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**[External] FW: DHS Comments: DRAFT PROGRAM COMMENT ON CERTAIN HOUSING, BUILDING, AND TRANSPORTATION ACTIVITIES**

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**From** Hass, Jennifer <jennifer.hass@hq.dhs.gov>

**Date** Fri 13-Dec-24 2:24 PM

**To** Program Alternatives <program\_alternatives@achp.gov>; Sara Bronin <sbronin@achp.gov>; Jaime Loichinger <jloichinger@achp.gov>

**Cc** Sarah Koeppel <Sarah.Koeppel@hq.dhs.gov>; FERNANDEZ, GABRIELLE <GABRIELLE.FERNANDEZ@hq.dhs.gov>

ACHP Team -

DHS provides the following comments on the November 15, 2024 version of the Program Comment. I'm happy to discuss next week if needed.

Thanks,  
Jen

**Stipulation II. Scope**

1. We understand application of this Program Comment is voluntary and that federal agencies may amend or terminate existing Program Alternatives per Stipulation II.C.2. DHS requests clarification from the ACHP regarding the relationships and/or implications of existing agreement documents and the PC when there may be undertakings that are similar, but with slight distinctions. For example, DHS has a nationwide PA which covers roof mounted PV under certain circumstances, primarily in situations where they would not be visible from the public right of way. Appendix A, Section B.2.vi allows "clean energy technologies" and states no further Section 106 review is required. Is it possible to use the ACHP's PC for a clean energy technology project on the exterior of a building (e.g., wind power), without amending or terminating our existing nationwide PA?
  - a. If not, we recommend adding clarifying language stating existing Program Alternatives with similar undertakings must follow the stipulations as written in that existing document (i.e., you can't use both documents interchangeably or on a project by project basis).
  - b. If so, we recommend adding language similar to: For undertakings that are similar, but distinct, or not addressed in an existing MOA or PA, the federal agency may elect to utilize this PC without terminating or amending their existing documents upon notification (see notification section).
2. For existing Program Alternatives that do not cover an action included in the PC, but whose existing Program Alternatives state any undertakings outside the scope of the agreement document must conduct traditional Section 106 compliance, would the federal agency be able to utilize the PC without amending?

**Stipulation V. Unanticipated or Post-Review Discoveries**

DHS requests confirmation that the ACHP is not to be notified for unanticipated discoveries. Additionally, we recommend including additional streamlining measures to this stipulation in A. Immediate Response Requirements.

**If previously unidentified historic properties or unanticipated effects, including but not limited to visual, audible, atmospheric, and cumulative effects, to historic properties are discovered during implementation of the undertaking, the federal agency must immediately halt all activity within 100 feet of the discovery or that could otherwise 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 CFR § 800.13(b), with the following streamlined processes for timeliness:

**NEW PROPOSED LANGUAGE:**

- i. Within 48 hours of the discovery, the federal agency notifies the relevant SHPO/THPO, Tribe, or NHO, as appropriate, and any identified consulting parties, of the inadvertent discovery. Written documentation of the condition of the items from visual inspection, and any detailed information that may benefit the recovery plan and decision-making process is provided of the discovery.
1. Photographs, videos, or social media posts identifying or discussing human remains or material objects associated with burial contexts are not permitted unless consent is granted by the consulting parties and/or descendants. Special care will be taken to ensure that details, location and photographs of artifacts, funerary objects, and human remains associated with burial contexts are not provided to the public.
- ii. The federal agency determines within five (5) business days of the original notification, in consultation with the SHPO/THPO, Tribes, and NHOs, as appropriate, and any identified consulting parties, whether the unanticipated or post-review discovery is eligible for the National Register, or has been identified by a Tribe as a Sacred Site, and works collaboratively with the relevant SHPO/THPO, Tribe, or NHO, as appropriate, to determine the contents of a Discovery Plan, including ways to minimize, avoid, or mitigate adverse effects and appropriate methods of identification, transport, and storage of materials.

**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 in accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation. For sites involving burial sites, human remains, or funerary objects, the federal agency must follow these procedures and be guided by the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.**

**Stipulation X. Reports, Meetings, and Trainings**

DHS requests the following language be included to assist federal agencies with appropriately applying the Program Comment.

**NEW PROPOSED SECTION/LANGUAGE:**

**Training**

1. The ACHP will develop training materials on application and requirements of this Program Comment in coordination with Signatories within 90 days of adoption. The training materials will be reviewed and revised, as necessary, on an annual basis.
2. The ACHP will provide annual trainings for Federal agencies and maintain an on-demand training on its website.

**Jennifer DeHart Hass**

**Director, Environmental Planning & Historic Preservation Program  
Office of the Chief Readiness Support Officer**

Department of Homeland Security

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[jennifer.hass@hq.dhs.gov](mailto:jennifer.hass@hq.dhs.gov)

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*Optimize Readiness Across DHS*



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**[External] RE: Invitation to Consult on Revised Program Comment on Certain Housing, Building and Transportation Activities**

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**From** Volkema, Michelle A CIV OSD OUSD A-S (USA) <michelle.a.volkema.civ@mail.mil>

**Date** Fri 13-Dec-24 3:43 PM

**To** Sara Bronin <sbronin@achp.gov>

**Cc** Jaime Loichinger <jloichinger@achp.gov>; Reid Nelson <rnelson@achp.gov>; Ronald Tickle <ronald.e.tickle4.civ@mail.mil>; Alicia Sylvester <alicia.m.sylvester2.civ@mail.mil>

Chair Bronin,

Thank you for the opportunity to review and comment again on the ACHP's revised draft Program Comment on Certain Housing, Building and Transportation Activities. In addition to the comments we discussed during the FPO call earlier this week, I would like to offer the following additional technical comments for your consideration:

- Section V.B.
  - We are not aware of state burial laws that apply on federal lands. So, suggest listing NAGPRA first in this provision, then state burial laws - in order of authority - and use "or" instead of "and," and consider adding "as applicable" at the end of that sentence.
- Section XI - Definitions
  - Consider restoring the definition for "Substitute building materials" because it is referenced prominently in the Type G Determination beginning on page 29.
- Appendix A.2.c.
  - Consider adding back in "rehabilitation" or "repair" for the provision concerning building-mounted solar energy systems. As currently drafted, covered solar system activities in this section only covers replacement and installation.
- Throughout:
  - Suggest clarifying why Electric Vehicle Supply Equipment (EVSE) activities are included in this PC when a separate EVSE PC exists already, and how the covered activities here are/are not different.
  - When a number of days is specified for a duration, suggest the PC clarify whether calendar or business days are intended.

I hope these comments are helpful. Have a wonderful weekend.

Sincerely,

Michelle Volkema

Deputy Federal Preservation Officer

Office of the Deputy Assistant Secretary of Defense (Environmental Management & Restoration)

Department of Defense, OASD(EI&E)

michelle.a.volkema.civ@mail.mil

Telework: 202-731-2904

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**From:** chair@achp.gov <chair@achp.gov>

**Sent:** Friday, November 15, 2024 4:02 PM

**Cc:** Jaime Loichinger <jloichinger@achp.gov>; Reid Nelson <rnelson@achp.gov>

**Subject:** FW: Invitation to Consult on Revised Program Comment on Certain Housing, Building and Transportation Activities

The Advisory Council on Historic Preservation (ACHP) invites you to consult on the revised draft of the ACHP's Proposed Program Comment on Certain Housing, Building, and Transportation Activities.

The ACHP is continuing consultation on the proposed Program Comment. As described in the first round of consultation, the intent of the Program Comment is to accelerate federal Section 106 reviews of proposed undertakings to rehabilitate existing housing or create new housing in existing buildings, to maintain and update buildings and their immediate environs, and to rehabilitate or create new transportation infrastructure. The Program Comment would be available for all federal agencies proposing to carry out, license, permit, or fund the covered undertakings. The revised draft of the Program Comment is can be found on the [ACHP's website](#), which contains additional information about the Program Comment.

The ACHP's previous consultation period, which ran from August 8, 2024, to October 9, 2024, consisted of two meetings with Indian Tribes and Tribal Historic Preservation Officers, one with State Historic Preservation Officers, one with Federal Preservation Officers, and two public meetings. A review and comment period ran concurrently with the consultation period, during which the ACHP received 144 written comments that can be found on the website listed above. A narrative summary of comments received is attached.

In response to the comments, revisions were made to add clarity throughout the document. From a process standpoint, the revised draft includes annual reporting timelines and formats, requires specific content in the reports, and provides consulting parties and the public the ability to review those reports. It also reduces the proposed duration of the Program Comment. In addition, the revised draft clarifies Tribal consultation requirements, including in activities involving site work. Various definitions have been updated in response to comments. Most notably, the Program Comment's appendices have been reorganized, reduced in length, and revised to better align with typical findings in Section 106, to outline specified roles in the process for SHPOs and THPOs as well as qualified professionals, and to outline the process by which federal agencies must make determinations relevant to certain undertakings.

I have determined that given the completion of the initial consultation period, the nature of comments received during the first round of consultation, the extent to which the revised draft of the Program Comment addresses comments received during the initial consultation period, and the practical issues related to the change in Presidential administrations, circumstances warrant a second, shorter consultation period. Accordingly, you or your designated representative are invited to participate in a consultation meeting on the revised draft Program Comment to be held on **Tuesday, December 10, 2024, at 2:00 p.m. Eastern Standard Time**. Please register for the meeting [here](#).

*Please note this link is for registration only.* It is not a link to access the consultation meeting. Meeting access information will be emailed separately after you have registered.

In addition to the consultation meeting, questions and written comments can be submitted to [program\\_alternatives@achp.gov](mailto:program_alternatives@achp.gov). ***Written comments are requested by Sunday, December 15, 2024.***

I look forward to continuing consultation with you.

Sincerely,

Sara C. Bronin  
Chair



Outlook

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**[External] DRAFT PC- CERTAIN HOUSING, BUILDING, AND TRANSPORTATION ACTIVITIES**

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**From** Shanahan, Amy <amy.shanahan@hq.doe.gov>  
**Date** Fri 13-Dec-24 3:30 PM  
**To** Program Alternatives <program\_alternatives@achp.gov>  
**Cc** Kerwin, Kristin <kristin.kerwin@hq.doe.gov>

Hello ACHP,

Thank you for developing the draft program comment on Certain Housing, Building, and Transportation Activities. This program comment has the potential to support undertakings within the Department of Energy's, Office of Clean Energy Demonstrations, particularly those project selections within our Energy Improvements in Rural or Remote Areas (ERA) program. [Energy Improvements in Rural or Remote Areas | Department of Energy](#)

We have selected many projects within our ERA program that are located throughout the nation, and which are proposing to implement activities outlined within this program comment. For example, we are currently in negotiations with the National Association of Community Health Centers (NACHC), to finance, design, install, commission, and operate solar and storage microgrid systems at approximately 125 rural or remote community health centers throughout the Southeast region of the United States. In other examples, we have selected Spruce Root, a certified native community development financial institution who are serving tribal villages on Prince of Wales Island in Southeast Alaska, and we've selected the Northwest Arctic Burrough, who are serving tribal villages across their Burrough; these selectees are proposing to install close to a thousand air-source heat pumps in tribally owned homes and community facilities.

We want to ensure that we understand how heat pumps, which are considered in the program comment and defined as a mechanical system, can and should be reviewed. We note that the installation of mechanical systems (heat pumps, specifically) which are 45 years and older, must be reviewed by an SOI-qualified professional or SHPO/THPO if a Type E determination can be made. We would like to understand more about the way in which the ACHP defines maintenance or repair (including in-kind replacement) of mechanical systems. We would like to know if this would include swapping out a heating system for a heating system. Additionally, we are curious why an activity such as heat pump installation would not qualify to have a stipulation explicitly stated such as in Appendix A, Section 2.c. for the replacement or installation of building-mounted solar energy systems (page 22). We would appreciate the ACHP's consideration in identifying the installation of heat pumps under Appendix A explicitly stating installation methods can occur without further review while stipulating that if such a system is installed on the interior or exterior of a building, it would be limited to a *non-significant façade*, and that it would not be visible from the public facing right-of-way. We are curious what the risk to historic properties could be so that we can minimize any potential risk and have the ACHP include this stipulation to further streamline the review process for heat pump installations. We also note that OCED's NEPA determinations as well as our terms and conditions for each of our funded projects, would be further stopgaps requiring that our use of any such program comment, to comply with the NHPA, must be met.

We appreciate the time and care that the ACHP has taken in drafting the program comment and the consideration that has been taken with public comments received on the previous draft. We appreciate the ACHPs support in dynamically finding new ways to identify alternatives to the formal Section 106 process and to finding alternatives to developing program agreements. In our federal experience, program agreements are time consuming. OCED has just completed working with one of our DOE headquarter sister agencies to amend their programmatic agreement which would allow OCED to utilize the alternative process for one of our ERA projects, heat pump installations for mobile and manufactured homes in rural communities throughout the state of Maine. The process and time involved in a simple

amendment has taken 5.5 months to complete which is a lot of time and money spent of taxpayer dollars.

The program comment has the potential to save untold taxpayer dollars, putting as much project funding into the resources which our agency has been mandated by congress to administer, while protecting historic properties and promoting historic preservation. Thank you for your time and consideration.

Sincerely,

**Amy Shanahan** (she/her/hers)

Cultural Resources Specialist

Environment, Safety and Health Division

Office of Clean Energy Demonstrations

U.S. Department of Energy

Cell: 240-937-9605 | [amy.shanahan@hq.doe.gov](mailto:amy.shanahan@hq.doe.gov)

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Sign up for OCED Updates: [energy.gov/oced/contact-us](https://energy.gov/oced/contact-us)





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**[External] DOI COMMENTS-Proposed Program Comment on Certain Housing, Building and Transportation Activities**

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**From** Henry, Caroline D <caroline\_henry@ios.doi.gov>

**Date** Fri 13-Dec-24 5:09 PM

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

**Cc** Sara Bronin <sbronin@achp.gov>; chair@achp.gov <chair@achp.gov>; Shannon Estenoz <Shannon\_Estenoz@ios.doi.gov>; Michael Martinez <michael\_martinez@ios.doi.gov>; Margrette Thompson <margrette\_thompson@ios.doi.gov>; Reid Nelson <rnelson@achp.gov>; Jaime Loichinger <jloichinger@achp.gov>; Kelly Yasaitis Fanizzo <kfanizzo@achp.gov>; Javier Marques <jmarques@achp.gov>

 1 attachment (100 KB)

PC 11\_15\_24 Draft with Appendices\_DOI REDLINE-FINAL.docx;

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

Dear Chair Bronin:

The Department of the Interior appreciates the leadership of the Advisory Council on Historic Preservation (ACHP) in development of the proposed *Program Comment on Certain Housing, Building and Transportation Activities*. We appreciate the opportunity to comment on the November 15, 2024 "Draft for Public Comment." In an effort to achieve the Program Comment's stated goals, while best managing and preserving diverse historic resources, we offer the following "big picture" comments.

### **Consultation**

Several commenters on the previous draft expressed concerns about the consultation process undertaken for development of the Program Comment, including the written comments from the National Association of Tribal Historic Preservation Officers (NATHPO). These concerns remain, with the current comment period being shorter than the previous and a more limited number of consultation meetings in the lead up to the December holiday season. We also understand that despite ACHP's efforts to publicize opportunities to meet to discuss the draft and provide written comments, knowledge of these opportunities did not reach all interested parties and Tribal cultural resources staff.

Many commenters on the previous draft objected to the consultation procedures in the proposed Program Comment. The Program Comment removed any role for State Historic Preservation Officers (SHPOs) and some qualified authorities that often collaborate to share resources with Tribes. It eliminated the requirement to consult with Tribes, Native Hawaiian Organizations (NHOs) and Tribal Historic Preservation Officers (THPOs), even for projects with the potential to destroy historic, archaeological, and sacred sites. Further, Tribes are concerned that the truncated consultation procedures in this Program Comment infringe on government-to-government consultation obligations of

federal agencies. We appreciate that the revised Program Comment clarifies Tribal consultation requirements. However, we take note of the ongoing tribal concerns regarding consultation and acknowledge concerns that the procedures still reduce or eliminate SHPO, Tribal and NHO participation in many circumstances.

### **Qualified Professionals**

The use of “qualified professionals” has been an issue of significant concern to those commenting on previous drafts of the Program Comment, including NATHPO, Tribal nations, numerous SHPOs, the National Conference of State Historic Preservation Officers (NCSHPO) and the National Trust for Historic Preservation (NTHP). While revisions to the document offer some improvement, this issue remains an area of significant concern. We agree with other commenters’ recommendation that all “decision points” of this Program Comment be made by a qualified professional, including the foundational decision of whether a federal agency should use the Program Comment, and, if so, what sections of the Program Comment are applicable (or not) to a specific agency, project, historic property, etc.

### **Program Comment Scope**

Several commenters noted that the proposed Program Comment covers activities that seem incongruous. The transportation-related activities, in particular, are dissimilar to undertakings related to housing and buildings. The NTHP, along with numerous others in both written comments and in consultation meetings, have called for the removal of the entire section on transportation-related projects. This recommendation is further supported due to 44 states that have existing programmatic agreements that cover transportation projects (with more under development). We agree that the proposed Program Comment would be improved by this separation of all transportation-related activities. A careful analysis of gaps or problems by the ACHP and other stakeholders could result in development of a focused programmatic solution tailored to transportation projects, if necessary, while this Program Comment on housing and buildings would more closely align with expressed federal needs.

Numerous commenters on the previous draft expressed strong concern regarding the treatment of ground disturbance, specifically noting that the Program Comment could result in unnecessary damage to archaeological sites and delays of projects. This issue is of particular concern to Tribes, who note that predicting past ground disturbance and its effect on potential cultural deposits is nearly impossible without actual on-site verification. As expressed by the Osage Nation,

[G]round disturbance is rarely uniform and 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. (Letter from Osage Nation to ACHP at p.4, 10/9/24).

In consultation meetings and written comments, stakeholders noted that the proposed Program Comment is broad in scope and far-reaching in impact, suggesting that it may be more appropriate for the ACHP to implement rulemaking for these priorities.

In light of these and other concerns raised in the public comments, the Department of the Interior offers suggested revisions, attached to this email in a “red-lined” copy of the proposed Program Comment.

We also offer the following recommendations for advancing the resilience policies embodied in this draft Program Comment, while responding to these reasonable concerns described above:

1. Due to ongoing concerns of Tribal Nations with this proposal, we recommend the ACHP develop and implement a detailed Tribal consultation plan to ensure broad awareness of the proposed Program Comment and consideration of other revisions that might assuage Tribal concerns.
2. We suggest strengthening the requirements in the Program Comment for use of qualified professionals, specifically, removing all provisions that allow ground disturbing activity, unless it includes the direct oversight of a qualified professional, thereby reducing the risk of inadvertent discoveries of significant cultural resources and associated project delays.
3. We recommend removing all transportation-related activities given that 44 states have existing programmatic agreements that cover transportation projects (with more under development). Removal from this document could clarify and focus this proposed Program Comment on solutions for housing and building issues identified by federal agencies.

We look forward to the ACHP sharing the comments of other ACHP Members and stakeholders following the December 15th deadline for written comments. The Department of the Interior continues to offer the expertise of our staff to assist in development of the Program Comment.

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

**DRAFT PROGRAM COMMENT ON**  
**CERTAIN HOUSING, BUILDING, AND TRANSPORTATION ACTIVITIES**

This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on [date of adoption], on its own initiative pursuant to 36 CFR § 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 CFR part 800 (Section 106), regarding the *effects* of certain *housing-related*, *building-related*, and *alternative transportation infrastructure-related* activities.

**I. INTRODUCTION**

**A. Background**

The National Historic Preservation Act calls for “us[ing] measures ... to 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.” 54 U.S.C. § 300101. The development of this Program Comment responds to this call and is driven by the need to harmonize policies and procedures for the preservation of our nation’s historic places with other efforts designed to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce energy use and associated costs, improve resilience against natural hazards, and provide alternative transportation options — needs that have received high levels of attention from Congress, as well as state, local, and Tribal governments and private parties.

**B. 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. The ACHP has performed these statutory duties in the areas covered by this Program Comment.

In its advising capacity, the ACHP issued its first policy statement on affordable housing in 1995. It updated this policy statement in 2006, and again in 2023 by broadening the scope to cover all housing. The Housing and Historic Preservation 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 energy use and cost, resilience, and historic preservation through its Climate Change and Historic Preservation 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 alternative transportation projects.

In its oversight of the Section 106 process, the ACHP has issued or participated in a variety of 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

## DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

has also recently been a signatory to several statewide programmatic agreements with HUD related to projects and programs subject to 24 CFR Parts 50 and 58.

With regard to building rehabilitation, 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 resilience-related undertakings.

With regard to transportation alternatives, 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 offices, Indian Tribes, and state departments of transportation, covering a range of transportation-related activities.

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 offers an alternative approach for Section 106 review across the federal government for certain undertakings, equipping federal agencies to more effectively and efficiently preserve and protect our nation's historic resources while addressing other critical policy needs.

### **C. 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." Accordingly, it has been drafted to advance historic preservation goals including the reuse of historic materials and buildings and the upgrading of infrastructure in historic neighborhoods, and to harmonize them with the nation's pressing needs to expand access to housing, improve resilience, and offer transportation alternatives.

Every day, federal agencies meet these needs by proposing to carry out, permit, license, fund, assist, or approve undertakings that have the potential to affect historic properties, and when they do, they must comply with 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 offer efficiencies in reviewing these covered undertakings. In doing so, this Program Comment enables federal agencies to focus on preservation and consultation for other undertakings with greater potential for adverse effects on historic properties. This Program Comment also aims to leverage existing investments in existing buildings and other built infrastructure by facilitating reuse and thereby avoiding the need for new construction and for costly new construction materials.

Ultimately, this Program Comment aims to benefit the people who live in the housing, work in the buildings, and move using the transportation infrastructure projects being carried out, permitted,

licensed, funded, assisted, or approved by federal agencies by creating review efficiencies that deliver these projects more quickly and efficiently.

## 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 issuance of this Program Comment at the ACHP's own initiative provides the ACHP a reasonable opportunity to comment regarding the covered *undertakings*.

### B. Effect on Other Applicable Laws

This Program Comment does not modify, preempt, or replace any other federal laws or regulations (including the federal rehabilitation tax credit), or any applicable state, local, or Tribal laws or regulations (including local historic preservation review or zoning ordinances, building codes, or permitting requirements).

### C. Effect on Existing Agreements

1. Overall Effect A *federal agency* that already has an executed Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) in effect that addresses covered *undertakings* must follow the terms of those MOAs or PAs to the extent those MOAs or PAs address the *undertakings* covered by this Program Comment. This Program Comment does not in any way supersede, replace, or change the terms of existing MOAs or PAs, or other program comments.

#### 2. Amendment or Termination of MOAs and PAs

*Federal agencies* may pursue amendments to existing 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*.

If a *federal agency* elects to amend or terminate an MOA or PA, and if that MOA or PA includes an amendment or termination provision, the *federal agency* must follow the procedures of that provision, including consultation with all signatories to the MOA or PA.

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If a *federal agency* elects to amend or terminate an MOA or PA, and if the applicable amendment or termination provision of such MOA or PA does not require consultation with relevant *Indian Tribes* or *Native Hawaiian Organizations*, the ACHP strongly recommends that the *federal agency* meaningfully consult with relevant *Indian Tribes* and *Native Hawaiian Organizations* in considering any such amendment or termination.

If a *federal agency* elects to terminate an MOA or PA, and if the applicable termination provision of such MOA or PA does not require notice to the ACHP of such termination, the *federal agency* must provide written notice to the ACHP of such termination and provide notice of its intent to follow this Program Comment per Section III.A.2. of this Program Comment.

#### 3. Amendment of Existing Program Comments

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

*Federal agencies* may propose to the ACHP amendments to existing program comments following the amendment provisions in those program comments, and the ACHP may

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

consider any amendments to incorporate, in whole or in part, the terms of this Program Comment.

**D. Application on Tribal Lands**

This Program Comment does not apply to *undertakings* located on *Tribal lands*, or to *undertakings* that may affect *historic properties* located on *Tribal lands*, unless the *Tribal Historic Preservation Officer (THPO)* 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 C to this Program Comment, and by submitting the completed authorization to the Executive Director of the ACHP. This Program Comment is applicable on the *Tribal lands* identified in such authorization on the date of receipt of the authorization by the Executive Director of the ACHP, who must ensure notice of such authorization is included on the website of the ACHP within 30 days of ACHP's receipt. The *THPO* 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*.

**E. Activities Not Covered and Exceptions**

A *federal agency* must follow the Section 106 review process under 36 CFR §§ 800.3 through 800.7 or 36 CFR § 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*.
2. The *undertaking* is not listed in the Appendices to this Program Comment.
3. The *undertaking* would occur on or have the potential to affect the following *historic properties*:

a. Any ~~National Monument, National Historic Site, National Historic Trail, National Historical Park, National Military Park, National Battlefield, National Battlefield Park, or National Battlefield Site~~ unit under the jurisdiction of the National Park Service.

b. Any site, object, *building*, or structure individually designated as a *National Historic Landmark* or found within the boundaries of a *National Historic Landmark* district.

c. Sites of religious and cultural significance to *Indian Tribes* and *Native Hawaiian Organizations*, including but not limited to Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*.

**Commented [A1]:** We suggest that ACHP add a definition of a "National Park Unit" in the definition section and revise the wording here as noted. The citation of only certain "naming designations" is limiting. Every unit of the national park system is managed under a unified agency framework according to the same NPS-wide laws and policies. There are 28 different types of parks in the system that reflect the laws and authorities used to create each place, the unique cultural and political circumstances in which they were designated, and differences in geographic size, type of resources, and allowed uses. Thus, a National Park unit can be any one of the hundreds of areas of land and water administered as part of the national park system

### III. ALTERNATIVE COMPLIANCE APPROACHES

#### A. Available Alternative Compliance Approaches and Federal Agency Use

##### 1. Available Alternative Compliance Approaches

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

a. For *undertakings* set forth in Appendix A of this Program Comment, a *federal agency* has no further Section 106 review requirements regarding the *undertaking*, if the *federal agency* elects to use this Program Comment.

b. For *undertakings* set forth in Appendix B of this Program Comment, a *federal agency* has no further Section 106 review requirements regarding the *undertaking* if the *federal agency* elects to use this Program Comment and (i) satisfies the conditions, exclusions, or requirements prescribed in Appendix B, and (ii) documents, as part of its administrative record and for any reports required by Section X of this Program Comment, the manner in which it has satisfied such conditions, exclusions, or requirements.

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##### 2. Federal Agency Notice of Alternative Compliance Approaches

Prior to using this Program Comment, a *federal agency* must provide a written notification to the ACHP, the National Conference of State Historic Preservation Officers, and the National Association of Tribal Historic Preservation Officers of its decision to use this Program Comment, including an identification of the geographic scope (national, state, or otherwise) in which it will use the Program Comment. The ACHP must make available on its website any such notices submitted by *federal agencies* to the ACHP pursuant to this Section.

##### 3. Request for ACHP Advisory Opinions

A *federal agency* may seek an advisory written opinion from the ACHP as to whether it may appropriately utilize this Program Comment for an *undertaking* by forwarding to the ACHP all documentation relevant to the *undertaking*, requesting the ACHP to provide within 30 *days* its written comments, and taking the ACHP's comments into account before making a decision as to whether to utilize this Program Comment for such an *undertaking*.

#### 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-govern~~ance~~ment. Tribes exercise inherent sovereign powers over their members and territories.

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

It is important to recognize that while this Program Comment was drafted to limit *effects* on *historic properties*, including sites with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, covered *undertakings* could directly, indirectly, or cumulatively affect such properties.

##### 2. Consultation-Related Obligations

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

Prior to engaging in any *undertaking* for which this Program Comment requires a Type B Determination in accordance with Appendix B of this Program Comment, or for any *undertaking* for which the *federal agency* knows, believes, or has been informed that there may be moderate or high likelihood of encountering *historic properties* in which an *Indian Tribe* or *Native Hawaiian Organization* may have an interest, a *federal agency* must make a reasonable and good faith effort to identify any *Indian Tribes* or *Native Hawaiian Organizations* that might attach religious and cultural significance to *historic properties* in the *area of potential effects* and invite them to be consulting parties. 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 *federal agency* staff; historic maps; information gathered from previous consultations pursuant to Section 106 or Section 110 (subject to Section III.B.4. of this Program Comment); 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. Such *Indian Tribe* or *Native Hawaiian Organization* that requests in writing to be a consulting party shall be one.

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 but not limited to recognizing the special expertise of holders of Indigenous Knowledge. The *federal agency* must defer to the determination by an *Indian Tribe* or *Native Hawaiian Organization* that a certain individual or individuals has or have expertise (including but not limited to Indigenous Knowledge-based expertise) in identification, evaluation, assessment of *effect*, and treatment of *effects* to *historic properties* of religious and cultural significance to the *Indian Tribe* or to *Native Hawaiians*.

The *federal agency* must gather information to identify whether any *historic properties* of religious and cultural significance to such *Indian Tribes* or *Native Hawaiian Organizations* are included in such *area of potential effects* in accordance with the protocols in 36 CFR § 800.4(a)(4) and must use this information to assess whether the *undertaking* could result in an *effect* on any such *historic properties*.

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

Should the *federal agency* determine through consultation with *Indian Tribes* or *Native Hawaiian Organizations* or otherwise that a proposed *undertaking* covered in this Program Comment could result in an *effect* on a *historic property* with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, including but not limited to a Tribal identified sacred site or a site identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, the *federal agency* will not use this Program Comment and must instead follow the Section 106 review process under 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or another applicable agreement or program alternative.

**Commented [A2]:** This “scale” of the likelihood of encountering historic properties is undefined; it would be helpful to define this terminology.

**Commented [A3]:** This terminology has been defined by ACHP in other documents. That definition should be included in this Program Comment.

**Commented [A4]:** The FCC Tower Construction Notification System (TCNS) has long been a “go-to” source for tribal information. If this system is still maintained and relevant, it might be worth adding to this list.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

4. Confidentiality-Related Obligations

Consistent with 36 CFR § 800.4(a)(4) and 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, or by applicable State and local laws. *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, including when maintaining records of correspondence related to consultation under this Section. *Federal agencies* must also adhere to confidentiality requirements for other resources covered by Section 304 of the National Historic Preservation Act or other applicable State and local laws.

5. Responsibilities for Consultation and Opportunities for Outreach

The *federal agency* retains ultimate responsibility for complying with government-to-government consultation requirements. However, an *Indian Tribe* may consent in writing to allow an entity delegated legal responsibility for compliance with Section 106 in accordance with federal law to assist with or lead consultation. Such consent may be rescinded in writing by the *Indian Tribe* at any time.

Nothing in this Program Comment shall be construed to preclude or discourage early outreach by project proponents, applicants, state or local government entities, or other non-federal entities to *Indian Tribes* or *Native Hawaiian Organizations* prior to the initiation of an *undertaking*.

**C. The Use of Qualified Professionals**

Except where explicitly stated, *undertakings* covered by this Program Comment do not require the use of a *qualified professional*. When the *federal agency* consults with a *qualified professional*, the type of *qualified professional* must be appropriate to the circumstances. As an 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.

**Commented [A5]:** Numerous commenters have expressed concern with this provision. To address these concerns, it is recommended that all “decision points” of this Program Comment should be made by a qualified professional, including making the foundational decision whether a federal agency should use the Program Comment, and, if so, what sections of the Program Comment are applicable (or not) to a specific agency, project, historic property, etc.

**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 CFR 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

## DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

develop a memorandum of agreement or programmatic agreement to conclude the Section 106 review. 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 ability to enter into such an arrangement and pursuant to its statutory authorities and regulations. 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 or analysis to perform preliminary assessments of eligibility to the National Register or to make recommendations about eligibility to the *federal agency* and thereby inform the *federal agency's* determination of eligibility.
- D. Conduct research or analysis to assess the potential *effects* of the *undertaking* on *historic properties* and thereby inform the *federal agency's* determination of *effects*.
- E. Carry additional research or monitor ground disturbing activities.
- F. Curate artifacts or records recovered or made as part of *historic property* identification, or evaluation.
- 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, or minimize *effects* to *historic properties*.
- H. Monitor ground disturbing activities or *federal agency* treatment of unanticipated discoveries.

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.

## V. UNANTICIPATED DISCOVERIES

### A. Immediate Response Requirements

If previously unidentified *historic properties* or unanticipated *effects*, including but not limited to visual, audible, atmospheric, and cumulative *effects*, to *historic properties* are discovered during implementation of the *undertaking*, the *federal agency* must immediately halt all activity within 100 feet of the discovery or that could otherwise 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 CFR § 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*

## DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

*Organizations* and the information provided by designated holders of Indigenous Knowledge and must follow those procedures in accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation. For sites involving burial sites, human remains, or funerary objects, the *federal agency* must follow these procedures and be guided by the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.

### **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 100 feet of the discovery must cease, the area must be secured, and the *federal agency's* authorized official, any known and potentially affiliated *Indian Tribe* or *Native Hawaiian Organization*, 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* will comply with state burial laws and with Section 3 of the Native American Graves, Protection and Repatriation Act and its implementing regulations, 43 CFR 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 any consulting parties involved in the *undertaking* and any relevant *State Historic Preservation Officer (SHPO)* or *THPO*. Objecting parties may include but are not limited to *Indian Tribes*, *THPO(s)*, *SHPO(s)*, *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 CFR § 800.4(c)(2) and Section V of this Program Comment, as appropriate.

Should resolution not be reached within 60 *days*, the *federal agency* must forward to the ACHP all documentation relevant to the objection, including the *federal agency's* proposed resolution if any, request the ACHP to provide within 30 *days* its written comments to resolve the dispute, and take the ACHP's comments into account before making a decision regarding its approach to complying with Section 106. The *federal agency* must notify the objecting party, any consulting parties previously notified of the dispute, and any relevant *THPO* or *SHPO* regarding its decision regarding 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 in writing, 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 to identify patterns or common issues in the use of this Program Comment, 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, 2034, 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*, and after publication on the ACHP website of the Chair's written explanation (which shall take into account ACHP reports and *federal agency* reports required by this Program Comment and any comments received from *Indian Tribes*, *Native Hawaiian Organizations*, and others), may amend this Program Comment to extend its duration one time for 5 additional years. The ACHP must notify *federal agencies*, *SHPOs*, *THPOs*, *Indian Tribes*, and *Native Hawaiian Organizations* 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.

## IX. WITHDRAWAL

If the ACHP determines that the consideration of *historic properties* is not being carried out in a manner consistent with this Program Comment, the ACHP may withdraw this Program Comment. The Chair of the ACHP must then notify *federal agencies*, *SHPOs*, *THPOs*, *Indian Tribes*, and *Native Hawaiian Organizations* 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 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or another applicable agreement or program alternative for individual *undertakings* covered by this Program Comment.

**Commented [A6]:** We agree that an extension period is important to allow time to consult stakeholders on whether to renew/revise the Program Comment and, if so, for how long. Typically, a one year "automatic extension" period is sufficient for this purpose. Therefore, we recommend revising this extension period to one year.

## X. REPORTS AND MEETINGS

### A. Federal Agency Reports

#### 1. Timing of Reports

The *federal agencies* that use this Program Comment must provide annual reports to the ACHP regarding the use of this Program Comment during the previous fiscal year reporting period, ending September 30 annually, to the ACHP, as provided in this Section. Annual reports are due on December 31 of each year, starting December 31, 2025.

#### 2. Delivery of Reports

For any reporting required by this Section, *federal agencies* whose legal responsibility to comply with Section 106 has been delegated in accordance with federal law but who maintain a reporting mechanism for some or all such entities must provide reports to the ACHP on behalf of those entities for which such data is available. Other entities to whom legal responsibility for compliance with Section 106 has been delegated must directly submit reports to the ACHP in accordance with this Section, using their own reporting mechanisms. In any report required by this Section, the ACHP encourages *federal agencies* to also propose for ACHP's consideration amendments and refinements to this Program Comment based on their experience implementing it.

#### 3. Content of Reports

In any report required by this Section, each *federal agency* must:

- a. Identify the number of times the *federal agency* has utilized this Program Comment for *undertakings* covered by Section III.A.1.a.;
- b. For any *undertakings* covered by Section III.A.1.b., include: the address or, if no address is available, the location of the *undertaking*; information about the manner or extent to which the agency satisfied the conditions, exclusions, and requirements to proceed with such *undertakings*; the names and any institutional affiliations of any *qualified professionals*, *SHPOs*, or *THPOs* who contributed to written determinations required by this Program Comment; and a list of relevant *Indian Tribes* and *Native Hawaiian Organizations* with which consultation on such *undertaking* occurred;
- c. Identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, and their resolution;
- d. Assess the overall effectiveness of the Program Comment;
- e. List any entities to which the *federal agency* has delegated legal responsibility for compliance with Section 106 in accordance with federal law and whose *undertakings* are included in the report.

#### 4. Template for Reports

**Commented [A7]:** The reporting and meeting provisions imposed when using this Program Comment are extensive. While federal agency accountability is important and necessary, the requirements for annual reports (and tracking the data they require) and annual meetings seem to add a burden to compliance with this Program Comment that exceeds the benefit it aims to provide. The ACHP should consult federal agencies to arrive at a better balance. As currently crafted, the reporting/meeting requirements may deter agencies from using this Program Comment.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

Within three months of the adoption of this Program Comment, the ACHP must develop a template for *federal agencies* to collect information about any *undertakings* covered by Section III.A.1.b. The ACHP must also endeavor to create an online reporting and tracking system for undertakings covered by this Program Comment.

5. Publication of Reports

The ACHP must make available on its website any annual reports submitted by *federal agencies* to the ACHP pursuant to this Section within 30 days of receipt.

**B. Invitation to Provide Comment**

At any time, any *Indian Tribe, Native Hawaiian Organization, SHPO, THPO*, consulting party, or member of the public may submit written comments to the ACHP regarding the overall effectiveness of the Program Comment in meeting its intent and regarding suggestions for amendments and refinements to this Program Comment. The ACHP must provide and maintain instructions for submission of written comments on its website. The ACHP must consider such written comments when drafting any reports required by Section X.D. of this Program Comment.

**C. Annual Meetings**

By March 31, 2026 and annually for the duration of this Program Comment, the ACHP must schedule an annual meeting and invite *federal agencies, Indian Tribes, SHPOs, THPOs, Native Hawaiian Organizations, ACHP members, consulting parties, 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.

**D. ACHP Reports and Recommendations for Amendments**

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 at an ACHP business meeting a written and oral summary of information received from *federal agency* reports, annual meetings, comments provided pursuant to Section X.B. of this Program Comment, or other sources about the utility of this Program Comment and make any recommendations for amendments. The ACHP must make such written summary of information and such recommendations available to the public through posting on the ACHP website within 30 days of such meeting.

**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, remove, or encapsulate.

*Adverse effect*, as provided in 36 CFR § 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

Commented [A8]: Suggest adding definitions of "National Park Unit" and "reasonable and good faith effort"

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

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.

*Alternative transportation infrastructure* means a *building* or structure used for pedestrian, bicycle, *micromobility vehicle*, and *transit* purposes.

*Area of potential effects*, as provided in 36 CFR § 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 is not physically separated from motor vehicle traffic and that has been designated by striping, signage, and pavement markings for the exclusive use by and increased safety of bicyclists or users of *micromobility vehicles*.

*Bicycle locker* means a device or structure for storing personal or shared bicycles and *micromobility vehicles*, that may have a cover and enclosure to protect the bicycles and *micromobility vehicles* from weather or theft and is not intended for human occupancy.

*Bicycle parking* means a designated area to store a bicycle, whether personal or shared, including but not limited to *bicycle racks*, *bicycle lockers*, *bicycle shelters*, and dedicated docks and kiosks used in a shared system for bicycles or *micromobility vehicles*.

*Bicycle rack* means a rack for a personal or shared bicycle or *micromobility vehicle*.

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

*Bicycle shelter* means a canopy structure above a *bicycle rack* for a personal or shared bicycle or *micromobility vehicle* that provides partial weather protection of the rack and bicycles or *micromobility vehicles*.

*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 but not limited to mobile and manufactured homes and *alternative 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.

*Building safety system* means fire alarm, fire suppression, and security systems and equipment.

*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

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

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 *alternative transportation infrastructure*.

*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.

*Economic feasibility* means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including but not limited to estimated construction costs (including but not limited to the cost of *building* material and labor), estimated operational costs, material availability and life cycle, available budget, and the long-term sustainability of the *undertaking*.

*Effect*, as provided in 36 CFR §§ 800.5(a)(1) and 800.16(i), means a direct, indirect, reasonably foreseeable, or cumulative impact or 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 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 electric vehicle.

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

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

*Federal agency* means an agency as defined by 5 U.S.C. § 551(1), and for Section 106 purposes the term *federal agency* includes state, local, or Tribal governments that have been delegated legal responsibility for compliance with Section 106 pursuant to federal statutory authority such as that under the provisions of the Housing and Community Development Act of 1974 at 42 U.S.C. § 5304(g).

*Flex post* means flexible bollards or delineators used to separate motor vehicle traffic from a *bicycle lane* or *protected bicycle lane* 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.

*Ground disturbance* means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of any soils.

*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 but not limited to lead-based paint), asbestos, asbestos-containing material (including but not limited to 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 pavement using a polymer binder to restore or maintain pavement friction.

*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*, as provided in 36 CFR § 60.3(d), means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of historic sites, *buildings*, structures, or objects united by past events or aesthetically by plan or physical development.

*Historic property*, as provided in 36 CFR § 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 significance to an *Indian Tribe* or *Native Hawaiian Organization* that meet the National Register of Historic Places criteria.

*Housing* means any *building* containing or proposed to contain 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

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

configurations, including but not limited to *buildings* served by an elevator or elevators, “walk-up” *buildings*, rowhouses, semi-detached homes, mobile and manufactured homes, barracks, and freestanding homes.

*Independent utility* means those aspects of a project, activity, or program without which the specifically approved project, activity, or program would not serve a rational need.

*Indian Tribe*, as provided in 36 CFR § 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 in composition, design, color, texture, size, dimension and other physical and visual properties.

*In-kind replacement* means *replacement* of *historic building materials* with *in-kind building materials* or *replacement* of other existing materials, elements, or equipment with new materials, elements, or equipment that are physically and visually similar in all possible respects.

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

*Maintenance* means activities required to maintain in an operational state, or to bring back to operating condition.

*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, including but not limited to 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, waste heat recovery devices (including but not limited to desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment), adjustable speed drives, duct and pipe systems (including but not limited to return ducts, diffusers, registers, air filters, and thermostatic radiator controls), refrigeration lines, and building energy control systems.

*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 approximately 15 to 30 miles per hour.

*National Historic Landmark*, as provided in 36 CFR § 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 CFR § 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.

*Native Hawaiian Organization*, as provided in 36 CFR § 800.16(s)(1), means any organization which serves and represents the interests of *Native Hawaiians*; has as a primary and stated purpose

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

the provision of services to *Native Hawaiians*; and has demonstrated expertise in aspects of historic preservation that are significant to *Native Hawaiians*.

*Non-significant façade* means any exterior façade of a *building* which does not contribute to the historic significance of the *building*.

*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 materials* that are 45 years or older, including but not limited to those comprised of pavers, cobblestones, Belgian blocks, bricks, or wood and those involving earthworks or roofs of structures entirely underground.

*Previously disturbed ground* means soils not 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, including *previously disturbed right-of-way*, and does not mean areas that have been shallowly disturbed (such as via plowing) and does not mean areas in which the previous disturbance occurred sufficiently long ago to allow for subsequent deposit of cultural resources that are now over 45 years old (such as historic urban deposits).

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

*Primary space* means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other public space that contains a concentration of *character-defining features* of a *historic building* or *historic alternative transportation infrastructure*.

*Protected bicycle lane* means a bicycle or *micromobility vehicle* facility, whether one-way or two-way (such as a cycle track), that is physically separated from motor vehicle traffic, distinct from the sidewalk, and for the exclusive use by and increased safety of bicyclists or users of *micromobility vehicles*.

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

*Rail infrastructure* means structures, *building*, land, and equipment that supports land lines, including but not limited to 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 transportation manuals: 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,

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

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 and available *Indian Tribe*, state historic preservation office, Tribal historic preservation office, *Native Hawaiian Organization*, local preservation or planning office, and *federal agency* files, records, inventories, and databases, or other sources recommended by such parties, for information about whether *historic properties*, including but not limited to 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*.

*Repair* means fix or mend obsolete, broken, damaged, or deteriorated features, elements, materials, and systems. *Replacement* means substitution of new material, element, or equipment for an existing material, element, or equipment, including *in-kind replacement* and including substitution requiring a change in composition, design, color, texture, size, dimension, location, or configuration in order to improve the function and condition of the material, element, or equipment or the broader system of which the material, element, or equipment is a part.

*Resilience* means the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Right-of-way* means land developed or designated for the public passage of people using any mode of transportation, including *transit*.

*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 CFR § 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*.

*Technical feasibility* means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including but not limited to health, safety, energy efficiency, *resilience*, durability of materials, and sound professional judgment (including but not limited to architectural, archaeological, or engineering judgment).

*Transit* means mass transportation by a conveyance (including but not limited to 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 shelter* means a canopy structure or other structure open to the elements on at least one side, which provides partial weather protection for users of *transit*, such as those provided at city bus stops or along rail platforms.

*Tribal Historic Preservation Officer*, as provided in 36 CFR § 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*

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

*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 CFR § 800.16(x), means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

*Undertaking*, as provided in 36 CFR § 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. An *undertaking* must have *independent utility*.

**APPENDIX A: ACTIVITIES NOT REQUIRING FURTHER REVIEW**

1. Site Work

The following activities do not require further Section 106 review:

a. *Maintenance or repair* of any of the following elements, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*:

- i. Concrete and asphalt ground surfaces such as streets, parking areas, driveways, alleys, ramps, sidewalks, and walkways, including repaving, restriping, replacing such surfaces with *permeable ground surface materials*, sealing (including *installation* of slurry seals, overlays, and seal coatings), filling, milling, grinding, grooving, 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, netting, basketball hoops, drinking fountains, and *ground surface materials*.
- iii. Fencing.
- iv. Wayfinding, address, and identification signage.
- v. Lighting, such as *building-mounted* lighting and freestanding lighting in parking areas, along driveways or walkways, or in landscape elements (such as planted beds), or in park and playground areas, and including but not limited to relamping and rewiring.
- vi. Water features, such as decorative fountains, including but not limited to replumbing.
- vii. Curbs, gutters, steps, ramps, and retaining walls.
- viii. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.
- ix. **Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems.**
- x. *Bulb outs*, crosswalks (including but not limited to raised crosswalks across roadways and raised intersections), traffic calming devices (including but not limited to speed humps and speed tables), or islands (including but not limited to pedestrian islands and corner islands to separate or protect bicycles).
- xi. *High friction surface treatments, cool pavements, permeable ground surface materials, and rumble strips.*
- xii. **Green infrastructure, sprinkler heads, irrigation lines, and gray water systems.**
- xiii. Benches, tables, and freestanding planters.
- xiv. Vault toilets.

b. Any of the following landscaping, grounds, and water management activities, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*:

**Commented [A9]:** These undertakings may pose a risk to historic properties (if present) and we recommend deletion from Appendix A (Activities Not Requiring Further Review). It is conceivable that repair of below ground utilities (drainage, septic systems, gas/sewer/water/electric and telecommunications lines) could require disturbance beyond the previously disturbed area. In addition, this may be a particular concern for such utilities that were installed before Section 106 compliance was required (pre-1966) or absent such review. This concern also applies to "green infrastructure", Section xii of this Appendix A.1.a.

**Commented [A10]:** See comment above with regard to utilities.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

- i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, sheering, feeding, seeding, reseeding, mulching, aerating, and maintaining, as applicable, grass, shrubs, other plants, and trees.
- ii. Planting of grass, shrubs, and other plants, and xeriscaping.
- iii. *Replacement of a tree in, or within 10 feet of, its existing location.*
- iv. Removal of grass, shrubs, brush, leaves, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
- v. Removal of rocks, litter, and debris, but not rocks arranged in a rock wall or other man-made feature.
- vi. Removal of small conifers growing between mature trees.
- vii. Removal of sediment, silt, and debris from man-made drainage facilities, including retention and detention basins, ponds, ditches, canals, and sumps.

c. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter

d. *Installation or removal of temporary construction-related structures, including but not limited to scaffolding, barriers, screening, sediment-capture devices, fences, protective walkways, signage, office trailers, cofferdams, and restrooms, provided such activity is limited to previously disturbed ground or creates no new ground disturbance and that such activity does not damage any existing building or structure.*

e. Elevation of the ground surface within *previously disturbed right-of-way* by up to 18 inches to maintain, create, or connect *alternative transportation infrastructure*, or to facilitate boarding and disembarking at *transit facilities*, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*.

f. Removal of a deteriorated or damaged mobile or manufactured home or other temporary *building* or structure, not including removal of foundations.

2. Work on a Building Exterior

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

a. *Maintenance or repair of any of the following elements:*

- i. Doors, including but not limited to insulated exterior doors and basement bulkhead doors.
- ii. Windows, including but not limited to storm windows, glazing treatments, window jams, window sills, solar screens, awnings, and window louvers.
- iii. Siding.

b. *Maintenance or repair of any of the following elements, or in-kind replacement of any above-ground components of any of the following elements:*

- i. *Mechanical systems.*
- ii. *Building safety systems.*

**Commented [A11]:** This provision is of concern. Removal of a historic tree or an older tree with a large root expanse may still impact historic properties (if present). How would the area of "previous ground disturbance" be identified/defined for a tree planted decades (or more) ago? We recommend deletion of "tree replacement".

**Commented [A12]:** Exclusion of maintenance or repair of historic doors, windows or siding may be appropriate if the proposed activities are in accordance with the SOI Treatment Standards. Such a condition should be added to this section if the doors, windows or siding are contributing elements to an historic property.

**Commented [A13]:** See comment above with regard to doors, windows and siding; this comment applies to this section as well.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

- iii. Canopies, awnings, and solar shades.
  - iv. Roofing, including but not limited to cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; fasteners and ties to attach roofing to structural elements; white roofs or cool roofs on flat roofs; and green, sod, or grass roofs on flat roofs.
  - v. Improvements, such as ramps and railings, that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.
  - vi. *Clean energy technologies*.
  - vii. Elevator systems.
  - viii. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
  - ix. Foundations and foundation vents.
  - x. Chimneys.
  - xi. Vents, including but not limited to continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, or frieze board vents.
  - xii. Energy and water metering devices.
  - xiii. *Building-mounted utility infrastructure*, including but not limited to wires and anchors.
  - xiv. Installation of stanchions, fasteners, or tracks for flood shields.
- c. *Replacement or installation of building-mounted solar energy systems* if such system is installed with methods that do not irreversibly damage *historic building materials*, sits close to the roof, and has a profile that matches the roof profiles (such as pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.
- d. Any of the following *maintenance or repair* activities:
- i. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
  - ii. Repointing of mortar joints with mortar matching in composition, joint profile, color, hardness, and texture of existing mortar.
  - iii. 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 and not including sandblasting of masonry over 45 years old.
- e. Paint or stain on previously painted or previously stained exterior surfaces, provided that no historic decorative paint schemes or colors (such as graining, stenciling, marbling) will be covered and provided that for masonry over 45 years old, there will be no use of nontraditional or historically inappropriate masonry coatings, including painting of previously unpainted historic masonry, masonry consolidants, and waterproof or water-repellant coatings.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

f. *Abatement of hazardous materials* where *effects* of the *abatement* are not visible on the *building* exterior, and the *abatement* either is limited to *previously disturbed ground* or creates no new *ground disturbance*.

3. Work on a Building Interior

The following activities do not require further Section 106 review when conducted entirely in the interior of a *building*:

a. *Maintenance or repair* of any of the following elements:

- i. Walls, ceilings, and flooring.
- ii. Doors.
- iii. Light fixtures.
- iv. Elevator systems.
- v. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
- vi. Chimneys.
- vii. Skylights, atria, courtyards, or lightwells.

**Commented [A14]:** Exemption of these activities from further Section 106 review may be appropriate if the property does not meet the definition of an historic property or if it is an historic property, but all proposed activities will meet the SOI Treatment Standards.

b. *Maintenance, repair, or in-kind replacement* of any of the following elements:

- i. *Mechanical systems*.
- ii. *Building safety systems*.
- iii. Light bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- iv. Battery energy storage systems.
- v. Thermal insulation, other than closed cell spray foam, in or around walls, floors, ceilings, attics, crawl spaces, *mechanical systems*, and foundations, where such insulation can be installed and removed without damaging exterior walls, and where such insulation will not cause condensation that could damage exterior walls – even if such insulation increases interior wall thickness.
- vi. Improvements, such as ramps and railings, that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.
- vii. Foundations and foundation vents.
- viii. Energy and water metering devices.

**Commented [A15]:** Exemption of these activities from further Section 106 review may be appropriate if the property does not meet the definition of an historic property or if it is an historic property, but all proposed activities meet the SOI Treatment Standards.

c. *Maintenance, repair, replacement, or installation* of household or kitchen appliances, where such appliances are Energy Star rated, or replace existing appliances with appliances with higher Energy Star ratings, or replace existing non-electric appliances with electric appliances.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

d. Caulking, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.

e. Painting or staining previously painted or previously stained interior surfaces, provided that no decorative paint schemes or colors (such as graining, stenciling, or marbling) will be painted or stained.

f. *Abatement of hazardous materials* where *effects* of the *abatement* are only visible from within an individual *housing* unit or where *effects* are not visible from the *building* interior.

4. Work Involving Transportation Fixtures and Equipment

The following activities do not require further Section 106 review, provided 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, replacement, or installation* of the following elements:

i. *Bicycle racks* or dedicated docks or kiosks used in a shared system for bicycles or *micromobility vehicles*.

ii. *Bicycle rails*.

iii. *Flex posts*.

iv. Concrete or stone blocks affixed to the ground by their weight.

v. Marks on the ground surface for visibility and delineation, including but not limited to striping for *bicycle lanes*, thermoplastic striping and paint, painted sidewalk extensions, sidewalk stencils, marks for *bicycle parking*, and paint in zones of potential conflict between bicyclists and motor vehicle drivers.

vi. Detectable warnings on or before a curb, entry point, crosswalk, or accessible facility.

b. *Maintenance or repair* of any of the following elements, or *in-kind replacement* of any above-ground components of any of the following elements:

i. Signs, signals, traffic control devices, or signalization, including but not limited to any such elements that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.

ii. Cameras, masts, wiring, and other equipment and fixtures used for automatic traffic enforcement, tolling, monitoring of motor vehicle traffic, or security purposes.

iii. Tracks, including but not limited to ballasts and ties.

iv. *Clean energy technologies* supporting *alternative transportation infrastructure*.

v. Signal bridges.

vi. Transformers, breakers, switches, and other electrical components.

c. *Maintenance or repair* of the following elements, or *in-kind replacement* of any above-ground components of the following elements:

**Commented [A16]:** Inclusion of transportation-related activities is of significant concern to many commenters. We recommend removing all provisions related to transportation-related activities. Removal from this document could clarify and focus this proposed Program Comment on housing and building issues identified by federal agencies. Issues or gaps in Section 106 compliance for transportation-related activities could be studied and addressed through a focused compliance mechanism.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

- i. Bollards.
- ii. Ticket dispensing structures, fee collection structures, or interpretive wayside exhibit structures.
- iii. *Transit shelters, bicycle lockers, or bicycle shelters.*

5. Work on Bridges

The following activities related to bridges built as or incorporated into *alternative transportation infrastructure* do not require further Section 106 review:

- a. *Maintenance or repair* of drains, joints, joint seals, concrete decks, parapet, rail, concrete, steel elements, bearings, retaining walls, and bridge machinery.
- b. Cleaning and washing.
- c. Conducting electrochemical extraction and cathodic protection.
- d. Mitigating cracks, including but not limited to pin-and-hanger *replacement* and other retrofits.
- e. Implementing countermeasures against scour.

6. Other Activities

The following activities lack any potential to cause *adverse effects* and therefore do not require further Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies.
- 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* or by another entity receiving federal financial assistance (such as a state, Tribal, or local government, or joint venture, railroad commission, compact authority, port authority, transit agency or authority, private company, or other project sponsor), of: *buildings*, energy efficiency or *electrification* materials or equipment, *clean energy technologies*, railway *rights-of-way* for the *maintenance*, development, or expansion of rail-to-trail pathways or passenger rail service, and fleets of bicycles, *micromobility vehicles*, hybrid or electric vehicles, or electric locomotives, provided that any changes in use or access, or any physical actions related to such activities 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. Direct home mortgages or mortgage guarantees for homeowners.
- e. Transfer, lease, or sale of a federal government-owned *building* or *alternative transportation infrastructure* from one *federal agency* to another *federal agency*, provided that any changes in use or access, or any physical actions related to such activities must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

**Commented [A17]:** Inclusion of transportation-related activities is of significant concern to many commenters. We recommend removing all provisions related to transportation-related activities. Removal from this document could clarify and focus this proposed Program Comment on housing and building issues identified by federal agencies. Issues or gaps in Section 106 compliance for transportation-related activities could be studied and addressed through a focused compliance mechanism.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

f. A decision to limit motor vehicle access to, through, or on streets that remain available for walking, bicycling, *micromobility vehicle*, or *transit* uses, including but not limited to “play streets,” “school streets,” “safe route to school” streets, “open streets,” tolling, or congestion pricing, provided that any changes in use or access, or any physical actions related to such activities must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

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

h. Treatment for pests, rodents, insects, and termites that does not visibly alter or obscure the structural, architectural, or decorative features of a *building*.

## APPENDIX B: ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

### I. Written Determinations

Certain *undertakings* listed in this Appendix B, due to their nature and potential *effects*, require a written determination before the *federal agency* may proceed with the *undertaking*. Applicable review processes and criteria for each type of determination are outlined below. After any such determination is made, the *federal agency* shall include the determination in its administrative record.

#### a. Type A Determination for Ground-Related Activities

A Type A Determination requires the *federal agency* to obtain a written determination that the *undertaking* is limited to *previously disturbed ground*, creates no new *ground disturbance*, or will have no *adverse effects* on any *historic property* from a *qualified professional* meeting the professional standards for archeology established by the Secretary of the Interior, the relevant *SHPO*, or the relevant *THPO*.

#### b. Type B Determination for Ground-Related Activities

A Type B Determination requires the *federal agency* to identify the *area of potential effects* in accordance with 36 CFR § 800.4 and either (a) (i) consult with *Indian Tribes* and *Native Hawaiian Organizations* in accordance with Section III.B. of this Program Comment and (ii) obtain a written determination that the activity will have no *adverse effects* on any *historic property* from either a *qualified professional* meeting the applicable professional standards established by the Secretary of the Interior or the relevant *SHPO*; or (b) conduct a field survey of the *area of potential effects* or obtain a field survey of such area completed within the past 10 years, where such survey is acceptable to current state or Tribal standards and, if applicable, has been subject to consultation with *Indian Tribes* and *Native Hawaiian Organizations*, without such survey or consultation identifying any *historic properties* in the *area of potential effects*.

In addition to explicit provisions in this Program Comment requiring a Type B Determination, if the *federal agency* knows, believes, or has been informed that there may be moderate or high likelihood of encountering subsurface *historic properties* or burial sites, human remains, funerary objects, sacred objects, or items of cultural patrimony, then a Type B Determination must be made before work can proceed pursuant this Program Comment.

#### c. Type C Determination of Historic Building Status

A Type C Determination applies to *buildings* placed in service 45 or more years ago and requires the *federal agency* to either (a) make a written finding that such *building* has not been identified as a *historic building* within the preceding 10 years after a *records check* and a review of its own records or (b) obtain a written determination from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or the relevant *SHPO* that such building is not a *historic building*. If a *building* was placed in service fewer than 45 years ago, then a Type C Determination is not required.

#### d. Track D Determination for Window, Door, and Siding Replacements

A Type D Determination applies to *undertakings* involving the *replacement* of a window, door, or siding of a *historic building* or of a *building* that has not received a Type C determination. A Type D Determination requires that (a) a *qualified professional* meeting the professional standards for

**Commented [A18]:** Inclusion of ground disturbing activities is of significant concern to many commenters. We recommend removing all provisions that allow ground disturbing activity, unless it includes the direct oversight of a qualified professional.

**Commented [A19]:** This section should note the potential for "exceptional significance" in buildings less than 50 years old (in accordance with the criteria of the National Register).

## DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

historic architecture or architectural history established by the Secretary of the Interior or the *SHPO* make a written determination that any *replacement* window, door, or siding is an *in-kind building material* or make a Type G Determination; and (b) the *federal agency* make a written determination that the *replacement* of a window or windows, door or doors, or siding as applicable, will reduce energy use of the *building*, after consideration of the lifespan and embodied energy of the existing element, the cost and carbon impact (including transportation-related impacts) of producing the *replacement* element, the *technical feasibility* of modifying the existing element to align it with current energy efficiency standards and codes, and the payback period of the *replacement* element.

### e. Type E Determination for *Character-Defining Features* and *Non-Significant Facades*

A Type E Determination applies to *historic buildings* and *buildings* placed in service 45 or more years ago. A Type E Determination requires that the *federal agency* obtain a written determination that a proposed action will not affect a *character-defining feature* of the *building* façade or that the *effects* of a proposed action will be limited to a *non-significant façade*, either from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*. In making such a determination for a *building* placed in service 45 or more years ago but not deemed to be a *historic building*, the individual making the written determination must apply identical standards to such *building* as if it were a *historic building*. If a *building* was placed in service fewer than 45 years ago or a Type C Determination has been made, then a Type E Determination is not required.

### f. Type F Determination for *Character-Defining Features* and *Primary Spaces*

A Type F Determination applies to *historic buildings* and *buildings* placed in service 45 or more years ago. A Type F Determination requires that the *federal agency* obtain a written determination that a proposed action will not affect a *primary space* at all, or will not affect a *character-defining feature* in a *primary space*, either from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*. In making such a determination for a *building* placed in service 45 or more years ago but not deemed to be a *historic building*, the individual making the written determination must apply identical standards to such *building* as if it were a *historic building*, and all lobbies, ceremonial rooms, and ground-floor hallways (unless primarily used for utility purposes) shall automatically be deemed *primary spaces*. If a *building* was placed in service fewer than 45 years ago or a Type C Determination has been made, then a Type F Determination is not required.

### g. Type G Determination for Substitute Building Material *Replacements*

A Type G Determination applies to *undertakings* involving the *replacement* of *historic building materials* with substitute building materials. A Type G Determination requires that the *federal agency* obtain a written determination from either a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*, that the substitute building material is appropriate based on the following factors: (a) the character of existing *historic building materials* in terms of condition, design, material properties, performance (including but not limited to insulation and air sealing value), safety, and presence of hazards such as lead-based paint, asbestos, or other *hazardous materials*; (b) the *technical feasibility* and *economic feasibility* of *repairing* or *replacing* the *historic building materials*; and (c) the suitability of available substitute building materials, with attention to composition, design, color, texture, size, dimension and other physical and visual properties.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

h. *State Historic Preservation Officer* Reviews

The *State Historic Preservation Officer* shall have 30 days to review and respond to an adequately documented request by a *federal agency* for a determination pursuant to this Section. If the *State Historic Preservation Officer* requests additional, missing information in order to make its determination, the *State Historic Preservation Officer* shall have 30 days from receipt of the additional information to respond. If the *State Historic Preservation Officer* does not respond within 30 days of receipt of the request or the amended request, as applicable, then the determination shall be deemed to have been made.

2. Site Work

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

- a. *Replacement* of any element listed in Appendix A, Section 1.a., after a Type A Determination has been made.
- b. Removal of any element listed in Appendix A, Section 1.a., after a Type B Determination has been made.
- c. *Installation* of any element on the same lot as a *building* or within an existing *right-of-way* and listed in Appendix A, Section 1.a., after a Type B Determination has been made.
- d. Planting a tree (other than replacing a tree per Appendix A, Section 1.b.iii.), after a Type A Determination has been made.
- e. Test borings, soil sampling, well drilling, or perc tests more than eight inches in diameter, after a Type B Determination has been made.
- f. Any of the activities listed in Appendix A, Sections 1.d., 1.e. or 1.f. that have the potential for new *ground disturbance*, after a Type B Determination has been made.
- g. Removal of oil tanks, septic tanks, or hazardous materials, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*, after a Type B Determination has been made.

3. Work on a Building Exterior

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

- a. *Replacement* or *installation* of any of the elements listed in Appendix A, Section 2.a., after a Type C Determination has been made.
- b. *Replacement* or *installation* of any of the elements listed in Appendix A, Section 2.a., if a Type C Determination cannot be made or is inconclusive, after a Type D Determination has been made.
- c. *Replacement* or *installation* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 2.b., if a Type E Determination has been made.
- d. *Abatement of hazardous materials* where *effects* of the *abatement* may be visible from the *building* exterior, if a Type E Determination has been made.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

e. *Abatement of hazardous materials* where *effects* of the *abatement* have the potential for new *ground disturbance*, after a Type B Determination has been made.

4. Work on a Building Interior

The following activities do not require further Section 106 review, when conducted entirely in the interior of a *building*, after the satisfaction of the following conditions, exclusions, or requirements:

a. *Replacement or installation* of any of the elements listed in Appendix A, Section 3.a. or Section 3.b., after a Type C Determination has been made.

b. *Replacement or installation* of any of the elements listed in Appendix A, Section 3.a. or Section 3.b., if a Type C determination cannot be made or is inconclusive, after a Type F Determination has been made.

c. *Abatement of hazardous materials* where *effects* of the *abatement* may be visible from the *building* interior (other than from the interior of an individual housing unit), after a Type F Determination has been made.

5. Work Involving Transportation Fixtures and Equipment

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

a. *Replacement* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 4.b. after a Type B Determination has been made.

b. *Installation* of signs, signals, traffic control devices, or signalization supporting *alternative transportation infrastructure*, or *installation* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 4.b.ii., after a Type B Determination has been made.

c. *Installation of clean energy technologies* supporting *alternative transportation infrastructure*, after a Type B Determination has been made.

d. *Installation* of any of the following elements after a Type A Determination has been made:

i. Bollards no taller than 48 inches and no larger in diameter than 12 inches.

ii. Ticket dispensing structures, fee collection structures, or interpretive wayside exhibit structures, 6 feet or less in height and 3 square feet or less in horizontal cross-section area, in addition to height or cross-section needed to incorporate solar power into such structures.

iii. *Transit shelters, bicycle lockers, or bicycle shelters* 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.

6. Work on Bridges

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

**Commented [A20]:** Inclusion of transportation-related activities is of significant concern to many commenters. We recommend removing all provisions related to transportation-related activities. Removal from this document could clarify and focus this proposed Program Comment on housing and building issues identified by federal agencies. Issues or gaps in Section 106 compliance for transportation-related activities could be studied and addressed through a focused compliance mechanism.

**Commented [A21]:** Inclusion of transportation-related activities is of significant concern to many commenters. We recommend removing all provisions related to transportation-related activities. Removal from this document could clarify and focus this proposed Program Comment on housing and building issues identified by federal agencies. Issues or gaps in Section 106 compliance for transportation-related activities could be studied and addressed through a focused compliance mechanism.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

a. *Replacement or installation* of a bridge built to serve pedestrian, bicycle, *micromobility vehicle*, or *transit* use, after a Type B Determination has been made.

DRAFT FOR PUBLIC COMMENT-DATED 11/15/2024

**APPENDIX C: 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:

**DRAFT PROGRAM COMMENT ON  
CERTAIN HOUSING, BUILDING, AND TRANSPORTATION ACTIVITIES**

This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on [date of adoption], on its own initiative pursuant to 36 CFR § 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 CFR part 800 (Section 106), regarding the *effects* of certain *housing*-related, *building*-related, and *alternative transportation infrastructure*-related activities.

**I. INTRODUCTION**

**A. Background**

The National Historic Preservation Act calls for “us[ing] measures ... to 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.” 54 U.S.C. § 300101. The development of this Program Comment responds to this call and is driven by the need to harmonize policies and procedures for the preservation of our nation’s historic places with other efforts designed to produce and rehabilitate affordable, accessible, energy-efficient, and hazard-free housing; to reduce energy use and associated costs, improve resilience against natural hazards, and provide alternative transportation options — needs that have received high levels of attention from Congress, as well as state, local, and Tribal governments and private parties.

**B. 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. The ACHP has performed these statutory duties in the areas covered by this Program Comment.

In its advising capacity, the ACHP issued its first policy statement on affordable housing in 1995. It updated this policy statement in 2006, and again in 2023 by broadening the scope to cover all housing. The Housing and Historic Preservation 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 energy use and cost, resilience, and historic preservation through its Climate Change and Historic Preservation 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 *alternative transportation* projects.

In its oversight of the Section 106 process, the ACHP has issued or participated in a variety of 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 CFR Parts 50 and 58.

With regard to building rehabilitation, 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 resilience-related undertakings.

With regard to transportation alternatives, 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 offices, Indian Tribes, and state departments of transportation, covering a range of transportation-related activities.

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 offers an alternative approach for Section 106 review across the federal government for certain undertakings, equipping federal agencies to more effectively and efficiently preserve and protect our nation's historic resources while addressing other critical policy needs.

### **C. 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." Accordingly, it has been drafted to advance historic preservation goals including the reuse of historic materials and buildings and the upgrading of infrastructure in historic neighborhoods, and to harmonize them with the nation's pressing needs to expand access to housing, improve resilience, and offer transportation alternatives.

Every day, federal agencies meet these needs by proposing to carry out, permit, license, fund, assist, or approve undertakings that have the potential to affect historic properties, and when they do, they must comply with 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 offer efficiencies in reviewing these covered undertakings. In doing so, this Program Comment enables federal agencies to focus on preservation and consultation for other undertakings with greater potential for adverse effects on historic properties. This Program Comment also aims to leverage existing investments in existing buildings and other built infrastructure by facilitating reuse and thereby avoiding the need for new construction and for costly new construction materials.

Ultimately, this Program Comment aims to benefit the people who live in the housing, work in the buildings, and move using the transportation infrastructure projects being carried out, permitted,

licensed, funded, assisted, or approved by federal agencies by creating review efficiencies that deliver these projects more quickly and efficiently.

## 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 issuance of this Program Comment at the ACHP's own initiative provides the ACHP a reasonable opportunity to comment regarding the covered *undertakings*.

### B. Effect on Other Applicable Laws

This Program Comment does not modify, preempt, or replace any other federal laws or regulations (including the federal rehabilitation tax credit), or any applicable state, local, or Tribal laws or regulations (including local historic preservation review or zoning ordinances, building codes, or permitting requirements).

### C. Effect on Existing Agreements

1. Overall Effect A *federal agency* that already has an executed Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) in effect that addresses covered *undertakings* must follow the terms of those MOAs or PAs to the extent those MOAs or PAs address the *undertakings* covered by this Program Comment. This Program Comment does not in any way supersede, replace, or change the terms of existing MOAs or PAs, or other program comments.

2. Amendment or Termination of MOAs and PAs

*Federal agencies* may pursue amendments to existing 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*.

If a *federal agency* elects to amend or terminate an MOA or PA, and if the applicable amendment or termination provision of such MOA or PA does not require consultation with relevant *Indian Tribes* or *Native Hawaiian Organizations*, the ACHP strongly recommends that the *federal agency* meaningfully consult with relevant *Indian Tribes* and *Native Hawaiian Organizations* in considering any such amendment or termination.

If a *federal agency* elects to terminate an MOA or PA, and if the applicable termination provision of such MOA or PA does not require notice to the ACHP of such termination, the *federal agency* must provide written notice to the ACHP of such termination and provide notice of its intent to follow this Program Comment per Section III.A.2. of this Program Comment.

3. Amendment of Existing Program Comments

*Federal agencies* may propose to the ACHP amendments to existing program comments following the amendment provisions in those program comments, and the ACHP may

consider any amendments to incorporate, in whole or in part, the terms of this Program Comment.

#### **D. Application on Tribal Lands**

This Program Comment does not apply to *undertakings* located on *Tribal lands*, or to *undertakings* that may affect *historic properties* located on *Tribal lands*, unless the *Tribal Historic Preservation Officer (THPO)* 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 C to this Program Comment, and by submitting the completed authorization to the Executive Director of the ACHP. This Program Comment is applicable on the *Tribal lands* identified in such authorization on the date of receipt of the authorization by the Executive Director of the ACHP, who must ensure notice of such authorization is included on the website of the ACHP within 30 days of ACHP's receipt. The *THPO* 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*.

#### **E. Activities Not Covered and Exceptions**

A *federal agency* must follow the Section 106 review process under 36 CFR §§ 800.3 through 800.7 or 36 CFR § 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*.
2. The *undertaking* is not listed in the Appendices to this Program Comment.
3. The *undertaking* would occur on or have the potential to affect the following *historic properties*:
  - a. Any National Monument, National Historic Site, National Historic Trail, National Historical Park, National Military Park, National Battlefield, National Battlefield Park, or National Battlefield Site.
  - b. Any site, object, *building*, or structure individually designated as a *National Historic Landmark* or found within the boundaries of a *National Historic Landmark* district.
  - c. Sites of religious and cultural significance to *Indian Tribes* and *Native Hawaiian Organizations*, including but not limited to 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 and Federal Agency Use

##### 1. Available Alternative Compliance Approaches

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

a. For *undertakings* set forth in Appendix A of this Program Comment, a *federal agency* has no further Section 106 review requirements regarding the *undertaking*.

b. For *undertakings* set forth in Appendix B of this Program Comment, a *federal agency* has no further Section 106 review requirements regarding the *undertaking* if the *federal agency* (i) satisfies the conditions, exclusions, or requirements prescribed in Appendix B, and (ii) documents, as part of its administrative record and for any reports required by Section X of this Program Comment, the manner in which it has satisfied such conditions, exclusions, or requirements.

##### 2. Federal Agency Notice of Alternative Compliance Approaches

Prior to using this Program Comment, a *federal agency* must provide a written notification to the ACHP, the National Conference of State Historic Preservation Officers, and the National Association of Tribal Historic Preservation Officers of its decision to use this Program Comment, including an identification of the geographic scope (national, state, or otherwise) in which it will use the Program Comment. The ACHP must make available on its website any such notices submitted by *federal agencies* to the ACHP pursuant to this Section.

##### 3. Request for ACHP Advisory Opinions

A *federal agency* may seek an advisory written opinion from the ACHP as to whether it may appropriately utilize this Program Comment for an *undertaking* by forwarding to the ACHP all documentation relevant to the *undertaking*, requesting the ACHP to provide within 30 *days* its written comments, and taking the ACHP's comments into account before making a decision as to whether to utilize this Program Comment for such an *undertaking*.

#### 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.

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

It is important to recognize that while this Program Comment was drafted to limit *effects* on *historic properties*, including sites with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, covered *undertakings* could directly, indirectly, or cumulatively affect such properties.

##### 2. Consultation-Related Obligations

Prior to engaging in any *undertaking* for which this Program Comment requires a Type B Determination in accordance with Appendix B of this Program Comment, or for any *undertaking* for which the *federal agency* knows, believes, or has been informed that there may be moderate or high likelihood of encountering *historic properties* in which an *Indian Tribe* or *Native Hawaiian Organization* may have an interest, a *federal agency* must make a reasonable and good faith effort to identify any *Indian Tribes* or *Native Hawaiian Organizations* that might attach religious and cultural significance to *historic properties* in the *area of potential effects* and invite them to be consulting parties. 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 *federal agency* staff; historic maps; information gathered from previous consultations pursuant to Section 106 or Section 110 (subject to Section III.B.4. of this Program Comment); 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. Such *Indian Tribe* or *Native Hawaiian Organization* that requests in writing to be a consulting party shall be one.

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 but not limited to recognizing the special expertise of holders of Indigenous Knowledge. The *federal agency* must defer to the determination by an *Indian Tribe* or *Native Hawaiian Organization* that a certain individual or individuals has or have expertise (including but not limited to Indigenous Knowledge-based expertise) in identification, evaluation, assessment of *effect*, and treatment of *effects to historic properties* of religious and cultural significance to the *Indian Tribe* or to *Native Hawaiians*.

The *federal agency* must gather information to identify whether any *historic properties* of religious and cultural significance to such *Indian Tribes* or *Native Hawaiian Organizations* are included in such *area of potential effects* in accordance with the protocols in 36 CFR § 800.4(a)(4) and must use this information to assess whether the *undertaking* could result in an *effect* on any such *historic properties*.

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

Should the *federal agency* determine through consultation with *Indian Tribes* or *Native Hawaiian Organizations* or otherwise that a proposed *undertaking* covered in this Program Comment could result in an *effect* on a *historic property* with traditional religious and cultural significance to an *Indian Tribe* or *Native Hawaiian Organization*, including but not limited to a Tribal identified sacred site or a site identified by Indigenous Knowledge of *Indian Tribes* or *Native Hawaiian Organizations*, the *federal agency* will not use this Program Comment and must instead follow the Section 106 review process under 36 CFR §§ 800.3 through 800.7, or 36 CFR § 800.8(c), or another applicable agreement or program alternative.

#### 4. Confidentiality-Related Obligations

Consistent with 36 CFR § 800.4(a)(4) and 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, or by applicable State and local laws. *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, including when maintaining records of correspondence related to consultation under this Section. *Federal agencies* must also adhere to confidentiality requirements for other resources covered by Section 304 of the National Historic Preservation Act or other applicable State and local laws.

#### 5. Responsibilities for Consultation and Opportunities for Outreach

The *federal agency* retains ultimate responsibility for complying with government-to-government consultation requirements. However, an *Indian Tribe* may consent in writing to allow an entity delegated legal responsibility for compliance with Section 106 in accordance with federal law to assist with or lead consultation. Such consent may be rescinded in writing by the *Indian Tribe* at any time.

Nothing in this Program Comment shall be construed to preclude or discourage early outreach by project proponents, applicants, state or local government entities, or other non-federal entities to *Indian Tribes* or *Native Hawaiian Organizations* prior to the initiation of an *undertaking*.

### C. The Use of Qualified Professionals

Except where explicitly stated, *undertakings* covered by this Program Comment do not require the use of a *qualified professional*. When the *federal agency* consults with a *qualified professional*, the type of *qualified professional* must be appropriate to the circumstances. As an 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.

## 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 CFR 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. 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 ability to enter into such an arrangement and pursuant to its statutory authorities and regulations. 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 or analysis to perform preliminary assessments of eligibility to the National Register or to make recommendations about eligibility to the *federal agency* and thereby inform the *federal agency's* determination of eligibility.
- D. Conduct research or analysis to assess the potential *effects* of the *undertaking* on *historic properties* and thereby inform the *federal agency's* determination of *effects*.
- E. Carry additional research or monitor ground disturbing activities.
- F. Curate artifacts or records recovered or made as part of *historic property* identification, or evaluation.
- 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, or minimize *effects* to *historic properties*.
- H. Monitor ground disturbing activities or *federal agency* treatment of unanticipated discoveries.

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.

## V. UNANTICIPATED DISCOVERIES

### A. Immediate Response Requirements

If previously unidentified *historic properties* or unanticipated *effects*, including but not limited to visual, audible, atmospheric, and cumulative *effects*, to *historic properties* are discovered during implementation of the *undertaking*, the *federal agency* must immediately halt all activity within 100 feet of the discovery or that could otherwise 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 CFR § 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 in accordance with the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation. For sites involving burial sites, human remains, or funerary objects, the *federal agency* must follow these procedures and be guided by the ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects.

#### **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 100 feet of the discovery must cease, the area must be secured, and the *federal agency's* authorized official, any known and potentially affiliated *Indian Tribe* or *Native Hawaiian Organization*, 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* will comply with state burial laws and with Section 3 of the Native American Graves, Protection and Repatriation Act and its implementing regulations, 43 CFR 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 any consulting parties involved in the *undertaking* and any relevant *State Historic Preservation Officer (SHPO)* or *THPO*. Objecting parties may include but are not limited to *Indian Tribes*, *THPO(s)*, *SHPO(s)*, *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 CFR § 800.4(c)(2) and Section V of this Program Comment, as appropriate.

Should resolution not be reached within 60 *days*, the *federal agency* must forward to the ACHP all documentation relevant to the objection, including the *federal agency's* proposed resolution if any, request the ACHP to provide within 30 *days* its written comments to resolve the dispute, and take the ACHP's comments into account before making a decision regarding its approach to complying with Section 106. The *federal agency* must notify the objecting party, any consulting parties previously notified of the dispute, and any relevant *THPO* or *SHPO* regarding its decision regarding 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 in writing, 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 to identify patterns or common issues in the use of this Program Comment, 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, 2034, 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*, and after publication on the ACHP website of the Chair's written explanation (which shall take into account ACHP reports and *federal agency* reports required by this Program Comment and any comments received from *Indian Tribes*, *Native Hawaiian Organizations*, and others), may amend this Program Comment to extend its duration one time for 5 additional years. The ACHP must notify *federal agencies*, *SHPOs*, *THPOs*, *Indian Tribes*, and *Native Hawaiian Organizations* 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.

## IX. WITHDRAWAL

If the ACHP determines that the consideration of *historic properties* is not being carried out in a manner consistent with this Program Comment, the ACHP may withdraw this Program Comment. The Chair of the ACHP must then notify *federal agencies*, *SHPOs*, *THPOs*, *Indian Tribes*, and *Native Hawaiian Organizations* 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 CFR §§ 800.3 through 800.7, or 36 CFR § 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 Reports

#### 1. Timing of Reports

The *federal agencies* that use this Program Comment must provide annual reports to the ACHP regarding the use of this Program Comment during the previous fiscal year reporting period, ending September 30 annually, to the ACHP, as provided in this Section. Annual reports are due on December 31 of each year, starting December 31, 2025.

#### 2. Delivery of Reports

For any reporting required by this Section, *federal agencies* whose legal responsibility to comply with Section 106 has been delegated in accordance with federal law but who maintain a reporting mechanism for some or all such entities must provide reports to the ACHP on behalf of those entities for which such data is available. Other entities to whom legal responsibility for compliance with Section 106 has been delegated must directly submit reports to the ACHP in accordance with this Section, using their own reporting mechanisms. In any report required by this Section, the ACHP encourages *federal agencies* to also propose for ACHP's consideration amendments and refinements to this Program Comment based on their experience implementing it.

#### 3. Content of Reports

In any report required by this Section, each *federal agency* must:

- a. Identify the number of times the *federal agency* has utilized this Program Comment for *undertakings* covered by Section III.A.1.a.;
- b. For any *undertakings* covered by Section III.A.1.b., include: the address or, if no address is available, the location of the *undertaking*; information about the manner or extent to which the agency satisfied the conditions, exclusions, and requirements to proceed with such *undertakings*; the names and any institutional affiliations of any *qualified professionals*, *SHPOs*, or *THPOs* who contributed to written determinations required by this Program Comment; and a list of relevant *Indian Tribes* and *Native Hawaiian Organizations* with which consultation on such *undertaking* occurred;
- c. Identify any significant issues (including disputes) that may have arisen while implementing the Program Comment, and their resolution;
- d. Assess the overall effectiveness of the Program Comment;
- e. List any entities to which the *federal agency* has delegated legal responsibility for compliance with Section 106 in accordance with federal law and whose *undertakings* are included in the report.

#### 4. Template for Reports

Within three months of the adoption of this Program Comment, the ACHP must develop a template for *federal agencies* to collect information about any *undertakings* covered by Section III.A.1.b. The ACHP must also endeavor to create an online reporting and tracking system for undertakings covered by this Program Comment.

#### 5. Publication of Reports

The ACHP must make available on its website any annual reports submitted by *federal agencies* to the ACHP pursuant to this Section within 30 days of receipt.

### **B. Invitation to Provide Comment**

At any time, any *Indian Tribe, Native Hawaiian Organization, SHPO, THPO*, consulting party, or member of the public may submit written comments to the ACHP regarding the overall effectiveness of the Program Comment in meeting its intent and regarding suggestions for amendments and refinements to this Program Comment. The ACHP must provide and maintain instructions for submission of written comments on its website. The ACHP must consider such written comments when drafting any reports required by Section X.D. of this Program Comment.

### **C. Annual Meetings**

By March 31, 2026 and annually for the duration of this Program Comment, the ACHP must schedule an annual meeting and invite *federal agencies, Indian Tribes, SHPOs, THPOs, Native Hawaiian Organizations*, ACHP members, consulting parties, 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.

### **D. ACHP Reports and Recommendations for Amendments**

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 at an ACHP business meeting a written and oral summary of information received from *federal agency* reports, annual meetings, comments provided pursuant to Section X.B. of this Program Comment, or other sources about the utility of this Program Comment and make any recommendations for amendments. The ACHP must make such written summary of information and such recommendations available to the public through posting on the ACHP website within 30 days of such meeting.

## **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, remove, or encapsulate.

*Adverse effect*, as provided in 36 CFR § 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.

*Alternative transportation infrastructure* means a *building* or structure used for pedestrian, bicycle, *micromobility vehicle*, and *transit* purposes.

*Area of potential effects*, as provided in 36 CFR § 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 is not physically separated from motor vehicle traffic and that has been designated by striping, signage, and pavement markings for the exclusive use by and increased safety of bicyclists or users of *micromobility vehicles*.

*Bicycle locker* means a device or structure for storing personal or shared bicycles and *micromobility vehicles*, that may have a cover and enclosure to protect the bicycles and *micromobility vehicles* from weather or theft and is not intended for human occupancy.

*Bicycle parking* means a designated area to store a bicycle, whether personal or shared, including but not limited to *bicycle racks*, *bicycle lockers*, *bicycle shelters*, and dedicated docks and kiosks used in a shared system for bicycles or *micromobility vehicles*.

*Bicycle rack* means a rack for a personal or shared bicycle or *micromobility vehicle*.

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

*Bicycle shelter* means a canopy structure above a *bicycle rack* for a personal or shared bicycle or *micromobility vehicle* that provides partial weather protection of the rack and bicycles or *micromobility vehicles*.

*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 but not limited to mobile and manufactured homes and *alternative 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.

*Building safety system* means fire alarm, fire suppression, and security systems and equipment.

*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 *alternative transportation infrastructure*.

*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.

*Economic feasibility* means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including but not limited to estimated construction costs (including but not limited to the cost of *building* material and labor), estimated operational costs, material availability and life cycle, available budget, and the long-term sustainability of the *undertaking*.

*Effect*, as provided in 36 CFR §§ 800.5(a)(1) and 800.16(i), means a direct, indirect, reasonably foreseeable, or cumulative impact or 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 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 electric vehicle.

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

*Federal agency* means an agency as defined by 5 U.S.C. § 551(1), and for Section 106 purposes the term *federal agency* includes state, local, or Tribal governments that have been delegated legal responsibility for compliance with Section 106 pursuant to federal statutory authority such as that under the provisions of the Housing and Community Development Act of 1974 at 42 U.S.C. § 5304(g).

*Flex post* means flexible bollards or delineators used to separate motor vehicle traffic from a *bicycle lane* or *protected bicycle lane* 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.

*Ground disturbance* means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of any soils.

*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 but not limited to lead-based paint), asbestos, asbestos-containing material (including but not limited to 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 pavement using a polymer binder to restore or maintain pavement friction.

*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*, as provided in 36 CFR § 60.3(d), means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of historic sites, *buildings*, structures, or objects united by past events or aesthetically by plan or physical development.

*Historic property*, as provided in 36 CFR § 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 significance to an *Indian Tribe* or *Native Hawaiian Organization* that meet the National Register of Historic Places criteria.

*Housing* means any *building* containing or proposed to contain 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 limited to *buildings* served by an elevator or elevators, “walk-up” *buildings*, rowhouses, semi-detached homes, mobile and manufactured homes, barracks, and freestanding homes.

*Independent utility* means those aspects of a project, activity, or program without which the specifically approved project, activity, or program would not serve a rational need.

*Indian Tribe*, as provided in 36 CFR § 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 in composition, design, color, texture, size, dimension and other physical and visual properties.

*In-kind replacement* means *replacement* of *historic building materials* with *in-kind building materials* or *replacement* of other existing materials, elements, or equipment with new materials, elements, or equipment that are physically and visually similar in all possible respects.

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

*Maintenance* means activities required to maintain in an operational state, or to bring back to operating condition.

*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, including but not limited to 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, waste heat recovery devices (including but not limited to desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment), adjustable speed drives, duct and pipe systems (including but not limited to return ducts, diffusers, registers, air filters, and thermostatic radiator controls), refrigeration lines, and building energy control systems.

*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 approximately 15 to 30 miles per hour.

*National Historic Landmark*, as provided in 36 CFR § 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 CFR § 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.

*Native Hawaiian Organization*, as provided in 36 CFR § 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*.

*Non-significant façade* means any exterior façade of a *building* which does not contribute to the historic significance of the *building*.

*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 materials* that are 45 years or older, including but not limited to those comprised of pavers, cobblestones, Belgian blocks, bricks, or wood and those involving earthworks or roofs of structures entirely underground.

*Previously disturbed ground* means soils not 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, including *previously disturbed right-of-way*, and does not mean areas that have been shallowly disturbed (such as via plowing) and does not mean areas in which the previous disturbance occurred sufficiently long ago to allow for subsequent deposit of cultural resources that are now over 45 years old (such as historic urban deposits).

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

*Primary space* means lobby, ceremonial room, ground-floor hallway (unless primarily used for utility purposes), and any other public space that contains a concentration of *character-defining features* of a *historic building* or *historic alternative transportation infrastructure*.

*Protected bicycle lane* means a bicycle or *micromobility vehicle* facility, whether one-way or two-way (such as a cycle track), that is physically separated from motor vehicle traffic, distinct from the sidewalk, and for the exclusive use by and increased safety of bicyclists or users of *micromobility vehicles*.

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

*Rail infrastructure* means structures, *building*, land, and equipment that supports land lines, including but not limited to 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 transportation manuals: 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 and available *Indian Tribe*, state historic preservation office, Tribal historic preservation office, *Native Hawaiian Organization*, local preservation or planning office, and *federal agency* files, records, inventories, and databases, or other sources recommended by such parties, for information about whether *historic properties*, including but not limited to 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*.

*Repair* means fix or mend obsolete, broken, damaged, or deteriorated features, elements, materials, and systems. *Replacement* means substitution of new material, element, or equipment for an existing material, element, or equipment, including *in-kind replacement* and including substitution requiring a change in composition, design, color, texture, size, dimension, location, or configuration in order to improve the function and condition of the material, element, or equipment or the broader system of which the material, element, or equipment is a part.

*Resilience* means the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Right-of-way* means land developed or designated for the public passage of people using any mode of transportation, including *transit*.

*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 CFR § 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*.

*Technical feasibility* means the viability, suitability, and practicality of a proposed *undertaking* in light of a range of considerations, including but not limited to health, safety, energy efficiency, *resilience*, durability of materials, and sound professional judgment (including but not limited to architectural, archaeological, or engineering judgment).

*Transit* means mass transportation by a conveyance (including but not limited to 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 shelter* means a canopy structure or other structure open to the elements on at least one side, which provides partial weather protection for users of *transit*, such as those provided at city bus stops or along rail platforms.

*Tribal Historic Preservation Officer*, as provided in 36 CFR § 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 CFR § 800.16(x), means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

*Undertaking*, as provided in 36 CFR § 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. An *undertaking* must have *independent utility*.

**APPENDIX A: ACTIVITIES NOT REQUIRING FURTHER REVIEW**

1. Site Work

The following activities do not require further Section 106 review:

a. *Maintenance or repair* of any of the following elements, provided such activity is limited to *previously disturbed ground* or *creates no new ground disturbance*:

i. Concrete and asphalt ground surfaces such as streets, parking areas, driveways, alleys, ramps, sidewalks, and walkways, including repaving, restriping, replacing such surfaces with *permeable ground surface materials*, sealing (including *installation* of slurry seals, overlays, and seal coatings), filling, milling, grinding, grooving, 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, netting, basketball hoops, drinking fountains, and *ground surface materials*.

iii. Fencing.

iv. Wayfinding, address, and identification signage.

v. Lighting, such as *building-mounted* lighting and freestanding lighting in parking areas, along driveways or walkways, or in landscape elements (such as planted beds), or in park and playground areas, and including but not limited to relamping and rewiring.

vi. Water features, such as decorative fountains, including but not limited to replumbing.

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

viii. Above-ground utilities, including overhead wires, anchors, crossarms, transformers, monopole utility structures placed in augur holes, and other miscellaneous hardware.

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

x. *Bulb outs*, crosswalks (including but not limited to raised crosswalks across roadways and raised intersections), traffic calming devices (including but not limited to speed humps and speed tables), or islands (including but not limited to pedestrian islands and corner islands to separate or protect bicycles).

xi. *High friction surface treatments*, *cool pavements*, *permeable ground surface materials*, and rumble strips.

xii. *Green infrastructure*, sprinkler heads, irrigation lines, and gray water systems.

xiii. Benches, tables, and freestanding planters.

xiv. Vault toilets.

b. Any of the following landscaping, grounds, and water management activities, provided such activity is limited to *previously disturbed ground* or *creates no new ground disturbance*:

- i. Fertilizing, pruning, trimming, mowing, deadheading, weeding, sheering, feeding, seeding, reseeding, mulching, aerating, and maintaining, as applicable, grass, shrubs, other plants, and trees.
  - ii. Planting of grass, shrubs, and other plants, and xeriscaping.
  - iii. *Replacement* of a tree in, or within 10 feet of, its existing location.
  - iv. Removal of grass, shrubs, brush, leaves, other plants, invasive species, dead plant and tree material, and diseased or hazardous trees.
  - v. Removal of rocks, litter, and debris, but not rocks arranged in a rock wall or other man-made feature.
  - vi. Removal of small conifers growing between mature trees.
  - vii. Removal of sediment, silt, and debris from man-made drainage facilities, including retention and detention basins, ponds, ditches, canals, and sumps.
- c. Test borings, soil sampling, well drilling, or perc tests less than eight inches in diameter
- d. *Installation* or removal of temporary construction-related structures, including but not limited to scaffolding, barriers, screening, sediment-capture devices, fences, protective walkways, signage, office trailers, cofferdams, and restrooms, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance* and that such activity does not damage any existing *building* or *structure*.
- e. Elevation of the ground surface within *previously disturbed right-of-way* by up to 18 inches to maintain, create, or connect *alternative transportation infrastructure*, or to facilitate boarding and disembarking at *transit* facilities, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*.
- f. Removal of a deteriorated or **damaged mobile or manufactured home** or other temporary *building* or structure, not including removal of foundations.

## 2. Work on a Building Exterior

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

- a. *Maintenance* or *repair* of any of the following elements:
  - i. Doors, including but not limited to insulated exterior doors and basement bulkhead doors.
  - ii. Windows, including but not limited to storm windows, glazing treatments, window jambs, window sills, solar screens, awnings, and window louvers.
  - iii. Siding.
- b. *Maintenance* or *repair* of any of the following elements, or *in-kind replacement* of any above-ground components of any of the following elements:
  - i. *Mechanical systems*.
  - ii. *Building safety systems*.

- iii. Canopies, awnings, and solar shades.
- iv. Roofing, including but not limited to cladding and sheeting, flashing, gutters, soffits, downspouts, eaves, parapets, and reflective or energy efficient coating; fasteners and ties to attach roofing to structural elements; white roofs or cool roofs on flat roofs; and green, sod, or grass roofs on flat roofs.
- v. Improvements, such as ramps and railings, that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.
- vi. *Clean energy technologies.*
- vii. Elevator systems.
- viii. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
- ix. Foundations and foundation vents.
- x. Chimneys.
- xi. Vents, including but not limited to continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit vents, or frieze board vents.
- xii. Energy and water metering devices.
- xiii. *Building-mounted utility infrastructure, including but not limited to wires and anchors.*
- xiv. Installation of stanchions, fasteners, or tracks for flood shields.

c. *Replacement or installation of building-mounted solar energy systems* if such system is installed with methods that do not irreversibly damage *historic building materials*, sits close to the roof, and has a profile that matches the roof profiles (such as pitched or hip roofs) or if on a flat roof has a profile with a slope not to exceed 20%.

d. Any of the following *maintenance or repair* activities:

- i. Caulking, weatherstripping, reglazing of windows, *installation* of door sweeps, and other air infiltration control measures on windows and doors.
- ii. Repointing of mortar joints with mortar matching in composition, joint profile, color, hardness, and texture of existing mortar.
- iii. 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 and not including sandblasting of masonry over 45 years old.

e. Paint or stain on previously painted or previously stained exterior surfaces, provided that no historic decorative paint schemes or colors (such as graining, stenciling, marbling) will be covered and provided that for masonry over 45 years old, there will be no use of nontraditional or historically inappropriate masonry coatings, including painting of previously unpainted historic masonry, masonry consolidants, and waterproof or water-repellant coatings.

f. *Abatement of hazardous materials* where *effects* of the *abatement* are not visible on the *building* exterior, and the *abatement* either is limited to *previously disturbed ground* or creates no new *ground disturbance*.

### 3. Work on a Building Interior

The following activities do not require further Section 106 review when conducted entirely in the interior of a *building*:

a. *Maintenance or repair* of any of the following elements:

- i. Walls, ceilings, and flooring.
- ii. Doors.
- iii. Light fixtures.
- iv. Elevator systems.
- v. Hardware, such as dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peepholes.
- vi. Chimneys.
- vii. Skylights, atria, courtyards, or lightwells.

b. *Maintenance, repair, or in-kind replacement* of any of the following elements:

- i. *Mechanical systems*.
- ii. *Building safety systems*.
- iii. Light bulbs, ballasts, exit signs, HID fixtures, and lighting technologies such as dimmable ballasts, day lighting controls, and occupant-controlled dimming.
- iv. Battery energy storage systems.
- v. Thermal insulation, other than closed cell spray foam, in or around walls, floors, ceilings, attics, crawl spaces, *mechanical systems*, and foundations, where such insulation can be installed and removed without damaging exterior walls, and where such insulation will not cause condensation that could damage exterior walls – even if such insulation increases interior wall thickness.
- vi. Improvements, such as ramps and railings, that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.
- vii. Foundations and foundation vents.
- viii. Energy and water metering devices.

c. *Maintenance, repair, replacement, or installation* of household or kitchen appliances, where such appliances are Energy Star rated, or replace existing appliances with appliances with higher Energy Star ratings, or replace existing non-electric appliances with electric appliances.

- d. Caulking, weather-stripping, and other air infiltration control measures in and around bypasses, penetrations, ducts, and *mechanical systems*.
- e. Painting or staining previously painted or previously stained interior surfaces, provided that no decorative paint schemes or colors (such as graining, stenciling, or marbling) will be painted or stained.
- f. *Abatement of hazardous materials* where *effects* of the *abatement* are only visible from within an individual *housing* unit or where *effects* are not visible from the *building* interior.

#### 4. Work Involving Transportation Fixtures and Equipment

The following activities do not require further Section 106 review, provided 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, replacement, or installation* of the following elements:
  - i. *Bicycle racks* or dedicated docks or kiosks used in a shared system for bicycles or *micromobility vehicles*.
  - ii. *Bicycle rails*.
  - iii. *Flex posts*.
  - iv. Concrete or stone blocks affixed to the ground by their weight.
  - v. Marks on the ground surface for visibility and delineation, including but not limited to striping for *bicycle lanes*, thermoplastic striping and paint, painted sidewalk extensions, sidewalk stencils, marks for *bicycle parking*, and paint in zones of potential conflict between bicyclists and motor vehicle drivers.
  - vi. Detectable warnings on or before a curb, entry point, crosswalk, or accessible facility.
- b. *Maintenance or repair* of any of the following elements, or *in-kind replacement* of any above-ground components of any of the following elements:
  - i. Signs, signals, traffic control devices, or signalization, including but not limited to any such elements that address the requirements of the Americans with Disabilities Act, Architectural Barriers Act Accessibility Standards, or Uniform Federal Accessibility Standards.
  - ii. Cameras, masts, wiring, and other equipment and fixtures used for automatic traffic enforcement, tolling, monitoring of motor vehicle traffic, or security purposes.
  - iii. Tracks, including but not limited to ballasts and ties.
  - iv. *Clean energy technologies* supporting *alternative transportation infrastructure*.
  - v. Signal bridges.
  - vi. Transformers, breakers, switches, and other electrical components.
- c. *Maintenance or repair* of the following elements, or *in-kind replacement* of any above-ground components of the following elements:

- i. Bollards.
- ii. Ticket dispensing structures, fee collection structures, or interpretive wayside exhibit structures.
- iii. *Transit shelters, bicycle lockers, or bicycle shelters.*

#### 5. Work on Bridges

The following activities related to bridges built as or incorporated into *alternative transportation infrastructure* do not require further Section 106 review:

- a. *Maintenance or repair* of drains, joints, joint seals, concrete decks, parapet, rail, concrete, steel elements, bearings, retaining walls, and bridge machinery.
- b. Cleaning and washing.
- c. Conducting electrochemical extraction and cathodic protection.
- d. Mitigating cracks, including but not limited to pin-and-hanger *replacement* and other retrofits.
- e. Implementing countermeasures against scour.

#### 6. Other Activities

The following activities lack any potential to cause *adverse effects* and therefore do not require further Section 106 review:

- a. Energy audits, life cycle analyses, energy performance modeling, and retrocommissioning studies.
- 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* or by another entity receiving federal financial assistance (such as a state, Tribal, or local government, or joint venture, railroad commission, compact authority, port authority, transit agency or authority, private company, or other project sponsor), of: *buildings*, energy efficiency or *electrification* materials or equipment, *clean energy technologies*, railway *rights-of-way* for the *maintenance*, development, or expansion of rail-to-trail pathways or passenger rail service, and fleets of bicycles, *micromobility vehicles*, hybrid or electric vehicles, or electric locomotives, provided that any changes in use or access, or any physical actions related to such activities 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. Direct home mortgages or mortgage guarantees for homeowners.
- e. Transfer, lease, or sale of a federal government-owned *building* or *alternative transportation infrastructure* from one *federal agency* to another *federal agency*, provided that any changes in use or access, or any physical actions related to such activities must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

f. A decision to limit motor vehicle access to, through, or on streets that remain available for walking, bicycling, *micromobility vehicle*, or *transit* uses, including but not limited to “play streets,” “school streets,” “safe route to school” streets, “open streets,” tolling, or congestion pricing, provided that any changes in use or access, or any physical actions related to such activities must separately undergo Section 106 review if and as required, and pursuant to the standard review process or to applicable agreements or program alternatives.

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

h. Treatment for pests, rodents, insects, and termites that does not visibly alter or obscure the structural, architectural, or decorative features of a *building*.

## APPENDIX B: ACTIVITIES NOT REQUIRING FURTHER REVIEW AFTER THE SATISFACTION OF CONDITIONS, EXCLUSIONS, OR REQUIREMENTS

### 1. Written Determinations

Certain *undertakings* listed in this Appendix B, due to their nature and potential *effects*, require a written determination before the *federal agency* may proceed with the *undertaking*. Applicable review processes and criteria for each type of determination are outlined below. After any such determination is made, the *federal agency* shall include the determination in its administrative record.

#### a. Type A Determination for Ground-Related Activities

A Type A Determination requires the *federal agency* to obtain a written determination that the *undertaking* is limited to *previously disturbed ground*, creates no new *ground disturbance*, or will have no *adverse effects* on any *historic property* from a *qualified professional* meeting the professional standards for archeology established by the Secretary of the Interior, the relevant *SHPO*, or the relevant *THPO*.

#### b. Type B Determination for Ground-Related Activities

A Type B Determination requires the *federal agency* to identify the *area of potential effects* in accordance with 36 CFR § 800.4 and either (a) (i) consult with *Indian Tribes* and *Native Hawaiian Organizations* in accordance with Section III.B. of this Program Comment and (ii) obtain a written determination that the activity will have no *adverse effects* on any *historic property* from either a *qualified professional* meeting the applicable professional standards established by the Secretary of the Interior or the relevant *SHPO*; or (b) conduct a field survey of the *area of potential effects* or obtain a field survey of such area completed within the past 10 years, where such survey is acceptable to current state or Tribal standards and, if applicable, has been subject to consultation with *Indian Tribes* and *Native Hawaiian Organizations*, without such survey or consultation identifying any *historic properties* in the *area of potential effects*.

In addition to explicit provisions in this Program Comment requiring a Type B Determination, if the *federal agency* knows, believes, or has been informed that there may be moderate or high likelihood of encountering subsurface *historic properties* or burial sites, human remains, funerary objects, sacred objects, or items of cultural patrimony, then a Type B Determination must be made before work can proceed pursuant this Program Comment.

#### c. Type C Determination of *Historic Building* Status

A Type C Determination applies to *buildings* placed in service 45 or more years ago and requires the *federal agency* to either (a) make a written finding that such *building* has not been identified as a *historic building* within the preceding 10 years after a *records check* and a review of its own records or (b) obtain a written determination from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or the relevant *SHPO* that such *building* is not a *historic building*. If a *building* was placed in service fewer than 45 years ago, then a Type C Determination is not required.

#### d. Type D Determination for Window, Door, and Siding *Replacements*

A Type D Determination applies to *undertakings* involving the *replacement* of a window, door, or siding of a *historic building* or of a *building* that has not received a Type C determination. A Type D Determination requires that (a) a *qualified professional* meeting the professional standards for

historic architecture or architectural history established by the Secretary of the Interior or the *SHPO* make a written determination that any *replacement* window, door, or siding is an *in-kind building material* or make a Type G Determination; and (b) the *federal agency* make a written determination that the *replacement* of a window or windows, door or doors, or siding as applicable, will reduce energy use of the *building*, after consideration of the lifespan and embodied energy of the existing element, the cost and carbon impact (including transportation-related impacts) of producing the *replacement* element, the *technical feasibility* of modifying the existing element to align it with current energy efficiency standards and codes, and the payback period of the *replacement* element.

e. Type E Determination for *Character-Defining Features* and *Non-Significant Facades*

A Type E Determination applies to *historic buildings* and *buildings* placed in service 45 or more years ago. A Type E Determination requires that the *federal agency* obtain a written determination that a proposed action will not affect a *character-defining feature* of the *building* façade or that the *effects* of a proposed action will be limited to a *non-significant façade*, either from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*. In making such a determination for a *building* placed in service 45 or more years ago but not deemed to be a *historic building*, the individual making the written determination must apply identical standards to such *building* as if it were a *historic building*. If a *building* was placed in service fewer than 45 years ago or a Type C Determination has been made, then a Type E Determination is not required.

f. Type F Determination for *Character-Defining Features* and *Primary Spaces*

A Type F Determination applies to *historic buildings* and *buildings* placed in service 45 or more years ago. A Type F Determination requires that the *federal agency* obtain a written determination that a proposed action will not affect a *primary space* at all, or will not affect a *character-defining feature* in a *primary space*, either from a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*. In making such a determination for a *building* placed in service 45 or more years ago but not deemed to be a *historic building*, the individual making the written determination must apply identical standards to such *building* as if it were a *historic building*, and all lobbies, ceremonial rooms, and ground-floor hallways (unless primarily used for utility purposes) shall automatically be deemed *primary spaces*. If a *building* was placed in service fewer than 45 years ago or a Type C Determination has been made, then a Type F Determination is not required.

g. Type G Determination for Substitute Building Material *Replacements*

A Type G Determination applies to *undertakings* involving the *replacement* of *historic building materials* with substitute building materials. A Type G Determination requires that the *federal agency* obtain a written determination from either a *qualified professional* meeting the professional standards for historic architecture or architectural history established by the Secretary of the Interior or from the relevant *SHPO*, that the substitute building material is appropriate based on the following factors: (a) the character of existing *historic building materials* in terms of condition, design, material properties, performance (including but not limited to insulation and air sealing value), safety, and presence of hazards such as lead-based paint, asbestos, or other *hazardous materials*; (b) the *technical feasibility* and *economic feasibility* of *repairing* or *replacing* the *historic building materials*; and (c) the suitability of available substitute building materials, with attention to composition, design, color, texture, size, dimension and other physical and visual properties.

h. *State Historic Preservation Officer Reviews*

The *State Historic Preservation Officer* shall have 30 days to review and respond to an adequately documented request by a *federal agency* for a determination pursuant to this Section. If the *State Historic Preservation Officer* requests additional, missing information in order to make its determination, the *State Historic Preservation Officer* shall have 30 days from receipt of the additional information to respond. If the *State Historic Preservation Officer* does not respond within 30 days of receipt of the request or the amended request, as applicable, then the determination shall be deemed to have been made.

2. Site Work

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

- a. *Replacement* of any element listed in Appendix A, Section 1.a., after a Type A Determination has been made.
- b. Removal of any element listed in Appendix A, Section 1.a., after a Type B Determination has been made.
- c. *Installation* of any element on the same lot as a *building* or within an existing *right-of-way* and listed in Appendix A, Section 1.a., after a Type B Determination has been made.
- d. Planting a tree (other than replacing a tree per Appendix A, Section 1.b.iii.), after a Type A Determination has been made.
- e. Test borings, soil sampling, well drilling, or perc tests more than eight inches in diameter, after a Type B Determination has been made.
- f. Any of the activities listed in Appendix A, Sections 1.d., 1.e. or 1.f. that have the potential for new *ground disturbance*, after a Type B Determination has been made.
- g. Removal of oil tanks, septic tanks, or hazardous materials, provided such activity is limited to *previously disturbed ground* or creates no new *ground disturbance*, after a Type B Determination has been made.

3. Work on a Building Exterior

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

- a. *Replacement* or *installation* of any of the elements listed in Appendix A, Section 2.a., after a Type C Determination has been made.
- b. *Replacement* or *installation* of any of the elements listed in Appendix A, Section 2.a., if a Type C Determination cannot be made or is inconclusive, after a Type D Determination has been made.
- c. *Replacement* or *installation* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 2.b., if a Type E Determination has been made.
- d. *Abatement of hazardous materials* where *effects* of the *abatement* may be visible from the *building* exterior, if a Type E Determination has been made.

e. *Abatement of hazardous materials* where *effects* of the *abatement* have the potential for new *ground disturbance*, after a Type B Determination has been made.

#### 4. Work on a Building Interior

The following activities do not require further Section 106 review, when conducted entirely in the interior of a *building*, after the satisfaction of the following conditions, exclusions, or requirements:

a. *Replacement or installation* of any of the elements listed in Appendix A, Section 3.a. or Section 3.b., after a Type C Determination has been made.

b. *Replacement or installation* of any of the elements listed in Appendix A, Section 3.a. or Section 3.b., if a Type C determination cannot be made or is inconclusive, after a Type F Determination has been made.

c. *Abatement of hazardous materials* where *effects* of the *abatement* may be visible from the *building* interior (other than from the interior of an individual housing unit), after a Type F Determination has been made.

#### 5. Work Involving Transportation Fixtures and Equipment

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

a. *Replacement* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 4.b. after a Type B Determination has been made.

b. *Installation* of signs, signals, traffic control devices, or signalization supporting *alternative transportation infrastructure*, or *installation* of any of the elements (whether above-ground or below-ground) listed in Appendix A, Section 4.b.ii., after a Type B Determination has been made.

c. *Installation of clean energy technologies* supporting *alternative transportation infrastructure*, after a Type B Determination has been made.

d. *Installation* of any of the following elements after a Type A Determination has been made:

i. Bollards no taller than 48 inches and no larger in diameter than 12 inches.

ii. Ticket dispensing structures, fee collection structures, or interpretive wayside exhibit structures, 6 feet or less in height and 3 square feet or less in horizontal cross-section area, in addition to height or cross-section needed to incorporate solar power into such structures.

iii. *Transit shelters, bicycle lockers, or bicycle shelters* 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.

#### 6. Work on Bridges

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

a. *Replacement or installation* of a bridge built to serve pedestrian, bicycle, *micromobility vehicle*, or *transit* use, after a Type B Determination has been made.

**APPENDIX C: 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:

## **HUD Comments to 11.15.24 Draft of ACHP's Program Comment on Proposed Program Comment on Certain Housing, Building, and Transportation Activities**

Thank you for the opportunity to review the revised draft of the Program Comment on Proposed Program Comment on Certain Housing, Building, and Transportation Activities. HUD continues to appreciate the partnership with the ACHP. This streamlining measure/Program Comment (PC), created in accordance with 36 CFR 800.14(e), is an opportunity to advance new compliance approaches that ensure alignment with the NHPA while also advancing housing needs during a time of housing affordability and availability challenges nationwide.

Through the last few weeks, HUD has shared, in real time with the ACHP, suggestions to the draft that may assist us in the successful implementation of such a PC and appreciates that many of these have likely already been captured by ACHP. To keep a record of these, we share a synopsis of the comments below, which HUD has confidence have been addressed and will be reflected in a final version of the document if an unassembled ACHP vote is imminent. In addition, HUD also offers a few additional recommendations before the finalization of the PC and a vote, if one occurs.

Comments previously shared by HUD with ACHP are as follows:

- HUD recommended that within **Appendix A** the act of replacing/installing various interior dwelling unit elements and language that captures such exterior and interior work as installation of ramps for accessibility or health mitigation systems such as radon contamination mitigation systems be included. HUD suggested the following edits/additions to Appendix A:
  - *"Replacement or installation of walls, ceilings, flooring, doors, light fixtures, hardware, mechanical systems, building safety systems, thermal insulation, or accessibility improvements within an individual housing unit or in areas on upper floors that are not lobbies and not ceremonial rooms."*
  - *"Replacement or installation of an above-ground accessibility improvement and/or health systems such as radon mitigation equipment, if it is installed with methods that do not irreversibly damage historic building materials, provided such activity is limited to previously disturbed ground or creates no new ground disturbance."*
- HUD also recommended clarification or deletion of **Section III. B.5 - Responsibilities for Consultation and Opportunities for Outreach**. As written in the current draft, HUD raised that the language herein may result in confusion regarding the role of HUD in government-to-government consultative responsibilities versus the role of HUD's Responsible Entities, who under 24 CFR Part 58, have responsibility to consult with an Indian Tribe directly. It is HUD's understanding that ACHP legal counsel are engaged in determining the best course forward on this language and that deletion of the section may be considered. HUD requests review of any edits if this section stands in a final version before voting occurs.

- Finally, HUD also requested clarity regarding how a federal agency would proceed if SHPOs were not comfortable or willing to make a “negative determination” of eligibility and effect as an option articulated for adherence to Appendix B provisions. As a result, ACHP has revised **Section H. State Historic Preservation Officer Reviews** with more specificity to guide the agency in this event.

In addition to the comments above, which HUD anticipates are already addressed, HUD raises the following additional recommendations and considerations before finalization of the PC. These comments are intended to ensure appropriate and clear implementation of the document by HUD and Responsible Entities nationwide:

- HUD believes that the use of **the word “determination” in Appendix B is misleading** due to the established and persistent use of the word throughout normal Section 106 consultations to mean whether a building/site is eligible or not for the NRHP. In the case of Appendix B, the “determination” being made is a negative one only (as in determining when building integrity or a records check can indicate a building as clearly not eligible for the National Register or when there are no adverse effects). Though similar, this is a different decision than the Section 106 “determination,” as traditionally characterized in 36 CFR 800 as a determination of eligibility to the National Register (and under what criteria, etc.). HUD expects that such a negative determination would occur for those properties likely lacking integrity, as demonstrated by photographs and records checks (which are explained in the PC). HUD also believes that a SHPO may, in certain cases, be able to quickly assess such a “negative determination” because of a loss of integrity related to the NRHP evaluation criteria. However, because this action is different than what practitioners may be accustomed, utilizing the well-established terminology “determination” will be confusing for implementation. HUD recommends that ACHP consider a different term or phrase for what is intended here – which is to determine that a building is simply not eligible for the NRHP without using the traditional Section 106 process to achieve that ultimate outcome.
  - HUD offers a few suggestions to replace “determination” for ACHP’s consideration (and also recommends a clear and newly added definition be included in the definitions section based on the new term used throughout):
    - “ineligibility determination”
    - “negative NRHP eligibility determination”
    - “negative determination”
- HUD also requests clarity on the information standards that will be required of federal agencies to submit to a SHPO or THPO when requesting any of the determinations in **Appendix B. 1. Written Determinations**. Does ACHP envision a consistent approach to this or will this be deferred to by the Federal agency and the appropriate SHPO – please provide further guidance or clarity of responsibility for making this decision.
- In **B. Prior ACHP Action** or another location better suited, HUD suggests the ACHP state the criticality of the PC as a means of achieving the goals established in the Advisory Council on Historic Preservation Statements of Policy on Housing and Historic Preservation and on Climate Change and Historic Preservation. HUD suggests establishing within the PC itself, a self-standing document, the important connection to

the ACHP policy statements' goals of grounding historic preservation reviews in a flexible, creative, and consistent approach that ensures housing can be developed expeditiously. This acknowledgement would highlight that the PC boldly expands beyond the scope of prior program comments because it offers alternative approaches for Section 106 reviews across all federal government for certain undertakings related to these critical policy needs. Therefore, it would equip federal agencies to more effectively and efficiently preserve and protect our nation's historic resources while addressing other important and pressing policy needs.

- HUD Office of General Counsel suggests that where legal delegated responsibilities are discussed, the PC should rather state this as “**delegated or assumed**” **responsibilities** to ensure capture of the Responsible Entity language from statute. HUD's responsible entities (and the states) assume HUD's responsibility for environmental review under NEPA and the related laws and authorities based on the authorizing statutes for each program. A delegation is a different legal mechanism. This reference occurs in numerous locations in the PC, including the definitions.
- **Appendix B: Written Determinations.** The provisions for Type A, B, C, D, E, F, & G determinations appear to be written for application on a case-by-case basis. HUD recommends ACHP include a provision in that section to include the ability for agencies to make such determinations on a broader scale and in so doing create additional flexibilities in future renovations to a building, such as for specific property types or programs or undertakings that federal agency staff would incorporate into the administrative record and apply to the review as applicable in the PC for undertakings addressed in the PC.