



## **Amendment to the Program Comment for Communications Projects on Federal Lands and Property**

### **I. Background**

The 2020 coronavirus pandemic reinforced all Americans' need for reliable Internet at sufficient speeds, and highlighted the digital divide created by barriers to high-speed broadband access. The 2021 Infrastructure Investment and Jobs Act provided a historic investment of \$65 billion to help close the digital divide and ensure that all Americans have access to reliable, high speed, and affordable broadband. This "Internet for All" initiative will deploy or upgrade broadband networks to connect everyone in America, across all states and territories, generating an unprecedented volume of communications infrastructure projects subject to environmental review and permitting, including compliance with Section 106 of the National Historic Preservation Act (NHPA). For example, the Broadband Equity, Access, and Deployment (BEAD) program alone may generate hundreds, possibly thousands, of communications infrastructure projects in each state and territory that must be built within four years of proposal acceptance.

The ACHP has historically coordinated with federal agencies permitting, assisting, or licensing broadband projects and responded to the high volume of telecommunications undertakings licensed or assisted by federal agencies, along with the often-minimal effects on historic properties from these projects, by supporting the development of a range of program alternatives to optimize the efficiency and effectiveness of Section 106 reviews. Notably, in 2015, the ACHP worked with the White House Office of Science and Technology and an interagency Working Group comprised of representatives from the U.S. Department of the Interior's Bureau of Land Management, National Park Service (NPS), Fish and Wildlife Service; Department of Defense; the U.S. Department of Agriculture's Forest Service and Rural Utilities Service (RUS); and the Federal Communications Commission (FCC) to explore how best to accelerate the deployment of communications projects, particularly broadband activities, on federal lands and properties. After evaluating the Section 106 program alternatives outlined in 36 CFR 800.14 through two years of interagency collaboration and following requisite consultation, the ACHP issued the *Program Comment for Communications Projects on Federal Lands and Property* (Program Comment), 82 Fed. Reg. 23818 (May 24, 2017).

For the past several years, certain federal land and property managing agencies have implemented the Program Comment to address Section 106 compliance for the collocation of antennae on existing communications towers, including the mounting or installation of an antenna on an existing tower, building, or structure; installation of aerial communications cable; burying communications cable in existing road, railroad, and utility rights-of-way (ROW); construction of new communication towers (facilities), and removal of obsolete communications equipment and towers (hereinafter, communication deployment undertakings). Consistent with the 2022 Permitting Action Plan, the ACHP and broadband funding agencies identified the need to extend the applicability of the Program Comment to create uniform Section 106 rules for all broadband projects regardless of location. The Program Comment has therefore been amended, effective March 12, 2024. The amendment does not

substantially change the procedures established in the original Program Comment, although it does include the addition of a dispute resolution stipulation in the event that a federal agency and a consulting party are unable to reach consensus at various points within the Program Comment's implementation. Informed by a substantial record of National Telecommunication and Information Administration and RUS Section 106 reviews for these types of undertakings, the ACHP believes the amendment's expansion of the availability of the program comment to any federal agency with an undertaking that falls within its terms will create efficiencies for all consulting parties, streamline reviews, and increase predictability while appropriately taking into account the effects of broadband projects on historic properties.

The purpose of the amendment is to assist federal agencies in efficiently permitting and approving the deployment of wired and wireless next generation technologies of communications infrastructure, including 5G, to connect all communities with reliable, high-speed Internet. The Program Comment provides an alternative way for federal agencies to comply with Section 106 to take into account the effects of undertakings under its scope on historic properties and afford the ACHP a reasonable opportunity to comment on them. Federal agencies are encouraged, but not required, to follow the efficiencies set forth in this Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7 for individual undertakings falling within its scope.

## **II. Amendment to the Program Comment**

In accordance with its amendment provisions, effective today, March 13, 2024, the Program Comment is amended to read as follows:

### **Program Comment for Federal Communications Projects**

Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108 (Section 106), requires federal agencies to "take into account" the effects of undertakings they carry out, license, or assist on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting separate reviews of each individual undertaking under such category, as set forth in 36 CFR §§ 800.3 through 800.7. Federal agencies can meet their Section 106 responsibilities with regard to the effects of particular undertakings by taking into account this Program Comment and following the steps set forth herein.

## **I. Introduction**

The purpose of issuing this Program Comment is to assist federal agencies in permitting and approving the deployment of wired and wireless next generation technologies of communications infrastructure, including fiber and 5G, more efficiently. This Program Comment establishes uniform procedures for addressing Section 106 compliance for the collocation of antennae on existing communications towers, including the mounting or installation of an antenna on an existing tower, building, or structure; installation of aerial communications cable; burying communications cable in existing road, railroad, and utility rights-of-way (ROW); construction of new communication towers (facilities), and removal of

obsolete communications equipment and towers (hereinafter, communication deployment undertakings). These undertakings typically do not result in adverse effects to historic properties or result in limited adverse effects to historic properties, if present within the undertaking's Area of Potential Effects. Federal agencies may elect to follow the efficiencies set forth in this Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7 for individual undertakings falling within its scope as defined in Section II below. Public involvement remains a critical aspect of the Section 106 process; therefore, it is the responsibility of the federal agencies to determine their method for public engagement based on the agency's established protocols for their communications programs. In addition, for the purpose of this Program Comment, federal agencies are strongly encouraged to identify a single point of contact and designate a Lead Federal Agency for the purpose of carrying out Section 106 reviews when communications projects involve multiple federal agencies, consistent with the ACHP's *Frequently Asked Questions About Lead Federal Agencies in Section 106 Review*.

This Program Comment builds upon the precedent of two Nationwide Programmatic Agreements (NPAs) for wireless communications projects executed in 2001 and 2004, respectively, among the Federal Communications Commission (FCC), the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs have been successful in establishing efficiencies in the Section 106 review of tower construction and collocations and apply to facilities that support the use of FCC-licensed spectrum and are located on private lands. In 2009, the applicability of the NPAs was expanded to cover federally funded communications activities through the ACHP's issuance of the *Program Comment to Avoid Duplicative Reviews for the Wireless Communications Facilities Construction and Modification* (Duplicative Wireless Review Program Comment), as amended in 2015 and 2020, which allows the U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA); the U.S. Department of Homeland Security and its components; Federal Railroad Administration; Federal Transit Administration; the First Responders Authority; and the Office of Surface Mining and Reclamation, to rely on the FCC's review of tower and collocation undertakings under the NPAs, thereby eliminating duplicative reviews for undertakings supporting the use of FCC licensed service.

This Program Comment provides an alternate method for federal agencies to meet their Section 106 responsibilities in a flexible manner for communications undertakings. It does not modify the responsibilities of federal agencies to comply with Section 110(a) of the NHPA, 54 U.S.C. 306101 and 306102. Nor does it relieve federal agencies who utilize the Program Comment from completing Section 110(a) surveys when they are appropriate on federal lands.

## **II. Applicability**

### **A. Applicability**

1. This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, assisted, or approved by any federal agency.
2. A federal agency may elect to use this Program Comment as a substitute for existing procedures, such as a Memorandum of Understanding or consultation protocol with a SHPO, THPO, Indian Tribe, or Native Hawaiian organization (NHO) to coordinate consultation, or a program alternative developed pursuant to 36 CFR § 800.14 that addresses an agency's compliance with Section 106 for undertakings under the scope of this Program Comment. If such procedures

exist, the federal agency is encouraged to coordinate with the parties to those agreements or program alternatives prior to the agency making such a decision.

## B. Non-Applicability

This Program Comment is not applicable to undertakings proposed to be carried out, permitted, licensed, funded, assisted, or approved by any federal agency:

1. That would occur on or affect: National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, and National Battlefields, unless the responsible federal agency first consults with the relevant SHPO, Indian Tribes, the National Park Service, and other consulting parties to determine that application of the Program Comment will reasonably take into account the effects of the undertaking on those nationally significant sites, or whether following the standard Section 106 process under 36 CFR §§ 800.3 through 800.7 or another applicable program alternative under 36 CFR § 800.14 is more appropriate.
2. That would occur on or affect National Historic Landmarks, unless the responsible federal agency first consults with the relevant SHPO, Indian Tribes, the National Park Service, and other consulting parties to determine that application of the Program Comment will minimize harm to the National Historic Landmark; provided that nothing in this Program Comment modifies the responsibilities of federal agencies to comply with Section 110(f) of the NHPA, 54 U.S.C. 306107, where applicable; or
3. That would occur on or affect historic properties located on Tribal lands without the prior, written agreement between that Indian Tribe and the federal agency, and notification by the relevant federal agency to the ACHP.

## III. Definition of terms

- A. Adverse Effect – An adverse effect is found when an undertaking 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 (National Register) in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.
- B. Antenna – An apparatus designed for the purpose of emitting radio frequency radiation, to be operated or operating from a fixed location, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna.
- C. Applicant – The party submitting an application for federal communications permitting, licensing, approval or lease, and/or federal funding.
- D. Area of Potential Effects (APE) – 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. The APE is influenced by the scale and nature of an undertaking and may be

different for different kinds of effects caused by the undertaking. For purposes of this Program Comment, the APE includes the rights of way, access routes, and staging areas as defined below.

- E. Collocation – The communications industry’s term for the construction of a new antenna, or the mounting or installation of an antenna on an existing tower, building, or structure, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. It includes any fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that antenna or tower.
- F. Consulting Parties – The parties with whom federal agencies consult in the Section 106 process. Consulting parties “by right” are those parties a federal agency must invite to consult and include the ACHP, and the relevant SHPO; THPO; Indian Tribes, including Alaskan Native villages, Regional Corporations, or Village Corporations; and NHOs; representatives of local governments; and applicants for federal assistance, permits, licenses, and other approvals. Certain individuals and organizations with a demonstrated interest in the undertaking may, at the discretion of the relevant agency, also participate as consulting parties due to their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties.
- G. Effect – An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.
- H. Facility – The secured area including the building, tower, and related incidental structures or improvements.
- I. Ground Disturbance – Any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils. “Undisturbed soils” refers to soils that possess significant intact and distinct natural soil horizons. Previously undisturbed soils may occur below the depth of disturbed soils.
- J. Historic Property – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes traditional cultural properties (TCPs) and properties of traditional religious and cultural significance to an Indian tribe, Alaskan Native village, Regional Corporation or Village Corporation, or NHO that meet the National Register criteria.
- K. Indian Tribe – An Indian Tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. It includes 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).
- L. Native Hawaiian organizations — Any organization which serves or 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, a term that includes 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.

- M. Pole – A pole is a non-tower structure that can hold utility, communications, and related transmission lines.
- N. Previously disturbed soils - Previously disturbed soils are soils that are unlikely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.
- O. Records Check – The act of searching SHPO/THPO, Tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO/THPO, for any information about whether the following kinds of properties are known to exist within the APE: properties listed on or formally determined eligible for the National Register; properties that the SHPO/THPO certifies are in the process of being nominated to the National Register; properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a federal agency or local government representing the Department of Housing and Urban Development; properties listed and identified in the SHPO/THPO inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and properties in their files that the SHPO/THPO considers eligible.
- P. Right of Way (ROW) – The physical area subject to an easement, lease, permit, or license to occupy, use, or traverse public lands or private property. For the purposes of this Program Comment, types of ROW may include construction, maintenance, road, railroad, or utility ROW.
- Q. Staging Area – An area designated for short-term use, not to exceed the duration of the project, which is often used for storing and assembling building materials equipment, and machinery, and for parking vehicles, temporary mobile offices, and staging area entrances or exits.
- R. State Historic Preservation Officer — The state official appointed or designated pursuant to Section 101(b)(1) of the NHPA, 54 U.S.C. 302301, to administer the state historic preservation program or a designated representative.
- S. Substantial Increase in Size – This occurs when there is an existing antenna on a tower and the mounting of the proposed additional or replacement antenna would:
1. Result in an increase of the existing height of the tower by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph, if necessary to avoid interference with existing antennae; or
  2. Involve the installation of more than the standard number of new equipment cabinets for the technology involved (not to exceed four), or more than one new equipment shelter; or
  3. Involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater), except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

4. Expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries. The current tower site is defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

T. Tower — Any structure built for the sole or primary purpose of supporting antennae, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower, but not installed as part of an antenna as defined herein.

U. Tribal lands – All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

V. Tribal Historic Preservation Officer – The Tribal official appointed by the Tribe’s chief governing authority or designated by a Tribal ordinance who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on Tribal lands in accordance with Section 101(d)(2) of the NHPA, 54 U.S.C. 302702.

W. Qualified Professional\_— A person or person(s) meeting, at a minimum, the Secretary of the Interior’s Professional Qualifications Standards as set forth in 48 FR 44716, 44738-39, in the appropriate discipline. These qualification requirements do not apply to individuals recognized by THPOs, Indian Tribes, and NHOs to have expertise in the identification, evaluation, assessment of effects, and treatment of effects to historic properties of Tribal or Native Hawaiian religious and cultural significance.

#### **IV. Roles and responsibilities for Section 106 review of communication deployment undertakings**

A. For each proposed undertaking subject to this Program Comment, the federal agency shall employ or assign a qualified professional to:

1. Consult with the SHPO/THPO, Indian Tribes, or NHO to confirm the APE for each individual undertaking and provide notification to the appropriate SHPO/THPO, Indian Tribes, or NHO of intent to follow this Program Comment. See Sections IX, X, and XI of this Program Comment regarding the determination of APEs for installation of buried communications cable, communications tower replacement, and new communications tower construction.
2. Identify known eligible or listed historic properties within the relevant APE that may be affected by the undertaking by completing a Records Check. If a Records Check reveals no information on the presence of historic properties within the APE, the qualified professional will consult with the SHPO/THPO, Indian Tribes, or NHO to determine whether, based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible properties. If so, those areas within the APE will be avoided, and the federal agency shall have no further Section 106 responsibility for the undertaking. If they cannot be avoided, the federal agency and applicant will consult with the SHPO/THPO, Indian Tribes, or NHO to determine whether a survey or monitoring program should be carried out to identify historic properties, and to determine if any of the conditional exemptions listed in Sections VI-XI apply. Any request for additional information, and any request for monitoring, will include the basis for the request.

3. Consider whether any of the below criteria apply to the undertaking and if so, notify consulting parties that no further Section 106 review will be required for the element(s) of the undertaking that will occur within an APE:
    - a. that has been previously surveyed (acceptable to current state standards or within the past 10 years, utilizing relevant disciplines such as archaeology or ethnography) and there are no known historic properties located within the APE; or
    - b. that has been previously disturbed to the extent and depth where the probability of finding intact historic properties is low; or
    - c. that is not considered to have a high probability for historic properties by qualified professionals and based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.
    - d. If none of these criteria apply to the undertaking, proceed to consider whether the conditional exemptions listed in Sections VI-XI are applicable.
  4. Use existing agency procedures for implementation of this Program Comment which may include procedures for delegation of authority to the applicant, as appropriate.
  5. Use qualified professionals for the disciplines under review in accordance with Section 110(a)(1) of the NHPA, 54 U.S.C. 306101(c), and Section III.W of this Program Comment.
  6. Document use of this Program Comment in the Section 106 review, and how it reached its decisions about the scope and level of effort for any historic property identification, for the undertaking's administrative record.
  7. Where a Lead Federal Agency has been designated, and the Lead Federal Agency is in compliance with its responsibilities under this Program Comment, the other non-lead federal agencies responsible for the subject undertaking shall also be deemed to be in compliance with Section 106 under this Program Comment.
- B. The applicant, on behalf of the federal agency, shall employ or assign a qualified professional as necessary to:
1. Notify the federal agency of its proposed application or request for assistance at the earliest possible opportunity in project planning.
  2. Carry out and comply with the procedures for any delegation of authority to the applicant if established by the federal agency.
  3. Assist the federal agency to determine the APE in consultation with the SHPO/THPO, Indian Tribes, and NHO.
  4. Conduct a Records Check to identify known historic properties within the APE, when requested by the federal agency.



5. Notify the federal agency if the undertaking is not proposed to be located within or immediately adjacent to a known historic property.
  6. Document the recommended determination of effect to historic properties for and subject to the federal agency's approval when requested by the federal agency.
  7. Where appropriate to avoid adverse effects to historic properties, ensure the site avoidance plan has been approved by the federal agency and SHPO/THPO, Indian Tribes, and NHO. In addition, avoidance areas should be clearly marked by a qualified professional, as appropriate, during staging and construction activities, so construction crews are properly notified.
- C. Federal agencies, SHPOs, THPOs, Indian Tribes, and NHOs shall adhere to the timeframes outlined in the FCC NPAs or 36 CFR §§ 800.3 to 800.7. This will avoid delays in the deployment of communications undertakings.
- D. Federal agencies named in the Duplicative Wireless Review Program Comment may elect to notify the SHPO and consulting parties when one or more elements of an undertaking otherwise undergoing review under this Program Comment is subject to or excluded from Section 106 review by the FCC per the Duplicative Wireless Review Program Comment.
- E. Where a federal land or property management agency elects to follow this Program Comment to fulfill its Section 106 responsibilities on federal lands or property for an undertaking, the FCC has no further Section 106 responsibilities for such undertaking otherwise subject to or excluded from FCC review under the NPAs. Such other federal land or property management agency is responsible for the Section 106 review of such undertaking and may use this Program Comment for their review.
- F. This Program Comment does not require a federal agency or applicant to pay any consulting party for providing its views or comments in response to invitations to consult in a Section 106 review; to respond to the proposed APE, scope of identification efforts, initial eligibility findings, assessment of effect; or to consult to seek ways to resolve any adverse effects and develop a memorandum of agreement or programmatic agreement to conclude the Section 106 review finding or determination. If, however, a federal agency or applicant asks an Indian Tribe or any consulting party to do more than respond to its findings and determinations in connection with this Program Comment, the federal agency or applicant will enter into an appropriate arrangement to provide the Indian Tribe or consulting party reasonable payment for such services. Examples of services include requests to:
1. Conduct an archaeological, ethnographic, or other inventory or field survey to identify historic properties that may be affected by the undertaking;
  2. Perform a records or file search on behalf of the federal agency or applicant;
  3. Conduct research and make preliminary assessments of National Register eligibility on behalf of a federal agency or applicant, as opposed to responding to determination of eligibility;
  4. Provide a preliminary assessment of the potential effects of the undertaking on historic properties, as opposed to responding to such an assessment;

5. Carry out mitigation measures, including conducting additional research or monitoring ground-disturbing activities as part of a mitigation plan;
6. Curate artifacts or records recovered or made as part of historic property identification, evaluation, or mitigation efforts;
7. Design or develop a specific plan or specifications for an undertaking that would meet the Secretary of the Interior's Standards for Rehabilitation or otherwise avoid, minimize, or mitigate effects to historic properties; or
8. Contribute substantially to any of the above activities carried out by a third party.

#### **V. Project planning considerations**

- A. The applicant shall coordinate early with the federal agency regarding project planning activities. In the event the applicant proposes a public-private project, the carrier, tower company, or others who may be recognized as the applicant shall involve the relevant federal agencies in pre-application meetings to:
  1. Determine whether this Program Comment will be used;
  2. Consider the scope of work for the identification of historic properties;
  3. Discuss protocols for engaging with Indian Tribes or NHOs to ensure consistency with the federal agency's government-to-government obligations to Tribes; and
  4. Discuss alternatives and alternative routes for the undertaking.
- B. Noninvasive techniques are encouraged for identification and evaluation of all property types, if feasible, and for testing, including geotechnical testing, at archaeological sites, TCPs, and other sites important to Indian Tribes.
- C. Siting projects in previously disturbed areas, and following any relevant best management practices, is encouraged.

#### **VI. Collocation of communications antennae**

- A. A federal agency may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended July 2020.
- B. A tower collocation requires no further Section 106 review so long as:
  1. It will not result in a substantial increase in size of the existing tower; and
  2. There are no Section 106 requirements in an existing special use permit, easement, or communications use lease for that site.

- C. Collocations on non-tower structures require no further Section 106 review so long as one of the following conditions apply to the undertaking:
1. The structure is less than 45 years old; or
  2. If more than 45 years old, the structure has been previously evaluated and determined not eligible for listing on the National Register; and
    - a. The structure is not adjacent to or within the boundary of a National Register-listed or previously determined eligible historic district; and
    - b. The structure is not designated as or previously determined as a contributing element to a National Historic Landmark or State Historic Landmark; and
    - c. Indian Tribes or NHOs have not indicated there are known historic properties of traditional religious and cultural significance within the APE, and there will be no cumulative effects to such historic properties.

#### **VII. Above-ground communications connections to and collocations on buildings**

- A. A federal agency may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended July 2020.
- B. Communications connections to buildings that have been determined individually ineligible for listing in the National Register or non-contributing to a historic district via a previous Section 106 consultation completed in the past 15 years require no further Section 106 review.
- C. Communications connections to and collocations on buildings listed in or eligible for listing in the National Register require no further Section 106 review, so long as:
1. All construction complies with the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties; for example, when a new building entry is required because no entry points exist; and
    - a. Communications connections and collocations are placed on buildings behind parapets or the roof's edge in such a manner so that the connections and collocations are not visible from ground level; and existing communications or utility entry points and infrastructure are used to the greatest extent feasible, in and on the historic building; or
    - b. If existing communications or utility entry points and infrastructure cannot be used for the subject collocation, any additional entry points and infrastructure required in or on the historic building are installed in such a way as to minimize adverse effects to historic materials.

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

- A. The placement of above-ground communications and cable lines on existing poles or structures requires no further Section 106 review, as long as:
1. No new structures or poles need to be added to accommodate the new lines; and

2. The structure or pole is not a historic property and does not contribute to the significance of a historic district.
- B. When replacement of structures or poles is planned, such replacement requires no further Section 106 review, as long as the following conditions are met:
1. The location of the replacement pole will be either:
    - a. No more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole, provided that the construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines; or
    - b. Within an existing ROW or easement which has been surveyed.
  2. The replacement structures or poles are consistent with the quality and material of the originals; and
  3. Any proposed height increase of the replacement structures or poles is no more than 10 percent of the height of the originals or 5 feet, whichever is greater; and
  4. The original pole or structure is not a historic property and does not contribute to a historic district.
- C. When infill structures or poles need to be added along an extant line, the undertaking requires no further Section 106 review, as long as:
1. The addition of new structures or poles within existing ROWs or corridors is not proposed within the boundary of a known historic property; and
  2. The additional structures or pole(s) are 100 feet or more beyond the boundary of any National Register listed or previously determined eligible historic districts significant for their visual setting; and
  3. The additions are of generally consistent quality and material with the originals; and
  4. The height of any added structure or pole is no greater than 10 percent taller than the height of the originals, or 5 feet, whichever is greater.

#### **IX. Installation of buried communications cable**

- A. The APE for installation of buried cable will be the width of the construction ROW plus any additional areas for staging or access.
- B. The installation and maintenance of new or replacement communications cable and new or replacement associated vaults for cable access along or solely in previously disturbed areas or in existing communications or utilities trenches within existing road, railroad, and utility ROWs

requires no further Section 106 review when a records check confirms no known historic properties within the APE.

- C. The installation of new or replacement vaults for cable access that are outside of existing road, railroad, and utility ROWs but located solely in previously disturbed soils requires no further Section 106 review so long as a records check confirms there are no known historic properties within the APE for the vaults.
- D. The installation of new or replacement buried communication connections from road, railroad, and utility ROWs or vaults to a facility requires no further Section 106 review, so long as:
  - 1. A records check confirms that there are no known historic properties within the APE for the connection; or
  - 2. The new or replacement communication connections are solely buried in previously disturbed existing rights-of-way up to the existing facility or building or to an overhead line that connects to the facility or building.
- E. If the road, railroad, and/or utility ROW, or nearby previously disturbed area, or the area from the ROW to the individual user includes a known archaeological site(s), the undertaking requires no further Section 106 review so long as a qualified professional confirms the depth and extent of the property's intact and undisturbed deposits within the APE can be predicted with relative certainty such that the cable can be directionally bored below the site(s).

#### **X. Communications tower replacement**

- A. For the purpose of this section, the APE for physical<sup>1</sup> effects from a tower, compound, and associated construction is the area of potential ground disturbance, any areas for staging or access, and any property, or any portion thereof that will be physically altered or destroyed by the undertaking.
- B. For the purpose of this section, the APE for visual<sup>2</sup> effects is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity of a historic property.
  - 1. Unless otherwise established, or previously established through consultation and agreement between the federal agency and SHPO/THPO, Indian Tribes, and NHO the APE for visual effects for construction of new facilities or structures is the area from which the tower will be visible:
    - a. Within a 0.5 mile radius from the tower site if the proposed tower is 200 feet or less in overall height;
    - b. Within a 0.75 mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or

---

<sup>1</sup> The APE for "physical effects," consistent with the definition of "direct effects" in the FCC's 2005 NPA, includes the area of potential ground disturbance and any property, or any portion thereof, that will be physically altered or destroyed by the Undertaking.

<sup>2</sup> While FCC's agreements refer to visual effects as "indirect," in this context, "indirect" relates to activities that are indirectly related to the agency's undertaking and considered as part of its assessment of effects.

- c. Within a 1.5 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.
  - 2. These distances are a guideline that can be altered based on an otherwise established agreement and on individual circumstances addressed during consultation with the SHPO/THPO, Indian Tribes, NHOs, and consulting parties.
- C. Replacement of a tower within an existing facility boundary that was previously reviewed pursuant to Section 106, and mitigated as necessary, requires no further Section 106 review so long as:
  - 1. The proposed replacement tower does not represent a substantial increase in size relative to the existing tower; and
  - 2. The installation of the proposed replacement tower does not involve ground disturbance outside the facility's boundary and any applicable access or utility easements; and
  - 3. No new mitigation is required to address reasonably foreseeable cumulative effects.

#### **XI. New communications tower construction**

- A. For the purpose of this section, the physical APE for a tower, compound, and associated construction (staging area, access roads, utility lines, etc.) is the area of potential ground disturbance and any property, or any portion thereof, which would be physically altered or destroyed by the undertaking.
- B. For the purpose of this section, the APE for visual effects is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity of a historic property, including the landscape.
  - 1. Unless otherwise established, or previously established through consultation and agreement between the federal agency and SHPO/THPO, Indian Tribes, and NHOs, the APE for visual effects for the construction of a new tower is the area from which the tower will be visible:
    - a. Within a 0.5 mile radius from the tower site if the proposed tower is 200 feet or less in overall height;
    - b. Within a 0.75 mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or
    - c. Within a 1.5 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.
  - 2. These distances are a guideline that can be altered based on an otherwise established agreement or following consultation with SHPO/THPO, Indian Tribes, NHOs, and consulting parties.
- C. For the purpose of this section, new construction of up to three towers within an existing communications compound that has previously been reviewed pursuant to Section 106, and been

determined not to adversely affect any identified historic properties within the compound, requires no further Section 106 review so long as the proposed new towers are not substantially larger in size than the largest preexisting tower within the existing communications compound boundary.

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

- A. Federal agencies may authorize the removal of obsolete existing communications equipment and towers (the undertaking) and may remove the existing communications equipment or tower with no further Section 106 review as long as the removal undertaking would not create an adverse effect to known historic properties.
- B. Should a SHPO, THPO, Indian Tribe, or NHO object within 30 days after receiving notification that the federal agency proposes to authorize removal of obsolete communications equipment and towers, the federal agency shall comply with the requirements of 36 CFR §§ 800.3 to 800.7 for the proposed removal undertaking.

## **XIII. Unanticipated discoveries**

- A. If previously unidentified historic properties or unanticipated effects, including audible, atmospheric, and cumulative effects, to historic properties are discovered during project implementation, the contractor shall immediately halt all activity within a 50-foot radius of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours, the federal agency shall notify the relevant SHPO, THPO, Indian Tribe or NHO, and the ACHP of the inadvertent discovery, and determine whether a Discovery Plan is necessary, and whether 50 feet is sufficient for protection measures.
- B. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or Tribal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act and its implementing regulations (43 CFR part 10), and consistent with the Discovery Plan.
- C. The federal agency shall ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an undertaking, all work within 50 feet of the discovery will cease, the area will be secured, and the federal agency's authorized official will be immediately contacted. The federal agency will be guided by the principles within the ACHP's 2023 *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*. The federal agency will also comply with applicable state and local laws regarding the discovery of human remains.
- D. The Discovery Plan for inadvertent discoveries will include the following provisions:
  - 1. Immediately halting all construction work involving subsurface disturbance in the area of the find and in the surrounding area where further subsurface finds can be reasonably expected to occur, and immediately notify SHPO, THPO, Indian Tribes (as appropriate), and NHOs of the find;
  - 2. A qualified professional will immediately inspect the site and determine the area and nature of the affected find. Construction work may then continue in the area outside the find as defined by the federal agency;

3. Within five working days of the original notification, the federal agency, in consultation with SHPO, THPO, Indian Tribes, as appropriate, and NHOs, will determine whether the find is eligible for the National Register;
4. If the find is determined eligible for listing in the National Register, the federal agency will prepare a plan for its avoidance, protection, or recovery of information in consultation with the SHPO, THPO, Indian Tribes, as appropriate, and NHOs. Any dispute concerning the proposed treatment plan will be resolved by the federal agency. The ACHP is available to provide technical assistance in developing the plan.
5. Work in the affected area will not proceed until either:
  - a. The plan is implemented; or
  - b. The determination is made that the unanticipated find is not eligible for inclusion in the National Register. Any disputes over the evaluation of unanticipated finds will be resolved in accordance with the requirements of 36 CFR § 800.4(c)(2) as appropriate.

#### **XIV. Emergencies**

Should the federal agency determine that an emergency or natural disaster has occurred during the implementation of any undertakings covered under this Program Comment, the federal agency shall notify the appropriate SHPO, THPO(s), Indian Tribes, NHO(s), and the ACHP within seven days as to how the agency intends to repair or replace the communications equipment or facilities, or undertake other relevant actions in response to the emergency or natural disaster. The federal agency shall ensure that any approvals, licenses, or permits issued for these emergency response activities refer to compliance with the terms of this Program Comment.

#### **XV. Effective date and duration**

This Program Comment, as amended, shall go into effect on March 13, 2024. It shall expire December 31, 2033, unless it is amended prior to that date to extend the period in which it is in effect.

#### **XVI. Reporting**

- A. Federal agencies individually will submit an annual report to the ACHP, NCSHPO, and the National Association of Tribal Historic Preservation Officers (NATHPO) that summarizes, on a state-by-state basis, the projects reviewed under the Program Comment within a calendar year as well as the activities that resulted in adverse effects to historic properties. The annual report also will indicate whether any agreements regarding the applicability of this Program Comment on Tribal lands have been developed in the past calendar year, and which Indian Tribe(s) is a signatory, in addition to reporting on any significant issues that may have arisen while implementing the Program Comment, how those were addressed, and how they may be avoided in the future. Annual reports will be submitted December 1 of each year, commencing in 2024.
- B. The ACHP shall reexamine the Program Comment's effectiveness based on the information provided in the annual reports submitted by the federal agencies, and by convening an annual meeting with the federal agencies, NCSHPO, Indian Tribes, THPOs, NHOs, NATHPO, and industry representatives.



In reexamining the Program Comment's effectiveness, the ACHP shall consider any written recommendations for improvement submitted by stakeholders prior to the annual meeting.

#### **XVII. Amendment**

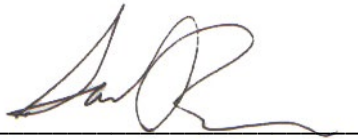
The chair of the ACHP may amend this Program Comment after consulting with the federal agencies and other relevant federal agencies, NCSHPO, Tribes, NHOs, THPOs, NATHPO, the National Trust for Historic Preservation, and industry representatives, as appropriate. The ACHP will publish a notice in the *Federal Register* informing the public of any amendments that are made to the Program Comment.

#### **XVIII. Dispute resolution**

Should a dispute arise over the implementation of this Program Comment, or its use for any particular undertaking, the federal agency shall consult with the objecting party to resolve the dispute. Should resolution not be reached, the federal agency shall request the ACHP to provide its advisory comments to resolve the dispute, and take the ACHP's comments provided within 10 business days of such a request into account before finalizing its approach to complying with Section 106. The federal agency shall notify all consulting parties regarding its approach to complying with Section 106 for the undertaking that is the subject of a dispute.

#### **XIX. Withdrawal**

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



Sara C. Bronin,  
Chair

March 13, 2024

\_\_\_\_\_  
Date