



*Preserving America's Heritage*

***Program Comment  
for Communications Projects on Federal Lands and Property  
May 8, 2017***

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

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

**I. Introduction**

The purpose of issuing this Program Comment is to assist Federal LMAs/PMAs in permitting and approving the deployment of next generation technologies of communications infrastructure, e.g. 5G, more efficiently. This Program Comment establishes uniform procedures for addressing Section 106 compliance for the collocation of antennae on existing communications towers, including the mounting or installation of an antenna on an existing tower, building, or structure; installation of aerial communications cable; burying communications cable in existing road, railroad, and utility rights-of-way (ROW); construction of new communication towers (facilities), and removal of obsolete communications equipment and towers (hereinafter, communication deployment undertakings). These undertakings would typically not result in adverse effects to historic properties. Federal LMAs/PMAs may elect to follow the efficiencies set forth in this Program Comment in lieu of the procedures in 36 CFR §§ 800.3 through 800.7 for individual undertakings falling within its scope. Public involvement remains a critical aspect of the Section 106 process; therefore, it is the responsibility of the Federal LMAs/PMAs to determine their method for public engagement based on the agency’s established protocols for their communications programs. In addition, for the purpose of this Program Comment, Federal LMAs/PMAs are encouraged to identify a single point of contact and a Lead Federal Agency for the purpose of carrying out Section 106 reviews when communications projects involve multiple federal agencies.

This Program Comment builds upon the precedent of two Nationwide Programmatic Agreements (NPAs) for wireless communications projects executed in 2001 and 2004, respectively, among the Federal Communications Commission (FCC), the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO). These NPAs have been successful in establishing efficiencies in the Section 106 review of tower construction and collocations, approaches which the Federal LMAs/PMAs

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are interested in following for their communications activities, including broadband deployment. The FCC NPAs apply on private lands where an applicant must obtain licenses or registrations. However, when an applicant deploys communications projects that involve private and federal lands, FCC and the applicant or licensee may coordinate with the Federal LMAs/PMAs to apply the terms of the NPAs as well as the provisions in this Program Comment.

Many State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Indian tribes, and Native Hawaiian organizations (NHOs) have been accustomed to reviewing applications for wireless communications facilities under the terms of the NPAs. As such, the NPAs were expanded to cover communications activities funded under the American Recovery and Reinvestment Act of 2009, through the ACHP's issuance of a Program Comment for the Broadband Initiatives Program and the Broadband Technology Opportunities Program. The 2009 Program Comment allows the U.S. Department of Agriculture, Rural Utilities Service; the U.S. Department of Commerce, National Telecommunications and Information Administration; and the U.S. Department of Homeland Security, Federal Emergency Management Agency, to rely on the FCC's review of tower and collocation undertakings under the NPAs, thereby eliminating duplicative reviews for undertakings subject to FCC licensing or registration. In 2015, the ACHP extended the Broadband Program Comment for an additional 20 years and expanded it to allow additional agencies that fund communication facilities, including the Department of Homeland Security (DHS) and its components, Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and FirstNet, to utilize its terms to comply with Section 106 for those undertakings.

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

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

## II. Applicability

This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, or assisted by the following LMAs: the U.S. Department of Agriculture's (USDA) U.S. Forest Service (USFS); the Department of the Interior's (DOI) National Park Service

(NPS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and Bureau of Indian Affairs (BIA); and the following PMAs: the Department of Homeland Security and its components, Department of Commerce; Department of Veterans Affairs; and the General Services Administration. Other federal agencies responsible for carrying out, permitting, licensing, funding, or assisting in the deployment of communications activities, such as FCC and the USDA Rural Utilities Service (RUS), may utilize this Program Comment to satisfy their Section 106 responsibilities on federal lands after completing the process set forth in Section XVIII.B. below.

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

This Program Comment is not applicable to undertakings proposed to be carried out, permitted, licensed, funded, or assisted by any federal agency that would occur on or affect the following federally owned lands: National Historic Landmarks (or the portion thereof that is located on federal land), National Monuments, National Memorials, National Historical Parks, National Historic Trails, National Historic Sites, National Military Parks, and National Battlefields. Should federal agencies or applicants want to deploy communications facilities that will affect these properties, the responsible federal agency must follow the standard Section 106 process under 36 CFR §§ 800.3 through 800.7 (or another applicable Program Alternative under 36 CFR § 800.14) for the review of such undertakings in consultation with the applicant, SHPO/THPO, Indian tribes, NHOs, and other consulting parties.

This Program Comment is not applicable to undertakings proposed to be carried out, licensed, permitted, or assisted by any federal agency that would occur on or affect historic properties located on tribal lands without the prior, written agreement between that Indian tribe and the federal agency, and notification by the relevant Federal LMA/PMA to the ACHP, NCSHPO, and NATHPO.

Should a dispute arise over applicability of this Program Comment, or its use for any particular undertaking, the Federal LMA/PMA will resolve the dispute and should consider following the standard Section 106 process under 36 CFR §§ 800.3-800.7. The Federal LMA/PMA shall notify all consulting parties regarding its preferred approach to complying with Section 106 for a communications undertaking that is the subject of a dispute.

### **III. Definition of terms**

- A. Agency official – It is the statutory obligation of the federal agency to fulfill the requirements of Section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance in accordance with 36 CFR part 800. The agency official has approval authority for the undertaking and can commit the federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance. The agency official may be a state, local, or tribal government official who has been delegated legal responsibility for compliance with Section 106 in accordance with federal law.
- B. Antenna – An apparatus designed for the purpose of emitting radio frequency radiation, to be operated or operating from a fixed location, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna.

- C. Applicant – The party submitting an application for communications permitting, licensing, or lease on federally managed lands or federally managed property.
- D. Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (source: 36 CFR § 800.16(d)). For purposes of this Program Comment the APE includes the ROW, access routes, and staging areas as defined below.
- E. Collocation – The communications industry’s term for the construction of a new antenna or tower, or the mounting or installation of an antenna on an existing tower, building, or structure, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. It includes any fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that antenna or tower.
- F. Consulting Parties – The parties with whom federal agencies consult in the Section 106 process. Consulting parties “by right” are those parties a federal agency must invite to consult and include the ACHP, and the relevant SHPO; THPO; Indian tribes, including Alaskan Native villages, Regional Corporations, or Village Corporations; and NHOs; representatives of local governments; and applicants for federal assistance, permits, license and other approvals. “Certain individuals and organizations with a demonstrated interest in the undertaking” may, at the discretion of the relevant agency, also participate as consulting parties “due to their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties” (source: 36 CFR § 800.2(c)).
- G. Effect and Adverse Effect – “Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places” (source: 36 CFR § 800.16(i)). “An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association” (source: 36 CFR § 800.5(a)(1)).
- H. Facility – Means the secured area including the building, tower, and related incidental structures or improvements, located on federal land.
- I. Ground Disturbance – Any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils. “Undisturbed soils” refers to soils that possess significant intact and distinct natural soil horizons. Previously undisturbed soils may occur below the depth of disturbed soils.
- J. Historic Property – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes traditional cultural properties (TCPs) and properties of traditional religious and cultural significance to an Indian tribe, Alaskan Native village, Regional Corporation or Village Corporation, or NHO that meet the National Register criteria (source: 36 CFR § 800.16(1)(1)).
- K. Indian tribe – An Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. It includes a Native village, Regional Corporation, or

Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602).

- L. Property Managing Agency – Executive branch agencies and independent agencies that have authority to hold smaller swaths of land to support facilities that are necessary to the agency’s mission and vision.
- M. Land Managing Agency – Executive branch agencies that have the authority to hold broad swaths of land for the agency’s mission and other particular purposes such as management and administration of activities undertaken to support the agency.
- N. Tribal lands – Defined in 36 CFR § 800.16(x) as including “all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.”
- O. Pole – A pole is a non-tower structure that can hold utility, communications, and related transmission lines.
- P. 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. 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: Properties listed on or formally determined eligible for the National Register; Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register; Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a federal agency or local government representing the Department of Housing and Urban Development; Properties listed and identified in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria; and Properties in their files that the SHPO/THPO considers eligible.
- R. 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. 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.
- T. Native Hawaiian organizations — Defined as “any organization which serves or represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians” (source: 36 CFR § 800.16(s)(1)). “Native Hawaiian” means any “individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii” (source: 36 CFR § 800.16(s)(2)).
- U. State Historic Preservation Officer — The state official appointed or designated pursuant to Section 101(b) (1) of the NHPA to administer the state historic preservation program or a designated representative.
- V. Tribal Historic Preservation Officer – The tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the NHPA.
- W. Tower — Any structure built for the sole or primary purpose of supporting antennae, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower, but not installed as part of an antenna as defined herein (source: Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, September 2004).

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

- A. For each proposed undertaking subject to this Program Comment, the Federal LMAs/PMA shall:
1. Consult with the SHPO/THPO, Indian tribes, or NHO to confirm the APE for each individual undertaking and provide notification to the appropriate SHPO/THPO, Indian tribes, or NHO of intent to follow this Program Comment. See Sections IX, X, and XI of this Program Comment regarding the determination of APEs for installation of buried communications cable, communications tower replacement, and new communications tower construction.
  2. Identify known eligible or listed historic properties within the relevant APE that may be affected by the proposed communications undertaking by completing a Records Check. If a Records Check reveals no information on the presence of historic properties within the APE, the qualified professional (see Section XIII below) 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 LMA/PMA shall have no further Section 106 responsibility for the undertaking. If they cannot be avoided, the Federal LMA/PMA and applicant will consult with the SHPO/THPO, Indian tribes, or NHO to determine whether a survey or monitoring program should be carried

out to identify historic properties, and to determine if any of the conditional exemptions listed in Sections VI-XI apply.

3. Consider whether any of the below criteria apply to a proposed undertaking and if so, notify consulting parties that no further Section 106 review will be required for any undertaking subject to this Program Comment that is proposed to occur within an APE:
  - i. that has been previously field surveyed (acceptable to current state standards or within the past 10 years) and there are no known historic properties located within the APE whose National Register qualifying characteristics would be adversely affected; or
  - ii. that has been previously disturbed to the extent and depth where the probability of finding intact historic properties is low; or
  - iii. that is not considered to have a high probability for historic properties by qualified professionals and based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.

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

4. Use existing agency procedures for implementation of this Program Comment which may include procedures for delegation of authority to the applicant, as appropriate.
5. Use qualified professionals for the disciplines under review in accordance with Section 110 of the NHPA and Section XIII of this Program Comment.
6. Document use of this Program Comment in the Section 106 review, and how it reached its decisions about the scope and level of effort for any historic property identification, for the undertaking's administrative record.
7. Where a Lead Federal Agency has been designated, and the Lead Federal Agency is in compliance with its responsibilities under this Program Comment, the other non-lead Federal LMAs/PMA's responsible for the subject undertaking shall also be deemed to be in compliance with Section 106 under this Program Comment.

B. The Applicant, on behalf of the Federal LMA/PMA, shall:

1. Notify the Federal LMA/PMA of its proposed application or request for assistance at the earliest possible opportunity in project planning.
2. Carry out and comply with the procedures for any delegation of authority to the applicant if established by the Federal LMA/PMA.
3. Assist the Federal LMA/PMA to determine the APE in consultation with the SHPO/THPO, Indian tribes, and NHO.
4. Conduct a Records Check to identify known historic properties within the APE, when requested by the Federal LMA/PMA.
5. Notify the Federal LMA/PMA if the undertaking is not proposed to be located within or immediately adjacent to a known historic property.

6. Document the recommended determination of effect to historic properties for and subject to the Federal LMA/PMA's approval when requested by the Federal LMA/PMA.
  7. Where appropriate to avoid adverse effects to historic properties, ensure the site avoidance plan has been approved by the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO. In addition avoidance areas should be clearly marked during staging and construction activities, so construction crews are properly notified.
- C. The Federal LMAs/PMA, SHPOs, THPOs, Indian tribes, and NHOs shall carry out their Section 106 responsibilities in a timely manner and adhere to the timeframes outlined in the FCC NPAs or 36 CFR §§ 800.3 to 800.7. This will avoid delays in the deployment of communications undertakings on federal lands and property.
  - D. Where FCC has Section 106 responsibility over a proposed communication deployment undertaking that also requires a license, permit, approval, or assistance from a Federal LMA/PMA, the Federal LMA/PMA shall be responsible for the Section 106 compliance for that undertaking and may utilize the terms of this Program Comment, including any applicable exemptions. FCC shall have no further Section 106 responsibilities for that undertaking.

## **V. Project planning considerations**

- A. The Applicant shall coordinate early with the Federal LMA/PMA regarding project planning activities. In the event the Applicant proposes a public-private project, the carrier, tower company, or others who may be recognized as the Applicant shall involve the Federal LMA/PMA in pre-application meetings to 1) decide whether this Program Comment will be used; 2) consider the scope of work for the identification of historic properties; 3) discuss protocols for consulting with Indian tribes or NHOs; and 4) discuss alternatives and alternative routes for the undertaking.
- B. Noninvasive techniques are encouraged for identification and evaluation of all property types, if feasible, and for testing, including geotechnical testing, at archaeological sites, TCPs, and other sites important to Indian tribes.
- C. Siting projects in previously disturbed areas is encouraged.

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

- A. A Federal LMA/PMA may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended August 2016.
- B. A tower collocation requires no further Section 106 review so long as:
  1. It will not result in a substantial increase<sup>1</sup> in size of the existing tower; and
  2. There are no Section 106 requirements in an existing special use permit, easement, or communications use lease for that site.
- C. Collocations on non-tower structures on federal land require no further Section 106 review so long as one of the following conditions apply to the undertaking:
  1. The structure is less than 45 years old; or

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



2. If more than 45 years old, the structure has been previously evaluated and determined not eligible for listing on the National Register; and
  - i. The structure is not adjacent to or within the boundary of a National Register-listed or previously determined eligible historic district; and
  - ii. The structure is not designated as a National Historic Landmark or State Historic Landmark; and
  - iii. Indian tribes or NHOs have not indicated there are known historic properties of traditional religious and cultural significance within the APE and there will be no cumulative effects to such historic properties.

**VII. Above-ground communications connections to and collocations on federal buildings and buildings located on federal land**

- A. A Federal LMA/PMA may elect to use applicable exclusions established in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended August 2016, for collocations on federal buildings and non-federal buildings located on federal lands.
- B. Communications connections to buildings that have been determined not eligible for listing on the National Register via a previous Section 106 consultation completed in the past 15 years require no further Section 106 review.
- C. Communications connections to and collocations on buildings listed in or eligible for listing in the National Register require no further Section 106 review, so long as:
  1. All construction complies with the Secretary of the Interior's Standards for Rehabilitation; for example, when a new building entry is required because no entry points exist; and
    - i. Communications connections and collocations are placed on buildings behind parapets or the roof's edge in such a manner so that the connections and collocations are not visible from ground level; and existing communications or utility entry points and infrastructure are used to the greatest extent feasible, in and on the historic building; or
    - ii. If existing communications or utility entry points and infrastructure cannot be used for the subject collocation, any additional entry points and infrastructure required in or on the historic building are installed in such a way as to minimize adverse effects to historic materials.

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

- A. The placement of above-ground communications and cable lines on existing poles or structures requires no further Section 106 review, as long as:
  1. No new structures or poles need to be added to accommodate the new lines; and
  2. The structure or pole is not a historic property and does not contribute to the significance of a historic district.

- B. When replacement of structures or poles is planned, the undertaking requires no further Section 106 review, as long as:
1. The replacement structures or poles can be located within the same hole as the original structure and there is no new ground disturbance outside of previously disturbed areas associated with temporary support of the lines; 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 consistent with the quality and appearance of the originals; and
  4. Any proposed height increase of the replacement structures or poles is no more than 10 percent of the height of the originals; and
  5. 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.

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

- A. The APE for installation of buried cable will be the width of the construction ROW plus any additional areas for staging or access.
- B. The installation and maintenance of new or replacement communications cable and new or replacement associated vaults for cable access along or solely in previously disturbed areas or in existing communications or utilities trenches within existing road, railroad, and utility ROWs requires no further Section 106 review.
- C. The installation of new or replacement vaults for cable access that are outside of existing road, railroad, and utility ROWs but located solely in previously disturbed soils requires no further Section 106 review so long as there are no known historic properties within the APE for the vaults.
- D. The installation of new or replacement buried communication connections from road, railroad, and utility ROWs or vaults to a facility requires no further Section 106 review, so long as:

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

## **X. Communications tower replacement**

- A. For the purpose of this section, the APE for direct effects for a tower, compound, and associated construction is the area of potential ground disturbance, any areas for staging or access, and any property, or any portion thereof that will be physically altered or destroyed by the undertaking. (source: 2004 NPA, as amended)
- B. For the purpose of this section, the APE for indirect visual effects is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity. (source: 2004 NPA, as amended)
1. Unless otherwise established, or previously established through consultation and agreement between the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO the APE for visual effects for construction of new facilities or structures is the area from which the tower will be visible:
    - i. Within a half-mile radius from the tower site if the proposed tower is 200 feet or less in overall height;
    - ii. Within a three-fourths mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or
    - iii. Within a 1 1/2 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.
  2. These distances are a guideline that can be altered based on an otherwise established agreement and on individual circumstances addressed during consultation with the SHPO/THPO, Indian tribes, and NHO and consulting parties.
- C. Replacement of a tower within an existing facility boundary that was previously reviewed pursuant to Section 106, and mitigated as necessary, requires no further Section 106 review so long as:
1. The proposed replacement tower does not represent a substantial increase<sup>2</sup> in size relative to the existing tower; and
  2. The installation of the proposed replacement tower does not involve ground disturbance outside the facility's boundary; and
  3. No new mitigation is required to address reasonably foreseeable cumulative effects.

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

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

- A. For the purpose of this section, the direct APE for a tower, compound, and associated construction (staging area, access roads, utility lines, etc.) is the area of potential ground disturbance and any property, or any portion thereof, which would be physically altered or destroyed by the undertaking.
- B. For the purpose of this section, the indirect APE for visual effects is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the integrity of a historic property, including the landscape.
  - 1. Unless otherwise established, or previously established through consultation and agreement between the Federal LMA/PMA and SHPO/THPO, Indian tribes, and NHO the APE for visual effects for the construction of a new tower is the area from which the tower will be visible:
    - a. Within a half mile radius from the tower site if the proposed tower is 200 feet or less in overall height;
    - b. Within a three-fourths mile radius from the tower site if the proposed tower is more than 200 but no more than 400 feet in overall height; or
    - c. Within a 1 1/2 mile radius from the proposed tower site if the proposed tower is more than 400 feet in overall height.
  - 2. These distances are a guideline that can be altered based on an otherwise established agreement or following consultation with SHPO/THPO, Indian tribes, and NHO and consulting parties.
- C. For the purpose of this section, new construction of up to three towers within an existing communications compound that has previously been reviewed pursuant to Section 106, and will not adversely affect any identified historic properties within the compound, requires no further Section 106 review so long as the proposed new tower is not substantially larger in size<sup>3</sup> than the largest preexisting tower within the existing communications compound boundary.

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

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

## **XIII. Professional qualifications**

- A. All tasks implemented pursuant to this Program Comment shall be carried out by, or under the direct supervision of, a person or person(s) meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-39) in the appropriate disciplines. However,

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

nothing in this section may be interpreted to preclude Federal LMAs/PMA's from using the properly supervised services of persons who do not meet the qualifications standards.

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

#### **XIV. Unanticipated discoveries**

- A. If previously unidentified historic properties or unanticipated effects, including audible, atmospheric, and cumulative effects, to historic properties are discovered during project implementation, the contractor shall immediately halt all activity within a 50 foot radius of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours, the Federal LMA/PMA shall notify the relevant SHPO, THPO, Indian tribe, or NHO of the inadvertent discovery, and determine whether a Discovery Plan is necessary.
- B. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or tribal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act and its implementing regulations (43 CFR part 10), and consistent with the Discovery Plan.
- C. The Federal LMA/PMA shall ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an undertaking, all work within 50 feet of the discovery will cease, the area will be secured, and the Federal LMA/PMA's authorized official will be immediately contacted.
- D. The Discovery Plan for inadvertent discoveries will include the following provisions.
  1. Immediately halting all construction work involving subsurface disturbance in the area of the find and in the surrounding area where further subsurface finds can be reasonably expected to occur, and immediately notify SHPO, THPO, Indian tribes (as appropriate), and NHO of the find;
  2. A qualified professional will immediately inspect the site and determine the area and nature of the affected find. Construction work may then continue in the area outside the find as defined by Federal LMA/PMA;
  3. Within five working days of the original notification, the Federal LMA/PMA, in consultation with SHPO, THPO, Indian tribes, as appropriate, and NHO, will determine whether the find is eligible for the National Register;
  4. If the find is determined eligible for listing in the National Register, the Federal LMA/PMA will prepare a plan for its avoidance, protection, or recovery of information in consultation with the SHPO, THPO, Indian tribes, as appropriate, and NHO. Any dispute concerning the proposed treatment plan will be resolved by the Federal LMA/PMA.
  5. Work in the affected area will not proceed until either:
    - a. The plan is implemented; or
    - b. The determination is made that the unanticipated find is not eligible for inclusion in the National Register. Any disputes over the evaluation of unanticipated finds will be resolved in accordance with the requirements of 36 CFR § 800.4(c) (2) as appropriate.

#### **XV. Emergencies**

Should the Federal LMAs/PMA's determine that an emergency or natural disaster has occurred during the implementation of any communications deployment activities covered under this Program Comment, the Federal LMAs/PMA's shall notify the appropriate SHPO, THPO(s), Indian tribes, and NHO(s) within seven days as to how they intend to repair or replace the communications equipment or facilities, or undertake other relevant actions in response to the emergency or natural disaster. Federal LMAs/PMA's shall ensure that any approvals, licenses, or permits issued for these emergency response activities refer to compliance with the terms of this Program Comment.

**XVI. Effective date**

This Program Comment shall go into effect on Monday, May 8, 2017.

**XVII. Reporting**

- A. Federal LMAs/PMAs individually will submit an annual report to the ACHP, NCSHPO, and NATHPO that summarizes the number of projects reviewed under the Program Comment within a calendar year as well as the number of activities that resulted in adverse effects to historic properties. The annual report also will indicate whether any agreements regarding the applicability of this Program Comment on tribal lands have been developed in the past calendar year, and which Indian tribe(s) is a signatory. Annual reports will be submitted December 1 of each year, commencing in 2018.
- B. The ACHP shall reexamine the Program Comment's effectiveness based on the information provided in the annual reports submitted by the Federal LMAs/PMA, and by convening an annual meeting with the Federal LMAs/PMAs, NCSHPO, NATHPO, tribal representatives, NHOs, and industry representatives. In reexamining the Program Comment's effectiveness, the ACHP shall consider any written recommendations for improvement submitted by stakeholders prior to the annual meeting.

**XVIII. Amendment**

- A. The chairman of the ACHP may amend this Program Comment after consulting with the Federal LMAs/ PMAs and other relevant federal agencies, NCSHPO, NATHPO, tribal representatives, the National Trust for Historic Preservation, and industry representatives, as appropriate. The ACHP will publish a notice in the *Federal Register* informing the public of any amendments that are made to the Program Comment.
- B. Should other federal agencies that propose to carry out, permit, license, fund, or assist in communications activities intend to utilize this Program Comment to satisfy their Section 106 responsibilities on federal lands, they must first notify the ACHP in writing of their intention. The ACHP will acknowledge in writing the agency's notification within 30 days following receipt of a request, and will put an announcement on its website when it receives such a notification. Upon receipt of the ACHP's acknowledgement, and without requiring an amendment to this Program Comment, the federal agency may utilize the Program Comment.

**XIX. Sunset clause**

This Program Comment will expire December 31, 2027, unless it is amended prior to that date to extend the period in which it is in effect.

**XX. Withdrawal**

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