



**Consultation Summary and Response to Comments on the
Proposed Amendment to *Program Comment for Communications Projects
on Federal Lands and Property***

March 13, 2024

In accordance with Stipulation XVII I of the *Program Comment for Communications Projects on Federal Lands and Property*, the chair of the Advisory Council on Historic Preservation (ACHP) invited federal agencies, the National Conference of State Historic Preservation Officers (NCSHPO), the National Association of Tribal Historic Preservation Officers (NATHPO), Tribal representatives, and industry representatives to consult on the proposed amendment to the *Program Comment for Communication Projects on Federal Lands and Property* (PC) in December 2023. During the consultation meetings, consulting parties provided verbal comments on the proposal and made suggestions to further refine technical points within the PC, ask questions regarding the PC’s past use, and share experiences with similar communications projects. Notes from those meetings, including a list of participants, can be found in Appendix A. Written comments were submitted by seven State Historic Preservation Officers (SHPOs), three Tribes, three federal agencies, and nine organizations representing industry and historic preservation interests. Copies of the comments can be found in Appendix B.

Generally, comments could be categorized into 12 categories. The table below summarizes the comments by the number of commenters and the associated number of comments.

Comment Category	# of Comments
Area of Potential Effects (APE)/level of effort	10
Other	10
Technical specifications	8
Unanticipated discoveries	7
Professional qualifications	6
Reporting	5
Role of applicants	3
Undertaking definition	3
NHLs	3
Assessment and resolution of effects	3
Timelines	2
Lead agency	2

Substantive Comments Summarized (excludes editorial comments), and ACHP responses:

In general, comments were technical or points where further clarification was needed in the document. The ACHP particularly benefited from the participation of industry representatives, who were able to clarify equipment specifications and processes, which have been integrated into the final amendment.

One substantive addition involved the issue of compensation, which was identified as an issue for resource-constrained Tribes and Tribal Historic Preservation Officers. Consistent with the ACHP's *Guidance on Assistance to Consulting Parties in the Section 106 Review Process*, the final amendment includes language in a new subsection of Stipulation IV that requires agencies to pay Tribes for services beyond responding to findings and determinations made pursuant to the PC.

Area of Potential Effects and Level of Identification Effort

Comments on the Area of Potential Effects (APE) and the associated level of identification effort came from SHPOs in Alaska, Arizona, Delaware, Iowa, Kentucky, Minnesota, and Mississippi as well as the Wireless Infrastructure Association, the Osage Nation, and the Flandreau-Santee Sioux Tribe. Comments related to the following points:

- “Previously disturbed soils” should be defined, or the PC should specify a depth at which soils are considered disturbed.
- Historic property surveys may be out of date or warrant re-evaluation if they were not completed within the last 10 years or carried out according to current industry standards; it is also unclear how earlier determinations of eligibility will be re-evaluated after a reasonable passage of time.
- The PC needs to specify what disciplines are applicable to the professional qualifications required for those conducting surveys and records checks.
- The APE definition should include areas that may experience visual effects.
- The 0.5 mile APE may not work for open and rural areas and may need to be larger for such areas.
- Unevaluated sites should be considered eligible and included in records checks.
- The basis for requesting additional information or monitoring in Stipulation IV.A.2 should be further detailed.
- The PC does not clearly acknowledge that Indigenous Knowledge is a valid information source for the identification of historic properties.
- Additional language should be added to the PC to require that the agency or its applicant confirm the age of poles or cable-supporting structures are less than 45 years old.
- Geotechnical testing and directional boring can result in adverse effects to historic properties; thus, consultation is needed if these methodologies are proposed.

ACHP response

An additional definition for “previously disturbed soils” was included in the final amendment, and clarifying language regarding the timeliness of surveys and the applicable disciplinary background for qualified professionals were added to the section describing the federal agency’s responsibilities. While each state will have varying amounts of completed surveys available for a records check, it is expected that the agency or its applicant will, if no surveys exist, conduct surveys where and when necessary to provide that data in support of its findings. Should there be no current survey results readily available, or the SHPO opines that the survey data is no longer current and needs reevaluation, the agency or its applicant would be expected to complete those efforts, depending on whether any other conditions apply.

The definition of APE used in the PC relies upon the definition within the Section 106 regulations, which includes visual effects. Accordingly, edits to the definition were not needed. Because the size of the APE is based on definitions from the Federal Communications Commission’s (FCC’s) nationwide Programmatic Agreements, the APE definition has been retained within this PC. Similarly, treating unevaluated properties as eligible for the National Register of Historic Places was not added for consistency with the FCC’s agreements; however, consulting parties should reference those issues as a basis for requesting additional information where necessary in consulting with a federal agency on a

communications project.

The ACHP's forthcoming Policy Statement on Indigenous Knowledge and Historic Preservation will provide further information to agencies on how to incorporate that specific information into consideration of an undertaking's effects on historic properties. However, the Section 106 regulations, and this PC, acknowledge the special expertise Tribes have in identifying properties of significance to them.

It is not reasonable for an agency or an applicant to confirm that every pole along a line is less than 45 years old, since poles are routinely replaced. Requiring such confirmation is inconsistent with the ACHP's guidance on [meeting the reasonable and good faith identification standard in Section 106 review](#), which notes that the identification of every historic property within an APE is not required. Based on the ACHP's experience, geotechnical testing and directional borings are unlikely to result in adverse effects to historic properties. However, should unanticipated effects occur, they would be reviewed under the PC's Unanticipated Discoveries stipulation.

Other comments

The following comments covered a variety of topics and reflect views from SHPOs (Alaska, Delaware, and Minnesota); Tribes (Flandreau-Santee Sioux Tribe, Osage Nation); wireless industry associations (NTCA – The Rural Broadband Association/ACA - America Connects, UScellular, Wireless Infrastructure Association); and the National Trust for Historic Preservation:

- Agencies should be required to request the ACHP's comments to resolve disputes.
- The proposed amendment needs to be clearer about the role of FCC with regard to undertakings subject to the PC and the relationship between this PC and the FCC's program alternatives.
- The proposed amendment would benefit from plainer language.
- More funding for Tribes and Tribal Historic Preservation Officers is needed to conduct these reviews, particularly within the short timeframe for expending federal funds on the projects subject to the PC.
- A definition of funding agency and permitting/licensing should be included.
- It is unclear how the PC meets requirements for federal agency consultation with Tribes or how the PC will ensure consistency with federal agency Tribal consultation guidance.
- The PC's efficiencies should not apply to existing but noncompliant towers.
- The ACHP should take steps to ensure that the PC is widely utilized.
- NTIA and other agencies should be clear about their intent to use the PC if it is not possible to require its use.
- Guidance and training on the PC's terms should be required.
- The ACHP should consider other federal environmental permitting rules to inform the amendment and its processes to ensure efficiency and consistency.
- The ACHP should consider whether preemption of state/local environmental laws and zoning requirements is possible when the PC is used.
- All broadband projects, regardless of location, should continue to use the standard Section 106 process.
- The differences in states warrant state-specific solutions rather than a program alternative.
- The public should have been included in the development of the amendment.

ACHP response

In response, the ACHP added a dispute resolution stipulation, clarified the relationship of the PC to FCC's program alternatives, and where possible, used plain English. While the ACHP cannot provide funding to Tribes and Tribal Historic Preservation Officers, the ACHP has included language on compensation consistent with the [Guidance on Assistance to Consulting Parties in the Section 106 Review Process](#). As the amendment will be available to any federal agency with an undertaking meeting the PC's terms, definitions for agency types were removed entirely. Language was added to the Project Planning stipulation to reinforce the requirements for federal agencies to consult with Tribes and to be guided by agency-specific guidance in addition to the ACHP's information on working with Tribes in the Section 106 review process.

As noted during the consultation meetings, the PC does not address the issue of "Twilight Towers." Should a noncompliant tower be identified during implementation of the PC, the federal agency would need to consult with the ACHP and/or the FCC as appropriate regarding next steps.

Language within the PC encourages its use by federal agencies, but its use cannot be required. The ACHP will update its website with additional guidance and look for opportunities to partner with agencies in developing training opportunities. In developing the original PC and this amendment, the ACHP drew on its experiences with Section 106 reviews of similar communications projects and existing program alternatives such as the FCC nationwide Programmatic Agreements. Whether or how a PC preempts state or local law is a legal issue that is not addressed in PCs; no changes were made in response to this issue.

While the standard Section 106 review process is frequently preferred by consulting parties, agencies may request and use PCs as one of the program alternatives set forth in the Section 106 regulations. This amendment also expands the use of an existing PC rather than creating a new programmatic approach for this category of undertakings. However, nothing in the PC prevents a state from requesting a state-specific solution from a federal agency.

Finally, the ACHP was guided by the process specified in the PC for amending its terms in developing this amendment. Consultation with federal agencies, NCSHPO, NATHPO, the National Trust for Historic Preservation, and industry representatives is required to consider an amendment; general public comment is not required. However, the ACHP will ensure the general public is informed about the amendment by updating its website and working with federal agencies to distribute information to the public about the PC when it applies to specific undertakings.

Technical points

The ACHP received comments on technical challenges within the PC and the proposed amendment during consultation meetings and in written comments. SHPOs (Arizona) and industry organizations (CTIA, Enterprise Wireless Alliance, Fiber Broadband Association, Wireless Infrastructure Association) as well as federal agencies (NTIA, RUS) offered the following points:

- Replacement poles:
 - Use of an existing hole for pole replacement is inconsistent with current industry practice.
 - If a pole cannot use the existing hole, other parties suggested that the new hole should be reviewed for effects to historic properties.
 - Replacement of poles should use language from the [2017 FCC Report and Order](#) that addresses the same issue.
 - The requirement for replacement poles to be located within existing ROW that has been surveyed should be removed.

- The PC should allow replacement poles to use the same standards as new infill structures/poles.
- “Existing poles” should be defined.
- The PC should focus on like material replacements rather than the appearance of the existing pole.
- The 10 percent replacement increment does not correlate to existing pole manufacturing sizes.
- Mid-span poles should be excluded from review.
- Collocations on Critical Use Towers should be allowed.
- Collocations should still be reviewed even if there is not a substantial increase in size.
- The PC should reference all types of next-generation communication technologies.
- The ACHP should educate agencies of issues arising from fiber projects, which are different than wireless projects.
- NTIA should eliminate the requirement for the BEAD program to comply with the National Environmental Policy Act (NEPA), or significantly streamline NEPA reviews.
- The PC should be expanded to include electric infrastructure projects.

ACHP response

The ACHP acknowledged that the PC’s process did not align with industry standards on pole replacement, where the practice is to build a new pole adjacent to an existing pole, then remove the existing pole. Accordingly, the ACHP revised this section of the PC using the language from FCC’s Declaratory Ruling. While some consulting parties said replacement poles should utilize the exact same locations as original poles, the ACHP proposes that the 10-foot radius standard set by the FCC’s Declaratory Ruling reasonably will result in no effects or no adverse effects to historic properties. Similarly, the ACHP adjusted language requiring replacement poles to match “appearance,” instead focusing on materials. For instance, wood poles must be replaced with new wood poles. The ACHP also adjusted language referencing the 10 percent increment, adding the phrase “or five feet, whichever is greater” to more closely align with manufacturing practices.

The ACHP considered the request to exclude mid-span poles from review. However, due to their potential placement, the ACHP believes it is more appropriate to use the process contained within the PC to consider whether additional identification effort is needed. Likewise, the PC process supports collocations. The ACHP declined to make collocations subject to full review even when the substantial increase in size threshold is not met on the grounds that such a requirement would be inconsistent with long-standing practices within the FCC’s Nationwide PA on Collocations. These practices have been shown to result in minimal effects on historic properties. Therefore, no change was made in this regard.

In response to a comment about the PC recognizing the variety of technologies related to communications projects, the ACHP made modifications to reflect wired and nonwired projects at various points within the PC. The ACHP will rely on the technical expertise of staff at the National Telecommunications and Information Administration (NTIA) to provide information about differences between fiber and wireless projects to consulting parties to ensure they are familiar with the nuances of project types.

The ACHP has no role in the oversight of NEPA review requirements nor in the broader environmental review processes that applicants for federal assistance, including NTIA’s BEAD program, must assist agencies in completing. Finally, given this PC’s focus on communications projects, no changes were made to accommodate federal electric projects.

Unanticipated Discoveries

Several SHPOs (Arizona, Delaware, Iowa, Kentucky, Minnesota, Mississippi) and the Osage Nation commented on the Unanticipated Discoveries stipulation:

- The stipulation should reference applicable state laws.
- The 50-foot radius should be expanded or allowed to be expanded based on the discovery.
- Avoidance areas should be marked by qualified professionals.
- Additional detail is needed on the discovery plan criteria and whether a Memorandum of Agreement (MOA) would be needed.
- The discovery of human remains warrants a process distinct from other types of discoveries.

ACHP response

This stipulation was modified in response to comments requesting that the process reference applicable state laws, and while the 50-foot radius was retained, the option to expand that distance was added based on consulting party input. The request to use qualified professionals to mark avoidance areas has been clarified to reflect that the agency has that option.

The required contents of the Discovery Plan were not modified, but by following the Plan in the event of a discovery, no MOA would be needed.

Given the sensitive nature of the discovery of any human remains, the original language was retained, although it reflects adoption of the 2023 *ACHP Policy Statement on the Treatment of Burial Site, Human Remains, and Funerary Objects*.

Qualified Professionals

Multiple questions and comments focused on the use of qualified professionals and how agencies or applicants would rely on their expertise in implementing the amended PC. Comments from SHPOs (Alaska, Arizona, Delaware, Iowa, Minnesota, Mississippi) included the following:

- The use of qualified professionals throughout PC needs to be emphasized.
- Agencies should be required to have qualified professional staff to use the PC.
- Familiarity with the local geographic area or expertise on relevant historic preservation disciplines should be clarified.

ACHP response

Based on the comments in this category, the ACHP made revisions throughout the document to emphasize the role of qualified professionals. Although the ACHP cannot require an agency to directly employ qualified staff, the document now reflects that the agency will employ or assign qualified staff to conduct tasks that require such expertise. The ACHP also referenced multiple disciplines which could be relevant to identifying historic properties. No further changes were made to the language about familiarity with the geographic area, as the language sufficiently addresses commenters' concerns.

Reporting

SHPOs (Alaska, Delaware, Minnesota) and the Osage Nation commented on the reporting stipulation:

- The reporting stipulation needs to be strengthened, especially in its specificity, given the limited information available on the current PC's effectiveness.
- An annual meeting should be required, not optional.

ACHP response

The ACHP strengthened the language in this section to more clearly focus reporting on the types of undertakings reviewed and their effects to historic properties. Reports should also be organized state-by-state for ease of reference. The annual meeting is now a requirement.

Role of applicants

The topic of the role of applicants in implementing the PC's terms received comments from CTIA and the Iowa and Minnesota SHPOs:

- The PC should more clearly describe the obligations and responsibilities of applicants.
- The PC is unclear whether it serves as a universal authorization for applicants to initiate consultation.
- Authorizations for applicants to conduct various steps of the Section 106 process, as well as who those applicants will be (state or local agencies, or project proponents), should be provided from agencies to SHPOs and consulting parties.

ACHP response

Given the likelihood of applicants being tasked with assisting agencies in implementing communications project reviews, the ACHP intends to broadly re-publicize its [Section 106 Applicant Toolkit](#) to help agencies advise their applicants. The ACHP is also available to help federal agencies develop agency-specific applicant guidance. The PC is not a universal authorization to applicants to initiate consultation, although agencies may choose to issue such authorizations pursuant to 36 CFR 800.2(c)(4). The ACHP will maintain a list of authorizations relevant to the PC on its website so consulting parties have an information resource.

Definition of Undertaking

The ACHP received written comments from the Alaska and Minnesota SHPOs about how communications projects are defined and how the PC may apply to them; these comments were also offered during the December 2023 consultation meetings:

- Potential issues of segmentation are not addressed by the PC.
- It is unclear whether undertakings including the installation of buried communications cable and the consideration of effects from that undertaking is limited to installation of main lines or includes connections to homes and businesses.
- While some industry representatives opined during the consultation meetings that staging areas should not be included as part of an undertaking, staging areas should continue to be included to ensure the definition of the undertaking encompasses the undertaking and all of its parts.

ACHP response

Handling the issue of segmentation will ultimately fall to the agencies who utilize the amended PC, as they are responsible for considering that issue when planning a Section 106 review. However, it seems reasonable to assume that the risk of segmentation is relatively low, given that many of the projects will have independent utility and not necessarily rely on other projects to be able to be constructed or operated.

While the federal agency is responsible for defining the undertaking being reviewed under Section 106, connections to homes and businesses would likely be considered as reasonably foreseeable effects rather than parts of the undertaking itself. Accordingly, no changes were made to the PC's language.

As discussed during the consultation meetings, staging areas are characterized as part of the undertaking in the PC given their direct connection to the undertaking and their potential to affect historic properties.

National Historic Landmarks

The PC's use at National Historic Landmarks, as well as other nationally significant properties, received comments from the Minnesota SHPO, UScellular, and the Osage Nation:

- The consultation process to use the PC at these properties needs more detail.
- The PC should never apply to National Historic Landmarks or other nationally significant properties.

ACHP response

Additional language was clarified in the Applicability section of the PC to stipulate a clearer consultation process if a National Historic Landmark (NHL) could be affected by an undertaking. Consulting parties would be able to advise a federal agency on whether use of the PC was appropriate to the undertaking and the NHL. Should a disagreement arise over the use of the PC, the agency would then be able to utilize the PC's Dispute Resolution stipulation. While federal agencies have a responsibility to comply with Section 110(f) of the National Historic Preservation Act (NHPA), which requires a higher level of consideration of effects to NHLs, it is feasible that using the PC's process may meet that standard. Accordingly, having the ability to use the PC or the Section 106 process provides agencies with maximum flexibility in meeting their legal responsibilities.

Assessment and Resolution of Effects

Comments came from the Kentucky and Alaska SHPOs, as well as the Bonneville Power Administration:

- The PC is unclear in how agencies will address cumulative effects.
- The PC might reference "The Secretary of the Interior's Standards for the Treatment of Historic Properties" to allow for maximum flexibility in applying the relevant standards.
- The PC is unclear whether an MOA would be needed to resolve adverse effects.

ACHP response

The PC speaks to the issue of cumulative effects in collocation and tower replacements; the ACHP does not believe further revisions were warranted to address this issue.

The Secretary of the Interior's Standards for the Treatment of Historic Properties, rather than a specific treatment standard, are now referenced to allow for maximum flexibility.

Based on the ACHP's experience with these types of projects, it is anticipated that the number of adverse effects will be fairly low. However, in the event that a site cannot be avoided, development of an MOA would be necessary.

Lead federal agency

The Alaska SHPO and the Osage Nation commented on the issue of designating a lead federal agency and identifying of a single point of contact:

- If the PC cannot require designation of a lead federal agency, then additional guidance on determining lead agency is needed.
- A single point of contact for communication project reviews is most useful when that contact is a qualified professional.

ACHP response

The PC cannot require that a lead agency be designated for a Section 106 review, but the ACHP can remind federal agencies in further guidance on the efficiency of designating a lead federal agency in those circumstances. The ACHP will also re-publicize its [Frequently Asked Questions About Lead Federal Agencies in Section 106 Review](#), so that agencies are aware of this guidance in planning for the environmental review process.

The ACHP agrees that having a qualified professional as the single point of contact is most beneficial and will emphasize that in subsequent guidance.

Timelines

Both the Alaska SHPO and the Bonneville Power Administration requested that the PC clarify timelines for necessary consultation.

ACHP response

While no specific changes were made in response to this comment, the PC does specifically reference the timeframes contained within 36 CFR 800.3-800.7. Agencies and consulting parties should use those in conducting reviews under the PC.

Appendix A

**Notes from Consultation Meetings
December 11-13, 2023**

Proposed Communications PC Amendment
Government-to-Government Consultation Meeting
December 11, 2023

Attendees:

- ACHP:
 - Chair Sara Bronin
 - Chairman Reno Franklin
 - Reid Nelson
 - (OTIP) Ira Matt, Jamie Lee Marks
 - (OGC) Javier Marques
 - (OFAP) Jaime Loichinger, Megan Borthwick, Emily Choi
- Representatives from 9 Nations

Chair Sara Bronin introduced herself and welcomed participants to the consultation meeting. Chair Bronin then asked Chairman Reno Franklin of the Kashia Band of Pomo Indians (Tribal Member of the ACHP) for opening remarks. Chairman Franklin thanked everyone for their time and expressed his intent to submit comments as a representative of his Tribe. Chair Bronin summarized the amendment stipulation of the existing Program Comment, then asked Jaime Loichinger, Director of the Office of Federal Agency Programs, to provide a detailed overview of the proposed amendment.

After a brief introduction of Zoom guidelines for virtual consultation meetings, Ms. Loichinger reviewed the purpose, content, and applicability of a Program Comment generally, and the 2017 “Communications Program Comment” (2017 PC) specifically. Noting that neither the 2017 PC nor the proposed amendment addresses the issue of Twilight Towers, Ms. Loichinger reviewed the expedited aspects of the process available in the 2017 PC through a flowchart. She emphasized that this alternative process would be available to federal agencies as a tool and not as a requirement. She further explained that the amendment makes no substantive changes to the process; instead, it expands the applicability of the 2017 PC from land and property managing agencies to any federal agency with a communications project, and also includes several minor administrative updates. Ms. Loichinger concluded the presentation portion by reviewing the 2017 PC’s amendment stipulation and the ACHP’s proposed consultation timeline, and posing questions related to the participants’ experience with the existing PC’s implementation. Chair Bronin invited comments, requesting that any leaders present speak first and emphasizing ACHP’s eagerness to listen.

Sara Childers, Flandreau Santee Sioux Tribe of South Dakota, asked for the flowcharts to be shared on the screen again, specifically the portion referencing surveys. She asserted the need for the ACHP to include Indigenous Knowledge in addition to the survey requirements, and that the federal applicant/licensee would need to pay a Tribe for the survey. Ms. Loichinger thanked Ms. Childers, and responded that the ACHP will look for ways to incorporate her comments. Ms. Childers further emphasized the need for the amendment to include Indigenous Knowledge in the chat, suggesting that the ACHP pause this effort until the proposed ACHP policy statement on the topic is adopted.

Chair Bronin spoke of the ACHP’s ongoing efforts on a new policy statement on Indigenous Knowledge. She added that the intent of the policy statement is to inform federal agencies and other stakeholders on the integration of Indigenous Knowledge into the Section 106 process, and that the policy statement is planned to be adopted in 2024. Chair Bronin observed that Ms. Childers is asking for compliance consistent with the ACHP’s policies and guidance.

Dr. Andrea Hunter, Osage Nation, noted that the Osage Nation had provided extensive comments on the

2017 PC, but felt that none of those comments resulted in a change to the PC. She stated her opinion that program comments minimize Tribal voices, and expressed frustration that agencies use program comments to remove Tribes from the Section 106 process. Ms. Childers included a suggestion in the chat for the ACHP to look at the comments that were submitted on the 2017 effort; Ms. Loichinger thanked her for that suggestion, and said that was something staff would be doing. Dr. Hunter continued by raising the significant issue of Tribes lacking capacity to review and respond to federal agency notifications under Section 106. She emphasized the need for additional qualified archaeologists and attorneys, and detailed common past occurrences, where communication from the applicant stops once a Tribe shares information about Tribal burials and sacred sites. However, construction seems to begin without any consideration of that information.

Chair Bronin requested that Dr. Hunter explain the Osage Nation's capacity issues to better understand how they affect reviews. Dr. Hunter answered that while there are 10 staff archaeologists in the Osage Nation's Historic Preservation Office (ONHPO), they review submissions from all federal agencies across their ancestral lands which include 12 states. Chair Bronin observed that the 10 staff archaeologists of ONHPO exceed the capacity available at many other Tribal Historic Preservation Offices. Ms. Loichinger added that the ACHP would be happy to set up a separate meeting with Dr. Hunter, so that the ACHP could hear and understand her specific concerns.

Dr. Hunter detailed another serious issue stemming from the 2017 PC. Relying only on state survey records results in an incomplete picture of historic properties, as Tribes often have their own databases. She concluded by saying she could not see how Indigenous Knowledge had been considered and incorporated into the 2017 PC or the proposed amendment.

Chair Bronin and Executive Director Reid Nelson each responded to Dr. Hunter's concerns. Chair Bronin noted that the development of the upcoming policy statement on Indigenous Knowledge has received support from all 24 ACHP members, 10 of which represent federal agencies. She said the ACHP would take a closer look at how this issue can be further addressed in the amendment. Mr. Nelson added that the ACHP understands Dr. Hunter's concerns, and emphasized that what has been prepared is a draft amendment, and asked participants to help the ACHP by bringing up specific instances where measures should be changed or added. He acknowledged the enormity of this ask, and thanked the Tribes again for their participation and consideration. Concerning Tribal capacity issues, Mr. Nelson assured participants that the ACHP would take every available opportunity to advocate for Tribes in future and existing legislation and agency programs. Ms. Childers wrote in the chat that more federal funds to support Tribal Historic Preservation Officers is needed.

Holly Houghten, Mescalero Apache Tribe, requested clarification on a provision from the draft amendment's Introduction. The provision noted potential applicability to Tribal lands, and Ms. Houghten asked who, specifically, would be determining this applicability. Ms. Loichinger responded that it would be the Tribal leader. Ms. Houghten also asked whether a Tribal Historic Preservation Officer would also be involved when deciding whether to have the PC apply on Tribal lands, as Tribal governments may not always be in communication with the cultural office for communications from a federal agency. Ms. Loichinger thanked Ms. Houghten for her comments, and agreed that this provision could benefit from further specificity in the amendment.

Other ACHP staff offered further clarifications and suggestions to Ms. Houghten. Mr. Nelson encouraged concerned Tribal Historic Preservation Officers to share concerns with their Chairman or President. Javier Marques, General Counsel, shared the language of the 2017 PC's applicability provision. For the 2017 PC to apply on Tribal lands, "prior, written agreement between [the] Indian Tribe and the federal agency" would be required. Mr. Marques shared the full stipulation in the chat, and Ms. Loichinger clarified that this provision could be found in Stipulation II of the 2017 PC.

Ms. Childers reiterated Dr. Hunter's comment concerning Tribal capacity issues and the problematic circumstances stemming from these issues. She recalled a recent notification concerning a communications project, and detailed that the process of requesting additional surveys has been very difficult. She also acknowledged the pushback her Tribe experienced in making these survey requests, although given the extraordinary amount of federal funding for these efforts, it does not seem unreasonable for agencies to pay for these surveys. She reiterated her problematic experiences with tower construction, and that project type should not be added to this PC.

Chair Bronin requested that Ms. Childers clarify her comment regarding "tower construction being added." Ms. Loichinger interposed that applications for new tower construction has been, and would continue to be, covered by the 2017 PC. However, the ACHP has learned through conversations with various federal agencies that the vast majority of anticipated applications under the proposed amendment would comprise buried communications cables.

Ms. Childers expressed further concerns regarding the buried communications cables, which require trenching. She said applicants will claim that the rights-of-way were previously surveyed, but those surveys were not conducted by a Tribe for effects to properties of significance to the Tribe.

Both Mr. Nelson and Ms. Loichinger responded to Ms. Childers' concerns. Mr. Nelson cited data provided by the Federal Communications Commission to the ACHP confirming that the vast majority of cell tower constructions have undergone review per the FCC's existing Section 106 agreements, although there are times when construction begins before Section 106 reviews are completed. Mr. Nelson added that the amendment is intended to facilitate the hanging of cable on poles, or the burying of communications cables. Mr. Nelson emphasized the importance of delineating cell tower construction, from projects related more specifically to broadband. Both Mr. Nelson and Ms. Loichinger recognized that trenching has the potential to result in an adverse effect. Ms. Loichinger restated that conversations with interested federal agencies have thus far indicated the vast majority of anticipated applications under the proposed amendment would not include new tower construction.

Ms. Loichinger shared recent data from the FCC: of 15,000 undertakings under the FCC's nationwide Programmatic Agreements, there have been approximately 150 adverse effects. Ms. Loichinger emphasized that while the 2017 PC is a separate, distinct agreement from the FCC's agreements, the data presented may be helpful in understanding the overall impact of federal communications and broadband initiatives.

Chair Bronin waited for other comments; hearing none, she noted that further comments may be submitted in writing. She mentioned that the comments received would be collated after January, and that the ACHP would note how the participants' comments had been addressed as it proposes next steps. Chair Bronin thanked everyone for their time, and asked Chairman Franklin for closing remarks.

Chair Franklin began by recalling a recent visit to the Osage Nation's reservation lands. He continued that the comments submitted by his Tribe concerning this proposal would not be in favor of the amendment. He further noted this is an opportunity for Tribes to push for the incorporation of policies such as Indigenous Knowledge into Section 106 agreements. In closing, he urged participants to submit their comments, so that he can emphasize their concerns in his capacity as an ACHP member.

Tribal Nations represented:

- Cherokee Nation
- Choctaw Nation
- Flandreau Santee Sioux Tribe

- Kashia Band of Pomo Indians
- Mescalero Apache Tribe
- Osage Nation
- Pascua Yaqui Tribe
- Pueblo of Tesuque
- Santa Ynez Band of Chumash Indians

Proposed Communications PC Amendment
 General Consultation Meeting #1 (of 2)
 December 12, 2023

Attendees:

- ACHP:
 - Chair Sara Bronin
 - Reid Nelson
 - (OTIP) Jamie Lee Marks
 - (OGC) Javier Marques
 - (OFAP) Jaime Loichinger, Megan Borthwick, Emily Choi
- 10 representatives from federal agencies
- 12 representatives from State Historic Preservation Offices
- 27 representatives from industry (to include applicants, consultants, and other consulting parties)

Chair Sara Bronin introduced herself and welcomed participants to the consultation meeting. Chair Bronin provided a broad overview of the key substantive stipulations of the existing Program Comment, as well as the amendment procedure. She then asked Jaime Loichinger, Director of the Office of Federal Agency Programs, to provide a detailed overview of the proposed amendment.

After a brief introduction of Zoom guidelines for virtual consultation meetings, Ms. Loichinger reviewed the purpose, content, and applicability of a Program Comment generally, and the 2017 “Communications Program Comment” (2017 PC) specifically. Noting that neither the 2017 PC nor the proposed amendment addresses the issue of Twilight Towers, Ms. Loichinger reviewed the “expedited” aspects of the process available in the 2017 PC through a visual aid (flowchart). She emphasized that this alternative process would be available to federal agencies as a tool and not as a requirement. She further explained that the amendment makes no substantive changes to the process; instead, it expands the applicability of the 2017 PC from land and property managing agencies to any federal agency with a communications project, and also includes several minor administrative updates. Ms. Loichinger concluded the presentation portion by reviewing the 2017 PC’s amendment stipulation and the ACHP’s proposed consultation timeline, and posing questions related to the participants’ experience with the existing PC’s implementation. Chair Bronin expressed her interest in the full range of comments, particularly as she had not been present at the 2017 PC’s consultation and execution.

Matthew LeFluer said based on his work with the Vermont Health Equity Initiative, that rural states may not be adequately funded to do this work, and that broadband efforts should recognize that constituents with disabilities may feel marginalized. Federal programs can be difficult to understand, and efforts should be taken to further simplify this conversation. Chair Bronin thanked Mr. LeFluer for his comments, and Ms. Loichinger shared two links in the chat: “Introduction to Section 106,” which walks through the Section 106 process step-by-step: <https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106> , and more information about program alternatives: https://www.achp.gov/program_alternatives.

Sarah Beimers, Minnesota SHPO, noted in the chat that information about the proposed amendment was not found on the ACHP’s website and recommended that the ACHP put information regarding this proposed amendment on the website front and center.

Jill Springer, NTIA Federal Preservation Officer, provided some context about the 2017 PC, which was developed to assist in the expenditure of \$5 billion to bring broadband to rural areas, which resulted in more than 120 projects, but only one adverse effect from a tower construction project. The current funding level of almost \$50 billion in funding for 180+ projects means even more Section 106 reviews in

order to bring broadband to every American at an adequate speed, and an amendment to the PC would be an efficient way of having a consistent Section 106 review for these types of projects.

Lindsay Johansson of the Idaho SHPO observed that moving applicability of the 2017 PC off federal lands is a good step, as the Idaho SHPO receives many questions on the difference between communications projects on versus off federal lands. She shared that a uniform approach helps SHPOs in conducting their reviews. However, the PC currently focuses on *known* historic properties, which can be effective in urban or disturbed areas. For those in rural areas, these projects occur on areas that are not surveyed and therefore, an amendment may not be useful as surveys would still be needed.

Diana Eisner, representing USTelecom - The Broadband Association, suggested more concrete proposals and accompanying guidance, in order to streamline the Section 106 process, while meeting a goal of preserving historic properties. She raised several specific issues:

- The PC should be further amended to address that pole replacements do not occur in the same exact hole; that the practice is to build a new pole adjacent to the current pole, and then remove that pole. Without addressing this, applicants will be unable to use a streamlined Section 106 review.
- Previous data and surveys should carry over for any historic area.
- Language in the current PC has certain requirements regarding appearance and quality, but due to evolving manufacturing processes, old and new poles are different. The amendment should be more concrete and less subjective, as “similar in appearance” is vague.
- Language on visual effects within the Area of Potential Effects should be revised, to specify “where visual elements are part of the defining characteristics.”
- Language in the current PC has a 10 percent height increase allowance for new poles, but poles are manufactured at “x” ft increases, rather than “10 percent increments.” The amendment should correct this.
- Staging areas should be excluded from the project APE.

In responding to Ms. Eisner, Chair Bronin asked for clarification on the issue of appearance and quality. Ms. Eisner said approvals should not be delayed because “weathered patina” is not present on a new pole, so the focus should be on the same material type as well as color, circumference, and height.

Stephen Keegan, Wireless Infrastructure Association (WIA), noted that the amendment is a welcome step to industry, and encouraged agencies to use existing procedures and processes to the greatest extent practicable, particularly concerning Tribal consultation. Specifically, standardized consultation would be welcome to understand the requirements and provide consistency. He also opined that temporary staging areas should not expand the Area of Potential Effect or add additional review. He concurred with Ms. Eisner’s comments about the 10 percent height increase allowance and the pole replacement process.

Ms. Beimers asked if the ACHP could provide a summary of how the 2017 PC has worked in other states, and reiterated her earlier chat message about not being able to find information about the amendment on the ACHP’s website. Ms. Loichinger responded by reviewing the PC’s amendment stipulation, which does not require any public notification. Accordingly, the website will not be updated until or unless an amendment is finalized. Regarding the PC’s usage, it has been used infrequently; Department of Veterans Affairs, General Services Administration, and Department of Homeland Security are the only agencies that she was aware of who had used it. More detail can be provided when the ACHP prepares a summary of comments it receives during these consultation meetings.

Mike Beirne, CTIA – The Wireless Association, expressed CTIA’s support for the amendment, and observed the proposed amendment could significantly expedite Section 106 reviews for agencies who currently do not have procedures for these types of projects currently in place. He asked that the ACHP

also provide detail on projects not excluded from review.

Lucy Harrington, Minnesota SHPO, asked whether the removal of references to qualified professionals was considered an administrative change, and whether a potential contradiction existed with the PC and the ACHP's recent *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*. Specifically, it appeared that unless a cemetery was previously determined eligible, it would not be considered under either the 2017 PC or the proposed amendment, unless it was considered an unanticipated discovery. Ms. Loichinger confirmed that the issue of qualified professionals was moved to the Definitions section of the PC, but that it is still a key component of the PC. A reference to the ACHP's Policy Statement was included in the draft amendment, and Ms. Loichinger asked for suggestions from consulting parties about how to further highlight the Policy Statement within the amendment. Chair Bronin thanked Ms. Harrington for raising these issues, then briefly described the ACHP's statement on burial sites.

Andy Lachance, Verizon, expressed agreement and support for previous industry representatives' comments. He then noted that: new poles placed within existing spans should be *excluded*; staging areas should be removed from review as in his opinion there is not a potential for direct effects; and those parts of a project that are not using federal dollars should not be part of the federal review. Mr. Lachance used the example of connections provided at a later date as an example. Chair Bronin asked whether this is addressed in the 2017 PC; Mr. Lachance responded that he did not see it, and that Verizon is looking for clarification at this time. If those connections are not part of the proposal that the applicant makes for funding, then it should not be part of the undertaking being reviewed. Ms. Beimers also commented, on the issue of continued connections and how that related to the definition of the federal undertaking subject to review, noting the need for clear guidance as to whether the connections are *part of* the undertaking.

Rob Whitlam, Washington SHPO, commented that while he was not very familiar with the 2017 PC, he does have experience with fiber optics in sensitive cultural areas. The Washington SHPO is currently dealing with damage to a known, well-documented Native American cemetery that has been trenched through. This emphasizes the importance of early consultation, and to have discussions on the necessity of further investigations when an area has cultural resource sensitivity or known resources. Tribal governments may not necessarily share information with states or applicants. There is also a need for education and awareness for the state agencies who will be administering these funds, as they may not understand these reviews. Allyson Brooks, Washington SHPO, followed up on comments from Mr. Lachance and Mr. Whitlam on concerns regarding staging areas. Staging areas can affect historic properties, especially if they are graded. Chris Shaver, Idaho SHPO, wrote in the chat that parking a crane on a sensitive resource temporarily could be destructive, particularly if the ground is wet, which is why they are included in the review.

Ms. Eisner requested more clarifications on various technical aspects, asking who engages the qualified professional. Ms. Springer said that for NTIA, there will be availability of clarifying materials and technical assistance from NTIA's environmental and historic preservation review staff.

Ms. Johansson asked a follow-up question to Mr. Lachance, inquiring as to whether he was looking for further exemptions in the Section 106 process, or trying to have more clarification of the definition of "undertaking" within the Section 106 regulations. Mr. Lachance responded that he wanted additional clarification on future connections, which are not known at the time of review but would occur in the future. Ms. Johansson shared that from her experience, it is preferable to use existing definitions and not create new ones.

Mr. LeFluer reiterated the extensive resources and manpower needed in rural states to do this kind of work, and said the goal should not just be broadband accessibility, but also digital equity.

Caroline Klebacha, Arizona SHPO, observed that while the amendment could ultimately be beneficial, it will not be useful for states with large rural areas that have not been adequately or recently surveyed. Further, there are a lot of sites that are “recommended eligible,” rather than being determined so, which may not be consistent with the language in the PC requiring that a site be determined eligible. She added that the act of staging can and does have an adverse effect on historic properties.

Pamela Arluk, NCTA – The Internet and Television Association, said NCTA does not believe this amendment will benefit cable companies very much. She offered that the amendment acknowledges 5G technology but should add more broadband cable types and technologies.

In closing, Chair Bronin thanked the attendees for their comments, and noted that specific comments would be the most useful to the ACHP as it looks to further refine the draft amendment. Ms. Loichinger reminded attendees that written comments would be accepted through January 12, 2024, and could be submitted to program_alternatives@achp.gov.

Federal agencies represented:

- Bureau of Indian Affairs
- Bureau of Land Management
- Federal Communications Commission
- FirstNet
- Federal Highway Administration
- U.S. Forest Service
- National Telecommunication and Information Administration
- Rural Utilities Service

Industry represented, to include applicants and wireless lobbyists:

- Boldyn Networks
- CTIA – The Wireless Association
- Cox Communications
- Deloitte
- Diamond Communications
- Gilpin County (CO)
- GSS Midwest
- Iowa Department of Transportation
- Mediacom Communications
- Merit Network
- Missouri Office of Broadband Development
- NCTA – The Internet and Television Association
- North Carolina Division of Broadband and Digital Equity
- PepItUp
- Stevens & Lee
- US Telecom
- Western Governors Association
- Wireless Infrastructure Association
- Verizon

- Vermont Health Equity Initiative

SHPOs represented:

- Arizona
- Colorado
- Georgia
- Idaho
- Minnesota
- Mississippi
- Nebraska
- North Carolina
- South Carolina
- Washington
- West Virginia

Proposed Communication PC Amendment
General Consultation Meeting #2 (of 2)
December 13, 2023

Attendees:

- ACHP:
 - Chair Sara Bronin
 - Reid Nelson
 - (OGC) Javier Marques
 - (OFAP) Jaime Loichinger, Megan Borthwick, Emily Choi
- 10 representatives from federal agencies
- 12 representatives from states
- 25 representatives from industry

Chair Sara Bronin introduced herself and welcomed participants to the consultation meeting. Chair Bronin provided a broad overview of the key substantive stipulations of the existing Program Comment, as well as the amendment procedure. She then asked Jaime Loichinger, Director of the Office of Federal Agency Programs, to provide a detailed overview of the proposed amendment.

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Jill Springer, NTIA, noted that she had been involved in the development of the 2017 PC. At that time, the Rural Utilities Service (RUS) had received approximately \$7 billion for broadband deployment, while NTIA had received approximately \$5 billion. That resulted in 123 infrastructure projects for NTIA, with RUS having even more. Out of the 123 projects for NTIA, only one project, a tower construction, resulted in an adverse effect to historic properties. NTIA currently has almost \$50 billion in funding for broadband, and it is critical to establish a consistent process that allows projects to move smoothly through the Section 106 review process while taking historic properties into account in a reasonable manner.

In the chat, ACHP staff shared a link to the draft amendment and confirmed that the amendment, if executed, would allow any agency to use the PC’s terms, so long as it was a project type included. ACHP staff also confirmed the use of qualified professionals throughout the PC, and noted that the ACHP would be available at any time to any consulting party should a dispute arise or technical assistance be needed. Ted Gilliam, Zayo, asked whether the PC would address delays in the process. Ms. Loichinger responded that it would depend on what caused the delays, but the hope is that use of the PC would create a consistent, timely Section 106 review process.

Chris St. Germaine, Ziply Fiber, asked how the applicants would be aware of this process and how they could manage it. Ms. Springer noted that each grant award that the NTIA administers has a special award condition. That special condition would require the recipient to support completion of NEPA and Section 106 review. The process contemplated in the 2017 PC is specific to the types of infrastructure that the funding will involve. The PC builds upon a long record of communications projects and the types of effects they create, and emphasizes the benefit of consultation using specific guidelines based on project types, rather than starting fresh each time consultation is initiated. Ms. Springer also opined that delays that applicants are experiencing will see a significant benefit from this amendment.

Meredith Williams, AT&T, asked whether agencies will have a choice as to whether to adopt the PC. Ms. Loichinger clarified that the PC is a tool available to agencies, although they may choose to follow the traditional four-step review process or other applicable program alternative. The proposed amendment *encourages* the use of the PC for additional efficiencies; however, the ACHP recognizes that there *may* be instances where additional agency discretion is necessary. When an agency announces/shares its intent to use the PC, that is the point at which the SHPO or THPO could express their concerns.

Eric Keber, WTA – Advocates for Rural Broadband, asked whether data is collected on how often federal agencies choose to use the current PC. Ms. Loichinger responded that the ACHP does have some data, and that will be included in the ACHP's update in January.

Mary-Ellen Walsh, Arizona SHPO, expressed concern with replacement poles; in her experience with broadband projects in urban areas, the poles *have to* be moved, for one reason or another, and that further streamlining the replacement process would result in a lack of necessary consultation. She added additional detail in the chat, that in areas that do not have broadband access now, it is unlikely that poles will be replaced in the exact same location. Further, the APE for these project types can be insufficient to fully consider line of sight issues, and the reliance of surveys and determinations of eligibility is challenging in Arizona due to incomplete surveys. Ms. Loichinger responded that the ACHP had heard similar issues regarding replacement poles in the earlier consultation meeting, and the ACHP will be considering how best to address this issue in additional revisions. Chair Bronin asked consulting parties to please include specific ideas about how to address these concerns in their written comments.

Jenna Carlson Dietmeier, South Dakota SHPO, expressed concern with buried cable lines, asking who would be making determinations as to potential effects to archaeological resources. She used an example where an applicant determined that it would bore under the known and previously determined eligible archaeological resource, but the records they relied upon had not been updated since 1979, so boundaries are likely not as correct. Ms. Walsh commented that she had the same concerns in Arizona. Ms. Loichinger responded, it would be the federal agency making that determination.

Reid Nelson, ACHP, added his thoughts from earlier consultation meetings this week. There have been discussions over the years concerning directional boring, and those discussions have often involved Tribes. In the ACHP's opinion, installation of buried cable and trenching *can* have effects to historic properties, and *can* have effects to burials and other important resources to Tribes and other parties. The ACHP is sensitive to these points; the expectation is that the application of the PC would include the necessary consultation with states and Tribes to determine whether the circumstances are appropriate to conduct additional survey or monitoring.

Giovanna Peebles, Vermont SHPO, shared her concern about education and outreach on the PC. For those agencies without cultural resources professionals on staff, how will they learn to use the PC correctly? She noted that, in her experience, federal agencies and other stakeholders need as much help as possible. Ms. Loichinger responded that the ACHP would need to consider the development of more detailed guidance on the PC, and share available information on the ACHP's website as an educational resource.

Ms. Walsh, Arizona SHPO, said she does not have experience using this PC, and asked for statistics on the PC. Ms. Loichinger responded, noting that while the ACHP has received reports from agencies when they have used the PC, it is clear that it has only been used in limited circumstances. Mr. Nelson reminded attendees that the existing PC is only for federal lands and properties, which is a fraction of the projects that are federally assisted.

In closing the meeting, Chair Bronin again welcomed written comments, noting that the best comments would be the most specific comments. She closed the meeting by extending her appreciation to all attendees. Ms. Loichinger reminded attendees that written comments and questions can be sent to program_alternatives@achp.gov, as well as to jloichinger@achp.gov.

Federal agencies represented:

- Bonneville Power Administration
- Bureau of Indian Affairs
- Bureau of Land Management
- Federal Communications Commission
- Federal Highway Administration
- Federal Railroad Administration
- FirstNet
- U.S. Forest Service
- National Telecommunication and Information Administration
- Rural Utilities Service

Industry represented, to include applicants and wireless lobbyists:

- Affinity Consulting Group
- America's Communication Association
- AT&T
- California Department of General Services
- California Department of Technology
- Charter Communications
- Cox Communications
- CTC Technology & Engineering
- GSS Midwest
- GoNetSpeed
- Maine Connectivity Authority
- Minnesota Department of Employment and Economic Development
- Minnesota Office of Broadband Deployment
- National Governors Association
- National Rural Electric Cooperative Association
- National Telephone Cooperative Association
- National Trust for Historic Preservation
- New York Empire State Development
- US Cellular
- Viaero
- Western Governors Association
- WTA Advocates for Rural Broadband
- Wilkinson Barker Knauer LLP
- Zayo Group

- Zply Fiber

SHPOs represented:

- Alabama
- Arizona
- Iowa
- Illinois
- Kentucky
- Maryland
- Missouri
- Montana
- New Mexico
- South Dakota
- Tennessee
- Vermont

Appendix B

Written Comments from Consulting Parties



01-001-2023-005

January 29, 2024

[VIA EMAIL TO:chair@achp.gov]
Advisory Council on Historic Preservation
Ms. Sara Bronin
401 F Street NW, Suite 308
Washington, DC 20001-2637

**Re: Invitation to Consult on Amendment to Program Comment for Communications
Projects
and Federal Lands/Property**
**

Dear Ms. Sara Bronin,

The Agua Caliente Band of Cahuilla Indians (ACBCI) appreciates your efforts to include the Tribal Historic Preservation Office (THPO) in the Program Comment for Communications Projects and Federal Lands and Property project. We have reviewed the documents and have the following comments:

*At this time ACBCI has no comments, but please continue to provide our office with updates as the project progresses. Also, please inform our office if there are changes to the scope of this project.

*Continued consultation on this project.

Again, the Agua Caliente appreciates your interest in our cultural heritage. If you have questions or require additional information, please call me at (760) 699-6958. You may also email me at ACBCI-THPO@aguacaliente.net.

Cordially,

Timothy Wilcox
Archaeologist
Tribal Historic Preservation Office
AGUA CALIENTE BAND
OF CAHUILLA INDIANS



January 8, 2024

File No.: 3130-1R ACHP / 2023-01386

Jamie Loichinger
Director, Office of Federal Agency Programs
Advisory Council on Historic Preservation
jloichinger@achp.gov

Subject: Proposed Amendment to the 2017 Program Comment for Communications Projects on Federal Lands and Properties

Dear Ms. Loichinger:

The Alaska State Historic Preservation Office (SHPO) has reviewed the proposed amended Program Comment for Communications Projects on Federal Lands and Properties (PC), and we are concerned that, as currently written, the amended PC will not substantially assist federal agencies to efficiently meet the requirements of Section 106 of the National Historic Preservation Act for proposed undertakings in Alaska. This is problematic as Alaska is one of a handful of states that has over one billion dollars allocated for broadband improvements that need to be carried out in the next four to five years. We believe that either substantial revisions must be made to the amended PC to account for conditions in Alaska or that a separate alternative is developed to assist broadband improvements in Alaska.

One of the "Internet for All" initiative aims is to provide or upgrade broadband for unserved and underserved communities. According to Alaska's BEAD Five-Year Action Plan, there are over 88,000 unserved locations, over 16,000 underserved locations, and almost 7,300 underserved Community Anchor Institutions in Alaska. In order to provide or upgrade broadband for these parties, federal agencies and applicants will need to find a way to implement projects in Alaska in 3-4 years from award. This will be complicated by Alaska's demographics, topography, land management considerations, and low infrastructure development. Further information can be found in Enclosure 1.

Our office has put together detailed comments Enclosure 2, but the main points are summarized below:

- The amended PC relies heavily on previous survey and existing disturbed corridors that connect all communities and residences, which severely limits the PC's utility in Alaska.
 - The majority of Alaska's unserved or underserved locations are off the road system and do not have connectivity to regional utilities.
 - Roughly 80-85% of Alaska has **not** been surveyed within 10 years or to current industry standards. The majority of the research has been focused on areas accessible by the road system or associated with an undertaking subject to Section 106. Therefore, little is known about site distribution in rural Alaska, especially in the Yukon-Kuskokwim region. As such, it will be problematic to find consensus regarding areas of high potential.
- The amended PC does not provide guidance regarding how lead agency will be determined and how the PC will prevent project segmentation and redundant reviews.

- The majority of the communication undertakings in Alaska will require consultation regarding survey and/or monitoring, and there are no details in the proposed draft regarding the consultation level of effort that is needed to complete this step.
 - Tribal consultation and the required level of effort to fulfill trust responsibilities is not well defined. Relying on agency guidance on this topic has proven insufficient in Alaska (for example, the Ambler Access Road project and subsequent remand). In addition, most of Alaska's Tribes live in underserved communities and will not be able to rely on internet connectivity for video calls, file downloads, and even basic email access until the proposed projects are carried out.
 - It is unclear if there needs to be consultation regarding determinations of eligibility for listing in the National Register of Historic Places (DOEs) and findings of effect for projects that do not meet the criteria outlined in Section IV.A.3 or the conditional exemptions listed in Sections VI-XI.
 - It is unclear how the amended PC will ensure meaningful consultation with Tribes if they are not given a means to comment on DOEs and findings, especially regarding avoidance and minimization measures.
- The conditional exemptions listed in Sections VI-XI do not address cumulative effects.
- The amended PC does not always clearly define what is needed to successfully minimize effects in the various sections outlining the conditional exemptions listed in Sections VI-XI.

In summary, AK SHPO believes that the amended PC will exacerbate existing issues with broadband and communication projects in Alaska. We are already experiencing burdensome review redundancy; miscommunication and confusion as agencies try to parse what the project is and who should be the lead agency; project segmentation and insufficient identification for undertakings as a whole; and adverse effects to historic properties that go unreported for years due to a lack of oversight. Problematic compliance such as this does not lend itself to broadening an alternative process with minimal reporting to consulting parties.

Should the amended PC go into effect, AK SHPO foresees a continuation of our current situation that will be compounded by the narrow implementation window allowed by law. Our office anticipates that the majority of undertakings for broadband projects in Alaska will not be able to leverage the criteria outlined in Section IV.A.3 or the conditional exemptions listed in Sections VI-XI. However, we anticipate project proponents will attempt to meet the criteria or conditional exemptions through project segmentation, which will lead to portions of undertakings not being reviewed or receiving minimal identification efforts that will incur adverse effects to historic properties that could have been avoided through implementation of 36 CFR 800. We request that the ACHP reconsider the current draft of the amended PC and its applicability to Alaska.

Thank you for the opportunity to comment. Please contact Sarah Meitl at 907-269-8720 or sarah.meitl@alaska.gov if you have any questions or if we can be of further assistance.

Sincerely,



Judith E. Bittner
State Historic Preservation Officer

JEB:sjm

1 Proposed Amendment to the Program Comment for Communications Projects on Federal
2 Lands and Property
3
4

5 **I. Background**
6

7 The 2020 coronavirus pandemic reinforced all Americans’ need for reliable internet at
8 sufficient speeds, and highlighted the digital divide created by barriers to high-speed
9 broadband access. The 2021 Infrastructure Investment and Jobs Act provided a historic
10 investment of \$65 billion to help close the digital divide and ensure that all Americans
11 have access to reliable, high speed, and affordable broadband. This “Internet for All”
12 initiative will deploy or upgrade broadband networks to connect everyone in America,
13 across all states and territories, generating an unprecedented volume of communications
14 infrastructure projects subject to environmental review and permitting, including
15 compliance with Section 106 of the National Historic Preservation Act (NHPA). For
16 example, the Broadband Equity, Access, and Deployment (BEAD) program alone may
17 generate hundreds, possibly thousands, of communications infrastructure projects in each
18 state and territory that must be built within four years of proposal acceptance.
19

20 The ACHP has historically coordinated with federal agencies permitting, assisting, or
21 licensing broadband projects and responded to the high volume of telecommunications
22 undertakings licensed or assisted by federal agencies, along with the often-minimal
23 effects on historic properties from these projects, by supporting the development of a
24 range of program alternatives to optimize the efficiency and effectiveness of Section 106
25 reviews. Notably, in 2015, the ACHP worked with the White House Office of Science
26 and Technology and an interagency Working Group comprised of representatives from
27 the U.S. Department of the Interior’s Bureau of Land Management, National Park
28 Service (NPS), Fish and Wildlife Service; Department of Defense; the U.S. Department
29 of Agriculture’s Forest Service and Rural Utilities Service (RUS); and the Federal
30 Communications Commission (FCC) to explore how best to accelerate the deployment of
31 communications projects, particularly broadband activities, on federal lands and
32 properties. After evaluating the Section 106 program alternatives outlined in 36 CFR
33 800.14 through two years of interagency collaboration and following requisite
34 consultation, the ACHP issued the 2017 *Program Comment for Communications Projects*
35 *on Federal Lands and Property* (2017 Program Comment), 82 Fed. Reg. 23818 (May 24,
36 2017).
37

38 For the past several years, certain federal land and property managing agencies have
39 implemented the 2017 Program Comment to address Section 106 compliance for the
40 collocation of antennae on existing communications towers, including the mounting or
41 installation of an antenna on an existing tower, building, or structure; installation of aerial
42 communications cable; burying communications cable in existing road, railroad, and
43 utility rights-of-way (ROW); construction of new communication towers (facilities), and
44 removal of obsolete communications equipment and towers (hereinafter, communication
45 deployment undertakings). Consistent with the 2022 Permitting Action Plan, the ACHP
46 and broadband funding agencies identified the need to extend the applicability of the

47 2017 Program Comment to create uniform Section 106 rules for all broadband projects
48 regardless of location. As proposed, the amendment would not substantially change the
49 procedures established in the original program comment, although it does include the
50 addition of a dispute resolution stipulation in the event that a federal agency and a
51 consulting party are unable to reach consensus at various points within the Program
52 Comment’s implementation. Informed by a substantial record of NTIA and RUS Section
53 106 reviews for these types of undertakings, the ACHP believes expanding the
54 availability of the program comment to undertakings proposed on state and private lands
55 through this amendment would create efficiencies for all consulting parties, streamline
56 reviews, and increase predictability while appropriately taking into account the effects of
57 broadband projects on historic properties.

58
59 The purpose of this amendment is to assist federal agencies in efficiently permitting and
60 approving the deployment of next generation technologies of communications
61 infrastructure, including 5G, to connect all communities with reliable, high-speed
62 Internet. The 2017 Program Comment provides a process for its amendment in section
63 XVIII. The ACHP is utilizing that process to propose the following revisions. The
64 amended Program Comment would provide an alternative way for federal agencies to
65 comply with Section 106 to take into account the effects of their undertakings on historic
66 properties and afford the ACHP a reasonable opportunity to comment on them. Federal
67 agencies are encouraged, but not required, to follow the efficiencies set forth in this
68 amended Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7
69 for individual undertakings falling within its scope.

70
71

72 **II. Proposed Amendment to the Program Comment**

73

74 The following would amend the Program Comment to read as follows:

75

76 **Program Comment for Federal Communications Projects**

77

78 Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108
79 (Section 106), requires federal agencies to “take into account” the effects of their
80 undertakings on historic properties and to provide the Advisory Council on Historic
81 Preservation (ACHP) a reasonable opportunity to comment with regard to such
82 undertakings. The ACHP has issued regulations that set forth the process through which
83 federal agencies comply with these duties. Those regulations are codified under 36 CFR
84 part 800 (Section 106 regulations).

85

86 Under section 800.14(e) of those regulations, agencies can request the ACHP to
87 provide a “Program Comment” on a particular category of undertakings in lieu of
88 conducting separate reviews of each individual undertaking ~~under such category, as set~~
89 ~~forth in~~ following 36 CFR §§ 800.3 through 800.7. Federal ~~agencies~~ Land Managing
90 Agencies (LMAs) and Federal Property Managing Agencies (PMAs) can meet their
91 Section 106 responsibilities with regard to the effects of particular undertakings by taking
92 into account this Program Comment and following the steps set forth therein.

92

93 **I. Introduction**

94
95 The purpose of ~~issuing~~proposing this amended Program Comment is to assist ~~f~~Federal
96 LMA/PMAsagencies in permitting and approving the deployment of next generation
97 technologies of communications infrastructure, e.g. 5G, more efficiently. This amended
98 Program Comment ~~would~~ establish eses uniform procedures for addressing Section 106
99 compliance for the collocation of antennae on existing communications towers, including
100 the mounting or installation of an antenna on an existing tower, building, or structure;
101 installation of aerial communications cable; burying communications cable in existing
102 road, railroad, and utility rights-of-way (ROW); construction of new communication
103 towers (facilities), and removal of obsolete communications equipment and towers
104 (hereinafter, communication deployment undertakings). These undertakings ~~would~~
105 typically not result in adverse effects to historic properties typically result in similar
106 effects to historic properties, should they be present within the undertaking’s Area of
107 Potential Effect. Federal LMA/PMAsagencies may elect to follow the efficiencies set
108 forth in this proposed amended Program Comment in lieu of the procedures in 36 CFR §§
109 800.3 through 800.7 for individual undertakings falling within its scope. Public
110 involvement remains a critical aspect of the Section 106 process; therefore, it is the
111 responsibility of the ~~f~~Federal LMA/PMAsagencies to determine their method for public
112 engagement based on the agency’s established protocols for their communications
113 programs. In addition, for the purpose of this proposed amended Program Comment,
114 ~~f~~Federal LMA/PMAsagencies are encouraged to identify a single point of contact and
115 designate a Lead Federal Agency for the purpose of carrying out Section 106 reviews
116 when communications projects involve multiple federal agencies.

117
118 In addition to expanding the existing 2017 Program Comment, tThis amended
119 Program Comment builds upon the precedent of two Nationwide Programmatic
120 Agreements (NPAs) for wireless communications projects executed in 2001 and 2004,
121 respectively, among the Federal Communications Commission (FCC), the ACHP, and
122 the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs
123 have been successful in establishing efficiencies in the Section 106 review of tower
124 construction and collocations, and apply to facilities that support the use of FCC-licensed
125 spectrum and are located on private lands. The applicability of the NPAs was~~ere~~have
126 previously-been expanded to cover federally-funded communications activities through
127 the ACHP’s issuance of the 2009 Program Comment to Avoid Duplicative Reviews for
128 the Wireless Communications Facilities Construction and Modification, as further
129 amended in 2015 and 2020, which allows

130
131 ~~Many State Historic Preservation Officers (SHPOs), Tribal Historic Preservation~~
132 ~~Officers (THPOs), Indian tribes, and Native Hawaiian organizations (NHOs) have been~~
133 ~~accustomed to reviewing applications for wireless communications facilities under the~~
134 ~~terms of the NPAs. As such, the NPAs were expanded to cover communications activities~~
135 ~~funded under the American Recovery and Reinvestment Act of 2009, through the~~
136 ~~ACHP’s issuance of a Program Comment for the Broadband Initiatives Program and the~~
137 ~~Broadband Technology Opportunities Program. The 2009 Program Comment allows the~~
138 U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of

139 Commerce, National Telecommunications and Information Administration; and the U.S.
140 Department of Homeland Security, ~~Federal Emergency Management Agency and its~~
141 ~~components; Federal Railroad Administration (FRA); Federal Transit Administration~~
142 ~~(FTA); FirstNet;~~ and the Office of Surface Mining and Reclamation, to rely on the
143 FCC’s review of tower and collocation undertakings under the NPAs, thereby eliminating
144 duplicative reviews for undertakings supporting the use of subject to FCC licensed
145 service or registration. ~~In 2015, the ACHP extended the Broadband Program Comment~~
146 ~~for an additional 20 years and expanded it to allow additional agencies that fund~~
147 ~~communication facilities, including the Department of Homeland Security (DHS) and its~~
148 ~~components, Federal Railroad Administration (FRA), Federal Transit Administration~~
149 ~~(FTA), and FirstNet, to utilize its terms to comply with Section 106 for those~~
150 ~~undertakings.~~

151
152 ~~Since the FCC NPAs do not apply on federal lands, Federal LMAs/PMA can~~
153 ~~benefit from the use of this Program Comment for the deployment of communications~~
154 ~~infrastructure and facilities. The recommendation for developing such a program~~
155 ~~alternative on federal lands derived from the implementation of Executive Order 13616,~~
156 ~~Accelerating Broadband Infrastructure Deployment (77 FR 36903, June 20, 2012). Once~~
157 ~~Executive Order 13616 was issued, a Federal Property Working Group (Working Group)~~
158 ~~was established to expedite reviews and implement efficiencies for the deployment of~~
159 ~~broadband infrastructure on federal property. Subsequently the Broadband Opportunity~~
160 ~~Council (BOC) was established to produce specific recommendations to increase~~
161 ~~broadband deployment, competition, and adoption through actions within the scope of~~
162 ~~existing agency programs, missions, and budgets. The efforts of the BOC aligned with~~
163 ~~those of the Working Group, reaffirming the commitment to implement activities and~~
164 ~~policies that support increased broadband deployment, particularly in rural and~~
165 ~~underserved communities. Finally, the importance of broadband infrastructure~~
166 ~~deployment was reaffirmed with the issuance of Executive Order 13766, Expediting~~
167 ~~Environmental Reviews and Approvals for High Priority Infrastructure Projects (82 FR~~
168 ~~8657, January 30, 2017). This Executive Order requires infrastructure decisions to be~~
169 ~~accomplished with maximum efficiency and effectiveness, while also respecting property~~
170 ~~rights and protecting public safety. Further, all infrastructure projects, especially projects~~
171 ~~that are high priority for the nation, such as improving U.S. electric grids and~~
172 ~~telecommunications systems and repairing and upgrading critical port facilities, airports,~~
173 ~~pipelines, bridges, and highways are the focus of this executive order.~~

174
175 This amended Program Comment provides an alternate method for ~~the f~~Federal
176 LMAs/PMA agencies to meet their Section 106 responsibilities in a flexible manner for
177 communications undertakings. It does not modify the responsibilities of ~~f~~Federal
178 LMAs/PMA agencies to comply with Section 110(a) of the NHPA. Nor does it relieve
179 ~~f~~Federal LMAs/PMA and other federal agencies who utilize the amended Program
180 Comment from completing Section 110(a) surveys when they are appropriate on federal
181 lands.

182 **II. Applicability**

184

185 This amended Program Comment applies to communication deployment
186 undertakings that are carried out, permitted, licensed, funded, ~~or~~-assisted or approved by
187 any ~~f~~Federal agency the following LMAs: the U.S. Department of Agriculture's (USDA)
188 U.S. Forest Service (USFS); the Department of the Interior's (DOI) National Park
189 Service (NPS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS),
190 and Bureau of Indian Affairs (BIA); and the following PMAs: the Department of
191 Homeland Security and its components, Department of Commerce; Department of
192 Veterans Affairs; and the General Services Administration. Other federal agencies
193 responsible for carrying out, permitting, licensing, funding, or assisting in the deployment
194 of communications activities, such as FCC and the USDA Rural Utilities Service (RUS),
195 may utilize this Program Comment to satisfy their Section 106 responsibilities on federal
196 lands after completing the process set forth in Section XVIII.B. below.

197
198 Federal LMA/PMAagencies may have existing procedures in place, such as a
199 Memorandum of Understanding or consultation protocol with a SHPO, THPO, Indian
200 tribe, or NHO to coordinate consultation ~~or to expedite Section 106 reviews~~, or a program
201 alternative developed pursuant to 36 CFR § 800.14 that addresses agency compliance
202 with Section 106 for certain types of undertakings. If such procedures exist, the ~~f~~Federal
203 LMA/PMAagency may be encouraged to coordinate with the signatories of those
204 agreements or program alternatives to determine whether applying the terms of this
205 Program Comment can substitute for those procedures.

206
207 This amended Program Comment is not applicable to undertakings proposed to be
208 carried out, permitted, licensed, funded, ~~or~~-assisted or approved by any federal agency
209 that would occur on or affect ~~the following federally owned lands~~: National Historic
210 Landmarks (~~or the portion thereof that is located on federal land~~), National Monuments,
211 National Memorials, National Historical Parks, National Historic Trails, National
212 Historic Sites, National Military Parks, and National Battlefields, unless ~~Should federal~~
213 ~~agencies or applicants want to deploy communications facilities that will affect these~~
214 ~~properties~~, the responsible federal agency must consults with the SHPO, Tribes, the
215 National Park Service, and other consulting parties to determine whether if application of
216 the amended Program Comment will reasonably take into account the effects of the
217 agency's undertaking on historic properties, or whether following the standard Section
218 106 process under 36 CFR §§ 800.3 through 800.7 (~~or another applicable Program~~
219 ~~Alternative under 36 CFR § 800.14 is more appropriate~~) is necessary to assess effects to
220 those properties for the review of such undertakings in consultation with the applicant,
221 SHPO/THPO, Indian tribes, NHOs, and other consulting parties.

222
223 This amended Program Comment is not applicable to undertakings proposed to be
224 carried out, licensed, permitted, ~~or~~-assisted, or approved by any federal agency that would
225 occur on or affect historic properties located on Tribal lands without the prior, written
226 agreement between that Indian tribe and the federal agency, and notification by the
227 relevant ~~f~~Federal LMA/PMAagency to the ACHP, NCSHPO, and NATHPO.

228
229 Should a dispute arise over applicability the implementation of this amended
230 Program Comment, or its use for any particular undertaking, the ~~f~~Federal

231 ~~LMA/PMA~~agency will consult with the objecting party to resolve the dispute. Should
232 resolution not be reached, the federal agency should request the ACHP to provide its
233 advisory comments to resolve the dispute, and take the ACHP’s comments into account
234 before finalizing its approach to complying with Section 106. ~~and should consider~~
235 ~~following the standard Section 106 process under 36 CFR §§ 800.3-800.7.~~ The ~~f~~Federal
236 ~~LMA/PMA~~agency shall notify all consulting parties regarding its ~~preferred~~ approach to
237 complying with Section 106 for a communications undertaking that is the subject of a
238 dispute.

239

240 **III. Definition of terms**

241

242 A. Agency official – It is the statutory obligation of the federal agency to fulfill the
243 requirements of Section 106 and to ensure that an agency official with jurisdiction
244 over an undertaking takes legal and financial responsibility for Section 106
245 compliance in accordance with 36 CFR part 800. The agency official has approval
246 authority for the undertaking and can commit the federal agency to take
247 appropriate action for a specific undertaking as a result of Section 106
248 compliance. The agency official may be a state, local, or tribal government
249 official who has been delegated legal responsibility for compliance with Section
250 106 in accordance with federal law.

251 B. Antenna – An apparatus designed for the purpose of emitting radio frequency
252 radiation, to be operated or operating from a fixed location, for the transmission
253 of writing, signs, signals, data, images, pictures, and sounds of all kinds, including
254 the transmitting device and any on-site equipment, switches, wiring, cabling,
255 power sources, shelters or cabinets associated with that antenna and added to a
256 tower, structure, or building as part of the original installation of the antenna.

257 C. Applicant – The party submitting an application for federal communications
258 permitting, licensing, approval or lease, and/or recipients of federal funding ~~on~~
259 federally managed lands or federally managed property.

260 D. Area of Potential Effects (APE) – The geographic area or areas within which an
261 undertaking may directly or indirectly cause alterations in the character or use of
262 historic properties, if any such properties exist. The APE is influenced by the
263 scale and nature of an undertaking and may be different for different kinds of
264 effects caused by the undertaking (source: 36 CFR § 800.16(d)). For purposes of
265 this Program Comment the APE includes the ROW, access routes, and staging
266 areas as defined below.

267 E. Collocation – The communications industry’s term for the construction of a new
268 antenna ~~or tower~~, or the mounting or installation of an antenna on an existing
269 tower, building, or structure, for the purpose of transmitting and/or receiving radio
270 frequency signals for communications purposes. It includes any fencing,
271 equipment, switches, wiring, cabling, power sources, shelters, or cabinets
272 associated with that antenna or tower.

273 F. Consulting Parties – The parties with whom federal agencies consult in the
274 Section 106 process. Consulting parties “by right” are those parties a federal
275 agency must invite to consult and include the ACHP, and the relevant SHPO;
276 THPO; Indian tribes, including Alaskan Native villages, Regional Corporations,

277 or Village Corporations; and Native Hawaiian organizations (NHOs);
278 representatives of local governments; and applicants for federal assistance,
279 permits, license and other approvals. “Certain individuals and organizations with
280 a demonstrated interest in the undertaking” may, at the discretion of the relevant
281 agency, also participate as consulting parties “due to their legal or economic
282 relation to the undertaking or affected properties, or their concern with the
283 undertaking’s effects on historic properties” (source: 36 CFR § 800.2(c)).

284 G. Effect and Adverse Effect – “Effect means alteration to the characteristics of a
285 historic property qualifying it for inclusion in or eligibility for the National
286 Register of Historic Places” (source: 36 CFR § 800.16(i)). “An adverse effect is
287 found when an undertaking may alter, directly or indirectly, any of the
288 characteristics of a historic property that qualify the property for inclusion in the
289 National Register in a manner that would diminish the integrity of the property’s
290 location, design, setting, materials, workmanship, feeling, or association” (source:
291 36 CFR § 800.5(a)(1)).

292 H. Facility – Means the secured area including the building, tower, and related
293 incidental structures or improvements, ~~located on federal land.~~

294 I. Ground Disturbance – Any activity that moves, compacts, alters, displaces, or
295 penetrates the ground surface of previously undisturbed soils. “Undisturbed soils”
296 refers to soils that possess significant intact and distinct natural soil horizons.
297 Previously undisturbed soils may occur below the depth of disturbed soils.

298 J. Historic Property – Any prehistoric or historic district, site, building, structure, or
299 object included in, or eligible for inclusion in, the National Register maintained
300 by the Secretary of the Interior. This term includes artifacts, records, and remains
301 that are related to and located within such properties. The term includes
302 traditional cultural properties (TCPs) and properties of traditional religious and
303 cultural significance to an Indian tribe, Alaskan Native village, Regional
304 Corporation or Village Corporation, or NHO that meet the National Register
305 criteria (source: 36 CFR § 800.16(l)(1)).

306 K. Indian tribe – An Indian tribe, band, nation, or other organized group or
307 community, which is recognized as eligible for the special programs and services
308 provided by the United States to Indians because of their status as Indians. It
309 includes a Native village, Regional Corporation, or Village Corporation, as those
310 terms are defined in section 3 of the Alaska Native Claims Settlement Act (43
311 U.S.C. § 1602).

312 L. Property Managing Agency – Executive branch agencies and independent
313 agencies that have authority to hold smaller swaths of land to support facilities
314 that are necessary to the agency’s mission and vision.

315 M. Land Managing Agency – Executive branch agencies that have the authority to
316 hold broad swaths of land for the agency’s mission and other particular purposes
317 such as management and administration of activities undertaken to support the
318 agency.

319 M.N. Funding Agency - Executive branch agencies and independent agencies
320 that grant or loan federal funds to an applicant or recipient.

321 N.O. Tribal lands – Defined in 36 CFR § 800.16(x) as including “all lands
322 within the exterior boundaries of any Indian reservation and all dependent Indian

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communities.”

O.P. Pole – A pole is a non-tower structure that can hold utility, communications, and related transmission lines.

P.Q. Right of Way – An easement, lease, permit, or license to occupy, use, or traverse public lands (source: Federal Land Policy and Management Act of 1976, As Amended 2001, Title V). For the purposes of this Program Comment, ROW includes a construction, maintenance, road, railroad, or utility ROW.

Q.R. Records Check – For the purpose of this Program Comment, a “Records Check” means 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: pProperties listed on or formally determined eligible for the National Register; pProperties that the SHPO/THPO certifies are in the process of being nominated to the National Register; pProperties 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; pProperties listed and identified in the SHPO/THPO iInventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and pProperties in their files that the SHPO/THPO considers eligible.

R.S. Staging Area – For the purpose of this Program Comment, a staging area is an area designated for short term use, not to exceed the duration of the project, and is often used for storing and assembling building materials equipment, and machinery, and for parking vehicles, temporary mobile offices, and staging area entrance/exit.

S.T. Substantial Increase in Size – This occurs when there is an existing antenna on a tower and:

1. Mounting of the proposed additional or replacement antenna would 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. Mounting of the proposed additional or replacement antenna would 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. Mounting of the proposed additional or replacement antenna would 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.

368 3.4. The mounting of the proposed antenna would expand the boundaries of
369 the current tower site by more than 30 feet in any direction or involve
370 excavation outside these expanded boundaries. The current tower site is
371 defined as the current boundaries of the leased or owned property
372 surrounding the tower and any access or utility easements currently related
373 to the site.

374 F.U. Native Hawaiian organizations — Defined as “any organization which
375 serves or represents the interests of Native Hawaiians; has as a primary and stated
376 purpose the provision of services to Native Hawaiians; and has demonstrated
377 expertise in aspects of historic preservation that are significant to Native
378 Hawaiians” (source: 36 CFR § 800.16(s)(1)). “Native Hawaiian” means any
379 “individual who is a descendant of the aboriginal people who, prior to 1778,
380 occupied and exercised sovereignty in the area that now constitutes the state of
381 Hawaii” (source: 36 CFR § 800.16(s)(2)).

382 U.V. State Historic Preservation Officer — The state official appointed or
383 designated pursuant to Section 101(b)(1) of the NHPA to administer the state
384 historic preservation program or a designated representative.

385 V.W. Tribal Historic Preservation Officer – The tribal official appointed by the
386 tribe’s chief governing authority or designated by a tribal ordinance who has
387 assumed the responsibilities of the SHPO for purposes of Section 106 compliance
388 on tribal lands in accordance with Section 101(d)(2) of the NHPA.

389 X. Tower — Any structure built for the sole or primary purpose of supporting
390 antennae, including the on-site fencing, equipment, switches, wiring, cabling,
391 power sources, shelters, or cabinets associated with that tower, but not installed as
392 part of an antenna as defined herein (source: Nationwide Programmatic
393 Agreement for Review of Effects on Historic Properties for Certain Undertakings
394 Approved by the Federal Communications Commission, September 2004).

395 W.Y. Qualified Professional — A person or person(s) meeting, at a minimum,
396 the Secretary of the Interior’s Professional Qualifications Standards (48 FR
397 44716, 44738-39, September 29, 1983) in the appropriate discipline. These
398 qualification requirements do not apply to individuals recognized by THPOs,
399 Indian Tribes, and NHOs to have expertise in the identification, evaluation,
400 assessment of effects, and treatment of effects to historic properties of religious
401 and cultural significance to their Tribes or NHOs.

403 **IV. Roles and responsibilities for Section 106 review of communication deployment** 404 **undertakings**

405
406 A. For each proposed undertaking subject to this Program Comment, the ~~f~~Federal
407 ~~L~~MA/s/~~P~~MA/s agency shall:

- 408 1. ~~C~~onsult with the SHPO/THPO, ~~I~~ndian ~~T~~ribes, or NHO to confirm the
409 APE for each individual undertaking and provide notification to the
410 appropriate SHPO/THPO, Indian ~~t~~ribes, or NHO of intent to follow this
411 Program Comment. See Sections IX, X, and XI of this Program Comment
412 regarding the determination of APEs for installation of buried

413 communications cable, communications tower replacement, and new
414 communications tower construction.

415 2. Identify known eligible or listed historic properties within the relevant
416 APE that may be affected by the proposed communications undertaking
417 by completing a Records Check. If a Records Check reveals no
418 information on the presence of historic properties within the APE, the
419 qualified professional (see Section ~~XIII.Y~~ below) will consult with the
420 SHPO/THPO, Indian tribes, or NHO to determine whether, based on
421 professional expertise, familiarity with the area, and similar
422 geomorphology elsewhere, the APE includes areas that have a high
423 probability of containing National Register-eligible properties. If so, those
424 areas within the APE will be avoided and the ~~f~~Federal LMA/PMA agency
425 shall have no further Section 106 responsibility for the undertaking. If they
426 cannot be avoided, the ~~f~~Federal LMA/PMA agency and applicant will
427 consult with the SHPO/THPO, Indian Tribes, or NHO to determine
428 whether a survey or monitoring program should be carried out to identify
429 historic properties, and to determine if any of the conditional exemptions
430 listed in Sections VI-XI apply. Any request for additional information, and
431 any request for monitoring, will include the basis for the request. ~~fff~~

432 3. Consider whether any of the below criteria apply to a proposed
433 undertaking and if so, notify consulting parties that no further Section 106
434 review will be required for any undertaking subject to this Program
435 Comment that is proposed to occur within an APE:

436 a. that has been previously field surveyed (acceptable to current state
437 standards or within the past 10 years) and there are no known
438 historic properties located within the APE ~~whose National Register~~
439 ~~qualifying characteristics would be adversely affected;~~ or

440 b. that has been previously disturbed to the extent and depth where
441 the probability of finding intact historic properties is low; or

442 c. that is not considered to have a high probability for historic
443 properties by qualified professionals and based on professional
444 expertise, familiarity with the area, and similar geomorphology
445 elsewhere.

446 If none of these criteria apply to the undertaking, proceed to consider whether the
447 conditional exemptions listed in Sections VI-XI are applicable.

448 4. Use existing agency procedures for implementation of this Program
449 Comment which may include procedures for delegation of authority to the
450 applicant, as appropriate.

451 5. Use qualified professionals for the disciplines under review in accordance
452 with Section 110 of the NHPA and Section ~~XIII.Y~~ of this Program
453 Comment.

454 6. Document use of this Program Comment in the Section 106 review, and
455 how it reached its decisions about the scope and level of effort for any
456 historic property identification, for the undertaking's administrative
457 record.

- 458 7. Where a **Lead Federal** Agency has been designated, and the Lead Federal
459 Agency is in compliance with its responsibilities under this Program
460 Comment, the other non-lead fFederal LMA/PMA agencies responsible
461 for the subject undertaking shall also be deemed to be in compliance with
462 Section 106 under this Program Comment.
- 463 B. The Applicant, on behalf of the fFederal LMA/PMA agency, shall:
- 464 1. Notify the fFederal LMA/PMA agency of its proposed application or
465 request for assistance at the earliest possible opportunity in project
466 planning.
- 467 2. Carry out and comply with the procedures for any delegation of authority
468 to the applicant if established by the fFederal LMA/PMA agency.
- 469 3. Assist the fFederal LMA/PMA agency to determine the APE in
470 consultation with the SHPO/THPO, Indian tTribes, and NHO.
- 471 4. Conduct a Records Check to identify known historic properties within the
472 APE, when requested by the fFederal LMA/PMA agency.
- 473 5. Notify the fFederal LMA/PMA agency if the undertaking is not proposed
474 to be located within or immediately adjacent to a known historic property.
- 475 6. Document the recommended determination of effect to historic properties
476 for and subject to the Ffederal LMA/PMA agency's approval when
477 requested by the Ffederal LMA/PMA agency.
- 478 7. Where appropriate to avoid adverse effects to historic properties, ensure
479 the site avoidance plan has been approved by the Ffederal
480 LMA/PMA agency and SHPO/THPO, Indian tTribes, and NHO. In
481 addition, avoidance areas should be clearly marked during staging and
482 construction activities, so construction crews are properly notified.
- 483 C. The fFederal LMA/PMA agencies, SHPOs, THPOs, Indian tTribes, and NHOs shall
484 carry out their Section 106 responsibilities in a timely manner and adhere to the
485 timeframes outlined in the FCC NPAs or 36 CFR §§ 800.3 to 800.7. This will avoid
486 delays in the deployment of communications undertakings on federal lands and
487 property.
- 488 D. Where FCC has Section 106 responsibility over a proposed communication
489 deployment undertaking that also requires a license, permit, approval, or assistance
490 from a fFederal LMA/PMA agency named in the Broadband Program Comment, the
491 fFederal agency may elect to apply the Broadband Program Comment by following
492 its provisions, ~~the Federal LMA/PMA shall be responsible for the Section 106~~
493 ~~compliance for that undertaking and may utilize the terms of this Program Comment,~~
494 ~~including any applicable exemptions. FCC shall have no further Section 106~~
495 ~~responsibilities for that undertaking.~~
- 496 D.E. Where FCC has Section 106 responsibility over a proposed communication
497 deployment undertaking that also requires a license, permit, approval, or assistance
498 from another federal agency not named in the Broadband Program Comment,
499 Federal LMA/PMA, the fFederal agency-LMA/PMA shall be responsible for the
500 Section 106 compliance for that undertaking and may utilize the terms of this
501 Program Comment, including any applicable exemptions. FCC shall have no further
502 Section 106 responsibilities for that undertaking.
- 503

504 **V. Project planning considerations**

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506 A. The Applicant shall coordinate early with the ~~f~~Federal ~~LMA/PMA~~agency regarding
507 project planning activities. In the event the Applicant proposes a public-private
508 project, the carrier, tower company, or others who may be recognized as the
509 Applicant shall involve the ~~relevant f~~relevant ~~LMA/PMA~~agencies in pre-application
510 meetings to 1) ~~decide~~determine whether this Program Comment will be used; 2)
511 consider the scope of work for the identification of historic properties; 3) discuss
512 protocols for consulting with Indian tribes or NHOs; and 4) discuss alternatives and
513 alternative routes for the undertaking.

514 B. Noninvasive techniques are encouraged for identification and evaluation of all
515 property types, if feasible, and for testing, including geotechnical testing, at
516 archaeological sites, TCPs, and other sites important to Indian tribes.

517 C. Siting projects in previously disturbed areas is encouraged.

518

519 **VI. Collocation of communications antennae**

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521 A. A ~~f~~Federal ~~LMA/PMA~~agencies may elect to use applicable exclusions
522 established in the Nationwide Programmatic Agreement for the Collocation of
523 Wireless Antennas, as amended ~~August 2016~~July 2020.

524 B. A tower collocation requires no further Section 106 review so long as:

- 525 1. It will not result in a substantial increase¹ in size of the existing tower; and
526 2. There are no Section 106 requirements in an existing special use permit,
527 easement, or communications use lease for that site.

528 C. Collocations on non-tower structures ~~on federal land~~require no further Section
529 106 review so long as one of the following conditions apply to the undertaking:

- 530 1. The structure is less than 45 years old; or
531 2. If more than 45 years old, the structure has been previously evaluated and
532 determined not eligible for listing on the National Register; and
533 a. The structure is not adjacent to or within the boundary of a
534 National Register-listed or previously determined eligible historic
535 district; and
536 b. The structure is not **designated as** a National Historic Landmark or
537 State Historic Landmark; and
538 c. Indian tribes or NHOs have not indicated there are known historic
539 properties of traditional religious and cultural significance within
540 the APE and there will be no cumulative effects to such historic
541 properties.

542

543 **VI. Above-ground communications connections to and collocations on federal**
544 **buildings, regardless of ownership including federal buildings and buildings located**
545 **on federal land**

546

¹ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 547 A. A ~~f~~Federal LMA/PMA agency may elect to use applicable exclusions established
548 in the Nationwide Programmatic Agreement for the Collocation of Wireless
549 Antennas, as amended ~~August 2016~~July 2020, ~~for collocations on federal~~
550 ~~buildings and non-federal buildings located on federal lands.~~
- 551 B. **Communications connections to buildings that have been determined not eligible**
552 **for listing on the National Register via a previous Section 106 consultation**
553 **completed in the past 15 years require no further Section 106 review.**
- 554 C. Communications connections to and collocations on buildings listed in or eligible
555 for listing in the National Register require no further Section 106 review, so long
556 as:
- 557 1. All construction complies with the Secretary of the Interior's Standards for
558 Rehabilitation; for example, when a new building entry is required
559 because no entry points exist; and
 - 560 a. Communications connections and collocations are placed on
561 buildings behind parapets or the roof's edge in such a manner so
562 that the connections and collocations are not visible from ground
563 level; and existing communications or utility entry points and
564 infrastructure are used to the greatest extent feasible, in and on the
565 historic building; or
 - 566 b. If existing communications or utility entry points and infrastructure
567 cannot be used for the subject collocation, **any additional entry**
568 **points and infrastructure required in or on the historic building are**
569 **installed in such a way as to minimize adverse effects to historic**
570 **materials.**

571

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

- 574
- 575 A. The placement of above-ground communications and cable lines on existing poles
576 or structures requires no further Section 106 review, as long as:
- 577 1. No new structures or poles need to be added to accommodate the new
578 lines; and
 - 579 2. The structure or pole is not a historic property and does not contribute to
580 the significance of a historic district.
- 581 B. When replacement of structures or poles is planned, the undertaking requires no
582 further Section 106 review, as long as:
- 583 1. The replacement structures or poles can be located within the same hole as
584 the original structure and there is no new ground disturbance outside of
585 previously disturbed areas associated with temporary support of the lines;
586 and
 - 587 2. The replacement structures or poles are within an existing ROW or
588 easement which has been surveyed; and
 - 589 3. The replacement structures or poles are consistent with the quality and
590 appearance of the originals; and
 - 591 4. Any proposed height increase of the replacement structures or poles is no
592 more than 10 percent of the height of the originals; and

- 593 5. The original pole or structure is not a historic property and does not
594 contribute to a historic district.
- 595 C. When infill structures or poles need to be added along an extant line, the
596 undertaking requires no further Section 106 review, as long as:
- 597 1. The addition of new structures or poles within existing ROWs or corridors
598 is not proposed within the boundary of a known historic property ~~as~~
599 ~~identified by the Federal LMA/PMA~~; and
- 600 2. The additional structures or pole(s) are 100 feet or more beyond the
601 boundary of any National Register listed or previously determined eligible
602 historic districts significant for their visual setting; and
- 603 3. The additions are of generally consistent quality and appearance with the
604 originals; and
- 605 4. The height of any added structure or pole is no greater than 10 percent
606 taller than the height of the originals.
- 607

608 **IX. Installation of buried communications cable ~~on federally managed lands~~**

609

- 610 A. The APE for installation of buried cable will be the width of **the construction**
611 **ROW** plus any additional areas for staging or access.
- 612 B. The installation and maintenance of new or replacement communications cable
613 and new or replacement associated vaults for cable access along or solely in
614 **previously disturbed areas or in existing communications or utilities trenches**
615 **within existing road, railroad, and utility ROWs** requires no further Section 106
616 review.
- 617 C. The installation of new or replacement vaults for cable access that are outside of
618 **existing road, railroad, and utility ROWs but located solely in previously**
619 **disturbed soils** requires no further Section 106 review so long as there are no
620 known historic properties within the APE for the vaults.
- 621 D. The installation of new or replacement buried communication connections from
622 road, railroad, and utility ROWs or vaults to a facility requires no further Section
623 106 review, so long as:
- 624 1. **There are no known historic properties within the APE** for the connection;
625 or
- 626 2. The new or replacement communication connections are solely buried in
627 previously disturbed existing rights-of-way up to the existing facility or
628 building or to an overhead line that connects to the facility or building.
- 629 E. If the road, railroad, and/or utility ROW, or nearby previously disturbed area, or
630 the area from the ROW to the individual user includes a known archaeological
631 site(s), the undertaking requires no further Section 106 review so long as the
632 depth and extent of the property's intact and undisturbed deposits within the APE
633 can be predicted with relative certainty such that the cable can be directionally
634 bored below the site(s).
- 635

636 **X. Communications tower replacement**

637

- 638 A. For the purpose of this section, the APE for ~~direct~~physical effects for a tower,
639 compound, and associated construction is the area of potential ground
640 disturbance, any areas for staging or access, and any property, or any portion
641 thereof that will be physically altered or destroyed by the undertaking. (source:
642 2004 NPA, as amended)
- 643 B. For the purpose of this section, the APE for ~~indirect~~ visual effects is the
644 geographic area in which the undertaking has the potential to introduce visual
645 elements that diminish or alter the integrity. (source: 2004 NPA, as amended)
- 646 1. Unless otherwise established, or previously established through
647 consultation and agreement between the Federal ~~LMA/PMA~~agency and
648 SHPO/THPO, Indian ~~tribes~~ Tribes, and NHO the APE for visual effects for
649 construction of new facilities or structures is the area from which the
650 tower will be visible:
- 651 a. Within a 0.5 mile radius from the tower site if the proposed tower
652 is 200 feet or less in overall height;
- 653 b. Within a 0.75 mile radius from the tower site if the proposed tower
654 is more than 200 but no more than 400 feet in overall height; or
655 c. Within a 1.5 mile radius from the proposed tower site if the
656 proposed tower is more than 400 feet in overall height.
- 657 2. These distances are a guideline that can be altered based on an otherwise
658 established agreement and on individual circumstances addressed during
659 consultation with the SHPO/THPO, Indian Tribes, ~~and~~ NHOs, and
660 consulting parties.
- 661 C. Replacement of a tower within an existing facility boundary that was previously
662 reviewed pursuant to Section 106, and mitigated as necessary, requires no further
663 Section 106 review so long as:
- 664 1. The proposed replacement tower does not represent a substantial increase²
665 in size relative to the existing tower; and
- 666 2. The installation of the proposed replacement tower does not involve
667 ground disturbance outside the facility's boundary; and
- 668 3. No new mitigation is required to address reasonably foreseeable
669 cumulative effects.

671 XI. New communications tower construction

- 672
- 673 A. For the purpose of this section, the ~~physical~~direct APE for a tower, compound,
674 and associated construction (staging area, access roads, utility lines, etc.) is the
675 area of potential ground disturbance and any property, or any portion thereof,
676 which would be physically altered or destroyed by the undertaking.
- 677 B. For the purpose of this section, the ~~indirect~~ APE for visual effects is the
678 geographic area in which the undertaking has the potential to introduce visual
679 elements that diminish or alter the integrity of a historic property, including the
680 landscape.

² Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 681 1. Unless otherwise established, or previously established through
682 consultation and agreement between the fFederal LMA/PMAagency and
683 SHPO/THPO, Indian †Tribes, and NHOs, the APE for visual effects for
684 the construction of a new tower is the area from which the tower will be
685 visible:
- 686 a. Within a 0.5 mile radius from the tower site if the proposed tower is
687 200 feet or less in overall height;
 - 688 b. Within a 0.75 mile radius from the tower site if the proposed tower
689 is more than 200 but no more than 400 feet in overall height; or
 - 690 c. Within a 1.5 mile radius from the proposed tower site if the
691 proposed tower is more than 400 feet in overall height.
- 692 2. These distances are a guideline that can be altered based on an otherwise
693 established agreement or following consultation with SHPO/THPO, Indian
694 †Tribes, ~~and~~ NHOs, and consulting parties.
- 695 C. For the purpose of this section, new construction of up to three towers within an
696 existing communications compound that has previously been reviewed pursuant
697 to Section 106, and will not adversely affect any identified historic properties
698 within the compound, requires no further Section 106 review so long as the
699 proposed new tower is not substantially larger in size³ than the largest preexisting
700 tower within the existing communications compound boundary.

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

- 702
- 703 A. Federal LMA/PMAagencies may authorize the removal of obsolete existing
704 communications equipment and towers (the undertaking) and may remove the
705 existing communications equipment or tower with no further Section 106 review
706 as long as the removal undertaking would not create an adverse effect to known
707 historic properties.
 - 708 B. Should a SHPO, THPO, Indian †Tribe, or NHO object within 30 days after
709 receiving notification that the fFederal LMA/PMAagency proposes to authorize
710 removal of obsolete communications equipment and towers, the fFederal
711 LMA/PMAagency shall comply with the requirements of 36 CFR §§ 800.3 to
712 800.7 for the proposed removal undertaking.

713 **XIII. Professional qualifications**

- 714
- 715 ~~A. All tasks implemented pursuant to this Program Comment shall be carried out by,~~
716 ~~or under the direct supervision of, a person or person(s) meeting, at a minimum,~~
717 ~~the Secretary of the Interior's Professional Qualifications Standards (48 FR~~
718 ~~44716, 44738-39, September 29, 1983) in the appropriate disciplines. However,~~
719 ~~nothing in this section may be interpreted to preclude fFederal LMAs/PMAs from~~
720 ~~using the properly supervised services of persons who do not meet the~~
721 ~~qualifications standards.~~

³ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

724 ~~B. These qualification requirements do not apply to individuals recognized by~~
725 ~~THPOs, Indian tribes, and NHOs to have expertise in the identification,~~
726 ~~evaluation, assessment of effects, and treatment of effects to historic properties of~~
727 ~~religious and cultural significance to their tribes or NHOs.~~

728

729 **XIII.V. Unanticipated discoveries**

730

731 A. If previously unidentified historic properties or unanticipated effects, including
732 audible, atmospheric, and cumulative effects, to historic properties are discovered
733 during project implementation, the contractor shall immediately halt all activity
734 within a 50 foot radius of the discovery and implement interim measures to
735 protect the discovery from looting and vandalism. Within 48 hours, the fFederal
736 LMA/PMAagency shall notify the relevant SHPO, THPO, Indian †Tribe, or NHO,
737 and ACHP of the inadvertent discovery, and determine whether a Discovery Plan
738 is necessary.

739 B. Native American human remains, funerary objects, sacred objects, or items of
740 cultural patrimony found on federal or Tribal land will be handled according to
741 Section 3 of the Native American Graves Protection and Repatriation Act and its
742 implementing regulations (43 CFR part 10), and consistent with the Discovery
743 Plan.

744 C. The fFederal LMA/PMAagency shall ensure that in the event human remains,
745 funerary objects, sacred objects, or items of cultural patrimony are discovered
746 during implementation of an undertaking, all work within 50 feet of the discovery
747 will cease, the area will be secured, and the fFederal LMA/PMAagency's
748 authorized official will be immediately contacted. The fFederal agency will be
749 guided by the principles within the ACHP's Policy Statement on Burial Sites,
750 Human Remains, and Funerary Objects (adopted March 1, 2023).

751 D. The Discovery Plan for inadvertent discoveries will include the following
752 provisions.

- 753 1. Immediately halting all construction work involving subsurface
754 disturbance in the area of the find and in the surrounding area
755 where further subsurface finds can be reasonably expected to
756 occur, and immediately notify SHPO, THPO, Indian †Tribes (as
757 appropriate), and NHOs of the find;
- 758 2. A qualified professional will immediately inspect the site and
759 determine the area and nature of the affected find. Construction
760 work may then continue in the area outside the find as defined by
761 fFederal LMA/PMAagency;
- 762 3. Within five working days of the original notification, the fFederal
763 LMA/PMAagency, in consultation with SHPO, THPO, Indian
764 Tribes, as appropriate, and NHOs, will determine whether the find
765 is eligible for the National Register;
- 766 4. If the find is determined eligible for listing in the National
767 Register, the fFederal LMA/PMAagency will prepare a plan for its
768 avoidance, protection, or recovery of information in consultation
769 with the SHPO, THPO, Indian †Tribes, as appropriate, and NHOs.

770 Any dispute concerning the proposed treatment plan will be
771 resolved by the fFederal LMA/PMAagency.
772 5. Work in the affected area will not proceed until either:
773 a. The plan is implemented; or
774 b. The determination is made that the unanticipated find is not
775 eligible for inclusion in the National Register. Any disputes
776 over the evaluation of unanticipated finds will be resolved
777 in accordance with the requirements of 36 CFR §
778 800.4(c)(2) as appropriate.

780 **XIV. Emergencies**

781
782 Should the fFederal LMAs/PMAsagency determine that an emergency or natural
783 disaster has occurred during the implementation of any communications deployment
784 activities covered under this Program Comment, the fFederal LMAs/PMAsagency shall
785 notify the appropriate SHPO, THPO(s), Indian †Tribes, and NHO(s), and ACHP within
786 seven days as to how they intend to repair or replace the communications equipment or
787 facilities, or undertake other relevant actions in response to the emergency or natural
788 disaster. The fFederal LMAs/PMAsagency shall ensure that any approvals, licenses, or
789 permits issued for these emergency response activities refer to compliance with the terms
790 of this Program Comment.

792 **XVI. Effective date**

793
794 This amendedment Program Comment Program Comment shall go into effect on
795 [date]May 8, 2017.

797 **XVII. Reporting**

798
799 A. Federal agenciesLMAs/PMAs individually will submit an annual report to the
800 ACHP, NCSHPO, and NATHPO that summarizes the number of projects
801 reviewed under the Program Comment within a calendar year as well as the
802 number of activities that resulted in adverse effects to historic properties. The
803 annual report also will indicate whether any agreements regarding the
804 applicability of this Program Comment on †Tribal lands have been developed in
805 the past calendar year, and which Indian †Tribe(s) is a signatory. Annual reports
806 will be submitted December 1 of each year, commencing in 20182024.

807 B. The ACHP shall reexamine the Program Comment's effectiveness based on the
808 information provided in the annual reports submitted by the fFederal
809 LMAs/PMAsagencies, and, as needed, by convening an annual meeting with the
810 fFederal LMAs/PMAs, NCSHPO, NATHPO, tribal representatives, NHOs, and
811 industry representatives. In reexamining the Program Comment's effectiveness,
812 the ACHP shall consider any written recommendations for improvement
813 submitted by stakeholders prior to the annual meeting.

814

§15 **XVIII. Amendment**

816

817 The Chair~~man~~ of the ACHP may amend this Program Comment after consulting with the
818 ~~f~~Federal ~~LMA~~s/~~PMA~~s~~agencies~~ and other relevant federal agencies, NCSHPO,
819 NATHPO, ~~T~~tribal representatives, the National Trust for Historic Preservation, and
820 industry representatives, as appropriate. The ACHP will publish a notice in the *Federal*
821 *Register* informing the public of any amendments that are made to the Program
822 Comment.

823 ~~Should other federal agencies that propose to carry out, permit, license, fund, or assist in~~
824 ~~communications activities intend to utilize this Program Comment to satisfy their Section~~
825 ~~106 responsibilities on federal lands, they must first notify the ACHP in writing of their~~
826 ~~intention. The ACHP will acknowledge in writing the agency's notification within 30~~
827 ~~days following receipt of a request, and will put an announcement on its website when it~~
828 ~~receives such a notification. Upon receipt of the ACHP's acknowledgement, and without~~
829 ~~requiring an amendment to this Program Comment, the federal agency may utilize the~~
830 ~~Program Comment.~~

831

832 **XIXVIII. Sunset clauseDuration**

833

834 This Program Comment will expire December 31, 20~~33~~²⁷, unless it is amended
835 prior to that date to extend the period in which it is in effect.

836

837 **XIX. Withdrawal**

838

839 The Chair~~man~~ of the ACHP may withdraw this Program Comment, pursuant to
840 36 CFR § 800.14(e)(6), by publication of a notice in the *Federal Register* 30 days before
841 the withdrawal will take effect.

842



January 8, 2024

Subject: Alaska Fact Sheet

The Alaska State Historic Preservation Office (AK SHPO)/ Office of History & Archaeology (OHA) compiled information about Alaska to facilitate consultation with parties that may not reside in the state or have limited knowledge of life in rural Alaska. The assembled facts are essential to take into consideration when planning projects and/or policies to facilitate future implementation in Alaska. Information was sourced from the *Internet for All Alaska, State of Alaska Five-Year Action Plan* (September 2023), *The Iditarod National Historic Trail, Seward to Nome Route, A Comprehensive Management Plan* (1986), and the 2020 census (www.census.gov).

- Alaska is the largest state in the US:
 - 2,400 miles east to west; 1,420 miles north to south.
 - 46,000 miles of tidal shoreline, which more than the rest of the US states have combined.
- Robust Alaska Native population:
 - Nearly 230 of the 574 federally recognized Tribes in the U.S. are located and have traditional lands in Alaska.
 - ~20% of Alaska's population is indigenous.
 - The Alaska Native Claims Settlement Act (ANCSA) established 12 regional corporations, 12 regional non-profits, and 174 village corporations (all which are considered tribes for the purposes of Section 106).
 - Alaska has one Tribal Historic Preservation Officer who has assumed the duties of the State Historic Preservation Officer (SHPO) on trust lands [16 U.S.C. 470 Section 101 (d)(2)].
- Low population density and uneven population distribution (2020 census):
 - Alaska's population is 733,391; this equates to roughly one person for every 0.93 square miles.
 - ~40% of Alaska's population lives in Anchorage, including 10% of Alaska's Native peoples.
 - ~20% of Alaska's population is distributed among nearly 320 communities.
- Challenging topography:
 - 39 mountain ranges
 - 3 million lakes
 - 3,000 rivers
 - Permafrost in 85% of the state
- Extreme climate:
 - Snow, ice, and/or frigid temperatures prevent or hinder fieldwork for 6-7 months of the year.
 - Temperatures can range from -78.5°F to 100°F.
 - Precipitation varies across the state with the North Slope averaging 6 inches per year, while southeast Alaska can average over 200 inches per year.
 - Daylight is highly variable by season and latitude.
 - Alaska's northernmost communities do not see the sun for 63 days in the winter and the sun does not set for 81 days during the height of summer.
 - Southern communities have nearly 8 hours of daylight at winter solstice and almost 17 hours of daylight at summer solstice.

- Accessibility challenges:
 - More than 70% of the communities in Alaska that are unserved or underserved for broadband are considered either very difficult or extremely difficult to travel or ship to.
 - Most communities are not connected to adjacent communities by roads or have utilities extending between communities.
 - Many rural Alaskan communities and/or residences do not have plumbed water and/or sewer.
- Unique local and regional government structure:
 - 145 of 389 communities in Alaska are located in the “unorganized borough,” which means there is no regional form of government.
 - Uncertain or insufficient documentation about existing public hard assets like utility poles/lines and rights-of-way.
- Alaska has a unique statutory environment due to federal statutes that only pertain to Alaska, which have broad ramifications to the implementation of other federal statutes in Alaska.
 - Alaska National Interest Lands Conservation Act (ANILCA)
 - Alaska Native Claims Settlement Act (ANCSA)
- Federally designated land and water areas that need additional consideration during project planning and implementation:
 - 9 National Conservation Land Units encompassing 1.526 million acres.
 - 18 National Parks, which include Monuments and Preserves encompassing 59 million acres.
 - 2 National Historic Trails (including the Iditarod NHT’s 1,000-mile main route and 2,400 miles of connecting trails).
 - 952 miles of Wild and Scenic Rivers.
 - Two National Forests encompassing 22.5 million acres.
 - 57 million acres of federally designated wilderness.
 - 18 Scenic Byways



Katie Hobbs
Governor

ARIZONA STATE PARKS & TRAILS

Bob Broscheid
Executive Director



January 12, 2024

Jaime Loichinger
Director of the Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

RE: Amendment to the Program Comment for Communication Projects on Federal Lands and Properties; Initial Section 106 Consultation; National Telecommunications and Information Administration (NTIA); SHPO-2023-1449(172270)

Dear Ms. Loichinger:

The Arizona State Historic Preservation Office (SHPO) appreciates the opportunity to comment on the proposed amendment to the 2017 Program Comment for Communication Projects (2017 Program Comment). NTIA has requested that the Advisory Council on Historic Preservation (ACHP) revisit the 2017 Program Comment to expand its use for broadband projects across the country to facilitate the implementation of the “Internet for All” initiative and the dispensation of funding authorized under the 2021 Infrastructure Investment and Jobs Act. Since the broadband initiative will use federal funding for individual state, local, Tribal, and private projects, the program will comprise federal undertakings subject to review pursuant to Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 and its implementing regulations at 36 CFR Part 800.

NTIA has been given an aggressive schedule for the deployment of broadband networks across the country. The inclusion of NTIA in the 2017 Program Comment is intended to provide systematic guidance for review of these undertakings under Section 106. Our office supports efforts to streamline and simplify the review process to meet the scheduling requirements for NTIA. However, we have the following comments:

1. The Arizona SHPO has worked extensively with the FCC and FCC applicants over the years to implement the two National Programmatic Agreements for new cellular towers and collocations and the 2017 Program Comment. Through our experience reviewing FCC projects, we have identified several recurring issues that we are concerned may carry through to the NTIA undertakings.
 - a. The definition of the Area of Potential Effects (APE) in Section III, lines 260-266, is limited to the physical APE consisting of areas with potential ground disturbance. The APE for communication facilities should also address visual effects, and should be included in this definition.

1110 W. Washington Street, Suite 100, Phoenix, AZ 85007 | 877-MYPARKS | AZStateParks.com

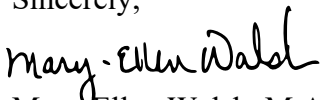
*Managing and conserving Arizona's natural, cultural and recreational resources for the benefit of the people,
both in our parks and through our partners.*

- b. In Arizona, we are particularly concerned with the APE for visual effects due to expansive viewsheds throughout the state. Our office consistently finds that the 0.5-mile APE for visual effects is insufficient in rural areas for considering the effects of towers on historic properties where the line of sight is uninterrupted for miles. We generally recommend that applicants with towers or transmission lines in open areas or on hilltops evaluate a larger APE.
 - c. Due to land jurisdictions and the limits of Section 106 and the Arizona State Historic Preservation Act, many archaeological sites identified within our state have not been reviewed or concurred upon by our office. In order to facilitate timeliness and efficiency in Section 106 reviews of APEs for visual effects, we recommend that sites that have not been reviewed or have been reviewed and determined “unevaluated” should be considered eligible and treated as historic properties. These sites need to be included in Records Checks and evaluated for potential adverse effects.
 - d. We also recommend that the Program Comment should require that proponents continue to do their due diligence for collocations even if there is not a “substantial increase in size.” We recently had a situation where a new antenna array was installed approximately 500 ft from a newly registered historic property with no SHPO review or public comment leading to an ongoing FCC investigation.
2. Additionally, we have specific comments regarding the proposed language of the Program Comment:
- a. Section I: The Introduction has inconsistent phrasing that is dependent on approval of the amendment to the Program Comment. In order to avoid multiple revisions to the document, we recommend that the revisions should reflect the final document. Specifically:
 - i. Line 95: Revert “proposing” to “issuing.”
 - ii. Lines 108, 113, etc.: Remove “proposed” from “amended Program Comment.”
 - iii. Lines 105-106: The term “similar effects to historic properties” is vague and requires additional clarification.
 - b. Section IV.A.3: The federal funding agency may not have the experience or knowledge of the local archaeology to determine whether Criteria a and b are met. We recommend that these criteria also require evaluation by qualified professionals.
 - c. Section IV.B.7: Clarify who is responsible for marking avoidance areas; we recommend this should be completed by qualified professionals.
 - d. Sections VI and VII: Agencies must also consider whether historic properties are present in the APE for visual effects.

- e. Section VII is also listed as Section VI.
- f. Section VI.C.2.c: We do not believe that this can be known without additional Tribal consultation.
- g. Section VIII.A: We recommend adding a stipulation that the pole or structure must be less than 45 years old in keeping with the two FCC Nationwide Programmatic Agreements and this Program Comment.
- h. Section VIII.A.2: We recommend adding language to indicate that the structure or pole has been evaluated for inclusion in the NRHP, found ineligible, and, therefore, exempt from further consultation.
- i. Section VIII.B.1: According to comments made in the Program Comment meeting on December 12, 2023 by several utility installers, it is not possible to install replacement poles in the same hole as the original structure and that they often place the new pole within 10 ft of the original pole. If the criteria in this exemption is not possible to complete as written, it should be removed from the exemptions. We do not agree that replacement in “the same hole as the original structure” should be interpreted as within 10 ft.
- j. Section IX.B: This exemption should include a caveat that the undertaking “requires no further Section 106 review” as long as there is no known historic property within the APE.
- k. Section XIII.C: Please note that States may have existing legal authorities and procedures for the treatment of human remains, funerary objects, sacred objects, or items of cultural patrimony when encountered on state and private land, which should be adhered to during federal undertakings on state or private land.
- l. Section XIII.D.4: Under this section, will an agreement document be necessary in the event of an inadvertent discovery? Or does ACHP consider the development of a Discovery Plan sufficient for resolving adverse effects?

Please contact me by telephone, 602.542.7120, or via e-mail at mwalsh@azstateparks.gov, if you have any questions or concerns.

Sincerely,



Mary-Ellen Walsh, M.A.
Cultural Resources Compliance Manager
Arizona State Historic Preservation Office

[External] BPA comments on proposed revised wireless program comment

Cannell, Kevin G (BPA) - EH-4 <kgcannell@bpa.gov>

Thu 11-Jan-24 3:58 PM

To: Program Alternatives <program_alternatives@achp.gov>

Good afternoon,

The Bonneville Power Administration (BPA) is a federal power marketing administration headquartered in Portland, Oregon. The agency markets power from 31 federal hydropower projects and one nuclear reactor. The agency also owns and operates a large transmission network in its service area comprising approximately three-quarters of all of the high voltage transmission lines in the Pacific Northwest. Safely and efficiently marketing and transmitting power relies on a few communication methods to control the transmission system and substations as well as for personnel to communicate in the field. These methods include a fiber optic network and wireless communication facilities both for the transmission system as well as for voice communication. In addition, private companies will on occasion request to co-locate cellular antennae on BPA transmission structures or use a portion of our existing fiber optic network to transmit data. As a result, BPA has many undertakings focused on maintaining, upgrading, and replacing communication related assets.

A few years ago we explored the possibility of utilizing the Program Comment for Communications Projects on Federal Lands and Property. However, we found the application was somewhat limited due to the requirement that the undertaking be on federal land or property. Therefore, we welcome the potential expansion of the program comment to non-federal lands. We had some challenges in interpreting the process based on the organization and wording of the program comment in the Federal Register. Our comments on the proposed revised program comment are based on our previous experience attempting to apply the process to actual undertakings. We have two broad questions and a few specific comments.

- 1) The typical Section 106 process includes a determination of effect. Is it correct that no determination of effect is necessary in order to comply with Section 106 using the program comment?
- 2) How does compliance with the program comment end when consultation has already begun with the consulting parties to confirm an APE but either the criteria at IV.A.3. apply or one of the conditional exemptions at VI-XI applies? There does not appear to be any further notification or determination requirement for the consulting parties.

Since the first step in all instances appears to be consulting to confirm the APE, from our perspective it would be helpful to add some language to the program comment to describe how an agency documents Section 106 compliance is complete for the benefit of the consulting parties. Otherwise, the agency could wind up consulting to confirm the APE and that would be last information the consulting parties could potentially receive.

<i>Lines</i>	<i>Section</i>	<i>Comment</i>
408-409	IV.A.1.	How long should an agency wait before proceeding to the next step when no response is received in response to the agency's effort to confirm the APE for a specific undertaking?
432-433	IV.A.3.	Does an agency need to wait any length of time before proceeding with an undertaking after the agency has notified consulting parties that an undertaking meets one of the three criteria?
446-447	-	Screening an undertaking for application of the conditional exemptions (Sections VI-IX) seem like it would more appropriately occur prior to consulting on the APE since Section 106 is complete if the conditional exemptions apply?
	IX., X., XI.	Each of these sections has a pre-defined APE. Would an agency simply reference these when confirming the APE with the consulting parties in Section IV.A.1.?

Please let me know if you have any questions or would like clarification of any of our comments.

Thank you,

Kevin G. Cannell

Policy Advisor

Historic Preservation, Cultural Resources EH-4

[BONNEVILLE POWER ADMINISTRATION](#)

kgcannell@bpa.gov | O: 503-230-4454 | C: 503-459-7686

**Before The
ADVISORY COUNCIL ON HISTORIC PRESERVATION
Washington, DC 20004**

**PROPOSED AMENDMENT TO THE PROGRAM)
COMMENT FOR COMMUNICATIONS PROJECTS)
ON FEDERAL LANDS AND PROPERTY)**

COMMENTS OF CTIA

I. INTRODUCTION AND SUMMARY

CTIA¹ appreciates the opportunity to submit these comments on the Advisory Council on Historic Preservation’s (“ACHP”) Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Property.²

CTIA strongly supports the ACHP proposal to amend the 2017 Program Comment³ to extend it (1) to all federal agencies that provide funding, licenses, authorizations, and approvals for qualifying communications projects, and (2) to communications projects that will be deployed on state-managed and private lands as well as on federally-managed lands. The amendments will provide all federal agencies and applicants with a more precise and effective

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless providers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Property (November 7, 2023).

³ Program Comment for Communications Projects on Federal Lands and Property, 82 Fed. Reg. 23818 (May 24, 2017) (“Program Comment”).

process to meet their obligations under Section 106 of the National Historic Preservation Act (“NHPA”). By extending the Program Comment to more federal agencies and to more lands and properties, the amendments will help speed deployment of the wireless network infrastructure that is essential to achieving the national priority to expand broadband access to all Americans. At the same time, the amendments maintain the longstanding respect for Tribal sovereignty and the role that the Section 106 process plays in protecting our nation’s historic properties, including properties of traditional religious and cultural significance.

CTIA also recommends that the ACHP adopt additional targeted revisions to the Program Comment that will also streamline broadband deployment while enabling federal agencies to fulfill their responsibilities under Section 106. These limited revisions will enable more rapid installation of small cells, which are essential to broadband deployment but pose little if any potential effect on historic properties. Many of these proposed revisions are consistent with actions that the Federal Communications Commission (“FCC”) has taken pursuant to the NHPA. By providing more specificity as to when an agency will need to conduct a review, they will reduce uncertainty and delay in deploying broadband facilities.

Specifically, the ACHP should (1) clarify the procedures to be followed in a Section 106 review, (2) make limited modifications to the conditions under which replacement poles are excluded from Section 106 review, to accommodate the need to install replacement poles while ensuring that there is no adverse effect on historic properties, and (3) provide additional flexibility for certain new mid-span poles along existing lines to be excluded from Section 106 review. Consistent with the other exclusions afforded in the existing Program Comment, the modified exclusions that CTIA proposes will enable more rapid deployment of the infrastructure that is urgently needed to expand and upgrade broadband services to enable all Americans to

access those services. Given the limits on the exclusions, they will fully protect historic properties.

II. THE AMENDMENTS WILL PROMOTE BROADBAND DEPLOYMENT WHILE FULLY PROTECTING THE OBJECTIVES OF SECTION 106.

A. The Amendments are Consistent with National Broadband Goals.

One of the Administration’s and Congress’s top priorities is to accelerate the public’s access to broadband. The Biden Administration has set a goal of connecting all Americans to reliable, affordable high-speed internet by the end of the decade.⁴ Congress appropriated a historic amount of funding toward this mission, including through the \$42.45 billion Broadband Equity, Access, and Deployment (“BEAD”) Program to bridge the digital divide by expanding the availability of broadband to people that lack access to this critical service.⁵ BEAD and other broadband funding programs will require massive investment in infrastructure to build the networks needed to reach these unserved areas. Revisions to the Program Comment can advance these programs by streamlining deployment of that infrastructure while fully protecting historic properties.

Wireless broadband will be essential to achieving this important goal of bridging the digital divide. The wireless industry has continued to make historic investments in infrastructure, including nearly \$39 billion in 2022.⁶ Moreover, wireless is America’s fastest growing home broadband technology, offering a competitive option for consumers across the

⁴ Fact Sheet: Biden-Harris Administration Announces Over \$40 Billion to Connect Everyone in America to Affordable, Reliable High-Speed Internet, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet> (June 16, 2023).

⁵ The BEAD program was authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (2021).

⁶ CTIA, *2023 Annual Survey Highlights*, at 4 (2023), <https://www.ctia.org/news/2023-annual-survey-highlights>.

country. As of the end of 2022, 5G Home Broadband accounted for 90 percent of new broadband subscribers—which was more than any other broadband option such as cable, fiber, or DSL.⁷

Amending the Program Comment to exclude from review the use of existing and new poles will further these goals. The majority of wireless facilities being installed are small antennas, often no larger than three cubic feet, which will rarely have an impact on historic properties. Most are placed on existing or replacement poles, which also are unlikely to have any such impact. The FCC, in a bipartisan 2017 order, excluded certain replacement poles from its review under the NHPA, based on its finding that streamlining the Section 106 process for replacement poles will directly benefit broadband deployment while ensuring that there is no potential effect on historic properties:

The record indicates that pole replacements are often required to support small cell facilities, which increasingly will be needed to support the rollout of next-generation services. Small cell antennas are much smaller and less obtrusive than traditional antennas mounted on macro cell towers, but a far larger number of them will be needed to accomplish the network densification that providers need, both in order to satisfy the exploding consumer demand for wireless data for existing services and in order to implement advanced technologies such as 5G.⁸

Despite the many substantial benefits that wireless broadband delivers, providers often face delays in deploying facilities due to different agencies' procedures for Section 106 reviews, as well as uncertainty as to how those procedures apply. The delays often result from different agencies having different procedures for reviewing those facilities, or from a lack of clearly defined procedures that provide a roadmap for providers and agencies to follow. Those delays

⁷ *Id.* at 6.

⁸ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760 (2017), at 9765 ¶ 12 (“*Pole Replacement Order*”).

have a significant impact on broadband deployment, especially in rural and remote areas that may lack access to high-speed broadband today.

Amending the Program Comment as the ACHP proposes, coupled with the further targeted revisions CTIA recommends, will promote both objectives of protecting historic properties, including those of religious and cultural significance, and advancing rapid broadband deployment.

B. The Program Comment Amendments Make a Uniform, Streamlined Process Available to All Federal Agencies.

The ACHP’s proposed amendments will enable all federal agencies to streamline review of qualifying projects while at the same time ensuring that sufficient review continues to occur. Expanding the Program Comment to more federal agencies and beyond federally-managed lands enables streamlined review for certain types of deployments that are unlikely to have an impact on historic properties.

The amendments would extend the benefits of the Program Comment to all federal agencies that provide funding, licenses, authorizations, and approvals for qualifying projects to use the Program Comment to meet their obligations under Section 106.⁹ This is an important and beneficial change for several reasons.

Federal agencies that are not included in the existing Program Comment must individually consider the effects of communications projects on historic properties rather than apply the Program Comment. This situation has led to a patchwork of different applications of Section 106, as each agency develops and implements its own process to evaluate the effects of a project on historic properties and its own standards to determine when such effects may occur.

⁹ Program Comment Sec. II (“Applicability”).

Extending the availability of the Program Comment to all agencies can promote consistent reviews of projects and use of the same exclusions. And for agencies that do not already have streamlined processes in place, use of the Program Comment by those agencies could significantly expedite the Section 106 review process.

At the same time, as the ACHP notes, enabling all federal agencies to adopt the Program Comment “would not substantially change the procedures established in the original Program Comment.”¹⁰ Those procedures will continue to require full consideration of potential effects of certain communications projects on historic properties.

Promoting use of a single framework will also promote broadband deployment by increasing applicants’ understanding of the reviews their communications projects will involve. Today there is considerable uncertainty as to which project will undergo review and how that review will be conducted due to different agencies’ various procedures. This uncertainty discourages applicants from pursuing certain projects, which in turn delays expansion of service or upgrades to that service. Promoting wider agency use of the Program Comment will increase applicants’ ability to assess which projects will undergo Section 106 review, which in turn will expedite where and how they invest in new or upgraded infrastructure.

Amending the Program Comment to include all federal agencies will be of particular benefit to the rapid and successful implementation of the BEAD program, because it will enable NTIA to adopt the Program Comment for Section 106 reviews. Congress assigned NTIA the central role in that program, and it is responsible for reviewing and approving state proposals regarding the use of their allocated funding. If NTIA can rely on the Program Comment and its exclusions, including for compliance with other relevant federal laws, it will be able to apply

¹⁰ *Id.* Sec. I, lines 48-49.

those procedures consistently to all applications – and applicants will be aware of those procedures. Both NTIA and applicants will benefit. In short, standardized, streamlined procedures for conducting Section 106 reviews should help to advance the national priority of expanding broadband service to reach all Americans.

C. The Program Comment Amendments Make a Uniform, Streamlined Process Available on All Lands.

The amendments would extend the Program Comment to all lands. CTIA agrees with the ACHP that “expanding the availability of the Program Comment to undertakings proposed on state and private lands through this amendment would create efficiencies for all consulting parties, streamline reviews, and increase predictability while appropriately taking into account the effects of broadband projects on historic properties.”¹¹

Currently the Program Comment applies only to lands managed by federal agencies. However, most communications projects today are deployed on state- or locally-managed lands, or on private lands. For example, the small wireless facilities that comprise most infrastructure that wireless providers are installing are typically placed along local or county rights-of-way. The Program Comment should encompass these lands for projects that constitute federal undertakings, because the salient issue under Section 106 is not what agency or jurisdiction controls the specific land, but whether the project will affect an historic property.

III. THE ACHP SHOULD MAKE ADDITIONAL TARGETED REVISIONS TO THE PROGRAM COMMENT.

Based on its members’ extensive experience in working with the ACHP, State Historic Preservation Officers (“SHPOs”), and Tribes to ensure that the objectives of Section 106 are achieved, CTIA recommends that the ACHP consider and adopt additional modifications to

¹¹ *Id.*, Sec. I, lines 53-57.

several sections of the Program Comment.¹² As with the amendments the ACHP has proposed, these additional modifications will advance broadband deployment while also fully safeguarding historic properties.

A. The ACHP Should Clarify the Respective Responsibilities of Applicants and Federal Agencies.

The Program Comment should include additional detail regarding the processes that would apply for Section 106 reviews related to projects that are not excluded from review. This includes the respective obligations of applicants and federal agencies that adopt the Program Comment for identifying and consulting with parties, and the timeframes associated with the review process. That additional detail will increase understanding of where and how the Program Comment will apply to specific projects, promoting more efficient Section 106 reviews.

B. The Exclusion for Replacement Poles Should Be Modified to Streamline Installation of These Poles While Fully Protecting Historic Properties.

Increasing the public's access to broadband often requires replacing existing poles with new poles that can accommodate the new antennas, fiber, and associated equipment. Providers' ability to determine in advance which pole replacements may require Section 106 review, and avoid unnecessary delays created by unpredictable and inconsistent processes, thus is important for rapid and successful broadband deployment. The ACHP should make limited changes to its exclusion for replacement poles to facilitate these needed upgrades to infrastructure while avoiding adverse effects to historic properties.

The current Program Comment recognizes that the installation of certain categories of replacement poles will not adversely affect historic properties. Section VIII.B thus excludes

¹² These modifications are included in Appendix A to CTIA's comments, which sets forth the provisions that are discussed in this section of the comments and CTIA's recommended modifications.

them from Section 106 review. However, Section VIII.B is more restrictive than the exclusion that the FCC adopted in its bipartisan *2017 Pole Replacement Order*. The FCC found that the construction of replacement poles that meet the broader conditions of this exclusion “has no potential to affect historic properties.”¹³ The ACHP should revise the Program Comment to reflect the Commission’s findings of no adverse effect with respect to replacement poles.

Section VIII.B.1 of the Program Comment excludes replacement poles only if they are installed in the same hole as the existing pole.¹⁴ This condition is impractical because that is not how utilities replace existing poles in the field. Instead, replacement poles are first installed near the existing pole, after which cables and other equipment attached to the existing pole are transferred to the replacement pole. The existing pole is then removed. Removing the existing pole first so a replacement pole could be put in the same hole would leave cables and other equipment unsupported and present logistical challenges to avoid damaging them. For these reasons, the FCC excludes a replacement pole from Section 106 review if it “is located no more than 10 feet away from the original pole based on the distance between the centerpoint of the replacement pole to the centerpoint of the original pole” if there is no ground disturbance “outside previously disturbed areas.”¹⁵ It held that a replacement pole located within this 10-foot limit “has no potential to cause effects on historic properties that might be present, because of the close proximity to the original pole and the *de minimis* size increase permissible to fall into this

¹³ *Pole Replacement Order*, 32 FCC Rcd 9760 ¶ 1.

¹⁴ Program Comment, lines 583-85.

¹⁵ See 47 CFR 1.1320(b)(3)(ii)(A).

exception.”¹⁶ For these reasons Section VIII.B.1 should be amended to allow replacement poles that meet the 10-foot condition.

Section VIII.B.2 requires that the replacement pole be “within an existing ROW or easement which has been surveyed.”¹⁷ The FCC’s exclusion for replacement poles, however, does not contain this survey requirement. Surveys are time-consuming, expensive, and not a normal part of the deployment process. The costs and delays associated with a new survey can significantly delay or deter a needed pole replacement. The survey requirement also does not appear necessary in light of the fact that a replacement pole would be subject to the requirement (modified as proposed above) that it must be located within 10 feet of the existing pole and not involve any new ground disturbance outside of previously disturbed areas, and must be located within an existing ROW or easement, which likely has undergone previous (or will undergo future) ground disturbance in projects that are not subject to section 106. The survey requirement should be deleted.

Section VIII.B.3 requires that to qualify for the exclusion, the replacement pole must be “consistent with the quality and appearance of the original pole.”¹⁸ In CTIA’s members’ experience, this vague and subjective condition can generate uncertainty and delay in installing replacement poles. For example, the existing wood pole may be weathered in appearance and color that cannot be replicated with a new wood pole. Other new poles can contain interior wiring, which streamlines their overall visual appearance but can require them to be wider. And poles may be constructed of different materials, such as wood, concrete and metal. CTIA thus

¹⁶ *Pole Replacement Order*, 32 FCC Rcd 9767 ¶ 18. This “*de minimis*” size increase was the greater of 10 percent or 5 feet taller than the existing pole. As discussed below, the ACHP should allow this same size increase to be made for replacement poles and new mid-span poles.

¹⁷ Program Comment, lines 587-88.

¹⁸ *Id.*, lines 589-90.

recommends that this condition be modified to state that the replacement of an existing pole with a new pole made of the same material (e.g., an existing wood pole replaced by a new wood pole, an existing metal pole replaced with a new metal pole, or an existing concrete pole replaced by a new concrete pole) is “consistent with the quality and appearance of the original pole.” Other replacement poles can also meet the consistency condition depending on their appearance. The other conditions of the exclusion regarding the location and height of the pole will sufficiently protect against adverse effects to historic properties. Further, the concept of pole “quality” in the existing condition has no bearing on appearance and is unavoidably ambiguous so should be removed.

Finally, Section VII.B.4 requires that the replacement pole be no more than 10 percent taller than the existing pole.¹⁹ This strict limitation severely constrains the use of the Program Comment for replacement poles because they typically come in five-foot increments. For example, a standard 40-foot pole with no additional space for attachments would typically be replaced by a 45-foot pole, but the replacement pole exclusion in the Program Comment would not apply to this 45-foot replacement pole because it exceeds by one foot the 10 percent (in this example 44-foot) limit. In recognition of this fact, the FCC’s rule excludes from Section 106 review any replacement pole that “has a height that does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater.”²⁰ This condition provides more flexibility to providers to replace shorter poles, while preserving a

¹⁹ *Id.*, lines 591-92.

²⁰ *See* 47 CFR 1.1320(b)(3)(ii)(B).

height increase limit that will ensure no potential effects on historic properties. ACHP should revise its height limit to include the language in the FCC's rules.

C. The Exclusion for Mid-Span Poles Should Be Modified in Similar Ways.

New poles often need to be installed along the existing span of wires between existing poles to support additional wires that will run between those poles. This frequently occurs in rural areas where poles are spaced farther apart. Deploying broadband to these rural areas thus can depend on being able to install these “mid-span” poles. Section VIII.C. of the existing Program Comment excludes certain of these poles, but under conditions that effectively prevent the exclusion from being used in many areas. CTIA thus recommends modifying these conditions in ways that will fully protect historic properties while speeding the installation of mid-span poles – and in turn speed broadband expansion.

Section VIII.C.1 requires that the mid-span poles be “within existing ROWs or corridors.”²¹ This restriction should be deleted because it can significantly delay or deter providers from deploying these essential poles by requiring Section 106 review. These poles are often needed in other locations (such as across privately-owned lands) that are not “existing ROWs or corridors.” Plus, the restriction is unnecessary because the exclusion already requires that the poles cannot be “within the boundary of a known historic property,” thus protecting those properties.

Section VIII.C.2 requires that to qualify for the exclusion, new poles must be “100 feet or more beyond the boundary of any National Register listed or previously determined eligible historic districts significant for their visual setting.”²² Given the undefined nature of the limiting

²¹ Program Comment, lines 597-99.

²² *Id.*, lines 600-602.

condition “significant for their visual setting,” the ACHP should modify this condition consistent with more objective language from its existing regulations to read “100 feet or more beyond the boundary of any historic district whose visual setting was a characteristic that previously qualified it for inclusion in or previously led to a determination of eligibility for the National Register.”

Section VIII.C.3 requires that to qualify for the exclusion, new poles must be “of generally consistent quality and appearance with the originals.”²³ This language is, as CTIA explained above in connection with Section VIII.B.3, inherently ambiguous and unnecessarily restrictive. It should be amended to exclude new poles that are made of the same material (e.g., a wood mid-span pole is added and the adjacent poles are also made of wood), or are otherwise “generally consistent with the appearance of the adjacent poles or structures.”

Section VIII.C.4 limits the height of mid-span poles to “no greater than 10 percent taller than the height of the originals.”²⁴ Given that the mid-span poles do not replace “originals,” the meaning of this condition is unclear. In any event, as CTIA explained above in connection with Section VIII.B.4, the 10 percent height increase limit is unnecessarily restrictive. The ACHP should adopt the same language CTIA recommends for replacement poles and amend Section VIII.C.4 to state that the height of new mid-span poles can be no more than 5 feet or 10 percent higher than the height of the adjacent poles that are at the ends of the span, whichever is greater.

²³ *Id.*, lines 603-04.

²⁴ *Id.*, lines 605-06.

IV. CONCLUSION

CTIA encourages the ACHP to adopt the proposed amendments to the Program Comment, as well as to consider the additional amendments detailed in these comments, as promptly as possible. Making a more streamlined process available to NTIA and other federal agencies will achieve both important national policies: promoting more rapid and extensive broadband deployment and protecting the nation's historic and cultural heritage.

Respectfully submitted,

/s/ Michael K. Beirne

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Dated: January 12, 2024

APPENDIX A

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

...

- B. When replacement of structures or poles is planned, the undertaking requires no further Section 106 review, as long as:
1. The replacement structures or poles can be located in or within 10 feet of the same hole as the ~~original existing~~ structure or pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the replacement pole, and there is no new ground disturbance outside of the disturbed areas associated with temporary support of the lines or with installation of the replacement structures or poles; and
 2. The replacement structures or poles are within an existing ROW or easement ~~which has been surveyed;~~ and
 3. The replacement structures or poles are made of the same material as the existing pole or structure (e.g., replacement of existing wood pole with new wood pole, replacement of existing concrete pole with new concrete pole, or replacement of existing metal pole with new metal pole), or are otherwise generally consistent with the quality and appearance of the original the existing pole or structure; and
 4. ~~Any proposed~~ The height ~~increase~~ of the replacement structures or poles is no more than 10 percent or 5 feet taller than~~of~~ the height of the ~~original existing pole or structure, whichever is greater;~~ and
 5. The ~~original existing~~ 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 as identified by the ~~F~~federal LMA/PMA agency; and
 2. The additional structures or poles(s) are 100 feet or more beyond the boundary of any ~~National Register listed or previously determined eligible historic district significant for their visual setting;~~ historic district whose visual setting was a characteristic that previously qualified it for inclusion in or previously led to a determination of eligibility for the National Register; and

3. The additions are made of the same material as the adjacent poles or structures (e.g., additional wood pole adjacent to other wood poles, additional concrete pole adjacent to other concrete poles, or additional metal pole adjacent to other metal poles), or are otherwise ~~of~~ generally consistent with the quality and appearance with the originals of the adjacent poles or structures; and
4. The height of any added structure or pole is no greater~~more~~ than 10 percent or 5 feet taller than the height of the adjacent poles or structures, whichever is greater~~originals~~.

January 12, 2024

Ms. Jaime Loichinger, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DE 20001
Submitted electronically to: program_alternatives@achp.gov

Subject: Invitation to Consult on Amendment to Program Comment on Communications Projects and Federal Lands/Property

Dear Ms. Loichinger:

Thank you for providing the opportunity to consult on the Advisory Council on Historic Preservation's (ACHP) proposed amendment to the above-referenced Program Comment. As indicated via email on December 18, 2023, unfortunately our office was unable to participate in the ACHP's scheduled consultation meetings, and therefore did not have the benefit of hearing questions posed by other SHPOs and ACHP's responses. We ask for your understanding if our comments that follow were otherwise covered in the December meetings.

To our understanding, the intent of the amendment is to expand the applicability of the Program Comment (the PC) to any and all communication deployment undertakings that are carried out, permitted, licensed, funded assisted or otherwise approved by any Federal agency, anywhere in the United States (regardless of ownership) except certain specified locations and Tribal lands (though there are exceptions to the exceptions). The existing Program Comment is limited to undertakings of Federal Land Managing and Property Managing agencies.

The goal of providing consistency of the review process for such undertakings across agencies and programs is understandable. However, before considering such a broad expansion of the existing Program Comment to meet that goal, the ACHP should demonstrate that it has carefully considered whether the existing PC is working well from all stakeholders' perspectives, including SHPOs. Delaware has relatively little land to which the existing PC would apply, so on this point we would defer to SHPOs and THPOs in states that do. Regardless, we think it would be helpful if ACHP provided clear information on the outcome of its prior years' assessments of the annual reports of the "certain federal land and property managing agencies" that have implemented the 2017 PC (as noted on lines 38-39 of the proposed amendment) thus far.

There were numerous concerns and questions raised at the time the PC was first proposed, as indicated in the Federal Register. What kinds of concerns or questions have been raised since the PC was adopted, e.g., during the annual meetings that are to occur under current Stipulation XVII (proposed XVI)? For example, we are aware that NCSHPO has provided extensive comments to the FCC regarding ongoing issues with implementation of the 2004 National Programmatic Agreement, noting numerous SHPO concerns, following annual reports for that program. Without further information on how well the existing PC is working, we do not agree with the proposed insertion of the words "as needed" (line 809) that would make the annual meeting optional, and strongly recommend adding language that specifies where the report(s) and the outcome of annual reviews are to be posted.

January 12, 2024

Letter to ACHP re: Amendment to 2017 Program Comment

The following are comments on specific sections of the document, some pertaining to the existing PC and some to the proposed amendment:

- Line 232 re: Dispute Resolution, change the phrase “the federal agency should request the ACHP” comments to “the federal agency *shall* request the ACHP” comments.
- The amendment should add a requirement that federal agencies provide guidance and training on Section 106 compliance and the terms of the PC to all applicants that are tasked with carrying out actions on the agency’s behalf.
- Qualified Professionals:
 - Striking Section XIII (lines 715-723) and adding a revised definition of Qualified Professional to Section III (lines 395-401) is not in and of itself objectionable. However, it has the effect of removing language asserting that a Qualified Professional must carry out tasks under the PC.
 - Individual sections reference when “the” Qualified Professional is to undertake certain tasks, but the PC does not make clear who that is. Add language stating that “the” Qualified Professional is someone either the federal agency or the applicant has on staff or hires to conduct such work (and is not using the SHPO staff to do their work for them).
 - Clarify that a Qualified Professional is making determinations on the level of previous ground disturbance.
 - It would be advantageous for “records checks” to be completed by a Qualified Professional.
- Lines 293-297 Ground Disturbance definition: Revise/augment this definition to clarify what “previously disturbed” soils are. Here is an example from DE SHPO’s Programmatic Agreement with FEMA:
“soils not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated. Previously disturbed soils shall not be taken to mean plowed soils or historic urban deposits.”
This definition more clearly lays out what types of disturbed soils are exempt in the context of archaeology. (DHS included this definition in its recent revised draft NPA for Climate Resiliency and Sustainability)
- Section XIV (proposed XIII) re: Unanticipated discoveries:
 - Add language indicating that the federal agency will consult with SHPO, THPO, Indian Tribes as to whether the 50’ radius should be expanded to protect the discovery.
 - With regard to discovery of human remains, provide for consideration of State law protecting same on non-federal and non-tribal property.

We understand and appreciate the goal of amending the Program Comment. We ask, however, that further consideration is given to how the existing process is working, and that clarification is included to assist all participants in understanding their roles and responsibilities. Thank you for your consideration of these comments.

Sincerely,

Gwenyth A. Davis
Deputy State Historic Preservation Officer

cc: Suzanne Savery, Division Director and State Historic Preservation Officer, Division of Historical and Cultural Affairs
Erik Hein, Executive Director, National Conference of State Historic Preservation Officers
Carlton Hall, Architectural Historian, DE SHPO, HCA (lead FCC project reviewer)
Luke Pickrahn, Archaeologist, DE SHPO, HCA (lead USDA project reviewer)





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National Telecommunications and
Information Administration
U.S. Department of Commerce
National Environmental Policy Act Procedures
and Categorical Exclusions

Docket ID 2023-0004

**FURTHER COMMENTS
OF
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”) offers additional comments on the National Telecommunications and Information Administration (“NTIA”) proposal to establish categorical exclusions (“CEs”) to the National Environmental Policy Act (“NEPA”). This action is in compliance with the Infrastructure Investment and Jobs Act (“IIJA”), which directed NTIA to establish new broadband programs, the largest of which is the Broadband Equity, Access, and Deployment (“BEAD”) Program to distribute funding for projects that support broadband infrastructure deployment and adoption among states, territories, DC and Puerto Rico. Because of the need to expand broadband access throughout the United States, NTIA is considering opportunities for accelerating this effort while still ensuring compliance with all relevant requirements, including NEPA and other related authorities. It proposed the establishment of thirty-three (33) CEs covering administrative, real property and facility, and operational actions that, according to its proposal, “individually or cumulatively do not have a significant effect on the human environment.”

EWA responded to the NTIA proposal by recommending adoption of a CE for towers built to support critical infrastructure industry (“CII”), business enterprise, and governmental customers. It explained that these towers historically have not been clustered in urban and suburban communities or along major transportation routes, but often are built in areas of lower population density where public safety entities, utilities, hospitals, and other private users require facilities for internal communication purposes. It suggested that these towers could play a vital role in achieving the objectives of the BEAD Program as existing, economically desirable, commercial infrastructure that would reduce BEAD deployment costs by facilitating collocation by broadband providers.

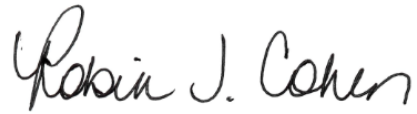
The proposed Amendment to the Program Content did not include EWA’s recommended CE. Because EWA continues to believe such a provision would be entirely consistent with the objectives of the IIJA and NTIA’s efforts in support of it, EWA proposes that the following provision be included as Section C. 3 in Section VI:

A tower or antenna structure, already constructed, which is owned or managed for use by a federal, state or local instrumentality, or collocates federal, state, local, public safety or critical use entities (e.g., utilities, school districts, emergency medical services) or provides land mobile or fixed radio support to those entities (“Critical Use Towers”) may be used for the collocation of equipment such as antennas, microwave dishes, or power units of broadband providers, provided that the structure is not listed or eligible for listing under the National Register of Historic Places. For any already constructed Critical Use Tower available for collocations of broadband providers, the State Historic Preservation Office (“SHPO”) of each State receiving BEAD funds shall consult, participate and review any necessary documents in the Section 106 process under Section 106 of the National Historic Preservation Act (“NHPA”), as amended, 54 U.S.C. 306108.

EWA would appreciate NTIA's consideration of this recommendation.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

A handwritten signature in black ink that reads "Robin J. Cohen". The signature is written in a cursive style with a large initial 'R'.

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January 12, 2024

**Before the
Advisory Council on Historic Preservation**

In the Matter of)
)
Proposed Amendment to Program Comment for)
Communications Projects on Federal Lands and)
Properties)

**COMMENTS
OF
FIBER BROADBAND ASSOCIATION**

The Fiber Broadband Association (“FBA”)¹ hereby submits comments in response to a proposal² to amend the Advisory Council on Historic Preservation’s (“ACHP’s”) 2017 Program Comment for Communications Projects on Federal Lands and Property (“2017 Program Comment”).³ The 2017 Program Comment established a streamlined process for communications providers to comply with Section 106 of the National Historic Preservation Act (“NHPA”)⁴ when they install certain wireline and wireless communications infrastructure on

¹ FBA is a not for profit trade association with approximately 500 members, including telecommunications, computing, networking, system integration, engineering, and content-provider companies, as well as traditional service providers, utilities, and municipalities. Its mission is to accelerate deployment of all-fiber access networks to ensure digital equity and enable ever community to leverage economic and societal benefits that only fiber can deliver. A list of FBA members can be found on the organization’s website: <https://fiberbroadband.org/>.

² *Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property* (“Proposed Amendment”) available at https://www.achp.gov/BroadbandPC_proposed_amendment.

³ *Program Comment for Communications Projects on Federal Lands and Property*, *Federal Register*, Vol. 82, No. 99 at 23818 *et seq.* (2017), available at https://www.achp.gov/sites/default/files/program_comments/2018-09/Program%20Comment%20for%20Communications%20Projects%20on%20Federal%20Lands%20and%20Property.pdf.

⁴ 54 U.S.C. § 306108.

federal lands and property. In issuing the 2017 Program Comment, the ACHP explained that its purpose is to--

assist LMAs [Land Managing Agencies] and PMAs [Property Managing Agencies] in expediting project delivery of broadband infrastructure to underserved communities, rural areas, and tribal communities. Further, the Program Comment is structured to cover the effects of all types of communication deployment undertakings, including constructing and placing antennae, towers, and associated equipment and facilities on federal property, and running buried and aerial fiber optic lines across federal lands. In order to expedite the review of broadband activities, the Program Comment defines the APE [areas of potential affects] for certain undertakings to establish more consistent reviews by LMAs and PMAs on federal lands; specifies the process for collocation on federal buildings and federal lands; and clarifies review and installation procedures for buried and aerial fiber optic lines.⁵

ACHP now proposes to amend the 2017 Program Comment by expanding its reach “to any federal agency providing funding, licenses, authorizations and approvals for projects that meet the PC’s terms.”⁶ FBA supports ACHP’s Proposed Amendment. It would facilitate Section 106 reviews for all federally funded broadband infrastructure projects and ensure agencies complete them in a reasonable and efficient manner. At the same time, because the 2017 Program Comment was directed largely to siting of wireless projects, we believe ACHP should expand its focus to increase federal agencies’ understanding of and ability to address

⁵ 2017 Program Comment, at 23819.

⁶ Proposed Amendment at 2 (“Consistent with the 2022 Permitting Action Plan, the ACHP and broadband funding agencies identified the need to extend the applicability of the 2017 Program Comment to create uniform Section 106 rules for all broadband projects regardless of location. As proposed, the amendment would 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 NTIA and RUS Section 106 reviews for these types of undertakings, the ACHP believes expanding the availability of the program comment to undertakings proposed on state and private lands through this amendment would create efficiencies for all consulting parties, streamline reviews, and increase predictability while appropriately taking into account the effects of broadband projects on historic properties.”).

issues arising from fiber projects, which tend to be much different than issues that arise from wireless projects.

To undertake fiber builds, communications providers or infrastructure firms – and their contractors and subcontractors -- need access to public and private right-of-way to bury conduit and fiber and access to poles to attach fiber. Over the years, these entities have developed efficient techniques to undertake this work, which minimize disruption to sites and the overall environment. This work already takes place against a backdrop of existing state and local environmental, historic preservation, and other such requirements. That said, despite sophisticated planning to reduce uncertainties in a build, these entities often face “in the field” issues that disrupt their plans and force them to develop new solutions. For instance, work crews may find that because a pole has been just replaced or reset, the specifications they are using are incorrect, or because the information about an underground path was not recorded properly, they need to find the correct path. As a result, it would be unrealistic for federal agencies to apply predetermined detailed criteria about how each element of a build should occur. This would only lead to work crews stopping and starting – potentially many times during a build -- increasing the cost of the project or potentially stopping it all together. FBA therefore proposes that agencies should provide a general framework of requirements that would enable work crews to deploy efficiently. Indeed, the National Telecommunications and Information Administration took an initial step in this direction last March, when it published a *Notice of availability; request for comments* regarding National Environmental Policy Act Procedures and Categorical Exclusions.⁷

⁷ *National Environmental Policy Act Procedures and Categorical Exclusions, Federal Register*, Vol. 88, No. 61 at 19089 *et seq.* (2023) available at https://www.ntia.gov/sites/default/files/publications/ntia_nepa_ces_federal_register_notice_3.30.23.pdf.

Working closely with industry, the various program agencies have the opportunity to ensure that these Categorical Exclusions, the Proposed Amendment, and other guidance and requirements reflect and support existing best practices and actual in-the-field construction practices will facilitate the efficient construction of government funded fiber networks.

Federal agencies also should recognize that they are not the only government entities that may oversee a fiber build. State and local governments have environmental, historic preservation and similar rules and requirements that apply to these projects. As such, federal agencies should seek to identify and involve them early in their review.

Overall, we recommend that ACHP and federal agencies conduct outreach to entities deploying fiber to gain a more precise understanding of their construction methods, including how they bury conduit and fiber and attach to poles. FBA stands ready to facilitate such outreach. In the end, this should lead to the development of a holistic, workable, and administrable set of categorical exemptions to ensure an efficient administration of government-funded fiber projects.

Respectfully Submitted,



Gary Bolton
President and CEO
Fiber Broadband Association
3050 K Street NW, Suite 400
Washington, DC 20007
Telephone: (202) 524-9550

January 19, 2024

INDUSTRIES ARGUMENT

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

Background:

As the basis for this request, NTIA has noted its extensive record of past Section 106 reviews supporting the minimal findings of adverse effects, and notes that an amendment of this nature would create efficiencies for all consulting parties, streamline reviews, and increase consistency while appropriately taking into account the effects of communications projects on historic properties.

The Flandreau Santee Sioux Tribe finds this basis for NTIAs proposed amendment laughable as the FCC has continued to lie to Tribes about non-compliant towers, instead of telling the tribes when a company willingly comes out to the FCC that their towers were built with no federal review the FCC tells them to run their tower collocation/expansion anyway through the TCNS system, tells them not to reach out to Tribes.

I personally have seen towers in the state of Montana that destroyed sacred sites that never went through any federal review. Many tribes have not been diligent in answering these proposed tower notices do to understaffed and overworked offices. The FCC needs to be honest and let the companies who have non-compliant towers and want to be up front about it the chance to be up front about it. It is our experience that the FCC has been very devious with reporting non-compliant towers to Tribes to speed the expansion off collocations. That is why the FCC is **so confident about their request for an Amendment because they have an extensive record of covering up problematic tower issues.**

ACHP In 2018

March 15, 2018

Mr. Thomas M. Johnson, Jr.

General Counsel

Federal Communications Commission

445 12th Street, SW

Washington, DC 20554

Ref: Second Report and Order WT Docket No. 17-79

Dear Mr. Johnson:

The Advisory Council on Historic Preservation (ACHP) has reviewed the Federal Communications Commission's (FCC) Second Report and Order for ***Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*** that will be considered by the Commissioners on March 22, 2018. The ACHP understands this Second Report and Order establishes the direction FCC will take on many of the issues it sought input from the public on its Wireless Infrastructure Notice of Proposed Rulemaking (NPRM), published in April 2017. The ACHP reviewed the NPRM and submitted comments on June 15, 2017.

At the outset, the ACHP is supportive of the FCC's goals to deploy 5G and the next generation of technology. To that end, we appreciate the opportunity to submit these comments and look forward to consulting with the FCC as it seeks process improvements to expedite project implementation.

The ACHP noted in its comments on the NPRM submitted to the FCC last June that it disagreed with the FCC's proposal to amend Section 1.1312 of its regulations, which effectively revises the definition of

federal undertaking. While the Second Report and Order further elucidates the FCC's rationale for the change, it remains inconsistent with the views of the ACHP as provided in its June 15, 2017 letter. The ACHP commends the FCC for including in the Second Report and Order sections No. 96 to 100, which require the submission of adequate documentation in Form 620 (new towers) and Form 621 (collocations) to potentially affected Indian tribes and Native Hawaiian organizations (NHOs) in order to initiate the timeclocks for their review. Ensuring that Section 106 participants have the necessary information to effectively participate in Section 106 reviews is critical to maintaining the integrity and efficiency of the review process.

We appreciate the FCC's effort to better align its views on fees with the ACHP's policies and Tribal Consultation Handbook. The reference to these documents in explaining how fees should be addressed in applicant reviews should reduce misunderstandings and improve the Section 106 review process.

At the same time, we are aware that Indian tribes have concerns with FCC's interpretations in the Second Report and Order. The ACHP therefore encourages the FCC to work with the tribes to resolve these issues in a mutually acceptable manner.

In our letter of June 15, 2017, to the FCC, the ACHP expressed its concern about the need for effective consultation with preservation stakeholders as the FCC undertook these significant changes in its processes. We urged the FCC "to continue in the spirit of collaboration with these partners to refine and improve these systems..." It appears that many of these stakeholders continue to hold the FCC's consultation efforts insufficient. Accordingly, we would strongly urge the FCC to further engage with those parties to seek agreeable solutions to their outstanding issues.

Should you wish to discuss our responses to the NPRM and Second Report and Order, please feel free to contact me at jfowler@achp.gov or by telephone at (202) 517-0200.

Sincerely,

John M. Fowler

Executive Director

ACHP 2023

Proposed Amendment Program Comment for Communications Projects on Federal Lands and Property

The 2021 FEDERAL Infrastructure Investment and Jobs Act provided a **historic investment of \$65 billion FEDERAL dollars** 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. 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.**

Consistent with the 2022 Permitting Action Plan, the ACHP and **broadband funding agencies** identified the need to extend the applicability of the 2017 Program Comment to create uniform Section 106 rules for all broadband projects regardless of location. As proposed, **the amendment would 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 NTIA and RUS

Section 106 reviews for these types of undertakings, the ACHP believes expanding the availability of the program comment to undertakings proposed on state and private lands through this amendment would create efficiencies for all consulting parties, streamline reviews, and increase predictability while appropriately taking into account the effects of broadband projects on historic properties.

POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND HISTORIC PRESERVATION

PRINCIPLES These principles **should be applied to the maximum extent** practicable by federal agencies, state and local governments, and nongovernmental institutions, including private contractors (hereafter “Preservation Partners”) **to advance the integration of Indigenous Knowledge into historic preservation decision making**. The following principles represent minimum standards that preservation partners seek to advance as part of their site stewardship, Section 106, sacred sites management, other historic preservation related actions, consistent with their unique mission and authorities.

Indigenous Knowledge held by an Indian Tribe, NHO, or other Indigenous Peoples **is a valid and self-supporting source of information and does not require verification by any other knowledge system to inform federal decision making**. Knowledge Holders are, and should be recognized as, subject matter experts regarding the application of Indigenous Knowledge with respect to the identification and documentation, evaluation, assessment of effects, and in the resolution of adverse effects to properties that may be of religious and cultural significance, many of which may also be sacred sites.

FEDERAL COURTS 2018

No. 18-1129 UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER NATIVE AMERICAN INDIAN TRIBES AND TRIBAL ORGANIZATIONS, ET AL., PETITIONERS v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS

40 C.F.R. § 1508.4. Categorical exclusions are appropriate for “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency.” *Id.* “Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review.” Council on Environmental Quality, *Memorandum for Heads of Federal Dep’ts and Agencies: Establishing, Applying & Revising Categorical Exclusions under [NEPA]* (*Categorical Exclusion Memo*) 2 (2010).

Section 106 review comprises “four steps”: “initiation, identification, assessment [or evaluation], and resolution.” *Section 106 Handbook*, J.A. 1018. Government-to-government consultation is a background requirement of Section 106 review at every stage. *See id.* at J.A. 1014, 1018; Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913; 36 C.F.R. § 800.2(c)(2)(ii)(A) (consultation requires giving the interested Tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects”). In the identification and evaluation period, however, applicants have often paid

for expertise and assistance from Tribes acting “in a role similar to that of a consultant or contractor” such as by providing “specific information and documentation regarding the location, nature, and condition of individual sites” or even conducting surveys. *Section 106 Handbook*, J.A. 1015.

The Advisory Council explains that “these two tribal roles”—government-to-government consultation, and assistance with identification and evaluation—“are not treated the same when it comes to compensation, although the line between them may not be sharp.” Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913. **Advisory Council guidance states that “agencies are strongly encouraged to use available resources to help overcome financial impediments to effective tribal participation in the Section 106 process” and applicants are likewise “encouraged to use available resources to facilitate and support tribal participation.”** At the same time, it says that agencies and applicants should not expect to pay fees for government-to-government consultation, which “gives the Indian tribe an opportunity to get its interests and concerns before the agency,” Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913, **but “should reasonably expect to pay” fees for the identification and evaluation, which puts Tribes in a “consultant or contractor” role, Advisory Council, Section 106 Handbook, J.A. 1015.**

TRIBES in 2018

UNDERFUNDED REVIEW PROCESS

WASHINGTON — The U.S. District Court of Appeals for the District of Columbia ruled Friday, Aug. 9, that the Federal Communications Commission cannot make smaller 5G towers exempt from a review process on tribal land.

The decision remands the issue back to the FCC, as the court ruled that Rule 1779, which went into effect in July 2018, violated tribal rights under the National Historic Preservation Act to determine whether proposed structures such as cell towers and antennae will have an impact on historically or culturally significant land.

"(Rule 1779) basically said that anything under 199 feet tall, antennas, didn't need review under the National Historic Preservation Act, Section 106. Any time the government permits something or funds something or both, the National Historic Preservation Act kicks in if they disturb the ground, or they disturb anything," said Gary Montana of Montana Associates LLC, a Wisconsin-based and native-owned law firm that represented the Crow Creek Sioux and several other tribes in the appeal. "... What they were trying to do was bypass federal law, because they said it costs too much money; it was a delay in putting out 5G."

Montana said Wednesday afternoon that while the appellate court ruled in tribes' favor in one aspect, another facet of the rule is affecting tribes financially.

After a telecommunications company or subcontractor applies for a license for a tower or antenna on tribal land, the application is listed on the Tribal Construction Notice

System. Tribes can then have information on the application sent to them for review. Montana said those documents can be up to 100 pages long.

Under the FCC rule, those who build antennae or towers on tribal land are not required to pay review fees to the tribes. Previously, those fees could be used by tribes for historic and cultural preservation projects.

"Since 1779 has gone into place, my company I represent, we've been reviewing these TCNS numbers for free, hoping that we would prevail in this case on the fee issue," Montana said. "Some of those tribes, like Omaha (Tribe of Nebraska) and Crow Creek, the TCNS numbers that come out each week ... Sometimes, there could be 400 or 500 sites a week."

The appellate court declined to vacate the part of the rule dealing with review fees, Montana said, because the Advisory Council on Historic Preservation, which oversees the National Historic Preservation Act, said tribes can be paid review fees if they're in a contractor role.

"So the FCC said, 'if you're going to get paid, you're going to have to have a written contract with these companies,'" Montana said. "And how many of these companies are really going to sign a contract with tribes that requires them to get paid?"

<https://www.brainerddispatch.com/news/us-appeals-court-tribes-have-right-to-review-fcc-regulated-development>

FCC Is Allowing 5G Towers on Indigenous Land Without Tribal Consent

In West Virginia, the FCC first proposed a "broadband expressway project" in 2018 to build 150 new 5G towers across one of the ancestral homelands of the United Keetoowah Band of Cherokee Indians in Oklahoma. Even though the band refused to sign the proposal, the project was reupped this year and is going ahead anyway.

"They pretty much told us that they were going to put these towers in. They didn't care if we had historical properties there," said Whitney Warrior, the current preservation office director for the United Keetoowah Band.

"It's very clear that they have no intention of being educated in tribal sensitivity at all." <https://www.vice.com/en/article/5dpden/the-fcc-is-allowing-5g-towers-on-indigenous-land-without-tribal-consent>

The four biggest things for ACHP to take into consideration in the Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property are.

1. *Only Tribes have Indigenous Knowledge to be able to identify and evaluate a site. If an area of potential effect never had a survey done by a Tribe then it is considered not surveyed by Tribes. All Rights of Ways (ROW) not surveyed by a Tribe is considered not surveyed as well.*
2. *More funds need to be allocated by Congress for Tribal THPO's to be able to sustain responding to. **unprecedented volume of communications infrastructure projects** Applicants should be up for costs to Tribes who request a tribal cultural survey be done before they can give a determination of effect which includes Federal Agencies that normally refuse to pay for Tribal Cultural Surveys ie. US FOREST SERVICE.*
3. *Non-Compliant and or Twilight Towers – There should be no exemptions for non-compliant towers. If a tower never went through review then a Tribe has the right to do a post survey review of the built tower regardless of who owned the tower at time of original build. Its all Federal funds for this broadband deployment so Federal money can pay for post tower reviews as well if a dispute arises between applicant and Tribes over a non-compliant tower.*

Even though we were verbally told by ACHP that 5G towers will not be included in this Proposed comment of Broadband on Federal lands, they said it would be broadband trenched in ROWS mostly and that they need to strike out that verbiage about 5G and or towers. However we never were presented with a corrected version stating 5G/towers would not be included in this federal broadband deployment. This still should be corrected below....

For the past several years, certain federal land and property managing agencies have implemented the 2017 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 2017 Program Comment to create uniform Section 106 rules for all broadband projects regardless of location. As proposed, the amendment would 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 NTIA and RUS Section 106 reviews for these types of undertakings, the ACHP believes expanding the availability of the program **comment to undertakings proposed on state and private lands through this amendment** (??) would create efficiencies for all consulting parties, streamline reviews, and increase predictability while appropriately taking into account the effects of broadband projects on historic properties.

4, Timeline- Shot clock

It is our understanding that Federal funding for broadband deployment needs to be completed in 4 years. That is concerning to us. Many projects take up to ten years of acquisitions, siting, review, licensing, weather, man power etc etc. The speed that this must be put out will cause hap hazard siting and installation and most likely the destruction of cultural features/sites. This is another reason more funding should be allocated to Tribal THPO's, specifically THPO's who will be engaged in 106 review of proposed broadband projects on Federal lands.

Definition of Broadband by one of the major telecommunications companies.

Broadband is the transmission of wide bandwidth data over a [high-speed internet](#) connection. So what is broadband? According to the [FCC](#), the definition of broadband internet is a minimum of 25 Mbps download and 3 Mbps upload speeds. Broadband provides high speed internet access via multiple types of technologies including [fiber optics, wireless, cable, DSL and satellite](#).

Types of broadband connections

Broadband internet is delivered through several different technologies with varying availability based on location. Which broadband internet service you choose will depend on your needs, preferences, cost and where you live.

Fiber optic

Fiber optics carry lots of data using pulses of light through strands of fiber at the fastest speeds.

Fios offers Fios Gigabit Connection with blistering speeds up to 940/880 Mbps.

Wireless

Wireless broadband (Wi-Fi) connects a home or business to the internet using radio signals instead of cables.

Verizon's new 5G Home Internet is bringing impressive wireless speeds around 300 Mbps to homes in select cities.

DSL

Digital Subscriber Line (DSL) transmits data over traditional copper phone lines.

Verizon High Speed Internet offers plans up to 15 Mbps with a dedicated line from our central office to your home on a network that's 99.9% reliable.

Cable & Satellite

Cable delivers high speed internet over the same coaxial cables that deliver pictures and sound to your TV set.

On the other hand, internet connectivity via satellite is provided by communication satellites and is often the best option in rural areas.

The Flandreau Santee Sioux Tribes Tribal Historic Preservation Office respectfully submits their comments to The Advisory Council on Historic Preservation for the Amendment to Program Comment for Communications Projects and Federal Lands/ Property.

Sara Childers



Sara Childers

Tribal Historic Preservation Assistant

Flandreau Santee Sioux Tribe

603 W Broad Ave | Flandreau, SD 57028

p. 605.997.3891 x1226 | www.fsst-nsn.gov


[External] Program Comment for Communications Projects and Federal Lands/ Property

Sara Childers <schilders2006@hotmail.com>

Fri 12-Jan-24 8:16 AM

To:Program Alternatives <program_alternatives@achp.gov>

Cc:Jaime Loichinger <jloichinger@achp.gov>;chair@achp.gov <chair@achp.gov>;imatt@achp.org <imatt@achp.org>;Reid Nelson <rnelson@achp.gov>;Garrie KILLSAHUNDRED <garrie.killsahundred@fsst.org>

 1 attachments (35 KB)

ACHP Proposed Comments.docx;

Good Morning,

I am snowed in and without my work laptop or server in Iowa. I am sending this from my personal email.

I wish I had had more time to add more but am afraid if I wait any longer it won't make the cutoff.

I am not trained in Telecommunications so everything has been learning on the fly like most of this job.

Thank you for taking my emails and meetings, it is much appreciated.

In hands of friendship

Sara Childers

Sara Childers

Tribal Historic Preservation Assistant

Flandreau Santee Sioux Tribe

603 W Broad Ave | Flandreau, SD 57028

p. 605.997.3891 x1226 | www.fsst-nsn.govSent from [Outlook](#)

[External] Comments on the Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property

Heather Gibb <Heather.Gibb@iowaEDA.com>

Fri 12-Jan-24 5:31 PM

To:Program Alternatives <program_alternatives@achp.gov>

Dear Chair Bronin:

Thank you for the opportunity to submit comments on the Proposed Amendment to *Program Comment for Communications Projects on Federal Lands and Property*. The Iowa State Historic Preservation Office (SHPO) is housed within the Iowa Economic Development Authority and funded by the National Park Service Historic Preservation Fund. We provide the following comments which have been itemized by line number, when possible.

257-259: Do applicants for all federal agencies now get to submit materials instead of the agency for these types of projects? How will SHPOs and other consulting parties be able to identify the appropriate representative for a federal agency when materials are submitted?

430-431: What constitutes a basis for a request for additional information? What amount of information or explanation will be required to provide a basis for a request for additional information?

442-445: How will familiarity with an area be identified, particularly for professionals with limited to no experience working in particular areas or regions?

511-512: Does this afford agencies the ability to direct applicants to conduct tribal consultation? How has possible concerns provided by Tribes/Nations on this practice of the federal agency delegating their responsibility to consult with Tribes/Nations been addressed?

531-532; 553: Eligibility status of properties can change over time, including the property becoming eligible for listing on the National Register of Historic Places, How is this addressed? Is there a period of time after which eligibility determinations may need to be re-evaluated? We typically recommend re-evaluation of eligibility assessments after 5 years.

572: There are multiple examples of projects that would meet these guidelines and would result in an adverse effect to a historic property. Archaeological sites may be avoided and remain intact within right of way and easements, even those that are previously disturbed. Infill may encounter archaeological sites that were avoided, intentionally, by previous construction.

644-634: How would this prevent directional boring underneath burial sites and/or mounds without appropriate Section 106 consultation?

729: We recommend that the unanticipated discovery clause include a reference to adhering to applicable state and local burial laws.

We appreciate the obvious effort and consideration that has gone into the draft program comment provided for comment. We recommend continued consultation on this comment with consulting parties,

Tribes/Nations, and SHPOs.

Sincerely,

HEATHER GIBB | State Historic Preservation Office - State Historic Preservation Officer

IOWA ECONOMIC DEVELOPMENT AUTHORITY

1963 Bell Avenue, Suite 200 | Des Moines , Iowa 50315

+1 (515) 348-6285 | heather.gibb@iowaeda.com



NOTICE: Effective June 21, 2023, my address, email address, and phone number have changed. While my previous contact information will forward for a short period of time, please update your address book to include my new address, email address, and phone number to match the signature information above and begin using this new contact information effective immediately. Thank you!

1 Proposed Amendment to the Program Comment for Communications Projects on Federal
2 Lands and Property
3
4

5 **I. Background**
6

7 The 2020 coronavirus pandemic reinforced all Americans’ need for reliable internet at
8 sufficient speeds, and highlighted the digital divide created by barriers to high-speed
9 broadband access. The 2021 Infrastructure Investment and Jobs Act provided a historic
10 investment of \$65 billion to help close the digital divide and ensure that all Americans
11 have access to reliable, high speed, and affordable broadband. This “Internet for All”
12 initiative will deploy or upgrade broadband networks to connect everyone in America,
13 across all states and territories, generating an unprecedented volume of communications
14 infrastructure projects subject to environmental review and permitting, including
15 compliance with Section 106 of the National Historic Preservation Act (NHPA). For
16 example, the Broadband Equity, Access, and Deployment (BEAD) program alone may
17 generate hundreds, possibly thousands, of communications infrastructure projects in each
18 state and territory that must be built within four years of proposal acceptance.
19

20 The ACHP has historically coordinated with federal agencies permitting, assisting, or
21 licensing broadband projects and responded to the high volume of telecommunications
22 undertakings licensed or assisted by federal agencies, along with the often-minimal
23 effects on historic properties from these projects, by supporting the development of a
24 range of program alternatives to optimize the efficiency and effectiveness of Section 106
25 reviews. Notably, in 2015, the ACHP worked with the White House Office of Science
26 and Technology and an interagency Working Group comprised of representatives from
27 the U.S. Department of the Interior’s Bureau of Land Management, National Park
28 Service (NPS), Fish and Wildlife Service; Department of Defense; the U.S. Department
29 of Agriculture’s Forest Service and Rural Utilities Service (RUS); and the Federal
30 Communications Commission (FCC) to explore how best to accelerate the deployment of
31 communications projects, particularly broadband activities, on federal lands and
32 properties. After evaluating the Section 106 program alternatives outlined in 36 CFR
33 800.14 through two years of interagency collaboration and following requisite
34 consultation, the ACHP issued the 2017 *Program Comment for Communications Projects*
35 *on Federal Lands and Property* (2017 Program Comment), 82 Fed. Reg. 23818 (May 24,
36 2017).
37

38 For the past several years, certain federal land and property managing agencies have
39 implemented the 2017 Program Comment to address Section 106 compliance for the
40 collocation of antennae on existing communications towers, including the mounting or
41 installation of an antenna on an existing tower, building, or structure; installation of aerial
42 communications cable; burying communications cable in existing road, railroad, and
43 utility rights-of-way (ROW); construction of new communication towers (facilities), and
44 removal of obsolete communications equipment and towers (hereinafter, communication
45 deployment undertakings). Consistent with the 2022 Permitting Action Plan, the ACHP
46 and broadband funding agencies identified the need to extend the applicability of the

47 2017 Program Comment to create uniform Section 106 rules for all broadband projects
48 regardless of location. As proposed, the amendment would not substantially change the
49 procedures established in the original program comment, although it does include the
50 addition of a dispute resolution stipulation in the event that a federal agency and a
51 consulting party are unable to reach consensus at various points within the Program
52 Comment’s implementation. Informed by a substantial record of NTIA and RUS Section
53 106 reviews for these types of undertakings, the ACHP believes expanding the
54 availability of the program comment to undertakings proposed on state and private lands
55 through this amendment would create efficiencies for all consulting parties, streamline
56 reviews, and increase predictability while appropriately taking into account the effects of
57 broadband projects on historic properties.

58
59 The purpose of this amendment is to assist federal agencies in efficiently permitting and
60 approving the deployment of next generation technologies of communications
61 infrastructure, including 5G, to connect all communities with reliable, high-speed
62 Internet. The 2017 Program Comment provides a process for its amendment in section
63 XVIII. The ACHP is utilizing that process to propose the following revisions. The
64 amended Program Comment would provide an alternative way for federal agencies to
65 comply with Section 106 to take into account the effects of their undertakings on historic
66 properties and afford the ACHP a reasonable opportunity to comment on them. Federal
67 agencies are encouraged, but not required, to follow the efficiencies set forth in this
68 amended Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7
69 for individual undertakings falling within its scope.

70
71

72 **II. Proposed Amendment to the Program Comment**

73

74 The following would amend the Program Comment to read as follows:

75

76 **Program Comment for Federal Communications Projects**

77

78 Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108
79 (Section 106), requires federal agencies to “take into account” the effects of their
80 undertakings on historic properties and to provide the Advisory Council on Historic
81 Preservation (ACHP) a reasonable opportunity to comment with regard to such
82 undertakings. The ACHP has issued regulations that set forth the process through which
83 federal agencies comply with these duties. Those regulations are codified under 36 CFR
84 part 800 (Section 106 regulations).

85

86 Under section 800.14(e) of those regulations, agencies can request the ACHP to
87 provide a “Program Comment” on a particular category of undertakings in lieu of
88 conducting separate reviews of each individual undertaking ~~under such category, as set~~
89 ~~forth in~~ following 36 CFR §§ 800.3 through 800.7. Federal ~~agencies~~ Land Managing
90 Agencies (LMAs) and Federal Property Managing Agencies (PMAs) can meet their
91 Section 106 responsibilities with regard to the effects of particular undertakings by taking
92 into account this Program Comment and following the steps set forth therein.

92

93 **I. Introduction**

94
95 The purpose of ~~issuing~~proposing this amended Program Comment is to assist ~~f~~Federal
96 LMA/PMAs~~agencies~~ in permitting and approving the deployment of next generation
97 technologies of communications infrastructure, e.g. 5G, more efficiently. This amended
98 Program Comment ~~would~~establish~~es~~ uniform procedures for addressing Section 106
99 compliance for the collocation of antennae on existing communications towers, including
100 the mounting or installation of an antenna on an existing tower, building, or structure;
101 installation of aerial communications cable; burying communications cable in existing
102 road, railroad, and utility rights-of-way (ROW); construction of new communication
103 towers (facilities), and removal of obsolete communications equipment and towers
104 (hereinafter, communication deployment undertakings). These undertakings ~~would~~
105 ~~typically not result in adverse effects to historic properties~~typically result in similar
106 effects to historic properties, should they be present within the undertaking's Area of
107 Potential Effect. Federal LMA/PMAs~~agencies~~ may elect to follow the efficiencies set
108 forth in this proposed amended Program Comment in lieu of the procedures in 36 CFR §§
109 800.3 through 800.7 for individual undertakings falling within its scope. Public
110 involvement remains a critical aspect of the Section 106 process; therefore, it is the
111 responsibility of the ~~f~~Federal LMA/PMAs~~agencies~~ to determine their method for public
112 engagement based on the agency's established protocols for their communications
113 programs. In addition, for the purpose of this proposed amended Program Comment,
114 ~~f~~Federal LMA/PMAs~~agencies~~ are encouraged to identify a single point of contact and
115 designate a Lead Federal Agency for the purpose of carrying out Section 106 reviews
116 when communications projects involve multiple federal agencies.

117
118 In addition to expanding the existing 2017 Program Comment, t~~t~~his amended
119 Program Comment builds upon the precedent of two Nationwide Programmatic
120 Agreements (NPAs) for wireless communications projects executed in 2001 and 2004,
121 respectively, among the Federal Communications Commission (FCC), the ACHP, and
122 the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs
123 have been successful in establishing efficiencies in the Section 106 review of tower
124 construction and collocations, and apply to facilities that support the use of FCC-licensed
125 spectrum and are located on private lands. The applicability of the NPAs ~~was~~re~~have~~
126 previously~~been~~ expanded to cover federally-funded communications activities through
127 the ACHP's issuance of the 2009 Program Comment to Avoid Duplicative Reviews for
128 the Wireless Communications Facilities Construction and Modification, as further
129 amended in 2015 and 2020, which allows

130
131 ~~Many State Historic Preservation Officers (SHPOs), Tribal Historic Preservation~~
132 ~~Officers (THPOs), Indian tribes, and Native Hawaiian organizations (NHOs) have been~~
133 ~~accustomed to reviewing applications for wireless communications facilities under the~~
134 ~~terms of the NPAs. As such, the NPAs were expanded to cover communications activities~~
135 ~~funded under the American Recovery and Reinvestment Act of 2009, through the~~
136 ~~ACHP's issuance of a Program Comment for the Broadband Initiatives Program and the~~
137 ~~Broadband Technology Opportunities Program. The 2009 Program Comment allows the~~
138 U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of

139 Commerce, National Telecommunications and Information Administration; and the U.S.
140 Department of Homeland Security, ~~Federal Emergency Management Agency and its~~
141 ~~components; Federal Railroad Administration (FRA); Federal Transit Administration~~
142 ~~(FTA); FirstNet;~~ and the Office of Surface Mining and Reclamation, to rely on the
143 FCC’s review of tower and collocation undertakings under the NPAs, thereby eliminating
144 duplicative reviews for undertakings supporting the use of subject to FCC licensed
145 service or registration. ~~In 2015, the ACHP extended the Broadband Program Comment~~
146 ~~for an additional 20 years and expanded it to allow additional agencies that fund~~
147 ~~communication facilities, including the Department of Homeland Security (DHS) and its~~
148 ~~components, Federal Railroad Administration (FRA), Federal Transit Administration~~
149 ~~(FTA), and FirstNet, to utilize its terms to comply with Section 106 for those~~
150 ~~undertakings.~~

151
152 Since the FCC NPAs do not apply on federal lands, Federal LMAs/PMA can
153 benefit from the use of this Program Comment for the deployment of communications
154 infrastructure and facilities. The recommendation for developing such a program
155 alternative on federal lands derived from the implementation of Executive Order 13616,
156 Accelerating Broadband Infrastructure Deployment (77 FR 36903, June 20, 2012). Once
157 Executive Order 13616 was issued, a Federal Property Working Group (Working Group)
158 was established to expedite reviews and implement efficiencies for the deployment of
159 broadband infrastructure on federal property. Subsequently the Broadband Opportunity
160 Council (BOC) was established to produce specific recommendations to increase
161 broadband deployment, competition, and adoption through actions within the scope of
162 existing agency programs, missions, and budgets. The efforts of the BOC aligned with
163 those of the Working Group, reaffirming the commitment to implement activities and
164 policies that support increased broadband deployment, particularly in rural and
165 underserved communities. Finally, the importance of broadband infrastructure
166 deployment was reaffirmed with the issuance of Executive Order 13766, Expediting
167 Environmental Reviews and Approvals for High Priority Infrastructure Projects (82 FR
168 8657, January 30, 2017). This Executive Order requires infrastructure decisions to be
169 accomplished with maximum efficiency and effectiveness, while also respecting property
170 rights and protecting public safety. Further, all infrastructure projects, especially projects
171 that are high priority for the nation, such as improving U.S. electric grids and
172 telecommunications systems and repairing and upgrading critical port facilities, airports,
173 pipelines, bridges, and highways are the focus of this executive order.

174
175 This amended Program Comment provides an alternate method for ~~the f~~Federal
176 LMAs/PMA agencies to meet their Section 106 responsibilities in a flexible manner for
177 communications undertakings. It does not modify the responsibilities of ~~f~~Federal
178 LMAs/PMA agencies to comply with Section 110(a) of the NHPA. Nor does it relieve
179 ~~f~~Federal LMAs/PMA and other federal agencies who utilize the amended Program
180 Comment from completing Section 110(a) surveys when they are appropriate on federal
181 lands.

182 **II. Applicability**

184

185 This amended Program Comment applies to communication deployment
186 undertakings that are carried out, permitted, licensed, funded, ~~or~~-assisted or approved by
187 ~~any f~~Federal agency ~~the following LMAs: the U.S. Department of Agriculture's (USDA)~~
188 ~~U.S. Forest Service (USFS); the Department of the Interior's (DOI) National Park~~
189 ~~Service (NPS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS),~~
190 ~~and Bureau of Indian Affairs (BIA); and the following PMAs: the Department of~~
191 ~~Homeland Security and its components, Department of Commerce; Department of~~
192 ~~Veterans Affairs; and the General Services Administration. Other federal agencies~~
193 ~~responsible for carrying out, permitting, licensing, funding, or assisting in the deployment~~
194 ~~of communications activities, such as FCC and the USDA Rural Utilities Service (RUS),~~
195 ~~may utilize this Program Comment to satisfy their Section 106 responsibilities on federal~~
196 ~~lands after completing the process set forth in Section XVIII.B. below.~~

197
198 Federal ~~LMAs/PMAs~~agencies may have existing procedures in place, such as a
199 Memorandum of Understanding or consultation protocol with a SHPO, THPO, Indian
200 tribe, or NHO to coordinate consultation ~~or to expedite Section 106 reviews~~, or a program
201 alternative developed pursuant to 36 CFR § 800.14 that addresses agency compliance
202 with Section 106 for certain types of undertakings. If such procedures exist, the ~~f~~Federal
203 ~~LMAs/PMAs~~agency may be encouraged to coordinate with the signatories of those
204 agreements or program alternatives to determine whether applying the terms of this
205 Program Comment can substitute for those procedures.

206
207 This amended Program Comment is not applicable to undertakings proposed to be
208 carried out, permitted, licensed, funded, ~~or~~-assisted or approved by any federal agency
209 that would occur on or affect ~~the following federally owned lands: National Historic~~
210 ~~Landmarks (or the portion thereof that is located on federal land), National Monuments,~~
211 ~~National Memorials, National Historical Parks, National Historic Trails, National~~
212 ~~Historic Sites, National Military Parks, and National Battlefields, unless . Should federal~~
213 ~~agencies or applicants want to deploy communications facilities that will affect these~~
214 ~~properties, the responsible federal agency must consults with the SHPO, Tribes, the~~
215 ~~National Park Service, and other consulting parties to determine whether application of~~
216 ~~the amended Program Comment will reasonably take into account the effects of the~~
217 ~~agency's undertaking on historic properties, or whether following the standard Section~~
218 ~~106 process under 36 CFR §§ 800.3 through 800.7 (or another applicable Program~~
219 ~~Alternative under 36 CFR § 800.14 is more appropriate) is necessary to assess effects to~~
220 ~~those properties for the review of such undertakings in consultation with the applicant,~~
221 ~~SHPO/THPO, Indian tribes, NHOs, and other consulting parties.~~

222
223 This amended Program Comment is not applicable to undertakings proposed to be
224 carried out, licensed, permitted, ~~or~~-assisted, or approved by any federal agency that would
225 occur on or affect historic properties located on Tribal lands without the prior, written
226 agreement between that Indian tribe and the federal agency, and notification by the
227 relevant ~~f~~Federal ~~LMA/PMA~~agency to the ACHP, NCSHPO, and NATHPO.

228
229 Should a dispute arise over applicability the implementation of this amended
230 Program Comment, or its use for any particular undertaking, the ~~f~~Federal

231 ~~LMA/PMA~~agency will consult with the objecting party to resolve the dispute. Should
232 resolution not be reached, the federal agency should request the ACHP to provide its
233 advisory comments to resolve the dispute, and take the ACHP’s comments into account
234 before finalizing its approach to complying with Section 106. ~~and should consider~~
235 ~~following the standard Section 106 process under 36 CFR §§ 800.3-800.7.~~ The ~~f~~Federal
236 ~~LMA/PMA~~agency shall notify all consulting parties regarding its ~~preferred~~ approach to
237 complying with Section 106 for a communications undertaking that is the subject of a
238 dispute.

239

240 **III. Definition of terms**

241

242 A. Agency official – It is the statutory obligation of the federal agency to fulfill the
243 requirements of Section 106 and to ensure that an agency official with jurisdiction
244 over an undertaking takes legal and financial responsibility for Section 106
245 compliance in accordance with 36 CFR part 800. The agency official has approval
246 authority for the undertaking and can commit the federal agency to take
247 appropriate action for a specific undertaking as a result of Section 106
248 compliance. The agency official may be a state, local, or tribal government
249 official who has been delegated legal responsibility for compliance with Section
250 106 in accordance with federal law.

251 B. Antenna – An apparatus designed for the purpose of emitting radio frequency
252 radiation, to be operated or operating from a fixed location, for the transmission
253 of writing, signs, signals, data, images, pictures, and sounds of all kinds, including
254 the transmitting device and any on-site equipment, switches, wiring, cabling,
255 power sources, shelters or cabinets associated with that antenna and added to a
256 tower, structure, or building as part of the original installation of the antenna.

257 C. Applicant – The party submitting an application for federal communications
258 permitting, licensing, approval or lease, and/or recipients of federal funding ~~on~~
259 federally managed lands or federally managed property.

260 D. Area of Potential Effects (APE) – The geographic area or areas within which an
261 undertaking may directly or indirectly cause alterations in the character or use of
262 historic properties, if any such properties exist. The APE is influenced by the
263 scale and nature of an undertaking and may be different for different kinds of
264 effects caused by the undertaking (source: 36 CFR § 800.16(d)). For purposes of
265 this Program Comment the APE includes the ROW, access routes, and staging
266 areas as defined below.

267 E. Collocation – The communications industry’s term for the construction of a new
268 antenna ~~or tower~~, or the mounting or installation of an antenna on an existing
269 tower, building, or structure, for the purpose of transmitting and/or receiving radio
270 frequency signals for communications purposes. It includes any fencing,
271 equipment, switches, wiring, cabling, power sources, shelters, or cabinets
272 associated with that antenna or tower.

273 F. Consulting Parties – The parties with whom federal agencies consult in the
274 Section 106 process. Consulting parties “by right” are those parties a federal
275 agency must invite to consult and include the ACHP, and the relevant SHPO;
276 THPO; Indian tribes, including Alaskan Native villages, Regional Corporations,

- 277 or Village Corporations; and Native Hawaiian organizations (NHOs);
278 representatives of local governments; and applicants for federal assistance,
279 permits, license and other approvals. “Certain individuals and organizations with
280 a demonstrated interest in the undertaking” may, at the discretion of the relevant
281 agency, also participate as consulting parties “due to their legal or economic
282 relation to the undertaking or affected properties, or their concern with the
283 undertaking’s effects on historic properties” (source: 36 CFR § 800.2(c)).
- 284 G. Effect and Adverse Effect – “Effect means alteration to the characteristics of a
285 historic property qualifying it for inclusion in or eligibility for the National
286 Register of Historic Places” (source: 36 CFR § 800.16(i)). “An adverse effect is
287 found when an undertaking may alter, directly or indirectly, any of the
288 characteristics of a historic property that qualify the property for inclusion in the
289 National Register in a manner that would diminish the integrity of the property’s
290 location, design, setting, materials, workmanship, feeling, or association” (source:
291 36 CFR § 800.5(a)(1)).
- 292 H. Facility – Means the secured area including the building, tower, and related
293 incidental structures or improvements, ~~located on federal land.~~
- 294 I. Ground Disturbance – Any activity that moves, compacts, alters, displaces, or
295 penetrates the ground surface of previously undisturbed soils. “Undisturbed soils”
296 refers to soils that possess significant intact and distinct natural soil horizons.
297 Previously undisturbed soils may occur below the depth of disturbed soils.
- 298 J. Historic Property – Any prehistoric or historic district, site, building, structure, or
299 object included in, or eligible for inclusion in, the National Register maintained
300 by the Secretary of the Interior. This term includes artifacts, records, and remains
301 that are related to and located within such properties. The term includes
302 traditional cultural properties (TCPs) and properties of traditional religious and
303 cultural significance to an Indian tribe, Alaskan Native village, Regional
304 Corporation or Village Corporation, or NHO that meet the National Register
305 criteria (source: 36 CFR § 800.16(l)(1)).
- 306 K. Indian tribe – An Indian tribe, band, nation, or other organized group or
307 community, which is recognized as eligible for the special programs and services
308 provided by the United States to Indians because of their status as Indians. It
309 includes a Native village, Regional Corporation, or Village Corporation, as those
310 terms are defined in section 3 of the Alaska Native Claims Settlement Act (43
311 U.S.C. § 1602).
- 312 L. Property Managing Agency – Executive branch agencies and independent
313 agencies that have authority to hold smaller swaths of land to support facilities
314 that are necessary to the agency’s mission and vision.
- 315 M. Land Managing Agency – Executive branch agencies that have the authority to
316 hold broad swaths of land for the agency’s mission and other particular purposes
317 such as management and administration of activities undertaken to support the
318 agency.
- 319 M.N. Funding Agency - Executive branch agencies and independent agencies
320 that grant or loan federal funds to an applicant or recipient.
- 321 N.O. Tribal lands – Defined in 36 CFR § 800.16(x) as including “all lands
322 within the exterior boundaries of any Indian reservation and all dependent Indian

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communities.”

O.P. Pole – A pole is a non-tower structure that can hold utility, communications, and related transmission lines.

P.Q. Right of Way – An easement, lease, permit, or license to occupy, use, or traverse public lands (source: Federal Land Policy and Management Act of 1976, As Amended 2001, Title V). For the purposes of this Program Comment, ROW includes a construction, maintenance, road, railroad, or utility ROW.

Q.R. Records Check – For the purpose of this Program Comment, a “Records Check” means 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: pProperties listed on or formally determined eligible for the National Register; pProperties that the SHPO/THPO certifies are in the process of being nominated to the National Register; pProperties 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; pProperties listed and identified in the SHPO/THPO iInventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and pProperties in their files that the SHPO/THPO considers eligible.

R.S. Staging Area – For the purpose of this Program Comment, a staging area is an area designated for short term use, not to exceed the duration of the project, and is often used for storing and assembling building materials equipment, and machinery, and for parking vehicles, temporary mobile offices, and staging area entrance/exit.

S.T. Substantial Increase in Size – This occurs when there is an existing antenna on a tower and:

1. Mounting of the proposed additional or replacement antenna would 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. Mounting of the proposed additional or replacement antenna would 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. Mounting of the proposed additional or replacement antenna would 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.

368 3.4. The mounting of the proposed antenna would expand the boundaries of
369 the current tower site by more than 30 feet in any direction or involve
370 excavation outside these expanded boundaries. The current tower site is
371 defined as the current boundaries of the leased or owned property
372 surrounding the tower and any access or utility easements currently related
373 to the site.

374 F.U. Native Hawaiian organizations — Defined as “any organization which
375 serves or represents the interests of Native Hawaiians; has as a primary and stated
376 purpose the provision of services to Native Hawaiians; and has demonstrated
377 expertise in aspects of historic preservation that are significant to Native
378 Hawaiians” (source: 36 CFR § 800.16(s)(1)). “Native Hawaiian” means any
379 “individual who is a descendant of the aboriginal people who, prior to 1778,
380 occupied and exercised sovereignty in the area that now constitutes the state of
381 Hawaii” (source: 36 CFR § 800.16(s)(2)).

382 U.V. State Historic Preservation Officer — The state official appointed or
383 designated pursuant to Section 101(b)(1) of the NHPA to administer the state
384 historic preservation program or a designated representative.

385 V.W. Tribal Historic Preservation Officer – The tribal official appointed by the
386 tribe’s chief governing authority or designated by a tribal ordinance who has
387 assumed the responsibilities of the SHPO for purposes of Section 106 compliance
388 on tribal lands in accordance with Section 101(d)(2) of the NHPA.

389 X. Tower — Any structure built for the sole or primary purpose of supporting
390 antennae, including the on-site fencing, equipment, switches, wiring, cabling,
391 power sources, shelters, or cabinets associated with that tower, but not installed as
392 part of an antenna as defined herein (source: Nationwide Programmatic
393 Agreement for Review of Effects on Historic Properties for Certain Undertakings
394 Approved by the Federal Communications Commission, September 2004).

395 W.Y. Qualified Professional — A person or person(s) meeting, at a minimum,
396 the Secretary of the Interior’s Professional Qualifications Standards (48 FR
397 44716, 44738-39, September 29, 1983) in the appropriate discipline. These
398 qualification requirements do not apply to individuals recognized by THPOs,
399 Indian Tribes, and NHOs to have expertise in the identification, evaluation,
400 assessment of effects, and treatment of effects to historic properties of religious
401 and cultural significance to their Tribes or NHOs.

402

403 **IV. Roles and responsibilities for Section 106 review of communication deployment** 404 **undertakings**

405

406 A. For each proposed undertaking subject to this Program Comment, the ~~f~~Federal
407 ~~LMA~~s/~~PM~~A~~s~~agency shall:

408 1. Consult with the SHPO/THPO, Indian ~~T~~ribes, or NHO to confirm the
409 APE for each individual undertaking and provide notification to the
410 appropriate SHPO/THPO, Indian ~~t~~ribes, or NHO of intent to follow this
411 Program Comment. See Sections IX, X, and XI of this Program Comment
412 regarding the determination of APEs for installation of buried

- 413 communications cable, communications tower replacement, and new
414 communications tower construction.
- 415 2. Identify known eligible or listed historic properties within the relevant
416 APE that may be affected by the proposed communications undertaking
417 by completing a Records Check. If a Records Check reveals no
418 information on the presence of historic properties within the APE, the
419 qualified professional (see Section ~~XIII.Y~~ below) will consult with the
420 SHPO/THPO, Indian tribes, or NHO to determine whether, based on
421 professional expertise, familiarity with the area, and similar
422 geomorphology elsewhere, the APE includes areas that have a high
423 probability of containing National Register-eligible properties. If so, those
424 areas within the APE will be avoided and the ~~f~~Federal ~~LMA/PMA~~Agency
425 shall have no further Section 106 responsibility for the undertaking. If they
426 cannot be avoided, the ~~f~~Federal ~~LMA/PMA~~Agency and applicant will
427 consult with the SHPO/THPO, Indian ~~T~~ribes, or NHO to determine
428 whether a survey or monitoring program should be carried out to identify
429 historic properties, and to determine if any of the conditional exemptions
430 listed in Sections VI-XI apply. Any request for additional information, and
431 any request for monitoring, will include the basis for the request ~~##~~
- 432 3. Consider whether any of the below criteria apply to a proposed
433 undertaking and if so, notify consulting parties that no further Section 106
434 review will be required for any undertaking subject to this Program
435 Comment that is proposed to occur within an APE:
- 436 a. that has been previously field surveyed (acceptable to current state
437 standards or within the past 10 years) ~~and~~ there are no known
438 historic properties located within the APE ~~whose National Register~~
439 ~~qualifying characteristics would be adversely affected~~; or
 - 440 b. that has been previously disturbed to the extent and depth where
441 the probability of finding intact historic properties is low; or
 - 442 c. that is not considered to have a high probability for historic
443 properties by qualified professionals and based on professional
444 expertise, familiarity with the area, and similar geomorphology
445 elsewhere.
- 446 If none of these criteria apply to the undertaking, proceed to consider whether the
447 conditional exemptions listed in Sections VI-XI are applicable.
- 448 4. Use existing agency procedures for implementation of this Program
449 Comment which may include procedures for delegation of authority to the
450 applicant, as appropriate.
- 451 5. Use qualified professionals for the disciplines under review in accordance
452 with Section 110 of the NHPA and Section ~~XIII.Y~~ of this Program
453 Comment.
- 454 6. Document use of this Program Comment in the Section 106 review, and
455 how it reached its decisions about the scope and level of effort for any
456 historic property identification, for the undertaking's administrative
457 record.

- 458 7. Where a Lead Federal Agency has been designated, and the Lead Federal
459 Agency is in compliance with its responsibilities under this Program
460 Comment, the other non-lead fFederal LMA/PMA agencies responsible
461 for the subject undertaking shall also be deemed to be in compliance with
462 Section 106 under this Program Comment.
- 463 B. The Applicant, on behalf of the fFederal LMA/PMA agency, shall:
- 464 1. Notify the fFederal LMA/PMA agency of its proposed application or
465 request for assistance at the earliest possible opportunity in project
466 planning.
- 467 2. Carry out and comply with the procedures for any delegation of authority
468 to the applicant if established by the fFederal LMA/PMA agency.
- 469 3. Assist the fFederal LMA/PMA agency to determine the APE in
470 consultation with the SHPO/THPO, Indian tTribes, and NHO.
- 471 4. Conduct a Records Check to identify known historic properties within the
472 APE, when requested by the fFederal LMA/PMA agency.
- 473 5. Notify the fFederal LMA/PMA agency if the undertaking is not proposed
474 to be located within or immediately adjacent to a known historic property.
- 475 6. Document the recommended determination of effect to historic properties
476 for and subject to the Ffederal LMA/PMA agency's approval when
477 requested by the Ffederal LMA/PMA agency.
- 478 7. Where appropriate to avoid adverse effects to historic properties, ensure
479 the site avoidance plan has been approved by the Ffederal
480 LMA/PMA agency and SHPO/THPO, Indian tTribes, and NHO. In
481 addition, avoidance areas should be clearly marked during staging and
482 construction activities, so construction crews are properly notified.
- 483 C. The fFederal LMAs/PMA agencies, SHPOs, THPOs, Indian tTribes, and NHOs shall
484 ~~carry out their Section 106 responsibilities in a timely manner and~~ adhere to the
485 timeframes outlined in the FCC NPAs or 36 CFR §§ 800.3 to 800.7. This will avoid
486 delays in the deployment of communications undertakings ~~on federal lands and~~
487 ~~property~~.
- 488 D. Where FCC has Section 106 responsibility over a proposed communication
489 deployment undertaking that also requires a license, permit, approval, or assistance
490 from a fFederal LMA/PMA agency named in the Broadband Program Comment, the
491 fFederal agency may elect to apply the Broadband Program Comment by following
492 its provisions, ~~the Federal LMA/PMA shall be responsible for the Section 106~~
493 ~~compliance for that undertaking and may utilize the terms of this Program Comment,~~
494 ~~including any applicable exemptions. FCC shall have no further Section 106~~
495 ~~responsibilities for that undertaking.~~
- 496 D.E. Where FCC has Section 106 responsibility over a proposed communication
497 deployment undertaking that also requires a license, permit, approval, or assistance
498 from another federal agency not named in the Broadband Program Comment,
499 Federal LMA/PMA, the fFederal agency-LMA/PMA shall be responsible for the
500 Section 106 compliance for that undertaking and may utilize the terms of this
501 Program Comment, including any applicable exemptions. FCC shall have no further
502 Section 106 responsibilities for that undertaking.
- 503

504 **V. Project planning considerations**

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506 A. The Applicant shall coordinate early with the ~~f~~Federal ~~LMA/PMA~~agency regarding
507 project planning activities. In the event the Applicant proposes a public-private
508 project, the carrier, tower company, or others who may be recognized as the
509 Applicant shall involve the ~~relevant f~~relevant ~~LMA/PMA~~agencies in pre-application
510 meetings to 1) ~~decide~~determine whether this Program Comment will be used; 2)
511 consider the scope of work for the identification of historic properties; 3) discuss
512 protocols for consulting with Indian tribes or NHOs; and 4) discuss alternatives and
513 alternative routes for the undertaking.

514 B. Noninvasive techniques are encouraged for identification and evaluation of all
515 property types, if feasible, and for testing, including geotechnical testing, at
516 archaeological sites, TCPs, and other sites important to Indian tribes.

517 C. Siting projects in previously disturbed areas is encouraged.

518

519 **VI. Collocation of communications antennae**

520

521 A. A ~~f~~Federal ~~LMA/PMA~~agencies may elect to use applicable exclusions
522 established in the Nationwide Programmatic Agreement for the Collocation of
523 Wireless Antennas, as amended ~~August 2016~~July 2020.

524 B. A tower collocation requires no further Section 106 review so long as:

- 525 1. It will not result in a substantial increase¹ in size of the existing tower; and
526 2. There are no Section 106 requirements in an existing special use permit,
527 easement, or communications use lease for that site.

528 C. Collocations on non-tower structures ~~on federal land~~require no further Section
529 106 review so long as one of the following conditions apply to the undertaking:

- 530 1. The structure is less than 45 years old; or
531 2. If more than 45 years old, the structure has been previously evaluated and
532 determined not eligible for listing on the National Register; and
533 a. The structure is not adjacent to or within the boundary of a
534 National Register-listed or previously determined eligible historic
535 district; and
536 b. The structure is not designated as a National Historic Landmark or
537 State Historic Landmark; and
538 c. Indian tribes or NHOs have not indicated there are known historic
539 properties of traditional religious and cultural significance within
540 the APE and there will be no cumulative effects to such historic
541 properties.

542

543 **VI. Above-ground communications connections to and collocations on federal**
544 **buildings, regardless of ownership including federal buildings and buildings located**
545 **on federal land**

546

¹ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 547 A. A ~~f~~Federal LMA/PMA agency may elect to use applicable exclusions established
548 in the Nationwide Programmatic Agreement for the Collocation of Wireless
549 Antennas, as amended ~~August 2016~~July 2020, ~~for collocations on federal~~
550 ~~buildings and non-federal buildings located on federal lands.~~
- 551 B. Communications connections to buildings that have been determined not eligible
552 for listing on the National Register via a previous Section 106 consultation
553 completed in the past 15 years require no further Section 106 review.
- 554 C. Communications connections to and collocations on buildings listed in or eligible
555 for listing in the National Register require no further Section 106 review, so long
556 as:
- 557 1. All construction complies with the Secretary of the Interior's Standards for
558 Rehabilitation; for example, ~~w~~hen a new building entry is required
559 because no entry points exist; and
 - 560 a. Communications connections and collocations are placed on
561 buildings behind parapets or the roof's edge in such a manner so
562 that the connections and collocations are not visible from ground
563 level; and existing communications or utility entry points and
564 infrastructure are used to the greatest extent feasible, in and on the
565 historic building; or
 - 566 b. If existing communications or utility entry points and infrastructure
567 cannot be used for the subject collocation, any additional entry
568 points and infrastructure required in or on the historic building are
569 installed in such a way as to minimize adverse effects to historic
570 materials.

571
572 **VIII. Placement of above-ground communications and cable lines on existing poles**
573 **or structures**


- 574
- 575 A. The placement of above-ground communications and cable lines on existing poles
576 or structures requires no further Section 106 review, as long as:
- 577 1. No new structures or poles need to be added to accommodate the new
578 lines; and
 - 579 2. The structure or pole is not a historic property and does not contribute to
580 the significance of a historic district.
- 581 B. When replacement of structures or poles is planned, the undertaking requires no
582 further Section 106 review, as long as:
- 583 1. The replacement structures or poles can be located within the same hole as
584 the original structure and there is no new ground disturbance outside of
585 previously disturbed areas associated with temporary support of the lines;
586 and
 - 587 2. The replacement structures or poles are within an existing ROW or
588 easement which has been surveyed; and
 - 589 3. The replacement structures or poles are consistent with the quality and
590 appearance of the originals; and
 - 591 4. Any proposed height increase of the replacement structures or poles is no
592 more than 10 percent of the height of the originals; and

- 593 5. The original pole or structure is not a historic property and does not
594 contribute to a historic district.
- 595 C. When infill structures or poles need to be added along an extant line, the
596 undertaking requires no further Section 106 review, as long as:
- 597 1. The addition of new structures or poles within existing ROWs or corridors
598 is not proposed within the boundary of a known historic property ~~as~~
599 ~~identified by the Federal LMA/PMA~~; and
- 600 2. The additional structures or pole(s) are 100 feet or more beyond the
601 boundary of any National Register listed or previously determined eligible
602 historic districts significant for their visual setting; and
- 603 3. The additions are of generally consistent quality and appearance with the
604 originals; and
- 605 4. The height of any added structure or pole is no greater than 10 percent
606 taller than the height of the originals.

607

608 **IX. Installation of buried communications cable ~~on federally managed lands~~**

609

- 610 A. The APE for installation of buried cable will be the width of the construction
611 ROW plus any additional areas for staging or access.
- 612 B. The installation and maintenance of new or replacement communications cable
613 and new or replacement associated vaults for cable access along or solely in
614 previously disturbed areas or in existing communications or utilities trenches
615 within existing road, railroad, and utility ROWs requires no further Section 106
616 review.
- 617 C. The installation of new or replacement vaults for cable access that are outside of
618 existing road, railroad, and utility ROWs but located solely in previously
619 disturbed soils requires no further Section 106 review so long as there are no
620 known historic properties within the APE for the vaults. 
- 621 D. The installation of new or replacement buried communication connections from
622 road, railroad, and utility ROWs or vaults to a facility requires no further Section
623 106 review, so long as:
- 624 1. There are no known historic properties within the APE for the connection;
625 or
- 626 2. The new or replacement communication connections are solely buried in
627 previously disturbed existing rights-of-way up to the existing facility or
628 building or to an overhead line that connects to the facility or building.
- 629 E. If the road, railroad, and/or utility ROW, or nearby previously disturbed area, or
630 the area from the ROW to the individual user includes a known archaeological
631 site(s), the undertaking requires no further Section 106 review so long as the
632 depth and extent of the property's intact and undisturbed deposits within the APE
633 can be predicted with relative certainty such that the cable can be directionally
634 bored below the site(s).

635

636 **X. Communications tower replacement**

637

- 638 A. For the purpose of this section, the APE for ~~direct~~physical effects for a tower,
639 compound, and associated construction is the area of potential ground
640 disturbance, any areas for staging or access, and any property, or any portion
641 thereof that will be physically altered or destroyed by the undertaking. (source:
642 2004 NPA, as amended)
- 643 B. For the purpose of this section, the APE for ~~indirect~~ visual effects is the
644 geographic area in which the undertaking has the potential to introduce visual
645 elements that diminish or alter the integrity of ~~the~~ source: 2004 NPA, as amended)
- 646 1. Unless otherwise established, or previously established through
647 consultation and agreement between the Federal ~~LMA/PMA~~agency and
648 SHPO/THPO, Indian ~~T~~tribes, and NHO the APE for visual effects for
649 construction of new facilities or structures is the area from which the
650 tower will be visible:
 - 651 a. Within a 0.5 mile radius from the tower site if the proposed tower
652 is 200 feet or less in overall height;
 - 653 b. Within a 0.75 mile radius from the tower site if the proposed tower
654 is more than 200 but no more than 400 feet in overall height; or
 - 655 c. Within a 1.5 mile radius from the proposed tower site if the
656 proposed tower is more than 400 feet in overall height.
 - 657 2. These distances are a guideline that can be altered based on an otherwise
658 established agreement and on individual circumstances addressed during
659 consultation with the SHPO/THPO, Indian ~~T~~tribes, ~~and~~ NHOs, and
660 consulting parties.
- 661 C. Replacement of a tower within an existing facility boundary that was previously
662 reviewed pursuant to Section 106, and mitigated as necessary, requires no further
663 Section 106 review so long as:
 - 664 1. The proposed replacement tower does not represent a substantial increase²
665 in size relative to the existing tower; and
 - 666 2. The installation of the proposed replacement tower does not involve
667 ground disturbance outside the facility's boundary ~~and~~
 - 668 3. No new mitigation is required to address reasonably foreseeable
669 cumulative effects ~~and~~

671 XI. New communications tower construction

- 672
- 673 A. For the purpose of this section, the ~~physical~~direct APE for a tower, compound,
674 and associated construction (staging area, access roads, utility lines, etc.) is the
675 area of potential ground disturbance and any property, or any portion thereof,
676 which would be physically altered or destroyed by the undertaking.
- 677 B. For the purpose of this section, the ~~indirect~~ APE for visual effects is the
678 geographic area in which the undertaking has the potential to introduce visual
679 elements that diminish or alter the integrity of a historic property, including the
680 landscape.

² Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

- 681 1. Unless otherwise established, or previously established through
682 consultation and agreement between the fFederal LMA/PMAagency and
683 SHPO/THPO, Indian €Tribes, and NHOs, the APE for visual effects for
684 the construction of a new tower is the area from which the tower will be
685 visible:
686 a. Within a 0.5 mile radius from the tower site if the proposed tower is
687 200 feet or less in overall height;
688 b. Within a 0.75 mile radius from the tower site if the proposed tower
689 is more than 200 but no more than 400 feet in overall height; or
690 c. Within a 1.5 mile radius from the proposed tower site if the
691 proposed tower is more than 400 feet in overall height.
692 2. These distances are a guideline that can be altered based on an otherwise
693 established agreement or following consultation with SHPO/THPO, Indian
694 €Tribes, ~~and~~ NHOs, and consulting parties.
695 C. For the purpose of this section, new construction of up to three towers within an
696 existing communications compound that has previously been reviewed pursuant
697 to Section 106, and will not adversely affect any identified historic properties
698 within the compound, requires no further Section 106 review so long as the
699 proposed new tower is not substantially larger in size³ than the largest preexisting
700 tower within the existing communications compound boundary.
701

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

- 703
704 A. Federal LMA/ PMAagencies may authorize the removal of obsolete existing
705 communications equipment and towers (the undertaking) and may remove the
706 existing communications equipment or tower with no further Section 106 review
707 as long as the removal undertaking would not create an adverse effect to known
708 historic properties.
709 B. Should a SHPO, THPO, Indian €Tribe, or NHO object within 30 days after
710 receiving notification that the fFederal LMA/PMAagency proposes to authorize
711 removal of obsolete communications equipment and towers, the fFederal
712 LMA/PMAagency shall comply with the requirements of 36 CFR §§ 800.3 to
713 800.7 for the proposed removal undertaking.
714

715 **XIII. Professional qualifications**

- 716
717 ~~A. All tasks implemented pursuant to this Program Comment shall be carried out by,~~
718 ~~or under the direct supervision of, a person or person(s) meeting, at a minimum,~~
719 ~~the Secretary of the Interior's Professional Qualifications Standards (48 FR~~
720 ~~44716, 44738-39, September 29, 1983) in the appropriate disciplines. However,~~
721 ~~nothing in this section may be interpreted to preclude fFederal LMAs/PMAs from~~
722 ~~using the properly supervised services of persons who do not meet the~~
723 ~~qualifications standards.~~

³ Refer to Definition of Terms for substantial increase in size for the purposes of this Program Comment.

724 ~~B. These qualification requirements do not apply to individuals recognized by~~
725 ~~THPOs, Indian tribes, and NHOs to have expertise in the identification,~~
726 ~~evaluation, assessment of effects, and treatment of effects to historic properties of~~
727 ~~religious and cultural significance to their tribes or NHOs.~~

728

729 **XIII.V. Unanticipated discoveries**

730

731 A. If previously unidentified historic properties or unanticipated effects, including
732 audible, atmospheric, and cumulative effects, to historic properties are discovered
733 during project implementation, the contractor shall immediately halt all activity
734 within a 50 foot radius ~~of~~ the discovery and implement interim measures to
735 protect the discovery from looting and vandalism. Within 48 hours, the ~~f~~Federal
736 ~~LMA/PMA~~agency shall notify the relevant SHPO, THPO, Indian ~~†~~Tribes, or NHO,
737 ~~and ACHP~~ of the inadvertent discovery, and determine whether a Discovery Plan
738 is necessary.

739 B. Native American human remains, funerary objects, sacred objects, or items of
740 cultural patrimony found on federal or ~~T~~ribal land will be handled according to
741 Section 3 of the Native American Graves Protection and Repatriation Act and its
742 implementing regulations (43 CFR part 10), and consistent with the Discovery
743 Plan.

744 C. The ~~f~~Federal ~~LMA/PMA~~agency shall ensure that in the event human remains,
745 funerary objects, sacred objects, or items of cultural patrimony are discovered
746 during implementation of an undertaking, all work within 50 feet of the discovery
747 will cease, the area will be secured, and the ~~f~~Federal ~~LMA/PMA~~agency's
748 authorized official will be immediately contacted. ~~The f~~Federal agency will be
749 ~~guided by the principles within the ACHP's Policy Statement on Burial Sites,~~
750 ~~Human Remains, and Funerary Objects (adopted March 1, 2023).~~

751 D. The Discovery Plan for inadvertent discoveries will include the following
752 provisions.

- 753 1. Immediately halting all construction work involving subsurface
754 disturbance in the area of the find and in the surrounding area
755 where further subsurface finds can be reasonably expected to
756 occur, and immediately notify SHPO, THPO, Indian ~~†~~Tribes (as
757 appropriate), and NHOs of the find;
- 758 2. A qualified professional will immediately inspect the site and
759 determine the area and nature of the affected find. Construction
760 work may then continue in the area outside the find as defined by
761 ~~f~~Federal ~~LMA/PMA~~agency;
- 762 3. Within five working days of the original notification, the ~~f~~Federal
763 ~~LMA/PMA~~agency, in consultation with SHPO, THPO, Indian
764 ~~T~~ribes, as appropriate, and NHOs, will determine whether the find
765 is eligible for the National Register;
- 766 4. If the find is determined eligible for listing in the National
767 Register, the ~~f~~Federal ~~LMA/PMA~~agency will prepare a plan for its
768 avoidance, protection, or recovery of information in consultation
769 with the SHPO, THPO, Indian ~~†~~Tribes, as appropriate, and NHOs.

770 Any dispute concerning the proposed treatment plan will be
771 resolved by the fFederal LMA/PMAagency.
772 5. Work in the affected area will not proceed until either:
773 a. The plan is implemented; or
774 b. The determination is made that the unanticipated find is not
775 eligible for inclusion in the National Register. Any disputes
776 over the evaluation of unanticipated finds will be resolved
777 in accordance with the requirements of 36 CFR §
778 800.4(c)(2) as appropriate.
779

780 **XIV. Emergencies**

781
782 Should the fFederal LMAs/PMAsagency determine that an emergency or natural
783 disaster has occurred during the implementation of any communications deployment
784 activities covered under this Program Comment, the fFederal LMAs/PMAsagency shall
785 notify the appropriate SHPO, THPO(s), Indian ~~†~~Tribes, ~~and~~ NHO(s), and ACHP within
786 seven days as to how they intend to repair or replace the communications equipment or
787 facilities, or undertake other relevant actions in response to the emergency or natural
788 disaster. The fFederal LMAs/PMAsagency shall ensure that any approvals, licenses, or
789 permits issued for these emergency response activities refer to compliance with the terms
790 of this Program Comment.
791

792 **XVI. Effective date**

793
794 This ~~amendedment Program Comment~~ Program Comment shall go into effect on
795 [date]May 8, 2017.
796

797 **XVII. Reporting**

798
799 A. Federal ~~agencies~~LMAs/PMAs individually will submit an annual report to the
800 ACHP, NCSHPO, and NATHPO that summarizes the number of projects
801 reviewed under the Program Comment within a calendar year as well as the
802 number of activities that resulted in adverse effects to historic properties. The
803 annual report also will indicate whether any agreements regarding the
804 applicability of this Program Comment on ~~†~~Tribal lands have been developed in
805 the past calendar year, and which Indian ~~†~~Tribes(s) is a signatory. Annual reports
806 will be submitted December 1 of each year, commencing in ~~2018~~2024.

807 B. The ACHP shall reexamine the Program Comment's effectiveness based on the
808 information provided in the annual reports submitted by the fFederal
809 LMAs/PMAsagencies, and, as needed, by convening an annual meeting with the
810 fFederal LMAs/PMAs, NCSHPO, NATHPO, tribal representatives, NHOs, and
811 industry representatives. In reexamining the Program Comment's effectiveness,
812 the ACHP shall consider any written recommendations for improvement
813 submitted by stakeholders prior to the annual meeting.

814

§15 **XVIII. Amendment**

816

817 The Chair~~man~~ of the ACHP may amend this Program Comment after consulting with the
818 ~~f~~Federal ~~LMA~~s/~~PMA~~s~~agencies~~ and other relevant federal agencies, NCSHPO,
819 NATHPO, ~~T~~tribal representatives, the National Trust for Historic Preservation, and
820 industry representatives, as appropriate. The ACHP will publish a notice in the *Federal*
821 *Register* informing the public of any amendments that are made to the Program
822 Comment.

823 ~~Should other federal agencies that propose to carry out, permit, license, fund, or assist in~~
824 ~~communications activities intend to utilize this Program Comment to satisfy their Section~~
825 ~~106 responsibilities on federal lands, they must first notify the ACHP in writing of their~~
826 ~~intention. The ACHP will acknowledge in writing the agency's notification within 30~~
827 ~~days following receipt of a request, and will put an announcement on its website when it~~
828 ~~receives such a notification. Upon receipt of the ACHP's acknowledgement, and without~~
829 ~~requiring an amendment to this Program Comment, the federal agency may utilize the~~
830 ~~Program Comment.~~

831

832 **XIXVIII. Sunset clauseDuration**

833

834 This Program Comment will expire December 31, 20~~33~~²⁷, unless it is amended
835 prior to that date to extend the period in which it is in effect.

836

837 **XIX. Withdrawal**

838

839 The Chair~~man~~ of the ACHP may withdraw this Program Comment, pursuant to
840 36 CFR § 800.14(e)(6), by publication of a notice in the *Federal Register* 30 days before
841 the withdrawal will take effect.

842

January 12, 2024

SUBMITTED VIA E-MAIL

Jaime Loichinger, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington DC 20001

RE: Comments on *Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Properties*
MN SHPO No. 2024-0248

Dear Ms. Loichinger,

The Minnesota State Historic Preservation Office (MN SHPO) appreciates the opportunity to review and comment on the *Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Properties* (Proposed Amendment). MN SHPO staff have reviewed the Proposed Amendment document, including the "Background" overview document, as issued by the Advisory Council on Historic Preservation (ACHP). MN SHPO staff also participated in the consultation meeting held via Zoom on December 12, 2023. MN SHPO comments are provided in this letter for consideration by the ACHP and the National Telecommunications and Information Administration (NTIA), the federal agency proposing the amendment.

General Comments on the Proposed Amendment

Because it does not appear that the MN SHPO has consulted with any federal agencies under its terms, our office also re-reviewed the 2017 *Program Comment for Communications Projects on Federal Lands and Properties* (Program Comment) in order to provide further context for consideration of the Proposed Amendment. We understand that the Program Comment was developed in response to an initial request by the U.S. Department of Homeland Security in the agency's effort to deploy much-needed communications infrastructure on federal lands and properties in a more efficient manner through the establishment of streamlined, alternative Section 106 review procedures. The Program Comment expanded to include all federal land and property managing agencies. Although the Program Comment has a requirement under *XVIII. Reporting* that all federal agencies submit an annual report to the ACHP in order to document the undertakings reviewed under its terms and also understand its effectiveness, it is our understanding from the December 12th consultation meeting that detailed annual report data or corresponding summary is not available at this time.

The MN SHPO understands the critical need to expand broadband access to our underserved and unserved, usually rural, communities. Since 2014, the MN SHPO has worked with the Minnesota Department of Employment and Economic Development (MN DEED) Office of Broadband Development to review broadband projects under companion state historic preservation laws as MN DEED has been providing state grant funds for construction of expanded broadband networks in unserved and underserved areas of Minnesota. Through these consultations, the MN SHPO has gained a solid understanding of the scope and nature of these types of fiber optic installation projects and their potential for impacting historic, architectural, and archaeological resources.

Other general comments:

- The Proposed Amendment needs a clear definition of federal undertaking. For example, does the defined undertaking include hookups to individual homes/businesses, or does it only include installation of main fiber optic lines?

- As noted in the December 12th consultation meeting, construction staging areas can be disturbed by project activities. Heavy equipment can cause disturbance to the soil, especially in wet conditions. Intact archaeological sites are not always deeply buried and can, therefore, be impacted by construction equipment driving over them.
- Overall, the Proposed Amendment should be written in plain language and be organized as an outline of simple, explicit, and iterative procedural steps easily referenced by all users. Also, the original Program Comment made the Professional Qualifications clear in XIII and this requirement was consistently applied to “all tasks implemented pursuant to” carrying out its terms. It is our opinion that the proposal to move the Professional Qualifications section to the definitions in the Proposed Amendment removes the necessity for the tasks in the program comment to be completed by a qualified historic preservation professional or individuals recognized by THPOs, Indian tribes, and NHOs. We do not view this move as simply an “administrative change” as this change may result in inadequate historic property identification efforts, potential adverse effects to historic properties, impacts to unplatted cemeteries/Native American/NHO burials, and/or lengthy project review timelines with a likely increased burden on SHPOs and THPOs.

Comments by Proposed Amendment Section

I. Background

We believe it would have been beneficial for the ACHP to provide a more accurate summary and documentation regarding the use and the effectiveness of the Program Comment as this Proposed Amendment is being considered. We note a very brief reference - “certain federal land and property managing agencies have implemented the 2017 Program Comment” - with no additional information provided in either the document or during the December 12th consultation meeting.

II. Proposed Amendment to the Program Comment

I. Introduction

This section states that the Program Comment establishes procedures for addressing Section 106 compliance. The document should be organized so that non-subject matter expert (i.e., not historic preservation professionals) agency officials and authorized agents – which we understand may include federal, state, local, or tribal government officials – clearly understand when and how to complete an undertaking’s Section 106 review under the proposed alternative procedures. For example, titling sections using the word “procedures” such as “Section 106 Compliance Procedures” is clearer than the current title of section *IV. Roles and responsibilities for Section 106 review of communication deployment undertakings*.

We understand the scope of the Proposed Amendment is primarily to offer alternative, streamlined procedures primarily for installation of fiber optic cable to facilitate much needed expanded broadband communication networks in currently unserved and underserved geographic areas. If so, then the Proposed Amendment which geographically expands the terms of the Program Comment for all communications infrastructure - fiber optic cable as well as wireless telecommunications antennas and towers - from federal lands and properties to those projects requiring federal assistance on any and all lands within the U.S., presents a much larger expanded provision beyond what we understand is intended to meet the broadband initiative. Although clarifications and references are made in regards to the existing Nationwide Programmatic Agreements for wireless communications undertakings licensed by the Federal Communications Commission, we believe that the Proposed Amendment presents significant complications in the applicability of its terms relative to these NPAs and therefore we recommend further clarification and scrutiny of potentially overlapping and conflicting procedures.

Additional comment:

- Line 109: Refers to the “scope” of the Program Comment. We propose changing this to “...falling within its scope as defined in Section II. Applicability.”

II. Applicability

- Line 203: Should be “agencies” not “agency.”

- Line 205: Add "amended" before Program Comment.
- The paragraph starting on line 207 is not very clear as it instructs the federal agency to consult with the SHPO and others to determine whether the amended Program Comment would "reasonably take into account the effects the agency's undertaking on historic properties, or whether following the standard Section 106 process" is appropriate. Doesn't this go against the basic premise of the Proposed Amendment which is essentially to reasonably take into account the effects of these types of communications undertakings on historic properties? If so, then why is there a need for this consultation to occur? The directive in this paragraph is confusing and increases the burden of consultation on SHPOs, tribes, NPS, and other consulting parties.

III. Definition of Terms

Under paragraph A. Agency official, how will SHPOs and other consulting parties be notified of any state agency, local agency, or tribal government being delegated legal responsibility for carrying out Section 106 review of undertakings under the amended Program Comment? Will this be on a project-by-project basis? And with this "delegation" to non-federal agencies, it will be critical to ensure that the "delegated" non-federal entities fully understand Section 106 responsibilities and the applicability of the amended Program Comment, and also that this responsibility isn't further transferred through non-federal entities to consultants and/or project proponents.

Under paragraph C. Applicant, does this include state and local agencies as well as tribal governments who will be applying to the NTIA for grants? Or is this the telecommunications companies (project proponents) or their consultants? We recommend clarification in this definition as to whether these are non-federal public agency or tribal government applicants, or private sector applicants, or both.

In addition to Property Managing Agency, Land Managing Agency, and Funding Agency, it may be beneficial to include definitions for federal agencies that issue licenses and permits for these types of undertakings.

Under paragraph R. Records check, in addition to those property types listed, we recommend including "properties previously determined **ineligible** for listing in the National Register as part of a consensus determination between the SHPO/THPO and federal agency..."; "properties listed and identified in the SHPO/THPO inventory that the SHPO/THPO has previously evaluated and found **not** to meet National Register criteria." This definition should also include "properties in the SHPO/THPO inventory which have not been subject to survey and evaluation to determine National Register eligibility (unevaluated)." These additional categories to consider previously determined ineligible properties and unevaluated properties would meet the requirements under 36 CFR 800.4(c)(1) and are especially relevant for those previously determined ineligible for listing in the National Register but due to the passage of time, changing perceptions of significance, including to Indian tribes, or incomplete prior evaluations, may warrant updated property evaluations.

As mentioned above, the proposed move of Qualified Professional from section XIII of the current Program Comment to the definitions section of the Proposed Amendment is not simply an "administrative change" as stated during the December 12th consultation meeting. While Y. Qualified Professional is an accurate definition as proposed, it removes the provision in the current Program Comment which requires all tasks implemented pursuant to its terms to be carried out by qualified professionals. The removal of XIII in the Proposed Amendment presents a substantive procedural change which we believe will result in an ineffective set of alternative Section 106 procedures.

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

Because this section includes the alternative Section 106 procedures that federal agencies and applicants will utilize and therefore the section most commonly referenced by agencies and consulting parties, we recommend this section be retitled "Section 106 Compliance Alternative Procedures" or similar.

Paragraph A.1 requires consultation with the SHPO/THPO/consulting parties to "confirm the APE for each individual undertaking" and "intent to follow this Program Comment." Is the intent of this step to allow for consultation regarding the APE as defined by the federal agency or "delegated" applicant? Consideration should be

given to the need and effectiveness of this required step and whether it contributes to the goal of streamlining these reviews or not.

Starting at Line 415, paragraph A.2, we recommend that the identification step starts by stating that a Qualified Professional is responsible for identifying known National Register eligible or listed historic properties within the undertaking's APE. The current Program Comment only applied to federal lands and properties and so it was assumed that the federal land/property managing agency likely included qualified professionals on staff who have relevant experience in the field and would facilitate undertaking reviews under the Program Comment.

However, many of the other federal agencies, and also the applicants for federal assistance that will use or be "delegated" to use the proposed amended Program Comment off federal land, do not usually have qualified professionals on staff. In our experience at MN SHPO, having non-qualified staff perform this step results in inadequate Section 106 documentation resulting in more drawn-out and lengthy project reviews, especially for long, linear projects such as fiber optic cable installation. Essentially, the funding, permitting, and licensing federal agencies, many of this do not have historic preservation professionals on staff, will simply send proposed project maps and descriptions to the SHPO and assume that the SHPO will do all of the work of defining APEs, identifying historic properties, assessing effects, and making a finding of effect. This does not result in any efficiencies for the SHPO/THPO, or federal agencies, or federal applicants. The way the Proposed Amendment has modified paragraph 2 is a bit convoluted, does not sufficiently provide streamlined procedures, and will likely result in more drawn-out project reviews.

As currently drafted and including the required consultation with SHPO/THPO/consulting parties under paragraph A.1, there appears to be provision for quite a bit of back and forth between the agency/applicant and SHPO/THPO/other consulting parties, and several procedural points at which the Proposed Amendment triggers "consult with SHPO." We would prefer to minimize the consultation points and increase the responsibility of the federal agency/applicant. Requiring qualified professionals to be involved in carrying out all tasks on the federal agency/applicant side will result in consistent application of the terms of the agreement, better Section 106 documentation – whether reviewed as exempted from further Section 106 review under Sections VI-XI or needing SHPO/THPO/consulting party review – and overall achievable effectiveness of these alternative procedures in meeting the intent of expanding broadband access and corresponding protection of cultural resources.

Regarding the "Records Check", many archaeological sites in Minnesota have not been evaluated to determine their eligibility for listing in the National Register. Instead, they are treated as "eligible" for the National Register for purposes of Section 106 review of a particular undertaking only. Documentation of these sites is sufficient to consider potential effects of the undertaking and further consultation with MN SHPO typically results in avoidance of impacts to the recorded archaeological site and corresponding Section 106 findings of No Historic Properties Affected or No Adverse Effect. As a result, many archaeological sites are not listed in our statewide inventory as historic properties eligible for listing in the National Register. There are also cases where burial mounds/sites are located within right-of-way, and many of these property types are not recorded as historic properties (National Register listed or eligible). Therefore, a "Records Check" identifying only those properties that are listed in the National Register or previously determined eligible would not result in a reasonable effort to identify historic properties in the APE. As stated above, we recommend that the "Records Check" be conducted by a qualified professional.

Paragraph A.2 of the Proposed Amendment proposes that "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." Per our comment above regarding recordation of burial mounds/sites, we recommend that this step also include records check for known burials/burial sites/cemeteries/mortuary sites. MN SHPO recommends that step 2 be changed to the following, or similar:

The federal agency/applicant's qualified professional should identify historic properties, burial sites, and areas with high probability to contain historic properties using the methodology recommended in that state and then work with the applicant to design the undertaking to avoid properties and/or high

potential areas or minimize effects to those properties/areas. One way to minimize effects to locations that cannot be avoided is to monitor ground disturbance. Once the historic property identification effort, undertaking design, and proposed recommendation for minimizing adverse effects is completed, the federal agency should then consult with the appropriate SHPO/THPO/consulting party to determine whether these the historic property identification efforts are reasonable and avoidance/minimization measures are appropriate.

Further, paragraph A.2 requires that “If the areas cannot be avoided, the federal agency and applicant will consult with SHPO/THPO/consulting parties...to determine if exemptions listed in Sections VI-XI apply.” Because the exemptions are separated from this section of alternative Section 106 procedures yet are critical in the effectiveness of this Proposed Amendment, we recommend that the exemptions premise, and how the exemptions may be utilized as a very first step in an undertaking’s review, be introduced in this section – Step A.1 or A.2 perhaps - as well as the definitions section.

Regarding paragraph A.3, starting on Line 432, as edited, this language is partially redundant to paragraph A.2 and again, was clearly developed for federal lands/properties where the land managing agency has a really good understanding of what has and has not been surveyed and corresponding historic property inventory. This provision will not work the same off-federal lands because record keeping is hard and sharing information with all consulting parties to make informed decisions is important. MN SHPO proposes that this provision be changed to the following, or similar:

The federal agency’s qualified professional should determine whether the undertaking’s APE has been previously field surveyed (acceptable to current state standards or within the past 10 years) and there are no known historic properties or burials within the APE. If so, the federal agency should provide documentation of the survey effort to the consulting parties and notify them that the project will have no effect on historic properties.

Paragraph B.4, Line 471, states that “the Applicant” shall conduct a records check to identify historic properties. We recommend that this step be performed by a qualified professional because it could increase review timelines if this step is incorrectly or inadequately performed by an applicant who has no understanding or background in cultural resource management or historic preservation law/regulation.

Paragraph B.7, Line 478, should include burials.

V. Project Planning Considerations

Paragraph B, Line 514, “noninvasive techniques...” should be removed from this section.

We believe it would be useful if this section pointed to the use of a qualified professional to aid in the identification of historic properties and determination of what steps should be taken to complete Section 106 review. Revisions to this section could also point to the local regulations that may be triggered that are not part of the Program Comment. Several SHPOs in the ACHP meeting noted that they have local laws, and Allyson Brooks from WA went so far as to say, “[it’s] more beneficial to do the review with SHPO than to avoid it because eventually state law might get triggered.”

We recommend that paragraph A have subcategories for the numbered items:

- A. 1) Determine whether this Program Comment will be used.
 - a. The Applicant and the federal agency should review the Program Comment and the proposed federal undertaking and determine whether the steps described in the Program Comment are appropriate for the proposed federal undertaking.
- 2) Have a qualified professional aid in determining the scope of work for the identification of historic properties.
 - a. A qualified professional will have access to the most accurate information on historic properties, be able to consider the scope and nature of the federal undertaking and the potential to affect

- historic properties, and also consider the relevant state or local laws that may apply and are not reflected in the nationwide Program Comment.
- b. The Applicant and the federal agency should rely on the qualified professional to assist in designing the undertaking to avoid historic properties.
- 3) Discuss protocols for consulting with Indian Tribes or NHOs
 - a. It is the federal agency's responsibility for govt-to-govt consultation. However, many nationwide programmatic agreements allow for early coordination by the applicant. This line should clarify which of these methods this Program Comment is proposing.
 - b. Consultation with Indian Tribes or NHOs must include all of the same information (i.e. project maps, any reports, etc...) and agency determinations/findings submitted to SHPOs.
 - 4) Discuss alternatives and alternative routes for the undertaking.
 - a. The Applicant and the federal agency should rely on a qualified professional to assist in designing the undertaking to avoid historic properties because they will have access to the most accurate information and be knowledgeable of local regulations not covered by the program comment.

The Proposed Amendment needs further clarification of procedures to determine whether or not an exemption applies and that this determination must be made by a qualified professional.

We recommend that all sections that include any undertakings exempt from further Section 106 review should be re-titled to reflect the provision. For example: "Exemptions from Section 106 for the Collocation of Communications Antennas."

Because the Proposed Amendment is being considered primarily in response to the need for expanded broadband accessibility, our comments are focused on the following sections:

IX. Installation of buried communications cable

Regarding paragraph A, we recommend including clarifying language or guidance on whether individual customer service hook-ups are part of the APE or not. Several people commented on this in the December 12th consultation meeting. See general comment above on defining the undertaking.

For the following statements, we recommend that the evaluation of whether exemptions apply be determined based on the recommendation of a qualified professional and documented for the SHPO, tribes, and NHOs to review. We also recommend that the exemption does not apply if burials/cemeteries are present in addition to historic properties.

Paragraph B. Installation of new or replacement cable in previously disturbed soils or in existing utilities trenches within existing road, RR, utility ROWs require no further S106 review. Who determines previously disturbed soils? Qualified professionals? Other agency or applicant personnel?

Paragraph C. Installation of new or replacement vaults outside existing road, RR, utility ROWs but located in previously disturbed soils require no further S106 review so long as there are no known historic properties within the APE for the vaults. Who determines previously disturbed soils? Qualified professionals? Other agency or applicant personnel?

Paragraph D. Installation of communication connections from road, railroad, etc ROW or vaults to facility requires no further S106 review as long as no historic properties are present within APE. See note above regarding defining the undertaking.

Paragraph E. If the road, railroad, utility ROW or nearby previously disturbed area or the area from the ROW to individual user includes known archaeological sites, the undertaking requires no further S106 review as long as the depth and extent of the property's intact and undisturbed deposits within the APE can be predicted so that the cable can be directionally bored below the known site. Who decides this? Qualified professionals? Other agency or applicant personnel?

XIII. Unanticipated Discoveries

We recommend that this section be re-titled "Resolution of Unanticipated Discoveries" or similar.

This paragraph has not been edited to deal with human remains found off-federal land. It should at least point out that most states have a state law that deals with human remains outside of cemeteries and the fact that those will need to be treated appropriately. It is our opinion that including a Discovery Plan in this Proposed Amendment is inappropriate because there is way too much variation state by state on how human remains are dealt with. Often, local law enforcement is the first phone call. Unless, perhaps we have misinterpreted the intent of the "Discovery Plan" under paragraph D? Is this proposed to address both human and non-human remains? This section needs further clarification as it could also be interpreted that a Discovery Plan is required to be implemented for all federal undertakings under the Proposed Amendment.

XVI. Reporting

If the Proposed Amendment is approved, then it will be important to ensure that the reporting requirement is met by all agencies and that the ACHP will analyze the effectiveness of the Program Comment annually.

As stated above, our office fully supports agency efforts to streamline Section 106 reviews of broadband projects. However, it is our opinion that the Proposed Amendment to the existing Program Comment is an approach that seems to try to fit a square peg into a round hole. While the existing Program Comment for communications projects appears to meet the intent of the particular streamlining effort on federal lands/property and the specific nature of federally controlled geographic areas and properties, the Proposed Amendment to expand its provisions to all proposed federal undertakings on land regardless of ownership, is likely to present regulatory parameters that are unable to be aligned with the existing alternative procedures. Further, while the NTIA and its staff may well understand Section 106 and what this Proposed Amendment may mean in terms of compliance with federal law, we are concerned about how the Proposed Amendment will be interpreted by non-federal applicants, including state and local agencies and project proponents, with the high likelihood of misinterpretation and resulting adverse impacts to our nation's historic resources.

We recommend further consultation to instead consider development and agreement on a specific Program Comment, Nationwide Programmatic Agreement, or prototype state-level Programmatic Agreement for implementation of broadband undertakings only. We believe that focusing on a single type of undertaking such as installation of buried fiber optic cable, would allow for development of standard APEs more closely aligned to the scope and nature of these types of projects, more clearly defined undertaking categories exempt from further Section 106 review, and streamlined reviews of those undertakings requiring Section 106 review. A template, currently in the form of the Proposed Amendment, is already a starting point for such an agreement.

Please consider comments provided in this letter. Feel free to contact me at sarah.beimers@state.mn.us if you need clarification or would like to discuss further.

Sincerely,



Sarah J. Beimers
Environmental Review Program Manager

[External] MS SHPO Comments on ACHP Program Comment for Communications Projects

MDAH Section106 <section106@mdah.ms.gov>

Fri 12-Jan-24 3:24 PM

To:Program Alternatives <program_alternatives@achp.gov>

Good afternoon,

The MS Department of Archives and History (MS SHPO) has the following comments regarding the proposed amendment:

under heading IV.A. 3.a: this section should be revised to read "That has been previously field surveyed within the past 10 years".

under heading IV.A. 3.b: this section does not take into account the possibility of discovering human remains, regardless of previous disturbance.

under heading IV.A. 3.c: the MDAH does not accept probability as a reasonable basis for decision making regarding historic properties, as no known model has been developed to account for historic archaeological sites such as tenant farms. Additionally, "familiarity with the area" is overbroad and should be clarified to "state specific experience" to ensure that professionals with survey experience in the state are responsible for those determinations.

under heading IV.B.4: it is unclear if the applicant will employ SOI-qualified staff to complete records checks.

under heading IX. C: how is previous disturbance determined, and who makes that determination?

under heading IX.D.1: this should be qualified by "previously surveyed within the last 10 years, and no historic resources were discovered".

under heading IX.E; MDAH does not concur with this heading. Any previously recorded archaeological site, as determined eligible or of undetermined eligibility, should be avoided to ensure that intact cultural deposits are not disturbed. Disturbance of eligible sites constitutes an Adverse Effect.

General comments:

MDAH does not concur with the proposed programmatic comment. Historic properties on non- federal public lands are considered MS Landmarks. The comment does not address relevant state laws, nor does it direct at any time that applicants and federal agencies consult on state historic preservation laws during this process. MDAH respectfully requests that additional consultation occur between state SHPO, THPO, federally- recognized tribes, and other stakeholders prior to adoption of any proposed comment.

Sincerely,

Amy D. Myers

Preservation Planning Administrator

Mississippi Department of Archives and History

Phone: 601-576-6937

amyers@mdah.ms.gov

January 12, 2024

The Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Members of the Advisory Council,

On behalf of America's 3,069 counties, parishes and boroughs, the National Association of Counties (NACo) thanks you for the opportunity to comment on the National Telecommunications & Information Administration's inquiry to amend the 2017 *Program Comment for Communications Projects on Federal Lands and Property* (2017 PC) to create uniform Section 106 review requirements that apply to all federal communications projects. Section 106 of the National Historic Preservation Act (NHPA) provides an alternate way for federal agencies to comply with requirements through what is known as a Program Comment (PC).

Counties own and operate 45 percent of road miles, 38 percent of the nation's bridges, and one-third of the nation's public transit systems and airports. Additionally, counties are stewards for broadband connectivity in their communities, seeking to ensure that high-speed and affordable broadband infrastructure is accessible for residents no matter their location or socio-economic status. As owners and facilitators of infrastructure management and deployment, counties are committed to participating in all processes which will help facilitate expedited review of infrastructure deployment projects as intergovernmental partners.

NTIA's proposed amendment before the Advisory Council for Historic Preservation (ACHP) would expand the PC's applicability from certain Property managing and Land Managing Agencies to any federal agency providing funding, licenses, authorizations, and approvals for projects that meet the PC's terms, thus making it an option for projects funded by the Bipartisan Infrastructure Law's broadband programs, such as the Broadband Equity, Access, and Deployment (BEAD) Program. The BEAD program is a top priority for counties as they seek to narrow the digital divide for county residents who remain unserved or underserved by high-speed, affordable internet access. Counties are committed to ensuring that BEAD program funds go as far as possible in deploying broadband infrastructure in a timely manner, and NACo is supportive of the NTIA's request to expand criteria for the PC's applicability.

NACo continues to urge a strong intergovernmental partnership and comprehensive planning process for land use planning and management activities that is consistent with local land use policies. Streamlining the federal permitting process is a key bipartisan, intergovernmental priority that must be addressed to deliver on the historic investments made by the Bipartisan Infrastructure Law to help narrow the digital divide.

Sincerely,



Matthew D. Chase
CEO/Executive Director

Pamela Arluk

Vice President & Associate General Counsel

o (202) 222-2460 e PArluk@ncta.com

January 12, 2024

BY ELECTRONIC FILING

Charlene Dwin Vaughn
AICP, Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street, NW Suite 308
Washington, DC 20001–2637

Re: Proposed Amendment to Program Comment for Communications Projects on Federal
Lands and Properties

Dear Ms. Vaughn:

NCTA, on behalf of its member companies, appreciates the opportunity to submit these comments in response to NTIA’s request to amend the Program Comment applicable to communications projects on federal lands and properties. In addition, the undersigned participated in the virtual consultation meeting on December 12, 2023.

NCTA recommends several limited revisions to NTIA’s Proposed Amendment,¹ which would add express references to the technologies the Program Comment is intended to include. Accordingly, on pages 2 and 3, lines 61 and 97, where the Program Comment references next-generation technologies of communications infrastructure, after “5G” we suggest adding, “DOCSIS, fiber, hybrid-fiber coax, and other broadband cables,” to ensure inclusion of all types of next-generation communications technologies. Regarding burying communications cable in rights-of-way (ROW), we also recommend clarifying that this program includes new ROW as well as existing ROW. Accordingly, we suggest adding “or new” at the end of line 101, so the clause reads, “burying communications cable in existing **or new** road, railroad, and utility rights-of-way (ROW).”

Finally, we recommend that NTIA eliminate or at least significantly streamline the BEAD NOFO requirement that all BEAD awarding agencies must “analyze the potential environmental impacts as required by the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et. seq.)” for all BEAD program awards.² These NEPA review and permitting requirements could potentially add

¹ See Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Property.

² See NTIA, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program 86.

significant regulatory delays to BEAD project approvals and builds. NTIA could accomplish this in several ways. NTIA could conclude that the BEAD project deadlines conflict with the protracted NEPA review and approval process, which could take up to two years or more, and thus exempt the BEAD program pursuant to Section 106(a) of NEPA, which allows an agency to forgo preparation of an environmental impact statement, environmental assessment, or finding of no significant impact “if preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law.”³ Alternatively, NTIA could streamline BEAD-funded deployments pursuant to Section 109 of NEPA by exempting from environmental reviews one or more defined categories of deployment projects that other federal agencies have adopted in their own NEPA procedures.⁴ For example, the Department of Agriculture’s Rural Utilities Service has utilized this option and adopted categorical exclusions for the ReConnect program to speed broadband deployment.⁵ Either of these options would significantly streamline broadband deployment under BEAD and would also be fully consistent with the IIJA, which requires federal permitting improvements including with respect to environmental reviews.⁶

Please contact the undersigned with any questions regarding these comments.

Sincerely,

/s/ Pamela Arluk

Pamela Arluk
Vice President and Associate General Counsel
NCTA – The Internet & Television Association

³ 42 U.S.C. § 4336(a)(3).

⁴ *Id.* § 4336c.

⁵ *See* 7 C.F.R. § 1970.53(d) (excluding certain kinds of aerial and ground deployment projects). The Federal Communications Commission similarly has adopted a categorical exclusion for the installation of wire or cable along existing aerial or underground corridors of prior or permitted use. *See* 47 C.F.R. § 1.1306 note 1.

⁶ *See* Infrastructure Investment and Jobs Act, § 70801, Pub. L. No. 117-58, 135 Stat. 429 (2021) (amending 42 U.S.C. § 4370m *et seq.*).

**Before the
Advisory Council on Historic Preservation**

In the Matter of)
)
Proposed Amendment to Program Comment for)
Communications Projects on Federal Lands and)
Properties)

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION**

NTCA–The Rural Broadband Association¹ and ACA Connects – America’s Communications Association² (“the Associations”) hereby submit these comments in response to a proposal to amend a “program comment” issued by the Advisory Council on Historic Preservation (“ACHP”) in 2017 (“2017 PC”).³ Recognizing that telecommunications undertakings “typically [do] not result in adverse effects to historic properties,”⁴ the 2017 PC adopted a streamlined process for communications providers’ compliance with Section 106 of the National Historic Preservation Act (“NHPA”)⁵ for the installation of certain categories of wireline and wireless communications infrastructure on federal lands and property. At the

¹ NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

² ACA Connects represents approximately 500 smaller private and public broadband, video, and voice providers that pass approximately 23 million households across the 50 states and U.S. territories, including six million homes in rural areas.

³ *Program Comment for Communications Projects on Federal Lands and Property*, ACHP (May 08, 2017), available at: [Program Comment for Communications Projects on Federal Lands and Property | Advisory Council on Historic Preservation \(achp.gov\)](http://www.achp.gov/Program-Comment-for-Communications-Projects-on-Federal-Lands-and-Property)

⁴ *Id.* at § I.

⁵ 54 U.S.C. § 306108.

request of the National Telecommunications and Information Administration (“NTIA”), ACHP now proposes to expand the applicability of the 2017 PC “from certain Property Managing Agencies (PMA) and Land Managing Agencies (LMA) to any federal agency providing funding, licenses, authorizations and approvals for projects that meet the PC’s terms.”⁶ For the reasons as set forth below, the Associations strongly support the proposed amendment to the 2017 PC to ensure that the flexibility it affords will apply beyond federal lands and properties to facilitate more efficient and balanced completion of critical Section 106 reviews for all federally funded broadband infrastructure projects. The Associations also encourage ACHP to conduct extensive outreach to Federal agencies, including field office staff, to promote use of the amended PC as widely as possible.

I. THE ACHP SHOULD ADOPT THE PROPOSED AMENDMENT TO THE 2017 PROGRAM COMMENT.

A. The proposed amendment will enable broadband providers to meet the broadband availability goals established by the Administration and Congress while protecting and preserving this Nation’s historic legacy.

As the ACHP is aware, the Administration and Congress have allocated unprecedented levels of funding to close this nation’s persistent broadband availability gaps and enable the many telework, telemedicine, and other benefits of a robust connection to accrue to millions of Americans that lack sufficient access today. Tens of billions of dollars for thousands of broadband infrastructure projects will soon be made available to broadband providers through the U.S. Department of Commerce’s Broadband Equity, Access, and Deployment (“BEAD”) program,⁷ with the explicit objective of leaving no American unserved; additional programs such

⁶ Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property, p. 2.

⁷ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“IIJA”), § 60102.

as the U.S. Department of Agriculture’s ReConnect program,⁸ and the U.S. Department of Treasury’s Capital Projects Fund⁹ all play important parts in solving this puzzle as well. As the Nation has committed a historic level of funding to tackle persistent broadband availability gaps with highly aggressive timeframes (*i.e.*, by the end of the decade), the level of network construction necessary to meet these programs’ goals over the next several years will be unprecedented as well. This requires a renewed focus on how to ensure network construction can proceed as efficiently as possible while also balancing important historical preservation considerations under the NHPA.

As context, the Associations’ members typically operate in some of the most rural and remote reaches of the country where deployment barriers are substantial. Difficult terrain, weather shortened construction seasons, great distances, and low population density are among the many factors that contribute to higher per-household-passed network construction costs. These challenges, as well as supply chain and labor shortages, are likely to be more acute as the BEAD program begins its work in earnest. The challenges of completing environmental and historical preservation reviews are likely to be compounded going forward as well; even before the emergence of these new grant programs, these review processes have resulted in delays of a year or more before any construction can commence.¹⁰ Those federal and State agencies, offices, and entities with whom providers must interact to complete National Environmental

⁸ Consolidated Appropriations Act of 2018, H.R. 1625, 115th Congress (2018), § 779.

⁹ American Rescue Plan Act of 2021, H.R. 2617, 117th Congress (2022), § 604.

¹⁰ Communications and Technology Subcommittee Legislative Hearing: “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment,” Statement by Michael Romano Executive Vice President NTCA–The Rural Broadband Association (Apr. 19, 2023), available at: <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-legislative-hearing-breaking-barriers-streamlining-permitting-to-expedite-broadband-deployment>.

Policy Act (“NEPA”) and NHPA processes are already overtaxed and likely to be even more so as hundreds (or even thousands) of new projects and billions of dollars more for broadband deployment flood the marketplace in the next several years. Moreover, even as policymakers have become increasingly attuned to the challenges posed by the environmental review processes required under NEPA, the separate and independent historical preservation processes required pursuant to the NHPA are often overlooked in “streamlining” discussions. Yet, for many of the Associations’ members and especially in rural areas, historical preservation processes pursuant to NHPA are more often the source of substantial delays. Thus, ACHP’s attention to streamlining these processes where possible will be critical to the success of federal broadband funding initiatives – especially in the kinds of unserved and underserved areas that are the focus of grant programs like BEAD and far more likely to be rural or remote in nature.

The proposed amendment to the 2017 PC strikes an appropriate balance between seeking to address these concerns while still balancing important historical preservation objectives. The 2017 PC, and the amendment now being considered, retain the essential consultation that takes place between federal agencies and State Historic Preservation Officers (“SHPOs”) and Tribal Historic Preservation Offices (“THPOs”); yet, as member company feedback has indicated, the 2017 PC (and the amendment) have the effect of reducing the paperwork burdens and other time-consuming processes that have plagued navigation of Section 106 approvals. Moreover, the 2017 PC’s provisions reducing the area of potential effects for installing buried communications cable in a construction right-of-way (“ROW”) greatly reduces the time and effort involved with respect to surveying land surrounding the ROW for historic properties. In short, the streamlined processes of the 2017 PC strike an appropriate balance that will lead to more efficient reviews for broadband providers while protecting historic properties as Section 106 envisions, and their

extension through the amendment beyond federal lands and properties to all federally funded projects does nothing to disturb that effective balance.

B. Adoption of the proposed amendment to the 2017 PC should also include clarifications as to its applicability and scope to ensure the process is utilized as often as possible by agency staff.

In addition to adoption of the proposed amendment, ACHP can and should take additional steps to ensure that the amended 2017 PC will be utilized as widely as possible across federal agencies and staff, as well as State broadband offices. Member feedback indicates that many federal agency staff in field offices are unfamiliar with the 2017 PC, resulting in limited use of its streamlined procedures even as these would have saved those offices time and effort of their own. ACHP should therefore conduct outreach and education efforts regarding: (a) how to use the streamlined process; (b) the fact that it has been the subject of both ACHP review and public consultation; and (c) how it can enable agency staff to fulfill their Section 106 duties in a more efficient manner. In a similar manner, such outreach and education to State broadband office staff is important as well; where these offices may be expected to assist providers in completing Section 106 processes prior to federal agency review, ACHP should ensure they are fully briefed on the mechanics of the amended PC and the benefits that will result from its use for applying entities, for the offices themselves, and ultimately for those to be connected through the federally-funded deployments.

In conducting this outreach, ACHP should make clear to all stakeholders that the PC – both in its original form and as amended – is applicable in all respects to wireline broadband infrastructure, and more specifically that its application to wireline network elements (buried or aerial cable and fiber, etc.) is independent of the use of these facilities exclusively for wireless

backhaul.¹¹ Such clarification would be useful given that the 2017 PC is derived from the National Programmatic Agreement (“NPA”) for Federal Communications Commission (“FCC”) review of undertakings for the placement of communications facilities under Section 106 of the NHPA. The FCC’s review for communications facilities, however, is specific to towers, antennas, and related infrastructure relevant to the provision of spectrum-based wireless services. The goals of the proposed amendment would be severely undermined if it is mistakenly interpreted or understood as a mere extension of the FCC’s NPA and thus applicable only to streamline tower and antenna siting (or perhaps to buried fiber for the purposes of backhaul for wireless towers). This is of particular concern as the BEAD Notice of Funding Opportunity, based on the IIJA, prioritizes fiber-based broadband projects;¹² it would be an ironic turn indeed for streamlining measures to be adopted only for them to *not* apply to the majority of projects – and to no “priority” projects at all – funded by the very program that is prompting consideration of this amendment. Thus, ACHP should unequivocally confirm that the amended 2017 PC is applicable to wireline projects, including fiber-based broadband projects, and it should encourage agencies to make full use of the PC when conducting Section 106 reviews for such projects.

¹¹ See 2017 PC, §§ VIII (“Placement of Above-Ground Communications and Cable Lines on Existing Poles or Structures”), IX (“Installation of Buried Communications Cable on Federally Managed Lands”). The proposed amendments to the PC preserve both of these sections, with minor amendments to reflect the enlargement of the PC’s scope.

¹² National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, Notice of Funding Opportunity, BEAD Program (2022), p. 7.

II. CONCLUSION

For the reasons stated above, the Associations support the proposed amendment to the 2017 PC as an important step towards streamlining NHPA reviews in a balanced and thoughtful manner.

Respectfully submitted,

/s/ Michael R. Romano

Michael Romano

Brian Ford

4121 Wilson Boulevard, Suite 1000

Arlington, VA 22203

(703) 351-2000 (Tel)



/s/ Brian Hurley

Brian Hurley

Chief Regulatory Counsel

ACA Connects – America's

Communications Association

565 Pennsylvania Avenue

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Washington, DC 20001

(202) 573-6247



January 12, 2024



National Trust *for*
Historic Preservation®

January 12, 2024

Jaime Loichinger
Advisory Council on Historic Preservation
401 F Street NW, Room 308
Washington, DC 20001

Via email:

jloichinger@achp.gov

program_alternatives@achp.gov

**Re: Proposed Amendment to the ACHP's Program Comment for
Communications Projects on Federal Lands and Property**

Dear ACHP,

On behalf of the National Trust for Historic Preservation, we appreciate the opportunity to comment on the proposed amendments to the existing Program Comment for Communications Projects on Federal Lands and Property (82 Fed. Reg. 23,818 (May 24, 2017)). The 2017 Program Comment specifically requires consultation with the National Trust, along with other identified parties, prior to amending the Program Comment (*id.* at 23,829, Stip. XVIII.A.), and this letter is submitted as a part of that consultation process.

We have reviewed the comments submitted by the State Historic Preservation Offices for Alaska, Iowa, and Kentucky, and they raise a number of questions and concerns that need to be addressed. (You may still be receiving additional comments as well.) We are not repeating most of these comments, in order to minimize redundancy, but we share their concerns. We strongly recommend that these be discussed in a consultation meeting to which all parties are invited, rather than in individual responses, in order to minimize redundancy and maximize efficiency.

Comments

• ***Lack of public participation in the consultation process.***

The Program Comment only requires consultation with SHPOs, THPOs, Tribes, and NHOs. Although the definition of “Consulting Parties” includes a cryptic reference to other potential non-governmental participants (Stip. III.F., Lines 279-283), the Program Comment does not provide for any specific notification or consultation with other interested parties. In light of the National Trust’s congressional mandate to “facilitate public participation” in historic preservation, 54 U.S.C. § 312102(a), we strongly urge the ACHP to broaden the requirements in the Program Comment in order to spell out specific circumstances, such as adverse effects, that would trigger public notification and

involvement of additional consulting parties.

- ***Definition of “Funding Agency”*** (Stip. III.N., Lines 319-320)

The proposed expansion in the scope of the Program Comment is intended to apply to federal agencies that issue permits, licenses, and approvals for communication deployment undertakings, in addition to federal agencies that provide funding and financing for these undertakings. (Lines 185-187.) A definition has been added to Stipulation III. for “Funding Agency,” but there is not a new definition for agencies that would issue permits or approvals in the absence of federal funding or federal land. This needs to be clarified.

Revisions We Support:

- ***Fixing the Definition of “Collocation”***

Thank you for proposing a long-overdue correction to amend the definition of “Collocation” in Stipulation III.E., to delete the reference to “construction of a *new . . . tower.*” (Line 268, emphasis added.) At the time the Program Comment was adopted in May 2017, the National Trust raised an objection in writing to this definition because it is inconsistent with the FCC’s *Nationwide Programmatic Agreement on Collocation*, which is limited to installation of antennas on “existing” towers or other structures, and the definition in the 2017 PA is also inconsistent with the common sense public understanding and meaning of the term “collocation.”

- ***Amending the Professional Qualifications Requirements***

We support the removal of the 2017 Professional Qualifications stipulation (formerly Stip. XIII.), and the new definition of “Qualified Professional” in Stipulation III.Y. (Lines 395-401). Specifically, we appreciate the proposed removal of the sentence that says “nothing in this section may be interpreted to preclude [agencies] from using the properly supervised services of persons who do not meet the qualifications standards.” (Lines 721-723.) We support the retention of the provision that authorizes THPOs, Indian Tribes, and NHOs to make their own determinations to recognize individuals with relevant expertise regarding historic properties of religious and cultural significance.

- ***Eliminating Inconsistent Reference to “Direct” vs. “Indirect” Effects***

We support the elimination of the references to “direct” and “indirect” effects in Stipulations X. and XI. (Lines 638, 643, 673, and 677), as the use of these labels was inconsistent with the ACHP’s current guidance and with *National Parks Conservation Ass’n v. Semonite*, 916 F.3d 1075 (D.C. Cir. 2019).

Thank you for considering these comments from the National Trust, and we look forward to participating in a broader consultation process to address the additional comments raised by the SHPOs and other parties.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Merritt". The script is cursive and fluid, with the first name and last name clearly legible.

Elizabeth S. Merritt
Deputy General Counsel

cc: Erik Hein, NCSHPO


[External] Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Properties

Springer, Jill <jspringer@ntia.gov>

Fri 12-Jan-24 10:41 AM

To: Jaime Loichinger <jloichinger@achp.gov>; Program Alternatives <program_alternatives@achp.gov>

Cc: Gallagher, Kevin (Federal) <kgallagher@doc.gov>; Evans, Sakura <sevans@ntia.gov>; Reid Nelson <rnelson@achp.gov>

 1 attachments (16 KB)

ACHP Program Comment Amendment Pole Replacement Redline (002).docx;

Dear Jaime,

Thank you for the opportunity to participate in December's consultation meetings on the proposal to amend the *Program Comment for Communications Projects on Federal Lands and Property* (Program Comment) to enable all agencies to apply its terms to all federal communications projects, on and off federal lands. As Assistant Secretary Davidson explained in his October letter to Chair Bronin, this amendment would help ensure the success of NTIA's seven "Internet for All" (IFA) broadband grant programs, which were statutorily established to ensure that all Americans have reliable access to internet at sufficient speeds.

The original 2017 Program Comment represents a significant investment in interagency collaboration and ACHP staff time. Despite this, SHPOs and broadband industry stakeholders alike commented that this program alternative is not well known or used. Expanding its availability would leverage the initial investment of time and experience at a moment when the streamlined provisions will have the most significant impact, both in ensuring the success of the IFA deployments and in focusing Section 106 reviews on the small percentage of broadband projects with potentially adverse effects on historic properties.

The largest of the IFA programs, the Broadband Equity, Access, and Deployment (BEAD) Program, will touch every U.S. State and Territory. As the Idaho SHPO noted during consultation, "having a uniform approach" for Section 106 reviews is a "really good step" that will "be a benefit to SHPOs."

BEAD deployments will largely involve buried and aerial fiber to unserved or underserved locations. Aerial fiber is frequently deployed on poles that may already support electric or other utilities. As you heard during the consultations, industry representatives have raised concerns that pole attachments can be a significant challenge, especially when poles require replacement. To this end, many industry stakeholders attending the consultation meetings asked the ACHP to consider amendments to the program comment's pole replacement provisions addressing pole height and location.

In 2017, the FCC took public comment on its Section 106 rules and subsequently adopted a [Declaratory Ruling](#) updating its historic preservation review rules for the replacement of utility poles with substantially identical infrastructure. The Declaratory Ruling supports the FCC's Nationwide Programmatic Agreements by specifying certain very limited instances where pole replacements do not require Section 106 review. Because the Declaratory Ruling was adopted months after the Program Comment, the Program Comment is not currently consistent with its provisions. To that end, the ACHP could consider addressing the pole replacement concerns raised during the Amendment consultations by updating the program comment provisions to align with the FCC's pole replacement rule, as suggested in the attached draft redline.

NTIA appreciates the opportunity to work with ACHP staff on this and other issues discussed during the consultation meetings and raised in written comments.

Thank you,
Jill Springer
Federal Preservation Officer, NTIA

1/12/24, 11:05 AM

Mail - Jaime Loichinger - Outlook

Office of Internet Connectivity and Growth
Mobile: 202-430-3921
Email: jspringer@ntia.gov

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

B. When replacement of structures or poles is planned, the undertaking 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 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. For purposes of this paragraph, "ground disturbance" means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;~~The replacement structures or poles can be located within the same hole as 583 the original structure and there is no new ground disturbance outside of previously disturbed areas associated with temporary support of the lines and or~~

b.

~~2. The replacement structures or poles~~ Within an existing ROW or easement which has been surveyed.

2. The replacement structures or poles are consistent with the quality and appearance of the originals.

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.

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 ~~as identified by the Federal LMA/PMA~~; 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 appearance 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.



Osage Nation Historic Preservation Office HAZAZA BOSU KOPOLA

Date: January 12, 2024

Advisory Council on Historic Preservation
401 F St. NW Ste 308
Washington, DC 20001
Email: program_alternatives@achp.gov

RE: Advisory Council on Historic Preservation (ACHP) Proposed Amendments to the 2017 Program Comment for Communication Projects on Federal Lands and Property.

SENT VIA EMAIL

Dear ACHP,

The Osage Nation Historic Preservation Office (ONHPO) appreciates the opportunity to provide input on the procedures and plans regarding matters related to historic preservation that may affect Osage Nation historic properties and significant cultural resources. The Osage Nation did not approve of the original 2017 Program Comment for Communication Projects on Federal Lands and Property. The Osage Nation does not approve of the proposed amendments as well as other portions of the Program Comment which put Osage related cultural resources and historic properties at risk. The Program Comment also diminishes the federally-recognized Tribes' role as originally intended in the National Historic Preservation Act Section 106 and 36 CFR 800. Below are comments for the amendment document the Osage Nation received. However, the Osage Nation requests that the 2017 Program Comment as well as the current proposed Amendments be removed as an alternative plan for agencies to fulfill their Section 106 responsibilities. The Osage Nation Historic Preservation Office also requests a consultation meeting with the ACHP before any final decisions are made to further discuss the issues regarding the 2017 Program Comment and the proposed Amendments.

Lines 45-57, pages 1-2:

The Osage Nation is opposed to the 2017 Program Comment for federal land broadband/communication projects and to the amendment to expand the Program Comment to include state and private lands. We do not agree that this alternative method would increase predictability while appropriately identifying and protecting historic properties. The Osage

Nation questions what substantial record of NTIA and RUS were reviewed to make this proposed decision. Only in the last couple of years has the Osage Nation been aware of NTIA's existence and to our knowledge NTIA is a funding-only type of agency without a Federal Preservation Officer (FPO). RUS has also had many problematic broadband projects in which the Osage Nation found there was not an appropriate level of review for historic properties, no response by the applicants in attempts by the Tribe to engage them in consultation, and absolutely no follow-up by RUS in the incidences when the Nation has agreed to mitigation measures such as monitoring. RUS, as an agency, and NTIA should not be the standard by which the ACHP seeks input on how to engage the NHPA Section 106 process and consultation with Tribes. Regarding RUS specifically, in a 2021 letter¹, the ACHP wrote to the Acting Director of RUS, that RUS misunderstood what an undertaking was and how it applied to the Section 106 review. In that letter, the ACHP stated, "We are concerned that RUS may have misinterpreted key provisions in CFR 800.3(a)(1) that instructs the federal agency to assume historic properties are present when making this initial assessment." The ACHP further states in the January 27, 2021 letter to RUS, that "To fully meet the requirements of Section 800.3(a)(1), the federal agency should consider solely the type of activity to be carried out and assume such activity would be done in an area where historic properties are present. As such, previous disturbance in the area is not yet relevant during this initial determination and only becomes a factor in the Section 106 review after the agency has established the area of potential effects and is carrying out a reasonable and good faith effort to identify historic properties in consultation with the State Historic Preservation Officer and other consulting parties."

It is virtually impossible to determine if previously unidentified historic properties, significant archaeological sites, burials, mounds, and other sacred sites that may be eligible for the National Register of Historic Places are in the direct APE or in an indirect area of the APE with this one-size fits all approach. Thus, all broadband and construction projects, no matter the location, should continue to be reviewed, as per the standard Section 106, 36 CFR 800, approach on a case by case basis to identify and evaluate potential effects to historic properties. While the 2017 Program Comment and the proposed amendments assist federal agencies by decreasing paperwork to quickly approve projects, it is putting publicly unknown Osage and previously unidentified Osage historic properties and significant sites, including burials and mounds in danger by providing a process for all agencies to use an inappropriate standard to identify and protect historic properties. This process cannot achieve a good faith effort as required by the regulations and thus sets the stage for legal challenge.

Lines 97-122, page 3:

Each of the types of projects listed vary in the extent of ground disturbance, but more importantly, identifying the known and unknown historic properties and significant cultural resources that may be present must be the priority. Previously disturbed areas need to be fully examined and tested in the same manner as non-disturbed areas as cultural resources can and have been identified in previously disturbed areas. It is inappropriate for the listed project types

¹ Letter from Nelson, Reid, Director of Office of Federal Agency Programs (ACHP) to Christopher McClean, Acting Administrator of RUS, Washington, D.C., Regarding *Section 106 and Categorical Exclusions under the National Environmental Protection Act*, January 27, 2021, letter on file at the Osage Nation Historic Preservation Office.

to be exempt from review with the justification that since it is unknown what types of cultural resources and previously unidentified historic properties are present. We strongly disagree that the types of undertakings listed will typically result in similar effects to historic properties, should they be present within the undertaking's APE, or part of the undertaking's APE for indirect effects. For one example, the WK&T fiber line project in Illinois, a RUS project, included sacred mound sites that crossed or were adjacent to the undertaking's APE. This is not the same effect as an antenna that is placed on a modern building where there has been recent archaeological studies performed up to standard and has been provided to the Tribe for their review and consideration with no archaeological resources present inside or outside the APE. These undertakings should all be reviewed fully as stated in the standard Section 106 process and the Tribes should be provided the opportunity and consideration to review those undertakings along with their own knowledge of tribal resources, reports, and other documents.

Lines 114-116, page 3:

The Osage Nation agrees that federal agencies should be encouraged to identify a single point of contact and designate a Lead Federal Agency. However, it has been our experience that the most efficient means for communication is for the single point of contact to be a Federal Agency's staff member who has academic and professional experience in archaeology and cultural resources. It is a waste of Tribal resources and Tribal staff time when our archaeological staff must explain NHPA Section 106 or why we need to request additional field work to be done to someone who is not a subject matter expert for the Agency. In the past, when we have had to work with an applicant or a federal agency staff member that is not a subject matter expert, it was extremely time consuming and extremely frustrating. In the end, the issue is normally sent to a federal agency archaeologist or FPO. Federal agencies also cannot delegate Tribal consultation. Tribal consultation must be conducted directly with the Federal Agency as part of our sovereign to sovereign relationship.

Lines 118-122, page 3:

The Osage Nation did not agree with nor sign the 2001 or the 2004 Nationwide Programmatic Agreements for wireless communication projects, nor did any other Tribe. It appears that the ACHP does not understand the impact that these broad agreements have in dismissing the concerns of Tribes, providing agencies a blatant "free pass" to elevate SHPOs' and applicants' voices while weakening the tribal voices. The result is a perception that the ACHP does not support the full participation of Tribes in developing the procedural processes for alternative agreements nor the identification and preservation of our ancestral cultural resources and history.

Lines 142-144, page 4:

Federal agencies cannot use other agencies alternative 106 process without prior consultation and approval by the Tribe(s).

Lines 185-187, page 5:

Neither the 2017 Program Comment nor this proposed amended Program Comment should be applied to any type of communication undertakings (no matter what cultural resources might be present) by any federal agency that carries out permitting, licensing, funding, assistance or approval of the undertaking.

Lines 207-221, page 5:

The Osage Nation is adamant that this Program Comment should never apply to undertakings that would occur or affect National Historic Landmarks, National Monuments, National Memorials, National Historic Parks, National Historic Trails, National Historic Sites, National Military Parks or National Battlefields. Undertakings that occur or are affecting these significant locations should go through the standard Section 106 process under 36 CFR 800.3 through 800.7.

Lines 223-227, page 5:

This proposed amended Program Comment cannot be applicable to undertakings proposed on Tribal Lands. Any alternative agreement must include prior consultation and approval with the THPO and signature of the Tribe.

Lines 260-266, page 6:

The Osage Nation requests that the definition of Area of Potential Effects (APE) be changed to include: all Project construction and excavation activity required to construct, modify, improve, or maintain any facilities; any right-of-way or easement areas necessary for the construction, operation, and maintenance of the Project; all areas used for excavation of borrow material and habitat creation; all construction staging areas, access routes, utilities, spoil areas, and stockpiling areas.

Line 273, page 6:

The term Consultation should be included in definitions since it is often interpreted by some agencies to simply be the sending of a notification letter. The requests that the definition include: Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provides further guidance on consultation.

Lines 294-295, page 7:

The Osage Nation requests that the "Ground Disturbance" definition be changed to state, "Any activity that moves, compacts, alters, displaces, or penetrates the ground surface of disturbed or undisturbed soils." A definition of "Disturbed Soils" should be included as well. Disturbed soils are soils that have been changed from its natural condition by excavation or other means.

Lines 319, page 7:

Other than a definition for Funding Agency, there should also be definitions for Permitting Agency, Licensing Agency, Assistance Agency, and Approval Agency.

Lines 330-342, page 8:

The definition of Records Check should be changed to Desktop Records Check since it implies no field work. This term's description should also include identifying not only historic properties listed in the NRHP or those eligible for the NRHP, or those previously determined eligible as part of consensus between the federal agency, SHPO and THPO, but also for 1)

archaeological sites or cultural resources that have an undetermined eligibility status within the APE as well as outside, but near the APE, 2) historic properties listed in the NRHP or those eligible for the NRHP, or those previously determined eligible as part of consensus between the federal agency, SHPO and THPO near the APE, that could be effected indirectly or possibly directly if the site lies inside and outside the APE. The desktop records check should not include just historic properties or eligible properties only within the APE. Also, line 339 noting specifically a HUD example needs to be deleted.

Lines 348-356, page 8:

Any substantial increase in size when there is an existing antenna on a tower, must always involve prior documented consultation with Tribes. Increases in size could impact the viewshed of a sacred site, and the Tribe would be provided the opportunity to make that decision and determination.

Lines 357-360, page 8:

The addition of new equipment cabinets or new equipment shelters must only occur within a previously reviewed and approved by Tribes APE. Any placement outside the current APE that has or has not been reviewed and approved by Tribes must require standard Section 106 review under 36 CFR 800 and Tribal consultation and approval. A good majority of towers are on rises, hills, knolls, and elevated landforms which are locations for burials and sacred sites.

Lines 368-373, page 9:

Additional Tribal consultation would be required if item III (T)(4) were proposed.

Lines 406-414, page 9, 10:

Under the section regarding roles of the Federal Agency IV(A)(1), while the Osage Nation agrees the federal agency should always consult with the THPO/Indian Tribes to confirm the APE for each individual undertaking, as required by the standard Section 106 process, however; individual Tribes must be provided the opportunity to accept the use of the Program Comment or use of the Standard Section 106 process. Under item IV(A)(1), agencies would simply notify Tribes they will be using this proposed amended Program Comment without any Tribal approval. This is not acceptable and not in line with the original intent of NHPA, Section 106, and Tribal participation in the Section 106 process. Nor it is in line with the intent and objective of Executive Order 13175.

Lines 415-431, page 10:

Under the section regarding roles of the Federal Agency IV(A)(2), the Osage Nation does not agree with the process as stated. The Federal Agency should not only identify currently known eligible or listed historic properties within the APE, but they should also identify through the Desktop Records Check all sites (including undetermined NRHP status), as well as all sites within one (1) mile of the APE for potential indirect effects. The Federal Agency should provide both hard copy maps of the APE as well as digital versions of the APE to Tribes such as a KMZ. Once all sites in the APE and within 1 mile of the APE have been identified, the Federal Agency's qualified professional archaeologist should provide this background information to the SHPO/Tribes and begin consultation with the SHPO/Tribes on areas of the project that need additional evaluation including possible additional fieldwork, copies of site forms, etc. in order

to evaluate if there are any known or previously unknown sites that may be listed in the NRHP, eligible for the NRHP, or needs further investigation to determine if the site is eligible for the NRHP, all of which may be effected by the undertaking.

The process presented in lines 422-425 are unacceptable. That being, if the APE includes areas of high probability to contain eligible historic properties, then those areas will be avoided within the APE and **the Federal Agency shall have no further Section 106 responsibility for the undertaking**. This is absurd. Even if a portion of the APE and undertaking is avoided due to the presence of significant cultural resources, the Federal Agency must continue to have full Section 106 responsibilities of the ENTIRE undertaking until the project is completed. Federal agencies cannot simply negate their Section 106 responsibilities of an entire undertaking by avoiding a portion of the proposed APE.

Lines 425-430 must be removed or reworded, for if there is a portion of the APE that needs to be avoided, the Federal Agency must consult with the THPO/Tribes to determine the appropriate level of mitigation that should take place. That mitigation cannot be limited to the stated actions of additional survey or monitoring. All mitigation is based on a case-by-case basis and there are multiple mitigation activities that Tribes will need to consider.

Lines 435-428 state that the Federal Agency and applicant will consult with THPO and Tribes if the portion of the APE cannot be avoided that contains potentially eligible historic properties. The Osage Nation has always requested to consult directly with the Federal Agency's subject matter experts, such as their SOI qualified archaeologist and not with the applicant, unless specifically approved by the Nation. Federal Agencies cannot delegate consultation and cannot delegate Tribal consultation to applicants. As per our previous experience, it is a much more efficient if the Federal Agency's consultation with Tribes concerning potential historic properties and Section 106 review is done by the Agency's subject matter experts, thus Agency SOI qualified professionals and FPOs.

Lines 430-431 under the section regarding roles of the Federal Agency IV(A)(2), stating that any request for additional information or for monitoring will include the basis for the request. This is very invasive and insulting to Tribes. Tribes may have confidential information regarding a location or a site that is integrated into their culture and sacred history. Providing justification by Tribes should not be requested. This sentence must be deleted in its entirety.

Lines 432-457, page 10:

Under the section regarding roles of the Federal Agency IV(A)(3), this entire section must be deleted. All federal undertakings should be reviewed based on the standard Section 106 process. Section (IV)(A)(3) removes Tribes from reviewing undertaking projects in accordance with NHPA Section 106. The criteria listed for undertakings that would not receive Tribal review is unacceptable. Using such criteria without consideration of Tribes' own resources, not referenced in states' databases, will put multiple cultural resources and potential historic properties at jeopardy of being destroyed. The Osage Nation constantly receive surveys from agencies for communication projects that are not acceptable to current Tribal standards nor state standards. Tribes also need to review projects for the presence of significant sites, in addition to sacred sites, mounds, and burials, that may be near and outside the APE and could potentially be adversely effected by the undertaking. Removing undertakings from Tribal review based on projects that are in previously disturbed areas can also potentially effect sites significant to the Osage Nation and other Tribes due to significant sites or possible burials being present in a disturbed APE. Significant sites and burials have been located in disturbed areas. Only having

non-tribal “qualified professionals” determine if there is a high probability for possibly historic properties is again very insulting to Tribal Nations. Tribes must be provided the opportunity, as in NHPA Section 106 36 CFR 800, to review all projects for potential effects to historic properties.

Lines 446-462, pages 10-11:

The section regarding roles of the Federal Agency IV(A)(4), must be deleted. From the Tribal perspective, this section basically states if you cannot justify sending a project to Tribes to review under the previous section, use one of these items to justify your reason to remove Tribes from the review process. Compliance with Section 106 must be determined based on adherence to the standard Section 106 processes under 36 CFR 800 or adherence to processes negotiated and approved in agreement with a Tribe(s).

Lines 463-482, page 11:

The section regarding roles of the Applicant, on behalf of the Federal Agency, IV(B) (2, 7), must be deleted and reworked. Item IV(B)(2) must specifically state that Federal Agencies will not delegate Tribal consultation to the applicant. Item IV(B)(4), has the similar concerns as lines 330-342, page 8 listed above that discusses the background Records Check. This item must require the applicant to identify all known cultural resources that are listed and eligible to the NRHP, or whose eligibility is undetermined within the APE as well as within near distance to the APE, such as one (1) mile from the APE. This request could come from not only the Federal Agency, but also from the SHPO and Tribes through the Federal Agency. While item V(B)(5) should be noted in communications between the applicant and federal agency, it must also include all sites within the APE or near the APE up to one (1) mile or a distance agreed upon by the Tribe for a specific project. Once all sites in the APE and near the APE have been identified by the applicant and shared in writing with the Federal Agency, that information would then be sent to the Tribes for review. Avoidance plans in item IV(B)(7), should be not only for avoidance of adverse effects to historic properties, but also for avoidance of sites that have not been fully evaluated for the NRHP and are undetermined in NHRP status, or for possible sacred sites to the Tribes that are not currently identified as a historic property.

Line 488-502, page 11:

The Osage Nation does not agree with item IV(D) and IV(E) that any federal agency should be allowed to follow this proposed Program Comment without the approval of the THPO/Tribes. The NHPA regulations legally allows Tribes to participate in the Section 106 process. This Program Comment unilaterally allows Federal Agencies to remove Tribes from the Section 106 process. This is blatant negligence. In order to use the Program Comment and be in compliance with Executive Order 13175, the Federal Agency must consult with Tribal Nations on it's possible use on a case-by-case basis, and it should only be used when approved by the Tribes, otherwise, standard NHPA Section 106 and 36 CFR 800 must be followed. The Osage Nation prefers for the standard NHPA Section 106, 36 CFR 800 processes to be followed unless a written alternative agreement has been signed by the Osage Nation.

Lines 506-517, page 12:

Section V Project planning considerations provides applicants much more authority and decision-making than the standard NHPA Section 106 provides, while denying or greatly limiting Tribal consultation and role in the NHPA Section 106 process. Line 510 states that the applicant in a meeting with the Federal Agency will determine if the Program Comment will be used. Again, this is highly problematic and unacceptable. The determination if any alternative agreement or Program Comment should be used, should be determined in consultation between the Federal Agency and Tribal Nations as part of our sovereign to sovereign relationship, Tribal roles as identified in NHPA Section 106, 36 CFR 800, and Executive Order 13175.

Item V(A) must be deleted and simply state that the applicant shall coordinate early with the Federal Agency in the project planning activities and that Federal Agencies will coordinate early with the SHPO and Tribes in the project planning activities. The Federal Agency will consult with Tribes if an alternative agreement to standard Section 106 is possibly needed, otherwise the standard process will be applied.

Item (V)(B) needs to state that any archaeological surveys or non-invasive techniques will be utilized only after consultation and with Tribes' review of the background Records Check. This will avoid applicants inadvertently surveying areas or utilizing invasive techniques at sacred site locations without the approval of Tribes.

Item (V)(C) appears to infer that projects located in disturbed areas will have less concerns. This is not true and this item must be deleted. All projects whether in disturbed or undisturbed areas should be sent to Tribes for review and consideration for effects to known historic properties and effects to Tribes' significant sites and sacred sites not in the public domain. As stated previously, disturbed areas can and have contained significant sites, burials, and sacred sites.

Lines 519-542, page 12:

The Osage Nation disagrees with Section VI, (A-C), regarding Collocation of communication antennae. Any exclusions of undertakings must be made in consultation and concurrence by Tribes. The Osage Nation and other Tribes objected to the Nationwide Programmatic Agreement for the Collocations of Wireless Antennas, and were not signatories. Tribes must always be provided the opportunity to review locations for collocations for possible sensitive areas nearby that should be avoided. It should not be assumed that Tribes received proper notification for all original locations and were provided the opportunity to review the undertaking; nor should it be assumed that the original survey was done properly and up to State or Tribal standards.

Lines 543-606, pages 12-14:

The Osage Nation disagrees with Section VI, Above-ground communications connections to and collocations on buildings and Section VIII Placement of above-ground communications lines on existing poles or structures. There was not a Section VII shown on the document. If there is a Section VII, then the Osage Nation would like to receive a copy of an updated document for review of a Section VII.

Any exclusions should be approved by the Tribes, since the Osage Nation and other Tribes did not agree with the NPA. Any exclusions should be based on cultural resources nearby, and that should be done in consultation and review by THPOs and Tribes. Any collocations or communication connections to buildings listed or eligible for listing in the

National Register need to require consultation with Tribes especially if that historic structure is associated with the Nation.

Lines 572-606, pages 13, 14:

The Osage Nation disagrees that the items listed in VIII placement of above-ground communications and cable lines on existing poles or structures do not require further Section 106 review based on the items noted in VIII (A, B, C). Tribal consultation and review should occur to identify sites of concern that may be adversely effected by these types of undertakings. As for all undertakings including these, it will depend on the location and identification of significant resources, and less on the type of project. Item VIII (C) is of particular concern since the addition of structures or poles are noted as not needing further Section 106 review if they are 100 ft or more beyond the boundary of the National Register listed or eligible historic district. In addition to National Register districts or eligible historic districts, Tribes also have significant sites, historic properties, sacred sites, mounds, and burials that should have optimal consideration for direct effects as well as consideration for their visual settings, the indirect effects.

Lines 608-634, page 14:

The Osage Nation has several concerns with Section IX Installation of buried communications cable. For item IX(A) the APE must be expanded to include similar language as was suggested above for lines 260-266, that the APE must include, all Project construction and excavation activity required to construct, modify, improve, or maintain any facilities; any right-of-way or easement areas necessary for the construction, operation, and maintenance of the Project; all areas used for excavation of borrow material and habitat creation; all construction staging areas, access routes, utilities, spoil areas, and stockpiling areas. Item IX(B-E) should not exclude Section 106 consultation and review simply based on placement in previously disturbed areas. The Osage Nation has had several conversations with the ACHP regarding disturbed areas, particularly in right-of-ways, and the ACHP guidance was that you must always assume historic properties exist in the APE and through the investigative processes the expert confirms or negates the presence of cultural resources in the APE. These items listed in Section IX (B-E) are exactly counter to what the ACHP has previously stated. In addition, most roadways and railroads were constructed well before the NHPA and certainly before Tribes were allowed to participate in the process. Professional expert analysis of the roads' and railroads' APEs is minimal across this country. As a result, multiple instances have occurred when present day examination of ROWs are conducted, sites and burials have been located in these "disturbed" APEs. Any area of the APE, whether previously disturbed or not disturbed must be processed through the standard NHPA Section 106 review and consultation process in accordance with 36 CFR 800.

Lines 636-669, page 14, 15:

What is the purpose of changing direct effects to physical effects and indirect effects to visual effects? The terminology must be consistent with the terminology in the regulations. The ACHP of all entities should know this.

Lines 671-713, pages 15, 16:

The Osage Nation disagrees with Section XI (C) New communications tower construction and Section XII (A) Removal of obsolete communications equipment and towers.

Tribal consultation must occur for item XI (C). Tribes must have the opportunity to review these locations as there may be significant cultural sites, sacred sites or burials nearby that need to be avoided. Again, many of these towers were constructed without Tribes' review or no review at all, i.e. Twilight Towers. Item XII (A) should still go through Section 106 review and Tribal consultation for the same reasons previously stated that 1) Tribes need to confirm that Section 106 review and consultation took place initially and that there are no significant cultural sites, historic properties, sacred sites, mounds or burials that may be effected by the undertaking.

Lines 729-778, pages 17, 18:

The Osage Nation strongly disagrees with Section XIII Unanticipated discoveries. This entire section needs to be completely reworded in consultation with Tribes that may require more than a one- or two-month response such as with this Program Comment. There should be a separate section for unanticipated discoveries of archaeological resources and a separate section for inadvertent discoveries of human remains or items of cultural patrimony. Item XIII (A) notes a halting distance of only 50 ft radius for unanticipated discoveries. It is not clear if this is meant for archaeological resources and human remains since "unanticipated discoveries" is normally used with NAGPRA. In-depth consultation with Tribes is needed to clearly work out the steps and procedures for archaeological resources and also for human remains since there are differences when human remains are identified on federal lands versus state and private. It is a complicated situation and unlike the Tribes, most agencies have not experienced what to do, nor have established training for their contractors on how to identify items in the field. How would a contractor or local agency official know that something is an archaeological resource versus a burial item or an item of cultural patrimony? The distance of 50 ft is unacceptable. The Osage Nation requests that this buffer distance be changed to 50 m for unanticipated discoveries of archaeological material.

Section XIII (B) does not provide steps needed when possible human remains are discovered. The steps for when human remains are found on Federal lands versus private/state lands needs to be clearly stated. In the Osage Nation's experience, most contractors or and agency personnel do not know the regulations for human remains or have limited experience with 43 CFR part 10, as well as the state's regulations regarding human remains. Thus, a clear step-by-step process is needed. In item XIII (C), the Osage Nation requests that a 100-meter buffer is used instead of 50 ft for the inadvertent discovery of human remains, burial, or possible objects of cultural patrimony. Item XIII (D) must be retitled to clearly state what objects are covered in the Discovery Plan. Item XIII (D) (1) needs to be changed to halt all work, surface and subsurface work in the area of the find, not just where finds can reasonably be expected to occur, using the buffer distances the Osage Nation requested. Item XIII (D) (4) regarding disputes concerning the proposed treatment plan must include consultation with the SHPO/THPO and Tribes, not just resolved by the Federal Agency.

Lines 782-790, page 18:

Any emergency notification that would require an expedited review should be sent to the Tribes/THPO using the processes that have been negotiated with the Tribes. For example, if the notification is to be sent to the Osage Nation, "Emergency Notification" must be listed in the subject line of the email along with the agency, project name/#, the county, and the state. The phrase, Emergency Notification 7-day Review, must be in large, bold, red letters at the top of a notification letter addressed to the THPO.

Lines 797-813, page 18:

The Osage Nation requests that item XVII Reporting be changed. In item XVII(A) replace NATHPO with each federally-recognized Tribe/THPO to which the summarized reports under this Program Comment are sent. Each federally-recognized Tribe has a role in NHPA Section 106, 36 CFR 800, not the non-profit organization NATHPO. In order to continue and reflect the government-to-government relationship with Tribes, any reports involving this Program Comment must be sent directly to the THPOs and Tribes. The report must also provide not only the number of projects reviewed under the Comment but also allow for project specific information such as project name and location to be provided at the Tribe's request.

In item XVII (B), the reexamination of the Program Comment's effectiveness by the ACHP must not be simply based on the self-reporting of the agencies, but also on the review of the Program Comment on projects that Tribes have had the opportunity to review and not review, as well as the Tribe's comments on the Federal Agency's annual reports. The ACHP must establish a system for submitting issues with the agency's use of the Program Comment so that along with the annual meeting, there is a way to notify the ACHP throughout the year.

Lines 815-822, page 19:

The Osage Nation requests that THPOs be added to the first paragraph for whom the Chairman of the ACHP consults with regarding amending the Program Comment. The non-profit agency NATHPO does not represent the Osage Nation and must be removed as it is a non-government, non-industry entity with a non-indigenous person in the lead. Tribes' participation in the consultation process is legally outlined and codified in NHPA Section 106, 36 CFR 800, and Executive Order 13175, therefore, only the Osage Nation speaks for the Osage Nation regarding NHPA Section 106 matters and not NATHPO.

Lines 832-841, page 18:

It is the position of the Osage Nation that the proposed amendment to the 2017 Program Comment be halted and meaningful consultation with interested Tribes be engaged to develop an amendment that benefits all parties. As such, one point that needs to be highlighted is the duration of the Program Comment. The 10-year expiration of the Program Comment is too long of a term for such a broad comment that effects all Federal Agencies, all Tribes, no matter the location. Federal Preservation Officers and ACHP personnel have stated in this last year that a 10-year period for agreement documents is too long and are now using 5-year expiration periods. The ACHP needs to be consistent, otherwise a negative perception results questioning preferential treatment. The Osage Nation request under XIX Withdrawal, that the Chairman of the ACHP withdraw this Program Comment and the proposed amendments and re-establish standard NHPA Section 106 procedures until an agreement can be negotiated amongst all stakeholders who will be affected by the terms of the Program Comment and signed by all stakeholders.

In conclusion, the Osage Nation has substantial concerns about the use of this Program Comment and the amendments. The Program Comment diminishes the Tribes role as originally intended in the National Historic Preservation Act Section 106 and 36 CFR 800 as well as in Executive Order 13175. It is disappointing that the ACHP has provided such a Comment to be considered when their mission is to promote the preservation, enhancement, and sustainable use

of our nation's diverse historic resources and to advise the President and the Congress on national historic preservation policy. It is very disheartening that we see the ACHP changing course away from the basic principles of preservation and the standards set in NHPA Section 106. This Program Comment illustrates a shrunken standard that we shouldn't expect from the ACHP, as well as a distancing and diminishing of the ACHP's acknowledgement of the role and importance of Tribes in the Section 106 process and the sovereign-to-sovereign relationship. The overwhelming majority of historic properties that will be damaged, destroyed, and desecrated by the continuance of the 2017 Program Comment and the proposed amendments will be Tribal historic properties and Tribal ancestors themselves. This fact nor the fact that the Tribes had no seat at the negotiation table is not lost on the Tribes. The 2017 Program Comment and now the proposed amendments send a clear message to Indian Country that our voice and our footprint on the landscape is to be erased by the federal agencies involved, led by the ACHP.

The Osage Nation requests that this horrible trajectory be re-centered through open, meaningful negotiation of a new proposal amongst all stakeholders to expedite communication projects on federal lands and property. It can be done.

Should you have any questions or need any additional information please feel free to contact me at the number listed below.

Andrea A. Hunter

Andrea A. Hunter, Ph.D.
Director, Tribal Historic Preservation Officer

[External] Amendment to Program Comment on Communications Projects and Federal Lands/Property

Howard, Basia - RD, MD <basia.howard@usda.gov>

Fri 12-Jan-24 3:37 PM

To: Program Alternatives <program_alternatives@achp.gov>

Cc: Ranson, Joseph - RD, TX <Joseph.Ranson@usda.gov>; Leverrier, Laurel - RD, DC <laurel.leverrier@usda.gov>; Mafnas, Aylene - RD, DC <aylene.mafnas@usda.gov>

Good afternoon, Chair Bronin:

United States Department of Agriculture (USDA) Rural Development (RD), Rural Utilities Service (RUS) appreciates the opportunity to provide comments on the Advisory Council on Historic Preservation (ACHP) Proposed Amendment to *Program Comment for Communications Projects on Federal Lands and Property* (PC). RUS supports the ACHP's efforts in amending the PC to expand its use for all federal communications projects.

RUS encourages the ACHP to consider expanding the PC to federal electric projects (buried and aerial electric cables) with similar methods and impacts to the communications projects covered by the PC considering increased federal investments for electric infrastructure through the Inflation Reduction Act (IRA) and other legislation. As a federal agency originally established under the Rural Electrification and Telephone Service Act of 1936, the RUS Electric and Telecommunications Programs have a long history of providing funding for both electric and telecommunications infrastructure and, therefore, RUS has a thorough understanding of the impacts of both. Furthermore, RUS believes that expanding the PC to include electric infrastructure with similar impacts meets the intent of the original PC by creating efficiencies for all consulting parties, streamline reviews, and increase consistency while appropriately taking into account the effects on historic properties.

RUS Comments on Proposed Amendment to *Program Comment for Communications Projects on Federal Lands and Property*

- Recommend including utilities which have similar effects as the communications facilities in the current PC. The methodology and impacts of installing a buried communications cable are the same as a buried electric cable; installing utility poles to support communications cables has the same impacts as installing utility poles to support electric cable. Considering these activities have the same methodology and impacts, the same efficiencies and streamlined reviews should be available.
- Are the roles and responsibilities described in Section IV prescriptive for reviews under Sections VI through XII or is this section intended to provide direction *where applicable*? We suggest either moving the relevant information from Section IV to Sections VI through XII, where applicable, or changing the language in Section IV.A to state "the federal agency, when applicable, shall:"
 - Section IV.A.1 explains that the Agency must consult on the APE for each individual undertaking; however, Section IX.A states that "[t]he APE for installation of buried cable will be the width of the construction ROW plus any additional areas for staging or access." How can a federal agency consult with all consulting parties in good faith if the APE has already been determined per the PC?
 - Sections IV.A.2 and IV.A.3 concern records check and other criteria for when no further Section 106 review is necessary; however, subsequent sections such as VI.B provide different criteria for when no further Section 106 review is necessary.
 - Section IV.A.3 states that the Agency must "notify consulting parties that no further Section 106 review will be required", but in Sections VI through XII when no further Section 106 is required, there is no requirement for notifying consulting parties.

- Sections VIII.B and VIII.C – Section VIII.B only allows replacement structures or poles when they are in the same hole; however, Section VIII.C allows new infill structures/poles as long as they are in the ROW (and meet other criteria). Recommend using the same criteria for replacement structures/poles and new infill structures/poles allowing both to be completed as long as they are in the ROW and meet the other criteria in VIII.C.

Thanks,

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January 12, 2024

Via Email, program_alternatives@achp.gov

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

Re: UScellular Comments to ACHP's Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property

United State Cellular Corporation (UScellular)¹ appreciates the opportunity to provide feedback on the proposed amendment and for your continued efforts to ensure the success of federal programs that connect the unconnected. UScellular is the fourth largest mobile operator and, unique from other mobile providers, the fifth largest tower company. As such, UScellular has direct knowledge of and experience with siting challenges. UScellular congratulates the Advisory Council on Historic Preservation (ACHP) for its efforts to ease infrastructure developments on federal lands and property. UScellular's operations on federal lands is limited. In particular, we have 22 active cell site leases with the Bureau of Land Management in California and Oregon and 33 active cell site leases with the Forest Service in California, Iowa, North Carolina, Oregon, Virginia, and Washington. It is with this background in mind that we submit our comments.

Background

Americans today overwhelmingly prefer mobile communications for voice services and mobile broadband usage has grown exponentially over the past decade.² Mobile data usage is projected to

¹ UScellular is a mobile communications and broadband provider with more than 5 million customers in 21 states. UScellular has delivered high-quality mobile voice and broadband services to rural Americans for 40 years. Fully 41% of the population that UScellular covers lives in rural America, as opposed to only 14% of the US population. Often, with the support of legacy high-cost universal funding, we have been the first to provide wireless connectivity to a hard-to-serve community that would have otherwise remained unconnected. We make sure you stay connected to what matters most, no matter where you and they are.

² For example, during the second six months of 2022, 72.6% of adults and 81.9% of children lived in wireless-only households. Stephen Blumberg & Julian Luke, Wireless Substitution: Early Release of Estimates from the



more than double by 2028, reaching over 21 exabytes per month, up from 1 exabyte in 2015.³ Ericsson estimates that the “[A]verage monthly mobile data usage per smartphone in North America is expected to reach 58 GB in 2028,” more than double today’s usage.⁴

For over forty years, UScellular has been delivering commercial mobile voice and broadband services to rural Americans. We are on the precipice of once-in-a-generation infrastructure funding, specifically \$42.5 billion through the Infrastructure, Investment, and Jobs Act’s Broadband Equity Access and Deployment (BEAD) program, providing support to deploy fixed broadband throughout the United States. Considering BEAD subgrantee selection processes are imminent and that mobile broadband is in increasing demand, now is the time to ensure we are amplifying the impact of these government funds as much as possible. The ACHP’s proposal will significantly help Congress and this Administration meet their universal connectivity goals as well as meet consumer mobility demands.

UScellular Recommendations

ACHP’s proposal would significantly streamline and expedite the permitting and tower construction process for federally-funded projects, and increase predictability for Section 106 applicants, as well as reduce the cost to deploy. This all will help states stretch BEAD monies farther. Understanding that these proposals are the result of significant negotiation and that there are a number of stakeholders and broader policy considerations, if there is room to improve the proposal at the edges, we would offer the below recommendations.

- Given that the program comment is fashioned a tool, but not a requirement for federal agencies, we suggest that NTIA be clear about its intent to use the program comment for BEAD and its other federally-funded projects. That will give BEAD participants the necessary predictability.
- If it were feasible to accomplish, we believe that the program comment would be more successful in generating stability and predictability for federally-funded projects if it were fashioned as a requirement for federal agencies, subject to certain exclusions. If that is not feasible, we would recommend seeking that other federal agencies state publicly their intent to use the program comment for their projects to maximize the impact of the tool.

National Health Interview Survey, July-December 2022, National Center for Health Statistics (May 2023), accessed at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202305.pdf>.

³ Statista, Mobile data traffic in North America from 2011 to 2028 (2023), accessed at [North America: mobile data traffic 2011-2028 | Statista](#).

⁴ Ericsson, Mobile data traffic outlook (2023), accessed at [Mobile data traffic forecast – Mobility Report - Ericsson](#).



- Consider clarifying the definition of “funding agency” and/or “federal funding” to address the scenario where multiple federal agencies play a role in the approval or funding of a project so that it is clear which federal agency will have the authority to decide whether to assume the Section 106 function.
- The amendment appears to retain National Historic Landmarks, Monuments, Memorials, Historic Parks, Historic Trails, etc., as “excluded areas.” However, it also appears to allow an agency to use the program comment in these “excluded” areas after a consultation with the applicable parties that leads to a determination that the program comment will reasonably take into account the effects on those areas (Line 207, et seq.). If our interpretation is correct, it could be beneficial to clarify the language so that it is understood that the program comment may be used in/around these “excluded areas” after such consultation and determination.
- The amendment duly recognizes the sovereignty of tribal lands. To improve coordination as within and near/around tribal lands between federal agencies and tribal authorities, consider adding a process through which a federal agency may request to consult with tribal authorities on a particular piece of federal funding.
- Finally, consider whether it would be possible for the amendment to provide for the preemption of state/local environmental and zoning requirements for federally-funded projects where the program comment is used for a project.

Conclusion

As a mobile operator and tower company, UScellular is deeply committed to ensuring all Americans get access to the latest mobile technologies. We thank the ACHP for exploring ways to improve and streamline the siting process. Please consider UScellular a partner in your amendment efforts. We are happy to answer questions about our recommendations.

Respectfully Submitted,

/s/ Rebecca M. Thompson

Rebecca Murphy Thompson
VP, Government Affairs
United States Cellular Corporation
8410 Bryn Mawr, Suite 700
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cc: Ms. Jaime Loichinger (jloichinger@achp.gov)



Wireless
Infrastructure
Association

Ms. Jaime Loichinger
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F St. NW, Suite 308
Washington, DC 20001

[Submitted Electronically to program_alternatives@achp.gov]

RE: Proposed Amendment to *Program Comment for Communications Projects on Federal Lands and Property*

Dear Ms. Loichinger,

The Wireless Infrastructure Association (“WIA”)¹ submits these Comments in response to the Proposed Amendment to the Advisory Council on Historic Preservation’s (“ACHP”) Program Comment for Communications Projects on Federal Lands and Property (“Proposed Amendment”).² The wireless infrastructure industry welcomes the Proposed Amendment, which will ensure quick and efficient deployment of the critical funds and infrastructure necessary to connect all Americans. As noted in the Proposed Amendment, federal programs to expand broadband connectivity will result in a significant increase in the volume of applications being reviewed by various state and federal agencies. Crafting clear, predictable, and proportional rules at the outset will give all parties reasonable expectations and facilitate the smooth deployment of funds and infrastructure.

The existing Program Comment has been a useful tool for siting communications projects on federal lands and expanding its applicability to all federally funded projects will benefit government, industry, and ultimately the American people. However, WIA also recommends ACHP modify the Proposed Amendment to more accurately reflect real-world practices and considerations. Accordingly, we recommend AHCP amend its Proposed Amendment as outlined below and provide further guidance on requirements to ensure the effectiveness of the permitting regime. Additionally, WIA recommends that AHCP look to other successful federal siting programs, particularly those administered by the Federal Communications Commission (“FCC”), to inform its policies and procedure.

¹ The Wireless Infrastructure Association (“WIA”) represents the businesses that build, develop, own, and operate the nation’s wireless infrastructure. Members include infrastructure providers, wireless carriers, and professional services firms that are responsible for telecommunications facilities around the globe.

² *Proposed Amendment to the Program Comment for Communications Projects on Federal Lands and Properties*, ADVIS. COUNCIL ON HIST. PRES. (Nov. 7, 2023), <https://www.achp.gov/sites/default/files/2023-11/Communications%20Projects%20PC%20draft%20amendment%2020231107.pdf> [“Proposed PC Amendment”].

I. THE PROPOSED AMENDMENT SHOULD REFLECT PRACTICAL, REAL-WORLD CONDITIONS.

Setting clear and predictable requirements for siting applications is key to ensuring a successful and efficient process. However, some of the provisions in the Proposed Amendment may be overly restrictive and could create rules that will be difficult, or impossible, to comply with in reality, ultimately diminishing the utility of the Program Comment for broadband deployment. Accordingly, WIA requests the following modifications to Section VIII, pertaining to replacement of above-ground communications and cable lines on existing poles.³ The Proposed Amendment should provide more flexibility for what replacement structures can be used without subjecting the project to additional Section 106 review. Several provisions on replacement poles in Section VIII are potentially too rigid to accommodate practical considerations in pole replacement.

A. THE PROPOSED AMENDMENT SHOULD PROVIDE REASONABLE FLEXIBILITY FOR REPLACEMENT POLES OR STRUCTURES.

First, the Proposed Amendment would require a replacement pole or structure to be placed in the same hole as the pole or structure it is replacing to qualify for relief.⁴ In practice, replacement poles are often installed adjacent to the original pole before the original pole is removed to allow for the seamless transition of power lines, communication lines, and other equipment from the original pole to the replacement pole. This is particularly true in the make-ready context for wireline projects, where each attacher, starting at the top with the electric company and proceeding down to include any cable and telecommunications facilities, relocates their own facilities from the old pole to the new pole at different times on different days in top-to-bottom order. Typically, only after the last wireline attacher completes their transfer to the new pole is the old pole removed from its hole. WIA recommends the Proposed Amendment be modified to allow a replacement pole or structure placed within 10 feet of the original to qualify for relief.

Second, the Proposed Amendment requires the replacement structure to be located within an existing Right of Way ("ROW") or easement *which has been surveyed*.⁵ This survey requirement is unnecessary and can quickly become overly burdensome, particularly in rural areas where ROW and easements may stretch miles and cross private property. The metes and bounds of the public ROW or existing easement are usually readily ascertainable from existing infrastructure and carrier records without resorting to a formal survey. A strict requirement that the area has been individually surveyed could add significant delay and cost to an infrastructure project. Accordingly, WIA recommends removing the reference to surveying from Section VIII.

³ *Proposed PC Amendment* at 13-14, Section VIII.

⁴ *Id.* at VIII(B)(1).

⁵ *Id.* at (B)(2) (emphasis added).

Further, the Proposed Amendment would require replacement poles or structures to be “consistent with the quality and appearance of the originals.”⁶ However, at a minimum, a replacement pole will have a different appearance than neighboring poles because it has not been exposed to the elements for the same amount of time. Additionally, if a pole is being replaced with a stronger pole to accommodate deployments, it should also be given Section 106 relief if it qualifies under the other requirements. WIA recommends additional clarification of this section to allow reasonable variance in replacement pole appearance.

Finally, the rules should allow for replacement poles to be the greater of 10 percent or five feet taller than the original pole.⁷ This accounts for the fact that poles are generally sold in five-foot increments, and a replacement structure that is only five feet taller would not likely have any significant impact. For example, if a 30-foot pole needed to be replaced, the next size up would be 35 feet, greater than a 10 percent increase in height and thus ineligible for the exclusion as written.

B. THE PROPOSED AMENDMENT SHOULD CLARIFY THE APPLICATION AND MEANING OF AN “EXISTING POLE.”

The ACHP has an opportunity to clarify application of the Proposed Amendment by defining “existing pole.”⁸ Poles are routinely set in the public ROW by utility companies in the normal course of their business. These activities do not trigger historic preservation review and presumably do not negatively impact our nation’s historic districts or properties. Consequently, the Proposed Amendment should clarify that public utility poles which have been placed prior to the installation of wireless equipment on those poles are existing poles, even if the pole was set by the utility company shortly before the wireless facilities are colocated on it. By doing so, the ACHP will promote colocation on existing poles placed by a utility and achieve a consistent policy approach to the use of poles in the right-of-way.

C. THE PROPOSED AMENDMENT SHOULD ALLOW FOR INFILL POLES WITHIN THE EXISTING RUNNING LINE OF EXISTING AERIAL DEPLOYMENTS.

Additionally, WIA seeks further clarity around rules for infill structures and poles.⁹ In addition to the considerations raised above, the Proposed Amendment should not unduly limit where additional poles can be placed within the running span of existing aerial lines in the ROW.¹⁰ Particularly in rural areas, the distance between two poles can regularly be twice as far when compared to pole infrastructure in more densely populated areas. Infill structures will need to be placed in the ROW to accommodate the increased load on the poles from new lines and other attachments. WIA requests that, when it is

⁶ *Id.* at (B)(3).

⁷ *Id.* at (B)(4).

⁸ *Id.* at VIII.

⁹ *Id.* at (C)(1)-(4).

¹⁰ See *id.* at (C)(1).

necessary to place an infill pole between existing poles in the ROW, the project be similarly exempt from further Section 106 review.

D. THE PROPOSED AMENDMENT SHOULD MODERNIZE THE 250-FOOT AREA OF POTENTIAL EFFECTS.

The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended,¹¹ (“NPA”) provides for an Area of Potential Effects (“APE”) of 250 feet when colocating small wireless antennas. The NPA’s recognition that small cell deployments pose a reduced impact to historic properties is appropriate. However, WIA encourages the ACHP to further reduce the APE for small cell installations. A typical small cell deployment includes a network of pole-mounted equipment in the public ROW in urban settings. In addition, the equipment is constrained by volumetric limitations that minimize the likelihood of visual impacts to historic districts.¹² As a result, the 250-foot APE is likely to encompass a historic district, even if the proposed project has no visual impact to that district. This results in unnecessary delay and expense without yielding any historic preservation benefits. In modernizing the APE regulation by significantly limiting its distance, the ACHP has an opportunity to propel broadband connectivity while ensuring our nation’s historic districts and properties are appropriately preserved.

II. ACHP SHOULD LOOK TO OTHER SUCCESSFUL PERMITTING RULES TO INFORM THE PROPOSED AMENDMENT.

As ACHP looks to streamline parties’ Section 106 obligations for broadband facilities, WIA also encourages it to borrow from other federal siting programs that have substantial experience in facilitating broadband deployment. Particularly, WIA points to the FCC’s experience in coordinating and ensuring participation with Tribal governments, such as through the Tower Construction Notification System (“TCNS”), as reasonable best practices NTIA should look to adopt in this proceeding.

Further, the FCC has adopted timeframes for action on siting applications, also known as shot clocks. These shot clocks provide a useful tool for industry and the government by setting clear expectations for when applications must be approved or denied. Additionally, providing that un-resolved applications are approved at the expiration of the shot clock (so called “deemed granted remedies”) ensures that administrative delay does not become an additional barrier to deployment.

WIA encourages ACHP to look to these existing programs to inform the Proposed Amendment. Creating reasonable, predictable, and consistent rules across the federal government will ensure the efficient use of limited resources and allow federal funds to be directed towards building this needed infrastructure.

¹¹ See Second Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 85 Fed. Reg. 51,357 (Aug. 20, 2020) (codified at 47 C.F.R. Part 1, App’x B).

¹² See *id.* Sections VI and VII.

III. CONCLUSION

The wireless industry welcomes the Proposed Amendment to the existing Program Comment as a crucial step toward improving the deployment landscape and ensuring that critical, limited federal funds will be utilized most efficiently in connecting all Americans. By incorporating the above recommendations to account for real-world considerations, the Proposed Amendment can be a significant boon for deployment and help ultimately bridge the digital divide. WIA appreciates the federal government's continued commitment to fostering public input as it designs these rules and stands ready to provide further information as the Administration may require.

Respectfully submitted,

/s/ Stephen Keegan

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January 12, 2024