested in a plastic tub for protection.
- 3) If the remains are too fragile to be removed in a clean state, they will be removed with the stabilizing soil attached.
- 4) To preserve fragile remains, some surrounding dirt should be placed in the plastic tub to help maintain humidity and prevent further degradation.
- 5) Small funerary objects that will fit in the same container as the human remains shall be kept together. Larger items shall be wrapped in bubble wrap and placed in individual containers. The separated objects must have identifiers to link them to the human remains.
- 6) If there is more than one individual, there must be distinct identification labels to ensure associated funerary objects can be reunited later with the correct individual.
- 7) All residual dirt accumulated through the remediation process is considered by the Miami Tribe to be associated with the human remains. All care will be taken to preserve the dirt so it can be reburied with the ancestor at a future date.
- 8) If the remediation is expected to last more than one day, all reasonable and appropriate security actions must be taken to protect the site from looting, vandalism or other criminal activity. Recommendations include but are not limited to:
  - a) Security guard or LEO involvement
  - b) Perimeter fencing of site
  - c) Tarp coverings of excavation
  - d) Surveillance cameras and signage
  - e) Other as determined by site conditions and circumstances at time of remediation.
- 9) Exhumed human remains and funerary objects shall not be left unprotected or unattended at the remediation site. Transfer to a secure facility or the agreed upon curation facility should be ensured daily, if necessary.

## **Post Exhumation Procedures**

This section details steps to follow upon completion of the remediation.

- 1) A full inventory should be completed listing human remains and all funerary objects collected during the remediation.
- 2) The human remains, funerary objects and any unassociated objects removed shall not be subjected to any scientific testing, analysis or experimentation.
- 3) A qualified osteologist should inspect any faunal remains to determine that all human remains are accounted for.
- 4) The Miami, as well as other interested Tribes, should be consulted on culturally acceptable storage of the individual(s) until the NAGPRA process is complete.
- 5) For Federal or State controlling parties: It is the agency's responsibility under the law to conduct NAGPRA consultation for the repatriation of the individual(s). If the agency chooses not to engage in the NAGPRA consultation process, legal control of the individual(s) must be immediately relinquished (in writing) to the curation facility in possession of the individual(s) so that the NAGPRA process can be fulfilled.
- 6) For Universities or federally funded non-governmental institutions: It is the institution's responsibility under the law to conduct NAGPRA consultation for the repatriation of the individual(s). It is recommended that consultation commence as soon as an inventory is completed.



## Osage Nation Historic Preservation Office

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October 9, 2024

Sara Bronin, Chair  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001  
[program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)

**RE: Advisory Council on Historic Preservation (ACHP) Program Comment on Accessible, Climate-Resilient, and Connected Communities**

*SENT VIA EMAIL*

Dear Chair Bronin,

The Osage Nation Historic Preservation Office (ONHPO) appreciates the opportunity to provide input on the Advisory Council on Historic Preservation's (ACHP) proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. The Osage Nation is deeply concerned about all matters related to historic preservation that may affect our historic properties and significant cultural resources. While The Osage Nation is generally supportive of attempts to streamline decision-making processes, we must express our strong opposition to the proposed Program Comment.

After a thorough review of the proposed Program Comment, we have identified significant concerns about its broad applicability, likelihood to undermine established consultation processes, and the risk it poses to historic properties of cultural significance to The Osage Nation and other Tribes. Our experiences working with federal agencies highlight the importance of tailored, agency-specific agreements that respects the complex and unique policies, projects, and communities invested in such undertakings. The generalized approach of the proposed program alternative threatens to overlook these complexities and diminish the effectiveness of project-specific or agency-specific solutions.

Additionally, the Program Comments seems to assume that the current Section 106 process and existing program alternatives are ineffective or at worst, processes to be bypassed. However, these established mechanisms provide the flexibility and solutions that are necessary to ensure meaningful consultation takes place in the protection of historic properties and streamline the consultation process in a manner that does not skirt Tribal consultation. The proposed Program Comment's broad approach, by contrast, risks eliminating the protections that these established processes offer.



We cannot ignore that this Program Comment appears to minimize or bypass the essential role of Tribal Nations in the consultation process, which is a fundamental requirement under Section 106 and a crucial aspect of the government-to-government relationship between the United States and Tribal Nations. Meaningful consultation is not only a legal obligation but also a critical component in identifying and protecting sites of cultural and historical significance. By potentially allowing federal agencies to make unilateral decisions without adequate Tribal input, the Program Comment undermines the principles of respect, collaboration, and mutual understanding that are vital to preserving our shared heritage.

We urge the ACHP to reconsider the Program Comment and engage in meaningful consultation with Tribal Nations to develop a more appropriate framework that honors our cultural heritage and legal rights. Some of our specific concerns are outlined below.

### **Section I. A-E, Pages 1-4**

The proposed Program Comment is not tied to a specific federal agency, action, or property type, resulting in an overly broad and unfocused approach. The Osage Nation's Ancestral Territory encompasses 16 states, and the ONHPO engages in consultation with diverse federal and state agencies regarding projects across these states, providing us with a unique perspective on addressing undertakings such as those described in the document. Our concerns vary significantly for the projects outlined in the Program Comment, as do our relationships and the trust we have established with the agencies overseeing them. Without tailoring the Program Comment to address the unique issues and impacts associated with each agency—similar to what Programmatic Agreements (PAs) and Memoranda of Agreements (MOAs) allow—it risks being ineffective and overlooking critical nuances in historic preservation efforts. The Osage Nation asserts that these generalizations will not only pose greater risks to historic properties but will also complicate and potentially delay projects that meet its criteria.

### **Section II. C, Page 5**

The Osage Nation vehemently opposes the ACHP's proposal to allow agencies that have previously entered into MOAs or PAs to decide which legally binding agreement to utilize without the consent of the other signatories. While we acknowledge the Program Comment mandates agencies must *consult* with other signatories, *consent* is essential to ensure all parties can reach a mutually acceptable agreement. Many projects described in this Program Comment are located on ancestral tribal lands. Tribes should be full partners in the decision-making process, as was intended when the National Historic Preservation Act (NHPA) was drafted, especially when cultural resources, human burials, and/or sacred sites may be impacted. As it is currently written, agencies may at any time terminate the agreement and follow the Program Comment, which does not offer clear guidance on Tribal consultation.

Additionally, the Program Comment mandates that existing Program Comments must be followed, while PAs and MOAs may be discarded or altered. Program Comments should not receive preference over PAs and MOAs that have been negotiated in good faith and signed by multiple parties, particularly those most familiar with the invested parties, complex histories, and landscapes relevant for each project. This change would make PAs and MOAs effectively meaningless to Tribal Nations since the agencies could opt out at will.

### **Section III. A-B, Page 6-7**

The Program Comment provides alternative compliance approaches for undertakings deemed to have “no or minimal potential to adversely affect historic properties.” However, many of the exemptions outlined in



the Appendices do carry the potential to adversely affect historic properties, as defined in 36 CFR 800.5. Federal agencies do not have the knowledge required to make these determinations without proper consultation with Tribal Nations. Although the ACHP provides a section titled, “Consultation with Indian Tribes and Native Hawaiian Organizations,” it is ambiguous if, when, and how federal agencies will be required to consult with Tribes. As it is currently written, the Program Comment allows federal agencies to unilaterally make determinations that affect historic properties, without knowing which locations will have traditional, religious, and cultural significance to Tribal Nations. The Osage Nation alone maintains a database of confidential Osage tribal historic properties that is not available to federal or state agencies, underscoring the urgent need for Tribal consultation beyond what has been exhibited in the creation of this document.

The Osage Nation is also deeply concerned about the lack of clarity regarding the qualifications and responsibilities of the “Tribal Liaisons” recommended in the consultation process, assuming it occurs at all. It is essential for the ACHP to work with Tribes to establish clear criteria for who is considered qualified for this role. For instance, it is currently unclear if any project manager is sufficient to fulfill this title or if individuals must be Secretary of the Interior (SOI) qualified cultural resource professionals or specifically trained as Tribal liaisons. Additionally, the document fails to specify their roles and responsibilities within the consultation process. Given that Tribal liaisons are often poorly trained or untrained in the complexities of cultural resources and the specific needs of Tribal Nations, it is critical to ensure that only adequately trained and knowledgeable individuals are entrusted with this vital responsibility.

Although the ACHP drafted this comment “with a commitment to strengthening the government-to-government relationship between the United States and *Indian Tribes*,” they have yet to demonstrate a good faith effort in consulting with tribes regarding this Program Comment. Our office understands that the ACHP used mailing lists and social media to notify the public about the Program Comment and consultation meetings held in June and September. However, the ONHPO has not received any form of communication from the ACHP regarding this program alternative. Sovereign Tribal Nations are not “the public” and consultation with them is expected on the government-to-government level that ACHP referenced. The lack of communication reflects a general disregard for our limited time, resources, and capacity to respond. How can tribes have confidence in the execution of this Program Comment when the ACHP has thus far failed to engage in proper consultation with Tribes during the development of this document? Even if the ACHP had been more thorough and robust in reaching tribes regarding the meetings in June and September, two listening sessions do not qualify as true consultation. This ACHP appears to be pushing a significant proposed Program Comment through in an irresponsible manner with no true concern for the Tribal voice.

#### **Section IV. E, Page 9**

Mitigation measures have no place in this Program Comment. The requirements stipulate that an undertaking can only qualify for this program alternative if it has “no or minimal potential to adversely affect historic properties.” The mere discussion of mitigation admits that adverse effects do exist, which contradicts the criteria for this proposal. If there are potential adverse effects, the undertaking should fall under the Section 106 process where appropriate assessment and consultation can take place to ensure the protection of historic resources.

#### **Section V. B, Page 10**

In this section, the Program Comment mandates that “all work within 50 feet of discovery must cease.” This is not sufficient to protect burials, nor is 50 feet a NAGPRA-compliant buffer. NAGPRA does not require a specific distance of stop work and instead requires to “stop any activity that could threaten the discovery” (43 CFR 10.5(b)). A pre-determined and presumptively narrow stop-work buffer runs counter



to NAGPRA. This may also violate the NAGPRA Discovery Plan of Action regulations and/or previously developed NAGPRA Agreements between federal agencies and Tribes that have created more appropriate buffers for work stoppages and avoidance areas during discoveries.

Additionally, it must be stated that the Program Comment does not adequately address the role of state burial laws beyond a token reference and guidance to follow the ACHP Policy Statement. While it is true that the policy states the federal agency should follow all applicable laws and protocols, the guidance is insufficient given the gravity of inadvertent discoveries of burials and the vast disparities among state laws.

#### **Section VI, Pages 10-11**

The Program Comment does not specify if and when federal agencies must reach out to Tribes regarding undertakings exempt under the criteria outlined in this document. Consequently, the process for Tribes to file a dispute is effectively nullified, particularly if they are not informed about undertakings due to the elimination of standard consultation procedures. Without proper notification, our office will be unable to exercise our right to protect Osage cultural resources, undermining our ability to safeguard our heritage.

#### **Section VII., Page 11**

If the ACHP proceeds down this path, despite our emphatic protest, a 20-year applicability period is excessively long. Circumstances, laws, and understandings of cultural resources can change significantly over two decades. We recommend a shorter duration, no more than five years, to allow for reassessment and updates in collaboration with Tribal Nations.

#### **Section VIII, Page 11**

The Osage Nation opposes the provision allowing the ACHP to amend the Program Comment solely at its discretion. This approach raises significant concerns about transparency and accountability and again underscores how the intention of this proposed Program Comment appears to be to circumvent Tribal consultation and input. Without meaningful participation from Tribal Nations in the decision-making process, amendments may not adequately reflect concerns regarding the protection and preservation of culturally significant sites. Amendments should not only include robust consultation process with Tribes but also allow for concurrence on actions that may directly or indirectly affect their cultural heritage.

#### **Appendices, Pages 21-42**

The Osage Nation has numerous concerns regarding the provisions outlined in the Appendices of the Program Comment. First, the broad range of activities exempt from additional review could lead to significant adverse effects on historic properties, particularly since many exemptions involve changes to elements that may be character-defining features. Second, we have serious concerns about the exemptions for ground-disturbing activities specified in the Appendices. It is nearly impossible to predict how past disturbances have affected potential cultural deposits without actual on-site verification. Ground disturbance is rarely uniform; previous activities may have only altered surface layers or brought cultural deposits closer to the surface. The Program Comment assumes that prior projects underwent the Section 106 process and that any resources were fully evaluated, which is rarely the case. Therefore, the assumption that areas of prior disturbance lack cultural significance is fundamentally flawed. To accurately assess the potential impact on archaeological and cultural materials, it is essential that an SOI qualified archaeologist trained in soil science conducts a thorough evaluation. Their expertise in understanding soil profiles and disturbances is crucial for identifying and protecting important cultural resources that might otherwise be overlooked and destroyed.



The reliance on written determinations by "qualified authorities" raises questions about who qualifies as such and whether these individuals actually possess the necessary expertise in historic preservation, particularly when activities like the replacement of building materials or installation of clean energy technologies are broadly exempted. This reliance may also lead to situations where inadequately trained staff conduct assessments, increasing the likelihood for misjudgment in evaluating impacts on historic properties. Finally, the provisions allowing for emergency work without further review could be misapplied, which would result in detrimental effects on historic properties not thoroughly assessed during urgent situations.

Our concerns with these exemptions highlight opportunities for the ACHP to refine the Program Comment through consultation with qualified professionals. By involving experienced archaeologists, historians, preservation experts, and Tribes, the provisions can more comprehensively address critical aspects of cultural resource management. A collaborative approach would not only enhance the effectiveness of the Program Comment but also align with the intent of the National Historic Preservation Act, which emphasizes the importance of involving knowledgeable professionals in decision-making processes related to historic preservation.

The Osage Nation encourages the ACHP to reconsider the proposed Program Comment in light of the concerns outlined above. We believe there are significant areas for improvement in the current document, and as it stands, are unable to support it. We look forward to discussing how to best address issues of cultural preservation that better align with our shared goals.

We welcome the opportunity to engage in further dialogue to address these issues comprehensively.

Sincerely,

Andrea A. Hunter, Ph.D.

Director, Tribal Historic Preservation Officer, The Osage Nation

## PC Comments Received during EJ Strategic Plan Meeting

Jamie Lee Marks <jmarks@achp.gov>

Thu 22-Aug-24 3:29 PM

To: Program Alternatives <program\_alternatives@achp.gov>

Cc: Kelly Yasaitis Fanizzo <kfanizzo@achp.gov>

Via chat:

Rolene Schliesman to Everyone (Aug 22, 2024, 3:22 PM)

Lindsey D. Bilyeu, Program Coordinator for NHPA Compliance Review for the Historic Preservation Department of the Choctaw Nation of Oklahoma has concerns with the alternative Program Comment concept.

She reviewed document, has the following comments/questions, and has added comments directly to the document. We have not read through the entire draft yet but we will prepare comments before the September deadline

We are very concerned about how the Program Comment affects the Section 106 process and, in turn, the protection of our cultural resources.

The main question is why is this Program Comment really needed? Section 106 process is already set up to do what they say they want the Program Comment to do.

This Program Comment is a threat to historic preservation. There are thousands of projects that can be passed by this Program Comment that could just be labeled as "minimal potential" to affect cultural resources. Who is defining minimal? Just because the physical effects may not cause issues, that doesn't mean the feeling or intangible aspects of Tribal cultural resources wouldn't be affected.

The document mentions so many other nationwide agreements with housing and transportation, but was actual tribal consultation done on these agreements and were any Tribes given the right to be signatories? If Tribes don't sign onto an agreement, then we are choosing to do the traditional 106 process. How can federal agencies be directed to do consultation according to this program comment when the building blocks of the Program Comment may have never been Tribal agreed upon. Even if it's said Tribes were allowed to submit comments, that is not actual consultation. That's sending your concerns to a generic email address and likely won't be read by ACHP.

The claim is that this Program Comment will weed out the repetitive reviews of certain types of projects. Tribes need to be consulted on what they do and don't want to see. This isn't achieved through a Program Comment, it's achieved through Consultation between the federal agency and the Tribe. This is why we have PAs with federal agencies and they work just fine.

The sentence, "The Program Comment also provides the ACHP a reasonable opportunity to comment regarding covered undertakings," is worrisome. A nationwide agreement like this would cover so many projects that the ACHP couldn't effectively comment on any of them. The sheer number of projects would make it impossible. Also, the ACHP isn't the only agency that needs to address adverse effects to historic properties. Again, we will have further comments. Yakoke (Thank you).

Kelly Fanizzo, ACHP to Everyone (Aug 22, 2024, 3:25 PM)

Hi Rolene and Lindsey, Thank you for providing these initial comments. To confirm, you are referring to this proposed draft program comment: <https://www.achp.gov/news/achp-announces-draft-program-comment-accessible-climate-resilient-connected-communities>

Please correct me if this is not the document you are commenting on in the chat.

Rolene Schliesman to Everyone (Aug 22, 2024, 3:26 PM)



Yes

Larry Benallie to Everyone (Aug 22, 2024, 3:27 PM)  
consutation.

Kelly Fanizzo, ACHP to Everyone (Aug 22, 2024, 3:27 PM)

Thank you. We will be sure to review these comments closely and look forward to any additional comments you may want to provide.



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

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**From** Billie Burtrum <Billie.Burtrum@quapawnation.com>

**Date** Wed 09-Oct-24 4:51 PM

**To** Program Alternatives <program\_alternatives@achp.gov>

To Whom it May Concern,

The Quapaw Nation appreciates the effort behind the proposed Program Comment to address climate change and the affordable housing crisis. However, we must express our strong objections, particularly regarding the following points:

1. **Limitations of Virtual Listening Sessions:** While we recognize the intent behind virtual listening sessions, they do not constitute true Tribal consultation. The expedited timeline for these proposals significantly restricts our community's ability to engage meaningfully in the process. Genuine consultation requires time and opportunities for dialogue, which are not afforded in a rushed format.
2. **Impact on Sovereignty:** We are deeply concerned that the implementation of the proposed Program Comment could unintentionally undermine Tribal sovereignty. Our ability to protect our cultural resources and sacred sites is paramount, and the fear that federal agencies may proceed without thorough consultation poses a significant risk to our heritage. This potential oversight could lead to irreversible harm to sites of great significance to the Quapaw Nation.
3. **Risks of Streamlining:** The concept of "streamlining" often implies efficiencies that can bypass essential Tribal consultation and thorough project reviews. We worry that many federal agencies may use program comments as a rationale to avoid the required Section 106 reviews. Without these reviews, it becomes exceedingly difficult to assess whether a project will adversely impact our cultural resources, which are vital to our identity and history.
4. **Previous Disturbances:** We urge a reconsideration of applying the Program Comment to previously disturbed areas. This assumption disregards the reality that many significant sites may not have undergone adequate Section 106 reviews, as much of our nation's infrastructure predates current laws and policies. Additionally, a Tribally important site does not lose its significance simply because it has been disturbed in the past.

We appreciate the recognition of Indigenous Knowledge but these measures alone are insufficient. It is critical that any proposed changes prioritize our rights and the protection of our cultural heritage.

Thank you for considering our concerns. We look forward to engaging in a dialogue that respects our sovereignty and ensures meaningful consultation moving forward.

Sincerely,

Billie Burtrum  
Preservation Officer/QHPP Director  
Quapaw Nation



# Rincon Band of Luiseño Indians

## CULTURAL RESOURCES DEPARTMENT

One Government Center Lane | Valley Center | CA 92082  
(760) 749-1092 | Fax: (760) 749-8901 | rincon-nsn.gov



October 9, 2024

**Sent via email: [program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov)**

Sara Bronin

Chair, Advisory Council on Historic Preservation

401 F Street NW, Suite 308

Washington, DC 20001

**Re: Request for Consultation under Section 106 of the National Historic Preservation Act (NHPA) on the Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities**

Dear Ms. Bronin:

This letter is written on behalf of the Rincon Band of Luiseño Indians (“Rincon Band” or “Tribe”), a federally recognized Indian Tribe and sovereign government. We have become aware of the availability of webinars on the **Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities**. Please provide us with formal notification for our files. Additionally, we request consultation to discuss our comments and concerns.

The Rincon Band of Luiseño Indians Tribal Historic Preservation Office (THPO) has reviewed the provided documents as provided by you on the ACHP’s website, and we have the following comments and concerns:

1. The Tribe is requesting consultation on the **Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities**. We feel it necessary to emphasize the importance of meaningful consultation between agencies and federally recognized Indian tribes, and would like to draw your attention to The White House Memorandum on *Uniform Standards for Tribal Consultation* which states the following:

*“The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations.*

...

*Tribal consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Nation-to-Nation relationship between the United States and Tribal Nations, and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. Consultation requires that information obtained from Tribes be*

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Bo Mazzetti  
Chairman

Joseph Linton  
Vice Chair

Laurie E. Gonzalez  
Council Member

John Constantino  
Council Member

Frank Mazzetti III  
Council Member

*given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome.”<sup>1</sup>*

**Please provide dates and times of your availability for a virtual consultation meeting.**

2. It seems ACHP in error labeled the provided informational webinars as “consultation meetings”. Again, we would like to point out that meaningful consultation occurs between two governments. It is therefore concerning that ACHP seems to believe that ACHP inviting over 570 tribes to a virtual meeting at a day and time convenient for ACHP constitutes formal government-to-government consultation. We also believe such approach counteracts The White House directive to strengthen relationships between federal agencies and federally recognized Indian tribes, as outlined in *Memorandum on Uniform Standards for Tribal Consultation* which states:

*“It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.”<sup>2</sup>*

*“To this end, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations.”*

3. Program Alternatives need careful reviews as they lack consultation with Tribes and therefore pose destruction and damage to historic properties, including those of traditional religious and cultural importance to Tribes. The same properties that ACHP previously stated to protect and work towards larger recognition of such places<sup>3</sup>. Program alternatives such as Program Comments are only to the benefit of agencies and rarely to the benefit of Tribes and counteract any preservation efforts of historic properties. We believe most telling is ACHP’s own synopsis, stating:

*“The proposed Program Comment would 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 develop new climate-friendly transportation infrastructure.”<sup>4</sup>*

Clearly missing here is any mentioning on how this fast-paced and streamlined project review upholds agencies’ consultation obligations and stewardship responsibilities to Indian Tribes and our historic properties.

4. The Tribe requests additional time to be given to allow ACHP to engage in meaningful consultation with Tribes. In particular, we would like to learn when and how (digital, USPS) notifications were sent to tribal

<sup>1</sup> [Memorandum on Uniform Standards for Tribal Consultation | The White House](#)

<sup>2</sup> [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships | The White House](#)

<sup>3</sup> [Traditional Cultural Landscapes | Advisory Council on Historic Preservation \(achp.gov\)](#)

<sup>4</sup> [Proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities | Advisory Council on Historic Preservation \(achp.gov\)](#)

nations. It has come to our attention that it seems notification procedures and practices have not yet demonstrated ACHP's commitment to consult with Tribes.

Please also include the Tribe on all distribution lists for document reviews, consultations, circulation of public documents, and notices for public hearings and scheduled approvals.

If you have additional questions or concerns, please do not hesitate to contact our office at your convenience at (760) 749 1092 ext. 323 or via electronic mail at [cmadrigal@rincon-nsn.gov](mailto:cmadrigal@rincon-nsn.gov). We are looking forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cheryl Madrigal', with a stylized flourish at the end.

Cheryl Madrigal  
Tribal Historic Preservation Officer  
Cultural Resources Manager



October 7th, 2024

Chair Sarah C. Bronin  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001

To Advisory Council on Historic Preservation (ACHP) Chair Sara C. Bronin:

This letter is written on behalf of *sdukʷalbixʷ*, the Snoqualmie Indian Tribe (“Snoqualmie” or “Tribe”), a federally recognized Indian Tribe and sovereign and self-determined government. The Tribe appreciates the opportunity to comment on ACHP’s proposed Program Comment (PC) on “Accessible, Climate Resilient, and Connected Communities” associated with housing-related, climate-smart building-related, and climate-friendly transportation infrastructure-related activities. With this stated appreciation, however, also come numerous concerns the Tribe holds regarding the ACHP’s attempt to provide all federal agencies with an alternative way to supposedly comply with their responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. part 800 (Section 106), as part of undertakings related to these identified activities. The Tribes concerns are as follows:

- ***This proposed PC for Section 106 alternatives—and any and all attempts to provide alternative programs and/or streamline Section 106 processes—without the free, prior, and informed consent of each and every federally recognized Native American tribe and Native Hawaiian Organization (NHO)*** is an attempt *in effect*—wittingly or unwittingly—to usurp the role of Congress, homogenize the diversities and densities of Native communities and peoples, erode tribal political and knowledge sovereignty, and erase the vital importance of procedural attention to ***place-specificity*** as understood, valued, lived, stewarded, and practiced through our own unique systems of Indigenous Knowledge (IK).
- What the PC proposes will functionally deregulate current processes that require attention to the specific and unique environmental, historical, social, economic, and cultural relationships to our places, properties, and landscapes of traditional religious and cultural significance by truncating and short-circuiting the procedures and processes of Section 106. ***It is these very processes of Section 106 and their sequential nature that permit us to better negotiate, coordinate, and fulfill our obligations to protect and preserve the integrity of our historic properties/properties of traditional religious and cultural importance (PTRCIs), continue practicing our intimately and indelibly associated traditional relational life/way systems in relationship with and to these historic properties/PTRCIs, and ensure our***



***capacities of and for collective continuance as unique Indigenous tribes and Indigenous peoples in continuity with our pasts and presents into the future.***

- Wittingly or unwittingly, ***the proposed PC will both undermine processes and procedures that afford tribes and NHOs rights and opportunities for protection and preservation of historic properties/PTRCs and negate associated pathways for heightened considerations*** through its attempts to produce “manageable forms of difference that are racially configured through whiteness” (Moreton-Robinson 2015:xvi). Given the content and substance of the proposed PC, the Tribe must make ACHP directly aware that “one does not have to *be* explicitly racist to reproduce white supremacy or its discursive formations” (Beliso-De Jesús and Pierre, 2020:71), and **assimilative and exclusionary practices, actions, and considerations such as those promoted in the proposed PC need not be intentional nor hostile to still be racist in effect** (see Pulido 2000).
- In attempting to address select climate change- and affordable housing-oriented activities ***without meaningfully engaging and providing correctives for the structural root causes of these problems and their implications in and for Native American tribe and NHO PTRCs***, as the proposed PC does, the ACHP is itself contributing to the facilitation and perpetuation of the destruction of Native lands, airs, and waters under a system of settler colonial domination, which must be understood “at [its] base [as] a winner-take-all project whose dominant feature is not exploitation but replacement. The logic of this project, a sustained institutional tendency to eliminate the Indigenous population, informs a range of historical practices that might otherwise appear distinct – invasion is a structure not an [isolated] event” (Wolfe 1999:163).
- ***The proposed PC—wittingly or unwittingly—will assist with the (re)generation and support structures of settler colonial invasion that evacuate effective tribal and NHO input and disappear procedures for effective tribal and NHO coordination and participation.*** Here, it must be stressed that even though the proposed PC states that the Section 106 process would need to be followed if an “undertaking would occur on or have the potential to affect.... Sites of religious and cultural significance to *Indian Tribes and Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes or Native Hawaiian Organizations*,” **it directly undermines the very processes and procedures afforded under Section 106 that more often than not are required to make such determinations.** Moreover, ***“sites” are only one property type eligible for the National Register of Historic Places (NRHP).***
- In these respects, the content, substance, and structure of this proposed PC are not only misguided in their intents and offerings for alternative programs for Native historic preservation concerns, but negligent in both their passive inattention or active disregard for ***how all lands, airs, and waters of what today is***





***commonly called the United States of America are Native lands, airs, and waters—and how undermining and short-circuiting the full Section 106 process will structurally (re)generate and perpetuate social and environmental injustices and acts of cultural genocide***, or what Osage Scholar George Tinker has identified and named as “the effective destruction of a people by systematically or systemically (intentionally or unintentionally in order to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life” (Tinker 1993:6). ***This reasonably foreseeable outcome of the proposed PC is supported both by its stipulation that “[u]ndertakings covered by this Program Comment, due to their nature and potential effects, do not require a federal agency to determine whether an involved or affected property is a historic property except where explicitly stated,” and by Chair Bronin’s own characterization of the proposed PC’s very design, function, and purpose.***

- During ACHP’s September 25, 2024, so-called “Tribal Consultation on ACHP Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities” meeting, ***Chair Bronin stated that the proposed PC is focused on outcomes rather than processes.*** The Tribe reiterates to Chair Bronin and the ACHP that the rights and opportunities to both develop heightened considerations and negotiate or coordinate pathways for the better protection and preservation of our historic properties/PTRCIs is directly situated in **Section 106 as a sequential and consultative process.**
- With Chair Bronin’s statement, the Tribe questions how this proposed PC has abided by ACHP’s own consultation obligations to the Tribe, all federally recognized Native American tribes, and all NHOs. It is clear that ***the Tribe must once again inform the ACHP that there are currently 574 federally recognized Indian Tribes and additional NHOs*** throughout the lands and waters of what is today called the territories of the United States who hold government-to-government consultation rights.
- The Tribe uses the term “so-called” above in relation to the September 25, 2024, meeting held by ACHP because this ***general meeting is not and cannot count as good faith, reasonable, or meaningful government-to-government consultation with the Tribe, and no good faith, reasonable, or meaningful consultation on this proposed PC has been conducted by ACHP to date.*** The Tribe reminds ACHP that 36 C.F.R. § 800.14(e)(4) requires that if a “program comment has the *potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization*, the Council shall follow the requirements for the agency official set forth in paragraph f of this section” (emphasis added). 36 C.F.R. § 800.14(f) stipulates that “*the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations*” (emphasis added). 36 C.F.R. § 800.14(f)(1) further states that “[w]hen a proposed program alternative has nationwide



applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law” (emphasis added).

- As this proposed PC will affect all 574 federally recognized Native American tribes as well as NHOs, **the ACHP has not to date fulfilled even its own self-stated consultation responsibilities as outlined in its Policy Statement Regarding the Council’s Relationships with Indian Tribes** (November 17, 2000; updated July 3, 2007). The Tribe reminds ACHP that this policy in no uncertain terms stipulates that “[t]he basis for the ACHP’s policy regarding its role, responsibilities, and relationships with *individual Indian tribes* derives from the Constitution, treaties, statutes, executive orders, regulations, and court decisions” (emphasis added), and “[t]he ACHP acknowledges that Federal-tribal consultation is a *bilateral process of discussion and cooperation between sovereigns*” (emphasis added). **The development of this proposed PC has neither fulfilled ACHP’s responsibilities to individual Indian tribes nor honored any bilateral process of discussion or cooperation with the Tribe as a political and knowledge sovereign** (and it must be assumed the other 573 federally recognized Indian tribes and NHOs).
- If it is the dubitable position of the ACHP that appropriate good faith and reasonable consultation has occurred on this proposed PC to date, then it appears that the ACHP is attempting to unilaterally change the terms of government-to-government “consultation” and therein promote a program of “American colonial ambivalence,” or “the inconsistencies in the application of colonial rule ... [that] stems from the privileged position of the United States, from which it can unilaterally shift the terms of its relationship to indigenous people[s]” (Bruyneel 2007:10). While ACHP may well feel this is within its right, it is a clear violation of its own agency policies and stated principles regarding its responsibilities to Indian tribes and NHOs.
- It is clear that **Chair Bronin and the ACHP have little to no grasp or care what tribes and NHOs must contend with on a daily basis to just have our basic rights and opportunities afforded under Section 106 and other regulatory review processes, such as the National Environmental Policy Act (NEPA)**. Clearly, the ACHP has done little to no labor to understand how this proposed PC will harm Native American tribes and NHOs by rendering large swaths of our ancestral territories, traditional use areas, and traditional cultural land/waterscapes—that is, **our historic properties/PTRCIs**—unaccounted for and open to further dispossession, exploitation, and damage for activities that perpetuate settler colonial privileges to the detriment and loss of Indigenous peoples. In identifying a goal of the proposed PC “to promote actions that, consistent with the National Historic Preservation Act, 54 U.S.C. § 300101(1), ‘foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations,’ while simultaneously neglecting



tribal and NHO presence, rights, opportunities, concerns, and inclusion, your agency is— intentionally or unintentionally—***excluding Native peoples from this American Nation and necessary considerations of what is required for the viable continuance of our present and future generations.***

- As stated in the Tribe’s September 23, 2024, letter on Executive Order (EO) 14096 to the ACHP, the proposed PC in a multitude of ways ***undermines and contradicts your agency’s charges for environmental justice*** under EOs 12898 and 14096, ***advancements in equity*** for Native communities under EOs 13985 and 14091, and good faith and reasonable consultation obligations, as identified and outlined above.
- The proposed PC also contradicts ACHP’s own stated mission to promote “the preservation, enhancement, and sustainable use of our nation’s diverse historic resources” as well as the ACHP’s 2022 *Strategic Plan* and its “commitment to both efficiency and inclusion ... to each of the plan’s five ‘pillars’” (emphasis added). ***There has not only been no good faith, reasonable, or meaningful Tribal inclusion in the development or considerations of this proposed PC and its effects, but there does exist a clearly identifiable attempt to actively elide rights and opportunities afforded under Section 106 for tribal and NHO historic property/PTRCI concerns as well as wholesale exclusions of IK insights and experiences of how Section 106 may or may not work efficiently or effectively to address the challenges of colonial- and industrial-induced climate change and the affordable housing crisis for Native peoples.***
- ***The proposed PC further fails to account for ACHP’s own self-stated trust responsibilities to tribes*** outlined in its *Policy Statement Regarding the Council’s Relationships with Indian Tribes* (November 17, 2000; updated July 3, 2007), and reiterated in its May 21, 2024, *Policy Statement on Indigenous Knowledge and Historic Preservation*. In the ACHP’s own words (emphasis ours):

*The ACHP recognizes that it has a trust responsibility to federally recognized Indian tribes and views this trust responsibility as encompassing all aspects of historic resources including intangible values. The ACHP shall be guided by principles of respect for the trust relationship between the Federal Government and federally recognized Indian tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the Act, are consistent with the protection of tribal rights arising from treaties, statutes, and Executive orders.*

***The proposed PC in its content, substance, and the institutional mindsets of “white possessive logics” (Moreton-Robison 2015) and the structures of settler colonial domination and Indigenous expropriation and exclusion they support are widely inconsistent with the protection of tribal rights arising from***



***numerous agreements, EOs, and statutes, including those directly guiding the procedures of and implicated in Section 106 as a sequential and consultative process.***

To close, the Tribe must state for the record that it adamantly disagrees with the position offered by the Executive Director of the National Association of Tribal Historic Preservation Officers (NATHPO) Dr. Valerie J. Grussing during the ACHP's September 25, 2024, meeting to discuss the proposed PC that its content and substance raise no major red flags. ***The Tribe could not disagree more with this position. The entirety of this proposed PC is a major red flag for tribal concerns.***

***What the entire proposed PC is attempting to do is undermine and erode tribal rights and opportunities under white possessive logics*** to ultimately facilitate a program of "[t]he patriarchal state [that] reinforces the invisibility of a possessive investment in patriarchal whiteness by normalizing it in discussions about economic development and commitments to the nation" (Moreton-Robinson 2015:77). In contradistinction to what has been presented by the ACHP with this proposed PC, ***the Tribe advocates for efforts to improve the Section 106 compliance process through a consultative and inclusive program that is in accordance with the intent and language of the NHPA, including its 1992 amendments and their implications for the affordance of full rights and opportunities for tribes and NHOs under the Section 106 process and the stipulations outlined at 36 C.F.R. § 800.4(c)(1).*** The Tribe urges the ACHP to review and thoughtfully consider its own IK guidance from May 2024 that states:

[a]cknowledgement in this context [of 36 C.F.R. § 800.4(c)(1)] means to recognize and defer to Tribal or NHO interpretation of the property's significance and integrity. Members of the preservation community are not the experts on what constitutes Indigenous Knowledge or how it should be utilized to identify or evaluate the eligibility of a property that may be of religious and cultural significance to an Indian Tribe or NHO, including, but not limited to, ancestral materials recorded and documented as "archaeological."

***As the proposed PC stands, it promotes and will facilitate pathways to undermine tribal and NHO rights and opportunities currently afforded under Section 106 for the identified activities, normalizes and perpetuates settler colonial dominance, values, and privileges in addressing environmental and social harms born of its own developmental and economic systems to the harm and destruction of Native lands, airs, waters, and peoples, and embraces and reproduces exclusionary assumptions based in notions of terra nullius and the ideological myth of manifest destiny***, the latter of which maintains an "inherent right and morality of expansionism of a particular people group at the expense of other culture-sharing groups, who are perceived to be inferior" (Styres 2017:93) and "continues to be fuelled [sic] by a sense of entitled racial and religious superiority maintained through networks and relations of power and privilege" (Styres 2017:93-94). ***To put it simply, the proposed PC in both what it promotes and what it excludes perpetuates white supremacist narratives and white possessive privilegings to the harm and detriment of Native peoples and the historic properties/PTRCIs vital to our viable and continuing pasts, presents, and futures.***



Based on these numerous concerns, ***it is the firm position of the Tribe that the proposed PC in its entirety must be revised to (1) be attentive to tribal and NHO rights and opportunities inclusive of a process that respects and honors government-to-government consultation obligations and IK sovereignty of each of the 574 federally recognized tribes and NHOs under free, prior, and informed consent and (2) operationalize compliance responsibilities under Section 106 for all federal agencies through a process that acknowledges and accounts for the fact that all lands, airs, and waters of what today is commonly called the United States of America are Native lands, airs, and waters.*** Colonial- and industrial-induced climate change and affordable housing challenges are both crises born of settler colonial systems of domination. Native peoples should not, once again, as this proposed PC tacitly asks and actively promotes, be the ones burdened with sacrificing or being asked to sacrifice the places, properties, and land/waterscapes vital for our collective continuance as unique and healthy peoples in order to address, uphold, or maintain settler colonial systems of exploitation, dominance, and social and environmental imbalance, destruction, and domination. This is an absolute imperative for this proposed PC and the identified activities it is meant to address if the ACHP is to avoid regenerating and reproducing once again the “long and bumbled history of non-Indigenous peoples making moves to alleviate the impacts of colonization” (Tuck and Yang 2012:3).

The Tribe thanks Chair Bronin and the ACHP for attention to these vitally important concerns and to the necessary direct Tribal collaboration on and wholesale revisions to the proposed PC. The Tribe is committed to reasonable, meaningful, and good faith communication and consultation to fulfill our stewardship responsibilities for the lands, airs, and waters and all of the diverse, dynamic, and living resources that help comprise our ancestral territories, traditional use areas, traditional cultural land/waterscapes, and other historic properties/PTRCIs. If you have any questions or need additional information, please contact me at [jaime.martin@snoqualmieltribe.us](mailto:jaime.martin@snoqualmieltribe.us).

Sincerely,

DocuSigned by:  
  
55ECFF68F5D44FA...

Jaime Martin  
Executive Director  
Governmental Affairs & Special Projects

CC:

Dr. Allyson Brooks, Washington State Historical Preservation Officer  
Steven Moses, Snoqualmie Tribe Director of Archaeology & Historic Preservation  
Senator Patty Murray  
Senator Maria Cantwell





Congresswoman Kim Schrier

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## PUEBLO OF ZUNI

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Officially known as the Zuni Tribe of the Zuni Indian Reservation

09 October 2024

Chair Sarah C. Bronin  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001

RE: Zuni Tribal Historic Preservation Officer's Comments on the Advisory Council on Historic Preservation's Proposed Program Comments on "Accessible, Climate Resilient, and Connected Communities.

Dear Ms. Bronin,

As the Tribal Historic Preservation Officer for the Pueblo of Zuni, I have numerous concerns regarding the Advisory Council on Historic Preservation's (ACHP) attempt to provide all federal agencies with an alternative way to meet their compliance responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. part 800 (Section 106), as part of undertakings related to these identified activities.

First, the notion that "alternative ways" for federal agencies to meet compliance responsibilities under Section 106 and its implementing regulations is on the edge of absurdity because in my 18 years as the Zuni THPO, I have too many examples where federal agencies were negligent or completely ignored their responsibilities often resulting in the destruction or damage to Register-eligible historic properties. For example, an egregious failure to comply with §106 was the U.S. Fish and Wildlife Service's (USFWS) funding of the creation of a fishing pond near Eagar, Arizona, which resulted in extensively damaging a Zuni ancestral site (AZ:Q:15:74 (ASM), a PIII/early PIV masonry Pueblo with 60+ rooms) and exposing the remains of 14 Zuni ancestors. This historic property and that damage was proximal to *Koluwala:wa* (Zuni Heaven). The Pueblo of Zuni was actively engaged in demanding that the USFWS be held accountable and remediate the damage. The federal agency's response was aggressively belligerent and uncooperative. Zuni Councilman Kucate and the Zuni THPO repeatedly called on the ACHP to be more assertive in demanding the federal agency to come into compliance; however, the ACHP remained less than effective.

I draw your attention to another, more recent, example involving the Bureau of Land Management (BLM) and the Borderlands Wind Project in west central New Mexico. The project area is situated near the geographical center of *A:shiwi A:wan Dehwa:we*, or the Zuni ancestral and traditional cultural landscape. This geography is a fundamental component of the relationship the Zunis have long shared with the natural and physical environment since the mo(ve)ment of emergence into this landscape in time immemorial, and the Zuni people continue to maintain traditional practices that are associated with



locations with/in proximity to the Borderlands Wind Project area. The geography of this Project area is of particular importance to the Pueblo of Zuni because of its (1) proximity to Zuni Salt Lake, home of *Ma'l Okyattsik'i* (Salt Mother, or Salt Grandmother), (2) associations with Zuni trail systems, which serve as vital networks of living cultural practices of migration, dwelling, movement, return, and ceremony for Zuni people, (3) extant ancestral/archaeological resources identified in the area, and (4) natural-cultural flora and fauna of traditional use and importance. The BLM failed to address the historic preservation issues delineated and presented by the Pueblo of Zuni. Finally, in a letter dated 28 June 2023, Zuni Governor Kucate reminded the BLM that the "Zuni PTRCI Study for the Borderlands Wind Project Area to inform NHPA Section 106 Review and Compliance" report was approved, concurred with, and endorsed with an authentication and endorsement page containing the signatures of the Zuni Governor, Lt. Governor, and each Tribal Council representative. It therefore must be considered by the BLM Socorro Field Office as the official position of the Zuni Tribe to the BLM as part of the government-to-government relationship and deserves respect and deference from this agency. The BLM failed to appropriately respond to the expressed Zuni concerns, and Zuni appeals to the ACHP to investigate this failure has remained unanswered. It is a concern that the ACHP is designing alternatives for Section 106, when as the two above examples clearly demonstrate, the ACHP either cannot or is unwilling to hold federal agencies accountable to even the existing legislation and the implementing regulations.

This proposed program comments for Section 106 alternatives without the free, prior, and informed consent of each and every federally recognized Native American tribe and Native Hawaiian Organization (NHO) is an attempt to usurp the role of Congress, homogenize the diversities and densities of Native communities and peoples, erode tribal political and knowledge sovereignty, and erase the vital importance of procedural attention to place-specificity as understood, valued, lived, stewarded, and practiced through our own unique systems of Indigenous Knowledge (IK). It can also be interpreted as a political strategy to compromise compliance with the legislation to avoid scrutiny by politicians in a divided Congress. As such, this proposed program comment appears far more to work in select political interests rather than the actual mission and purpose of ACHP to better protect and preserve places and landscapes of historical, geographical, and cultural importance.

The program comments will also functionally deregulate current processes that require attention to the specific and unique environmental, historical, social, economic, and cultural relationships to Zuni places, properties, and landscapes of traditional religious and cultural significance by truncating and short-circuiting the procedures and processes of Section 106. It is these very processes of Section 106 and their sequential nature that permit Zuni to better negotiate, coordinate, and fulfill Zuni obligations to protect and preserve the integrity of Zuni ancestral sites, properties of traditional religious and cultural importance (PTRCIs), continue practicing intimately and indelibly associated Zuni traditional relational life/way systems in relationship with and to these historic properties/PTRCIs, and ensure Zuni capacities of and for collective continuance as a unique Indigenous tribe and people in continuity with our pasts and presents into the future.

Virtual listening sessions conducted by the ACHP are not meaningful and honest Tribal consultation, rather listening sessions appear to the Zuni THPO as an intentional obfuscation of your agency's responsibility to every Tribal government and NHO in the United States and a means of expediting a timeline that treats Tribes as monolithic and does not provide them the dignity and respect they deserve. The ACHP is attempting to speed up what in fact must be slowed down to appropriately and inclusively account for tribes and NHOs. Given its mission and charges, the ACHP must do far better. It is the position of the Zuni THPO that the proposed program comment should be rejected in its entirety, and the Zuni Tribe calls for direct government-to-government consultation to discuss these matters in good faith and reasonable ways.



Letter to Ms. Bronin, Chair, ACHP

09 October 2024

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Sincerely,



Kurt Dongoske, RPA #10233

Principal Investigator/Tribal Historic Preservation Officer  
Zuni Tribal Historic Preservation Office  
Pueblo of Zuni