



Preserving America's Heritage

Frequently Asked Questions for Using the ACHP's *Program Comment for Communications Projects on Federal Lands and Property*

1. What is a Program Comment?

A Program Comment is an alternate way for federal agencies to meet their Section 106 obligations instead of conducting individual reviews under §§ 800.4 through 800.6 of the ACHP's Section 106 regulations (36 CFR Part 800). Program Comments can alter this standard process to better align with federal agency programs or types of undertakings. While requests for a Program Comment typically come from a federal agency's headquarters, they also can be issued by the ACHP at its own initiative. Program Comments are voted on by ACHP membership and issued by the chairman. More information on Program Comments can be found here: <http://www.achp.gov/altguidance/#introduction>.

(This is the general PC reference on the ACHP website)

<http://www.achp.gov/altguidance/qa.html>

2. What is the purpose of this *Program Comment for Communications Projects on Federal Lands and Property*?

The purpose of the Program Comment is to assist federal land and property managing agencies to deploy broadband services in rural and underserved communities by more efficiently permitting and approving the deployment of next-generation technology, e.g., 5G infrastructure on their properties.

3. Who can use this Program Comment?

This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, or assisted by federal land managing agencies such as the U.S. Department of Agriculture's (USDA) U.S. Forest Service; the Department of the Interior's National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Bureau of Indian Affairs; and federal property managing agencies such as the Department of Homeland Security and its components; the General Services Administration; the Department of Veterans Affairs; and the Department of Commerce.

Where the Federal Communications Commission (FCC) has Section 106 responsibilities over a proposed communications undertaking that requires compliance with Section 106 for private and public lands and property, the Federal Land Managing Agencies (LMAs) and Federal Property Managing Agencies (PMAs) shall be responsible for compliance with Section 106 for that undertaking and may utilize the Program Comment.

Other agencies such as USDA's Rural Utilities Service can use the Program Comment when it awards loans and grants to the private sector and tribal communities that may have an effect on federal lands and properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637

Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Should other federal agencies that propose to carry out, permit, license, fund, or assist in communications activities decide they want to use the Program Comment, they must first notify the ACHP in writing of their intention. The ACHP will acknowledge the agency's notification within 30 days following receipt of a request and post it on the ACHP's website. Only after the agency's notification has been posted can the federal agency begin to use the Program Comment.

4. Does my agency have to use this Program Comment to deploy communications infrastructure on federal land or on federal property?

No. While this Program Comment provides an alternate method for federal agencies to meet their Section 106 responsibilities in a flexible manner for communications undertakings, they can still use the standard process set out at 36 CFR §§800.3 through 800.7. In addition, the federal agencies can use other applicable program alternatives outlined in 36 CFR §800.14 to meet their Section 106 responsibilities.

5. Does this Program Comment apply to all federal land?

No. This Program Comment is not applicable to undertakings proposed to be carried out, permitted, licensed, funded, or assisted by any federal agency that would affect: 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 undertakings on these lands or that will affect properties not mentioned in this Program Comment, the federal agency must follow the standard Section 106 process under 36 C.F.R. §§ 800.3 through 800.7 or another applicable program alternative outlined in 36 C.F.R. § 800.14. The review of such undertakings should be carried out in consultation with the applicant, State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), Indian tribes, Native Hawaiian organizations (NHOs), and other consulting parties.

6. Does this Program Comment apply to Indian reservations?

It depends on whether the Federal LMA/PMA has developed a relationship with THPOs and Indian tribes over the years regarding tribal and cultural sites on federal lands and properties. Otherwise, Indian tribes should reach agreement with the Federal LMA/PMA regarding the use of this Program Comment or other agreement documents negotiated between the Federal LMA/PMA and Indian tribes, such as a Memorandum of Understanding.

7. What is the relationship between this Program Comment and the FCC's nationwide programmatic agreements?

This Program Comment draws upon the lessons learned in use of the two FCC Nationwide Programmatic Agreements (NPAs) for wireless communications projects, executed in 2001 and 2004. These NPAs have been successful in establishing efficiencies in the Section 106 review of tower construction and collocations, approaches which the federal agencies are interested in following for their communications activities on federal land and property. Further, federal land managing and property managing agencies may be able to comply with future amendments to the FCC NPAs that may establish new efficiencies for the deployment of communications facilities.

Since the FCC NPAs apply only to private lands on which an applicant must obtain licenses or registrations, the FCC understands that LMAs/PMA may use the Program Comment when complying with the requirements of Section 106 for public-private undertakings.

8. What are some of the efficiencies built into the Program Comment?

The first efficiency is to promote a consistent and predictable procedure to avoid and minimize effects on historic properties when deploying broadband on federal property. Early coordination among the federal agency, applicant, and SHPO/THPO and others; use of noninvasive techniques for testing below ground properties; and the siting of projects in previously disturbed areas are encouraged.

A second efficiency is the process of identifying historic properties located in the undertaking's area of potential effect (APE) for the communications deployment, particularly broadband. This Program Comment calls for the agency, or its applicant, to review existing records to see if anything is known about historic properties within the APE. If nothing is known, then qualified professionals help to determine whether 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. If they cannot be avoided, the Federal LMA/PMA and applicant will comply with the Standard Section 106 process and consult with the SHPO/THPO, Indian tribes, NHOs, and other consulting parties to determine whether a survey or monitoring program should be developed and implemented.

The third efficiency is a series of "best practices" that, if implemented, can limit the need for further Section 106 review for several categories of communications deployment. These exemptions include the following: 1) the placement of above-ground communications and cable lines on existing poles or structures; 2) the placement of above-ground connections to, and collocations on, federal buildings and buildings located on federal land; 3) collocation of communications antennae on new or replacement towers; and 4) the installation of buried communications cable.

Building on the experience gained in and results from implementing the FCC's two NPAs and the 2016 *Amendment to Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification*, it became clear that the vast majority of broadband deployment has limited potential to affect historic properties when known historic properties were avoided, new cable utilized existing facilities, and where cable was buried in already-disturbed soils.

9. What roles do the SHPOs, THPOs, Indian tribes, and NHOs play in this Program Comment?

The federal agency consults with the appropriate SHPO, THPO, Indian tribe, as appropriate, or NHO when 1) confirming the APE for each individual undertaking and providing notification of its intent to follow this Program Comment; 2) when carrying out its Records Check to determine if there are known historic properties within the APE; 3) when a discovery plan needs to be implemented; and 4) when assessing effects and resolving any adverse effects that cannot be avoided. In addition, the National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, and NHOs will participate in annual meetings with Federal LMAs/PMAs, industry representatives, and the ACHP to reexamine the effectiveness of the Program Comment based on findings in the annual reports that summarize activities carried out by the respective agencies.

10. What is the duration of this Program Comment?

The Program Comment will expire **December 31, 2027**, unless it is amended prior to that date to extend its duration.