



ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Issuance of the U.S. Department of Veterans Affairs Program Comment for Vacant and Underutilized Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of issuance of the U.S. Department of Veterans Affairs Program comment for vacant and underutilized properties.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has a program comment for the U.S. Department of Veterans Affairs (VA) that sets forth the way in which VA complies with Section 106 of the National Historic Preservation Act (NHPA) for its real property actions related to the transfer of property rights of vacant and underutilized buildings, structures and land, including out leases, exchanges, sales, transfers, conveyances, deconstructions and demolitions, and for certain maintenance and repairs.

DATES: The program comment went into effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Address any questions concerning the Program Comment to Angela McArdle, Office of Federal Agency

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

FOR FURTHER INFORMATION CONTACT: Angela McArdle, (202) 517-0221, amcardle@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the NHPA requires federal agencies to consider the effects of projects they carry out, license, or assist (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 the 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 individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by taking into account an applicable Program Comment and following the steps set forth in that comment.

The U.S. Department of Veterans Affairs (VA) sought a Program Comment for its real property actions related to the transfer of property rights of vacant and underutilized buildings, structures and land, including out leases, exchanges, sales, transfers, conveyances, deconstructions and demolitions, and for certain maintenance and repairs. The ACHP issued the Program Comment on October 19, 2018. The regulations implementing Section 106 require that such program comments be published in the Federal Register before going into effect.

I. Overview of the Program Comment

Reducing vacant and underutilized properties in its portfolio will allow VA to redirect limited operations and maintenance staff and funding to those facilities supporting delivery of services and benefits to veterans.

Changing needs, technology, and medical care have contributed to the functional obsolescence of many buildings and structures in VA's real property portfolio and altered how facilities are used or not used given VA's funding parameters. These changes have resulted, and will continue to result, in vacancies and underutilized buildings and structures in VA's portfolio. The Program Comment will enable VA to more efficiently complete the Section 106 review process to achieve a reduction of vacant

and underutilized buildings and structures, thereby reducing the square footage to be maintained, costs for management of VA's real property and ultimately the burden on taxpayers. The Program Comment creates an alternative process that will result in greater project schedule certainty, increased engagement of VA field personnel, and a better understanding of VA's Section 106 responsibilities

The Program Comment applies to VA disposals of federal real property including sales, transfers, conveyances or exchanges to non-federal entities, lease termination, public benefit conveyance, deconstruction and demolition of vacant and underutilized properties, as well as maintenance and repair of such properties that are non-historic or historic properties that have been categorized as utilitarian. This Program Comment does not apply to real property transfers, conveyances or exchanges from VA to another federal agency where such property remains in federal ownership and the receiving agency continues to be subject to Section 106.

This Program Comment also applies to Enhanced Use Leases (EULs) developed under 38 U.S.C. 8161 and leases or exchanges under 54 U.S.C. 306121 and 306122 (formerly Section 111 of the NHPA). These authorities allow outside parties to lease a building or structure from VA for

development of supportive housing for homeless veterans (EUL) or to lease historic properties for other uses that may benefit veterans, their families or communities. An exchange of one historic property with a comparable historic property is allowed under Section 111 of the NHPA.

According to VA's real property database, the Capital Asset Inventory (CAI), there are currently about 1,000 vacant and underutilized properties, of which approximately 400 are vacant and about 600 are underutilized. Not all of the vacant and underutilized properties are historic properties. There are currently about 330 vacant historic properties, of which about 160 are categorized as utilitarian. There are currently about 260 underutilized historic properties, of which about 200 are categorized as utilitarian.

By eliminating the need for Section 106 review of each individual real property action, the Program Comment will allow more efficient compliance with Section 106 for the reduction of VA's vacant and underutilized properties.

II. Background Leading to the Program Comment

Since 1971, VA has steadfastly invested in identification and evaluation of its historic properties. In 1981, the Keeper of the National Register of Historic Places (National Register) determined all national

cemeteries, regardless of age, eligible for inclusion in the National Register. Over the past fifteen years, VA has evaluated or re-evaluated more than 115 of its 152 medical centers according to the National Register Criteria for Evaluation to assess the significance in American history, architecture, archaeology, engineering, and culture present in VA's districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association.

In 2004, VA partnered with the National Park Service (NPS) to inventory its oldest medical centers, the eleven branches of the National Home for Disabled Volunteer Soldiers. This group of facilities includes properties dating from just after the Civil War through 1930, and is known within VA as the First Generation.

From 2008 to 2012, VA compiled documentation on 50 facilities built at the end of World War I through the end of World War II. The "United States Second Generation Veterans Hospitals" National Register Multiple Property Documentation was accepted by the NPS in January 2012.

Since 2010, VA has compiled documentation on 57 of its facilities built after World War II up to 1958. The "United States Third Generation Veterans Hospitals" National

Register Multiple Property Documentation was accepted by the NPS in May 2018.

In March 2016, the NPS accepted the Inter-World War National Cemeteries National Register Multiple Property Documentation for facilities opened between 1934 and 1939.

As of May 2018, VA has over 8,350 buildings and structures within its three divisions: Veterans Health Administration (VHA), National Cemetery Administration (NCA), and Veterans Benefits Administration (VBA). VA has evaluated about 7,325 of these 8,350 buildings and structures, approximately 88% of the built resources in its inventory, for eligibility to the National Register. Approximately 2,325 of these are historic: National Register eligible or listed, or National Historic Landmarks (NHLs). Of these historic properties, about 85%, or nearly 2,000 buildings and structures, are being used in support of veterans. More than 5,000 other buildings and structures have been evaluated and determined not eligible.

In recent decades, the White House, Congress and agencies have been assessing the federal government's ability to manage its capital assets - specifically buildings, structures, and land. These efforts have prompted the federal government to identify, assess, analyze, and review capital asset management to improve

fiscal accountability and management. Several studies, Presidential memoranda, and Executive Orders have highlighted this matter:

(1) A 2003 Government Accountability Office report (GAO-03-122) titled High-Risk Series: Federal Real Property highlighted federal real property as high risk, noting "multibillion-dollar cost implications [that] can seriously jeopardize mission accomplishment."

(2) Issued in 2004, Executive Order 13327, Federal Real Property Asset Management, became law in December 2016 as the Federal Property Management Reform Act (Public Law 114-318). The order directed creation of the Federal Real Property Profile (FRPP), a database updated annually with descriptions of individual buildings, structures, and objects including, among other elements, the historic status of the property. FRPP historic status is defined as: NHL, National Register listed or eligible, Non-contributing element of an NHL/National Register district, Not Evaluated or Evaluated/Not Historic. National Register listed or eligible assets are considered historic properties under the NHPA.

(3) A Presidential Memorandum issued in 2010, Disposing of Unneeded Federal Real Estate, required federal agencies to: identify and eliminate excess properties; increase space

utilization and occupancy rates; reduce operating costs; and improve energy efficiency and sustainability. The government-wide goal as directed by the Memorandum was to encourage federal agencies to save costs and be more efficient in managing real property. Oversight and implementation roles were assigned to the Office of Management and Budget (OMB) and General Services Administration (GSA).

(4) Two OMB memoranda applicable to all federal agencies' real property management followed in 2012 and 2013. The first memorandum (M-12-12, Promoting Efficient Spending to Support Agency Operations) provided that any acquisition of new civilian real property that increases the total square footage of an agency must be offset through consolidation, co-location or disposal of space from that agency's inventory. The second memorandum (Management Procedures No. 2013-02, Implementation of OMB Memorandum M-12-12), known as "Freeze the Footprint," set an annual performance standard of no net increase/no net growth in the square footage of each agency's domestic office and warehouse owned and leased property relative to a Fiscal Year (FY) 2012 FRPP inventory baseline. Acceptable offsets, or removal from a federal agency's inventory, include declaration of individual buildings to GSA as excess and

disposal. According to OMB policy, unacceptable offsets include mothballing, EULs, other out leases, or simply leaving a building unused or unoccupied.

(5) In 2015, OMB issued the "National Strategy for the Efficient Use of Real Property 2015-2020, Reducing the Federal Portfolio through Improved Space Utilization, Consolidation, and Disposal." This national effort, known as "Reduce the Footprint" is a follow-up to the earlier "Freeze the Footprint" initiative. The strategy and related policy require federal agencies to reduce their domestic real property square footage rather than simply maintaining their FY 2012 levels.

(6) In May 2017, the VA Secretary emphasized the need for VA to develop "different types of strategic partnerships" related to the reduction of vacant and underutilized buildings and specifically called out 430 vacant buildings and 735 underutilized buildings which VA had identified during a December 2016 review of its real property database, the Capital Asset Inventory (CAI). The VA MISSION Act of 2018 (S.2372) requires consideration of "the extent to which the real property that no longer meets the needs of the Federal Government could be reconfigured, repurposed, consolidated, realigned, exchanged, outleased, replaced, sold, or disposed."

A Program Comment under the NHPA Section 106 regulations, 36 CFR § 800.14(e), is an efficient alternative to address several categories of undertakings in support of VA's need to reduce its square footage of vacant and underutilized properties.

III. Public Participation

VA sought public participation in the Program Comment's development prior to formally requesting the ACHP to review its proposal for the Program Comment. These actions included publication of a Notice of Availability in the Federal Register in April 2018, giving the public a 30-day period to submit comments. Comments from the public were provided to the ACHP with VA's formal request.

Working with the Veterans Service Organizations (VSOs) Liaison, VA consulted with Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), American Legion, Military Officers Association of America (MOAA), Paralyzed Veterans of America (PVA), AMVETS, and Vietnam Veterans of America (VVA). These organizations were consulted prior to the development of the Program Comment to help determine issues that may be of specific concern prior to formal submission to the ACHP.

In December 2017 and January 2018, VA invited staff from the ACHP, National Conference of State Historic

Preservation Officers (NCSHPO), National Association of Tribal Historic Preservation Officers (NATHPO), and National Trust for Historic Preservation (NTHP) to face-to-face meetings concerning VA's proposed request for a Program Comment. These meetings solicited input from the participating entities to develop a Program Comment that considered the consulting parties' perspectives.

VA's Office of Tribal Government Relations (OTGR) reached out to leaders of all federally recognized Indian tribes through a letter sent in March 2018, which included a 45-day comment period. A webinar for Indian tribes, hosted by NATHPO, was held March 22, 2018, and led by VA's Federal Preservation Officer (FPO). VA coordinated with OTGR in the internal review of the draft Program Comment. OTGR also participated in the January 2018 consultation meeting with the consulting parties. In addition, information regarding the proposed Program Comment was included in the 2017 VA/OTGR Executive Summary Report.

On August 2, 2018, VA presented its proposal for a Program Comment at the ACHP's Federal Agency Programs (FAP) Committee meeting in Washington, DC and submitted its formal request for a Program Comment to the ACHP, starting the ACHP's 45-day regulatory clock, which was originally set to end on September 17, 2018. The most substantial

change in the draft submitted with the formal request was the removal of National Historic Landmarks from consideration under the Program Comment, a request that multiple consulting parties had made in the early stages of the draft's development.

Following VA's formal request, the ACHP carried out its own consultation. ACHP hosted a consultation meeting with NCSHPO, NATHPO, NTHP, and VA on August 9, 2018 to discuss the draft sent with VA's formal request. These preservation organizations expressed a desire for a longer public comment period than would have been possible in the original 45-day period. Based on this feedback, ACHP requested and obtained a 2-week extension from VA on August 23, 2018, to allow for an extended public review period of 28 days.

ACHP created a webpage to host the text of the Program Comment, linked to it on its Trending Topics webpage and its Twitter and Facebook webpages, and sent a broadcast email announcing the posting of the Program Comment text and ACHP's request for public review and comment. ACHP sent the email to ACHP members, Senior Policy Officials and Senior Policy Official Representatives (SPOs & SPO Reps), ACHP Alumni, Federal Preservation Officers and Federal Preservation Officer Representatives (FPOs & FPO Reps),

State Historic Preservation Officers (SHPOs), NTHP, National Preservation Organizations, Preservation Partners, Statewide and Local Preservation Organizations, Native Hawaiian Organizations (NHOs), Tribal 106 Chairs, Tribal 106 Contacts, and the same seven VSOs VA had consulted earlier in the development process. VA also posted a link to the Program Comment text on its Historic Preservation Office webpage. The public review period began August 23, 2018 and ended September 19, 2018 for a total period of four weeks.

Mid-way through the public comment period, ACHP members requested the opportunity to discuss the Program Comment in person at the next business meeting. In response, ACHP requested and obtained an additional 6-day extension from VA on September 6, 2018, to extend the period for ACHP comment until October 4, 2018, which would allow ACHP to accommodate an assembled vote at its October 4 Business Meeting.

By the close of the public comment period, ACHP received comments from 21 respondents. The primary concerns expressed in the comments focused on the need for: (1) a greater degree of procedural transparency by increasing notification and consultation with parties external to VA; (2) clarification on the categorization of VA's real

property into "utilitarian" and "non-utilitarian" and consideration of the cumulative effects to historic districts if multiple utilitarian historic properties were removed; and (3) clarification on how the Program Comment addresses archaeological historic properties and properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian Organizations (NHOs).

ACHP staff held a conference call with ACHP members on September 21, 2018 to discuss the comments received during the public comment period and to seek any comments or recommendations for revisions to the draft that ACHP members wished to provide. Fourteen ACHP members participated. ACHP staff hosted another consultation meeting September 26, 2018 with NCSHPO, NTHP, and VA to discuss specific revisions to address the comments received during the public comment period and those raised during the ACHP member teleconference.

Based on this feedback, ACHP and VA then worked together to revise the draft in the following ways:

(1) a new consultation process was added in Section 3. (Annual Publication and Review of VA's Real Property Portfolio) where each year VA will provide a composite list of properties that could be subject to the Program Comment to the ACHP for posting on a publicly accessible webpage.

VA would provide this list, with an accompanying narrative, to accommodate interested parties who wished to request additional information or send comments to VA concerning properties on the composite list. New processes of notification and consultation with parties external to VA were also added to Section 5.1. (Leases and Exchanges), Section 5.2. (Sales, Transfers, Exchanges, and Conveyances), Section 5.3. (Deconstruction and Demolition), Section 6. (Programmatic Mitigation), Section 7. (Review of Undertakings), and Section 8. (Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian tribes or NHOs);

(2) the definition of the term "utilitarian property" was updated in Section 2.2. (Definitions) and the consultation process added in Section 3. affords greater transparency on which properties VA will categorize as utilitarian. The Section 3. consultation process also allows interested parties to request more information about a utilitarian property and provide their views on that property's categorization as utilitarian. Section 4.3.1. (Utilitarian Historic Properties) has been made more concise for clarity, and the requests for clarification about maintenance and repair on utilitarian properties have been

addressed in Section 2.2. (Definitions) and Section 5.4. (Maintenance and Repair of Non-Historic and Utilitarian Historic Properties); and

(3) the newly added Section 8. (Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian tribes or NHOs) introduces procedures for how historic properties other than buildings and structures will be addressed when an undertaking subject to the Program Comment could affect them. The procedures require (1) Further identification efforts (notification and consultation with SHPOs, Indian tribes, and NHOs) of VA if there are ground disturbance activities proposed in previously undisturbed areas that VA has no record of being previously surveyed; (2) No further identification efforts of VA if land has been previously reviewed/surveyed and found to have no such properties that would be adversely affected, if previous ground disturbance indicates a low probability of finding such properties, or if a qualified professional has determined the area has a low probability for such properties; and (3) VA to follow the steps at 36 CFR § 800.13 (b) (Post-review Discoveries), if historic properties are discovered or unanticipated effects on historic properties are found during the implementation of an undertaking.

With these revisions, ACHP staff anticipated that the VA Program Comment was ready for vote by the membership. A draft was sent to ACHP members for their consideration on September 28, 2018 with the expectation that it would be the subject of discussion at the October 3 Federal Agency Program (FAP) Committee Meeting and voted on at the October 4 ACHP Business Meeting in Washington, DC. Discussion at the FAP Committee meeting on October 3, 2018 indicated that the ACHP members had additional concerns about the VA Program Comment that needed to be addressed prior to a vote. Namely, the need for an annual meeting, for clarification on the language concerning historic tax credits, for more consideration of cultural landscapes, for the addition of more consulting parties, and for additional clarification on the level of consultation with Indian tribes with ground disturbance activities. Consequently, on October 3, 2018, ACHP requested a third extension from VA for an additional 15 days to work through the remaining concerns. VA granted the extension.

ACHP members provided their final comments to ACHP staff on October 9, 2018. ACHP staff then worked with VA to produce another draft that was circulated to the ACHP members on October 11, 2018 and was to be the basis of discussion for a teleconference scheduled the next day,

October 12, 2018. Fourteen ACHP members participated in the teleconference call on October 12, 2018. Discussion during the teleconference indicated that the ACHP members were comfortable moving forward with a vote on the draft. Consequently, the draft was revised one final time for minor technical edits and sent to ACHP members on October 15, 2018 along with a ballot for them to cast their vote. On a vote that closed on October 19, 2018, the ACHP members voted in favor of issuing the program comment reproduced below.

IV. Text of the Program Comment

What follows is the text of the issued program comment:

U.S. Department of Veterans Affairs Program Comment for Vacant and Underutilized Properties

1. Introduction

This Program Comment provides the U.S. Department of Veterans Affairs (VA) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 CFR part 800 (Section 106), regarding vacant and underutilized properties. It enables VA to proceed with certain undertakings following an expedited review process that complements VA's real

property priorities in finding uses for vacant and underutilized properties. VA has and will continue to prioritize finding uses for vacant and underutilized properties in its inventory in the following order: (1) VA use; (2) third-party use via an Enhanced Use Lease (EUL) or NHPA Section 111 lease; (3) sales, transfers, exchanges, or conveyances (note: property must be severable from the campus); and (4) deconstruction and demolition.

VA has an annual budget planning process, called the Strategic Capital Investment Planning (SCIP) process that addresses space needs projected out over a 10-year horizon for all its facilities. The SCIP process has successfully found a VA use for approximately 85 percent of VA's historic properties. This Program Comment will address those vacant and underutilized properties for which the SCIP process is unable to identify a viable VA need.

As of October 2018, according to VA's real property database, the Capital Asset Inventory (CAI), there were about 1,000 vacant and underutilized properties, of which approximately 400 were vacant and about 600 were underutilized. Not all of such vacant and underutilized properties were historic properties. There were about 330 vacant historic properties, of which about 160 were categorized as utilitarian. There were about 260

underutilized historic properties, of which about 200 were categorized as utilitarian.

2. Scope of Program Comment and Definitions

2.1. Scope

The Program Comment applies to the following categories of undertakings regarding management of VA's vacant and underutilized properties in its CAI:

- 1) EULs and NHPA Section 111 Leases and Exchanges;
- 2) Sales, Transfers, Exchanges, and Conveyances;
- 3) Deconstruction and Demolition; and
- 4) Maintenance and repair of non-historic properties and utilitarian historic properties.

VA may choose to utilize a case-by-case approach for each undertaking and meet Section 106 requirements by following 36 CFR § 800.3 - 800.7 in the event VA determines the undertaking warrants individual consideration.

Individual consideration may be warranted where State Historic Preservation Officers (SHPOs), Indian tribes or Native Hawaiian organizations (NHOs), and/or other interested parties have requested additional consideration.

This Program Comment does not apply to National Historic Landmarks (NHLs), any property coming into VA's portfolio as the result of an exchange, or to the following when VA has a record of their existence: (1) archaeological

historic properties, or (2) properties of traditional religious and cultural significance to Indian tribes or NHOs. Undertakings with the potential to affect any of these historic properties will follow the standard Section 106 review process, or if extant, the process detailed in any previously executed Section 106 agreement documents that govern such undertakings. VA will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and Archaeological Resources Protection Act (ARPA), as applicable.

A VA facility or campus with a Section 106 agreement in effect that addresses a disposal, lease, or exchange of vacant or underutilized historic properties can choose to: (1) continue to implement the existing agreement for its duration; (2) seek to amend the existing agreement, per its stipulations, to incorporate, in whole or in part, the terms of this Program Comment; or (3) terminate the existing agreement per the stipulations of that agreement and, prior to approving any undertaking formerly under its scope, follow the terms of this Program Comment. Terminating an existing agreement would require any undertakings previously covered by said agreement that would not be covered under the scope of the Program Comment to go through the standard Section 106 review process.

2.2. Definitions

For purposes of this Program Comment, the following definitions apply:

Area of potential effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. 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.

Day means one calendar day, including weekends and federal holidays. A deadline that would otherwise fall on a weekend or a holiday is extended until the next business day.

Disposal is sale, lease termination, public benefit conveyance, exchange, deconstruction or demolition, and/or transfer of real property from VA's inventory.

Ground disturbance is any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils. "Undisturbed soils" are soils that possess significant intact and distinct natural soil horizons. Previously undisturbed soils may occur below the depth of disturbed soils.

Historic property is any district (including contributing resources), site, building, structure, or object listed in

or eligible for listing in the National Register of Historic Places (National Register).

Maintenance and repair are minor routine activities needed to keep a building or structure in, or return it to, working or usable condition. These activities typically involve general repairs or replacement of in-kind materials and typically do not diminish the integrity of a historic property's character-defining features, which make a property eligible for listing in the National Register.

Major alterations (e.g., additions that substantially increase the square footage of a building or structure) are not considered routine maintenance and repair.

Non-historic property is any site, building, structure, or object that is not listed in or eligible for listing in the National Register. This includes non-contributing resources to National Register-listed or eligible historic districts.

Non-utilitarian property is a building or structure that is generally of a higher quality construction and architectural detail than a utilitarian property and provided space for hospitals, medical care, staff offices or living quarters.

Records Check means VA will request relevant information about whether archaeological historic properties or properties of traditional religious and cultural

significance to Indian tribes or NHOs are known to exist within the APE from SHPO, tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO.

Underutilized is a building or structure that is currently listed in the Federal Real Property Profile (FRPP) as underutilized (i.e., occupied but the current function does not require all the available space) and has been listed as such for a consecutive period of 12 months or longer. That period includes any time in such a list prior to the adoption of this Program Comment.

Utilitarian property is a building or structure of practical design, usually without much architectural ornamentation, utilizing traditional construction materials, with functions primarily limited to industrial and storage needs. VA's utilitarian properties tend to have standardized plans and little architectural design, complexity, or uniqueness, were constructed quickly, and have been determined by VA to have minor or no historic significance and/or diminished or no integrity. Utilitarian properties in VA's inventory could include, but are not limited to, warehouses, garages and carports, storage sheds, sewage plants, transformer buildings, incinerators, smoking shelters, pump houses, trailers, boiler/power

plants, barns, Quonset structures, laundry facilities, golf shacks, gate houses, guard stations, connecting corridors, greenhouses, fall-out shelters, maintenance shops (e.g., machine, paint, vehicle repair, housekeeping), animal research laboratories, and associated research sheds or ancillary buildings.

Note: Buildings and structures that are individually listed, or individually eligible for listing, in the National Register, are not considered "utilitarian properties" for purposes of this Program Comment.

Vacant is a building or structure that is currently listed in the FRPP as vacant/unutilized (i.e., less than 50 percent occupied) and has been listed as such for a consecutive period of 12 months or longer. That period includes any time in such a list prior to the adoption of the Program Comment.

Note: The definitions of "vacant" and "underutilized" in the Program Comment are based on the Federal Real Property Council's 2018 Guidance for Real Property Inventory Reporting (Version 2-Issue Date: August 27, 2018) and VA Directive 7633, and its accompanying Handbook, Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal (published January 11, 2018). The "vacant" and "underutilized" categories are independent of

one another because they assess different patterns (i.e., physical occupation of space versus efficient utilization of space).

3. Annual Publication and Review of VA's Real Property Portfolio

Every building, structure, or object owned or leased by VA is included in its CAI database, which also records whether a property has been evaluated and found to be historic. Utilizing real property portfolio information in the CAI allows VA a measure of predictability for addressing effects to its historic properties for the undertakings covered by the Program Comment.

The Program Comment distinguishes between non-historic and historic properties, and, among historic properties, between utilitarian and non-utilitarian buildings and structures.

Each year the Program Comment is in effect, once VA provides its real property information to the FRPP (i.e., December/January), VA will provide the Advisory Council on Historic Preservation (ACHP) with:

- (a) a composite list of properties that could be subject to the Program Comment should an applicable undertaking covered by the Program Comment be proposed (i.e., a combined list that incorporates the most

current lists of VA's vacant and underutilized properties as defined in Section 2.2., indicating where the properties are located, those that are historic and non-historic, and those further classified as "utilitarian"); and

(b) a narrative explaining its conclusion that historic utilitarian properties may be eliminated without endangering the continued National Register eligibility of the historic districts in which they are located. The narrative may include examples of situations where such eliminations have occurred with SHPO concurrence.

The ACHP will host a publicly accessible webpage that features information on the VA Program Comment and, each year upon receipt of the list and narrative from VA, will post the composite list of properties and narrative on that webpage and send electronic mail (using its most recently updated lists) to the National Conference of State Historic Preservation Officers (NCSHPO), SHPOs, Tribal Historic Preservation Officers (THPOs), Indian tribes, NHOs, interested Veterans Service Organizations (VSOs), and ACHP members about its availability, along with a reminder about the timeframes outlined below. For 60 days after the electronic mail is sent, interested parties may request

additional information and/or send comments to VA concerning properties on the composite list. For instance, any interested party may: provide VA with additional information on a property and/or any associated land that it would like VA to take into consideration when proposing any future undertakings for said property; comment on and/or provide relevant information about the relationship between any buildings and structures on the composite list to the campus setting; or comment on and/or provide relevant information about the presence of or potential effects to cultural landscapes, traditional cultural properties, and/or properties of traditional religious and cultural significance to Indian tribes or NHOs. VA will respond to such requests and comments. Also within this 60-day period, SHPOs, THPOs, Indian tribes, and NHOs may object to VA in writing if there is a discrepancy between their files and the eligibility evaluations in VA's CAI, and/or they believe the elimination of one or more utilitarian properties within particular historic districts in their states could (individually or cumulatively) endanger the continued eligibility of such districts. If any of these parties provide VA such an objection within the 60-day period, VA will either resolve the objection with the party or refer the matter to the ACHP for

comments. Upon receipt of the referral, the ACHP has 30 days to provide comments to VA. VA will consider any such timely comments. Thereafter, and prior to proceeding with an undertaking involving the properties at issue, VA will notify the relevant party and the ACHP as to its final decision on the issue.

Within the first year of the Program Comment's adoption, VA will present an implementation webinar to educate interested parties on the Program Comment.

The 60-day period mentioned above will be reduced to 30 days in years subsequent to the first one. The 30-day period afforded the ACHP will be reduced to 15 days in years subsequent to the first one. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15-day period.

4. Consideration of Properties

4.1. Consideration of Properties Not Yet Evaluated

If any vacant or underutilized building or structure in VA's CAI is being considered for an undertaking subject to this Program Comment and has not yet been evaluated for National Register eligibility, VA will undertake evaluation for eligibility to the National Register pursuant to 36 CFR § 800.4 (c). Only evaluated properties can be subject to

the Program Comment. Evaluation will be conducted by a person or persons meeting the Secretary of the Interior's Historic Preservation Professional Qualifications Standards in the appropriate discipline found in Federal Register, Vol. 62, p. 33,708 (June 20, 1997).

Following concurrence on the evaluation results by the relevant SHPO, VA may proceed with following the applicable section(s) of this Program Comment for either non-historic or historic property. In case of a disagreement between VA and the relevant SHPO, VA will refer the matter to the Keeper of the National Register. VA will proceed in accordance with the Keeper's determination of eligibility.

4.2. Consideration of Non-Historic Properties

Prior to any final approval on a proposed undertaking where there are no historic properties within the APE, VA's Federal Preservation Officer (FPO) will verify in writing for its records (Attachment 1) that the APE is appropriate and there are no historic properties in the APE (note: non-historic properties includes non-contributing resources to historic districts). Once VA's FPO has completed the verification process, VA will have concluded its Section 106 review for such undertakings.

4.3. Consideration of Historic Properties

4.3.1. Utilitarian Historic Properties

Unless VA agrees otherwise because of the Section 3. consultation process, above, VA will not have any further Section 106 responsibilities regarding its leases, exchanges, sales, transfers, conveyances, deconstruction, or demolition of utilitarian historic properties that contribute to a historic district.

With regard to the maintenance and repair of utilitarian historic properties that contribute to a historic district or non-historic properties located within a historic district, VA will follow Section 5.4.

4.3.2. Non-Utilitarian Historic Properties

Undertakings involving non-utilitarian historic properties will be reviewed in accordance with Section 5., below.

5. Consideration of Non-Utilitarian Historic Properties

These buildings and structures are generally of a higher quality construction and architectural detail than utilitarian properties and provided space for hospitals, medical care, staff offices or living quarters.

When VA determines there is no viable VA need for a non-utilitarian historic property, VA will ensure the property is considered for reuse via EUL or NHPA Section 111 Lease/Exchange as well as a sale, transfer, exchange, or

conveyance (if property is severable from the campus) before deconstruction or demolition is considered.

5.1. Leases and Exchanges

The Program Comment aims to incentivize reuse of VA's unneeded historic properties via lease or exchange by creating more certainty within the EUL process for the development of additional supportive housing for homeless veterans, and creating opportunities for efficiently converting vacant space into educational, training, conference, or other uses for veterans under NHPA Section 111. VA will issue a minimum of two solicitations for possible reuse of unneeded non-utilitarian historic properties through an EUL or NHPA Section 111 lease or exchange in an effort to prioritize the reuse of vacant and underutilized buildings.

VA will give priority consideration to design proposals that conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards) and will include language in the initial public announcement that informs potential respondents of VA's commitment to this priority consideration.

5.1.1. First Solicitations for Lease or Exchange

VA will market its first solicitation for reuse of a historic property through an EUL or NHPA Section

111 lease for a minimum of 60 days at the national level through the Federal Business Opportunities (www.fbo.gov) platform. VA will consider additional time for solicitation based on level of interest of respondents or public comments. VA may also ask other national media to cross-reference the original posting.

5.1.1.1. Enhanced Use Lease (EUL)

For an EUL, VA's initial public announcement will identify the building or structure as a historic property, and mention that financial incentives and financing options linked to the federal Historic Preservation Tax Incentives may be available to parties interested in leasing a historic property for supportive housing for homeless veterans. An EUL requires local public hearings, and this information will be presented to the affected community. To qualify and receive the tax incentives, the lessee must meet legal requirements and review processes identified in the National Park Service (NPS) Technical Preservation Services Tax Incentives Program and the Internal Revenue Service tax code. If a lessee pursues these financial incentives, and

has "Part 1-Evaluation of Significance" and "Part 2-Description of Rehabilitation" of its Historic Preservation Certification Application approved by NPS through the normal submission and review process and requirements, no further reviews will be required related to Section 106.

If the lessee will not pursue federal Historic Preservation Tax Incentives or if Part 2 of its Historic Preservation Certification Application is not approved, VA will submit a design proposal to the relevant SHPO for its 30-day review and concurrence that the design conforms to the Standards. If VA finds that the proposal does not conform to the Standards, or if the SHPO does not concur with VA's assessment that it does conform, VA will request that the SHPO identify the specific characteristics of the building or structure that qualify the property for the National Register that will be adversely affected by the proposal. VA will encourage modification of the proposal to include retention of these character-defining features.

If the lessee agrees to retention of these specific characteristics, VA will add language

confirming their retention to the lease. If the lessee does not agree to retain the qualifying characteristics, VA will notify the relevant SHPO, along with any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and ensure the qualifying characteristics are documented prior to removal or alteration or that another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO is carried out. The notification will include VA's estimate of such cost. Prior to any building alteration under the lease, VA will (1) allow the SHPO and other identified parties 30 days after the mentioned notification to submit any ideas for alternate mitigation of equal or lesser cost and (2) take into account any such ideas that are submitted within that timeframe and respond in writing with its decision. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the additional cost of preserving and rehabilitating the

qualifying characteristics to be removed or altered.

5.1.1.2. NHPA Section 111 Lease or Exchange

NHPA Section 111 leases or exchanges allow a lessee to secure funding for capital improvements and maintenance of historic properties VA does not need. VA will identify the building or structure's historic status in the solicitation for the Request for Expression of Interest (RFEI), Request for Qualifications (RFQ), or Request for Proposal (RFP). If the property was previously considered for an EUL, information about why an EUL was not pursued will inform the NHPA Section 111 solicitation to promote a successful NHPA Section 111 lease and preservation of the property. If a lessee pursues federal Historic Preservation Tax Incentives, and has "Part 1-Evaluation of Significance" and "Part 2-Description of Rehabilitation" of its Historic Preservation Certification Application approved by NPS through the normal submission and review process and requirements, no further reviews will be required related to Section 106.

If the lessee will not pursue federal Historic Preservation Tax Incentives or if Part 2 of its Historic Preservation Certification Application is not approved, VA will submit a design proposal to the relevant SHPO for its 30-day review and concurrence that the design conforms to the Standards. If VA finds that the proposal does not conform to the Standards, or if the SHPO does not concur with VA's assessment that it does conform, VA will request that the SHPO identify the specific characteristics of the building or structure that qualify the property for the National Register that will be adversely affected by the proposal. VA will encourage modification of the proposal to include retention of these character-defining features.

VA will add language incorporating specific requirements of the lessee regarding treatment of the qualifying characteristics to the lease. The lease will include terms to adequately ensure preservation of the historic property; however, this does not prohibit adverse effects if such effects will not disqualify the property from being National Register-eligible.

If the lessee does not agree to retain all of the qualifying characteristics, VA will notify the relevant SHPO, along with any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and ensure the qualifying characteristics are documented prior to removal or alteration or that another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO is carried out. The notification will include VA's estimate of such cost. Prior to any alteration under the lease, VA will (1) allow the SHPO and other identified parties 30 days after the mentioned notification to submit any ideas for alternate mitigation of equal or lesser cost and (2) take into account any such ideas that are submitted within that timeframe and respond in writing with its decision. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the additional cost of preserving and rehabilitating the qualifying characteristics to be removed or altered.

5.1.2. Second Solicitations for Lease or Exchange

If the first solicitation to reuse a historic property through an EUL or NHPA Section 111 lease or exchange is not successful, VA will again solicit for either an EUL or NHPA Section 111 lease or exchange via RFEI, RFQ, or RFP in the state of the property's location. This second solicitation will be directed to local, state, and/or tribal governments, municipalities, and non-profit organizations that may have a potential program need for space. The solicitation will be listed in state and local newspapers or other local media where a potentially interested party may see it. VA may also request other media to cross-reference the mentioned postings. VA will notify the relevant SHPO, Indian tribes, and veterans' groups of the solicitation so they may further circulate the notice to encourage responses.

If there is no viable response to VA's second solicitation after 60 days, VA may proceed to consideration of the property for sale, transfer, exchange, or conveyance (Section 5.2.). VA will consider additional time for solicitation based on level of interest of respondents or public comments.

5.1.3. Annual Compliance Review of Leases

VA will conduct and document an annual compliance review for the life of any lease. The review ensures the terms of the lease, including any agreed upon historic property treatments, are being met. VA retains the right to terminate the lease in the event its terms are not implemented or followed.

5.2. Sales, Transfers, Exchanges, and Conveyances

For any sale, transfer, exchange, or conveyance from VA out of federal government ownership, VA will either: (a) include a preservation covenant or conservation easement for non-utilitarian historic properties to prevent future alterations that would disqualify the property from being National Register-eligible; or (b) carry out mitigation of equal or lesser value that VA identifies in consultation with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process. For purposes of this subsection, such "value" is, as calculated by a professional appraiser with experience in the evaluation of historic properties, the difference between the fair market value of the property before and after the recording of the preservation covenant or conservation easement.

(a) In the event a preservation covenant or conservation easement is included in the sale, transfer, exchange, or conveyance for non-utilitarian historic properties, the holder would be identified at the time of each individual real property transaction. This process allows for the flexibility of negotiation unique to the circumstances of the sale, transfer, exchange, or conveyance of a particular historic property. VA will grant the covenant or easement to an organization (either private, nonprofit, or government) with access to qualified historic preservation expertise. VA will submit a draft of the preservation covenant or conservation easement to the relevant SHPO and other identified parties for a 30-day review and comment period. If after 30 days, there is no agreement on the language to be included in the covenant or easement, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

(b) For any non-utilitarian historic property being considered for sale, transfer, exchange, or conveyance to a non-federal party without a covenant or easement, VA will consult for 30 days with the relevant SHPO to determine appropriate mitigation prior to completing the real estate transaction. If after 30 days there is no agreement on the mitigation, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

VA will, prior to the transaction being concluded, complete any mitigation agreed upon in consultation.

For any sale, transfer, exchange, or conveyance from VA to another federal agency, VA will take no further actions to document or protect the historic property.

5.3. Deconstruction and Demolition

If there is no viable response to solicitations for an EUL or NHPA Section 111 lease or exchange per Section 5.1., VA determines that a sale, transfer, exchange, or conveyance is not feasible per Section 5.2., and VA

continues to have no use for a non-utilitarian historic property, VA may proceed with deconstruction or demolition of the property without any further consultation after notifying the relevant SHPO, any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and the ACHP that it is doing so.

However, if an entire historic district that up to this point in the process had been subject to the Program Comment is proposed for deconstruction or demolition, VA will consult for 90 days with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process to develop a Memorandum of Agreement (MOA). If after 90 days there is no agreement on the terms of the MOA, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 30 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision.

Prior to deconstruction or demolition of a non-utilitarian historic property, VA will either: (a) complete a Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), or Historic American Landscape Survey (HALS) documentation package, in

accordance with the applicable guidelines, or (b) carry out another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the cost of producing the HABS/HAER/HALS documentation. If the mitigation detailed in (a) is pursued, the documentation will be submitted to NPS for inclusion in the HABS/HAER/HALS collection, submitted to the relevant SHPO, and will be distributed in digital form to the ACHP, NCSHPO, National Association of Tribal Historic Preservation Officers (NATHPO), National Trust for Historic Preservation, and VSOs upon request. If another form of mitigation is pursued as detailed in (b), VA will consult for 30 days with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process to determine the type of mitigation appropriate. If after 30 days there is no agreement on the alternate mitigation, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such

timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

5.4. Maintenance and Repair of Non-Historic and Utilitarian Historic Properties

Maintenance and repair is limited to vacant and underutilized non-historic properties and historic properties that VA has categorized as "utilitarian." Routine maintenance and repair activities are included under the scope of this Program Comment with the goal of making it easier to undertake such improvements to prevent these properties from remaining vacant or underutilized. A building or structure that is no longer vacant or underutilized is no longer subject to the Program Comment, and is less likely to be proposed for disposal. For maintenance and repair activities on utilitarian historic properties, VA will encourage in-kind repairs, meaning that new materials used in repairs or replacements match the material being repaired or replaced in design, color, texture, other visual properties, and, where possible, materials. VA's FPO will verify in writing for its records (Attachment 1) that the proposed maintenance and repair activities on utilitarian historic properties meet the

common-sense definition of "routine" and where feasible, are performed in-kind. Major alterations (e.g., additions that substantially increase the square footage of a building or structure) are not considered routine maintenance and repair.

6. Programmatic Mitigation

Since additional documentation for utilitarian historic properties described in Sections 2.2 and 4.3.1. will not be carried out, VA will develop, within five years, a public benefit document based on existing literature in archives, available VA documentation, photographs, and other source material. This document will be crafted specifically with veterans and the lay public as its audience. VA has generated substantial technical documentation on its properties (about 7,325 of its 8,350 buildings and structures [88 percent] have been evaluated). VA recognizes that while that information may be publicly available, it is not in a format that is readily accessible or of interest to a wide audience. VA will use this information to develop a study grounded in the fields of anthropology, sociology, and geography to explore how veterans, and the way the U.S. government has cared for those veterans, have shaped the physical geography of VA's buildings, structures, and landscapes.

The emphasis will be the cultural geography of VA over time—a study of the relationship between VA culture and place over three identified generations of its history. The three generational periods are (1) post-Civil War, (2) WWI through end of WWII, and (3) post-WWII through 1958. The document will explore how VA culture developed out of local landscapes but also shaped those landscapes, and will examine the interaction between the natural landscape and the veterans creating the cultural landscape. The document will focus on how VA shaped its particular facilities through the built environment, which encompasses places and spaces created or modified by people, and how those places and spaces reflect the people who produced them. It will address the different roles utilitarian buildings and structures serve on VA's medical campuses and national cemeteries and include information on where and how designed landscapes contribute to the National Register eligibility of campuses.

Prior to finalization, VA will provide the ACHP, NCSHPO, NATHPO, and interested VSOs a draft of the document for their 30-day review and comment. Once finalized, the document will be available for download on VA's website.

7. Review of Undertakings

All VA facilities and campuses utilizing the Program Comment will complete the VA Program Comment Form (Attachment 1) and submit it to VA's FPO. VA's FPO will review and retain all forms to ensure appropriate use of the Program Comment. The VA facility or campus must receive approval from the FPO prior to commencing the undertaking. VA will compile statistics annually at the end of each fiscal year for the duration of the Program Comment.

Summary information about utilization of the Program Comment compiled by VA's FPO will be updated annually, available from VA's website, and included in VA's Executive Order 13287 Section 3 reports. VA will notify the ACHP and NCSHPO when the annually updated summary information is available.

Once the summary information is available, VA will convene an annual meeting with the ACHP, NCSHPO, NATHPO, National Trust for Historic Preservation, and interested VSOs to report on use of the VA Program Comment. The annual meeting will include the opportunity to discuss the composite list of VA properties provided during the Section 3. consultation process (see Attachment 2 for more detail about the annual meeting).

8. Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian tribes or NHOs

When an undertaking is proposed under the Program Comment, VA's FPO will verify the potential for ground disturbance activities associated with that undertaking as submitted. If there is the potential for ground disturbance activities, VA will proceed as follows:

8.1. Further Identification Efforts Required

If there are ground disturbance activities proposed for areas outside the area of original/previous disturbance and VA has no internal record that this land has been previously surveyed for archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or NHOs, VA will:

- a. Notify the relevant SHPO, Indian tribes, and NHOs of VA's intent to follow this Program Comment, provide these parties with a proposed APE, and request comments on the APE and any information regarding known historic properties within the relevant APE be provided to VA within 30 days.
- b. Complete a Records Check to identify any archaeological historic properties within the APE of which VA does not already have a record. If a Records

Check reveals no information on the presence of archaeological historic properties within the APE, VA will consult with the relevant SHPO, Indian tribes, and NHOs to determine whether, based on professional expertise, tribal culture and history, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible archaeological properties. If so, those areas within the APE will be avoided. If they cannot be avoided, VA will consult with the SHPO, Indian tribes, and NHOs to determine whether a survey or monitoring program should be carried out to identify historic properties. VA will consider any comments or additional information provided by the SHPO, Indian tribes, and NHOs received within 30 days of the notification prior to making a final decision on its efforts to identify such historic properties.

c. If historic properties are identified, VA will follow the steps at 36 CFR § 800.13 (b) (Post-review Discoveries).

8.2. No Further Identification Efforts Required

If the area where ground disturbance activities are proposed falls under one or more of the below criteria, VA

has no further responsibilities to identify archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or NHOs prior to implementing the undertaking. VA will follow the steps at 36 CFR § 800.13 (b) (Post-review Discoveries), if historic properties are discovered or unanticipated effects on historic properties are found during the implementation of the undertaking.

a. If the land has been previously surveyed or reviewed by interested Indian tribes or NHOs or been the subject of previous consultation, and no historic properties of traditional religious and cultural significance to Indian tribes or NHOs have been identified whose National Register qualifying characteristics would be adversely affected; or

b. If the land has been previously field surveyed by a qualified professional for archaeological resources and there have been no archaeological historic properties nor historic properties of traditional religious and cultural significance to Indian tribes or NHOs located within the APE whose National Register qualifying characteristics would be adversely affected; or

c. If the land has been previously disturbed to the extent and depth where the probability of finding intact archaeological historic properties is low; or

d. If the land is not considered to have a high probability for archaeological historic properties by a qualified professional based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.

9. Effect of Program Comment

By adhering to the terms of this Program Comment, VA meets its responsibilities for compliance under Section 106 of the NHPA for disposals, leases, or exchanges of its vacant and underutilized properties, and maintenance or repair of such properties that are non-historic or utilitarian historic. VA is no longer required to follow the process set forth in 36 CFR § 800.3- 800.7 for case-by-case reviews for each of these individual undertakings.

This Program Comment will remain in effect for 10 years from issuance unless, prior to that time, VA determines that such comments are no longer needed and notifies the ACHP, in writing, or the ACHP withdraws the Program Comment in accordance with 36 CFR § 800.14(e)(6). Following such withdrawal, VA will again be required to comply with Section 106 through the process in 36 CFR §

800.3-800.7, or an applicable program alternative under 36 CFR § 800.14, for each individual undertaking formerly covered by this Program Comment.

During the first six months of the ninth year since issuance of this Program Comment, VA and the ACHP will meet to determine whether to consider an extension to its term. Such an extension would need to be pursued through an amendment, as detailed below.

10. Amendment

The ACHP may amend this Program Comment after consulting with VA, and other parties as appropriate. The ACHP will publish notice in the Federal Register to that effect within 30 days after its decision to amend this Program Comment.

Attachment 1: VA Program Comment Form 1-A

This section to be completed by facility staff

Facility Name and Location:

Building Number:

Date building vacated and/or number of years vacant:

Date building listed as underutilized and/or number of years underutilized:

Type of building: utilitarian non-utilitarian

Photo: insert below

Describe Proposed Undertaking/Action:

Please Circle the Applicable Undertaking and give an explanation:

- 1) Enhanced Use Leases, NHPA Section 111 Leases and Exchanges
- 2) Sales, Transfers, Exchanges, Conveyances
- 3) Deconstruction, Demolition
- 4) Maintenance and repair of non-historic properties and utilitarian historic properties

Are there any ground-disturbing activities associated with Undertaking?

If yes, describe the activities in detail and include a map indicating where these activities will likely occur (Area of Potential Effects):

Has the APE been previously surveyed for archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian organizations?

If yes, reference reports:

Your Name:

Title:

E-mail address:

Phone number:

Signature:

Date:

This section to be completed by VA's Federal Preservation Officer

Historic Evaluation:

- Date
- Historic Status

Comments:

VA FPO Approval Signature:

Date:

Attachment 2: Annual Meeting Protocol

Annual Meeting Protocol

A. Annual Meeting: A meeting among VA, ACHP, NCSHPO, NATHPO, National Trust for Historic Preservation, and interested VSOs will be coordinated on an annual basis for the duration of this Program Comment.

B. Topics: At least two weeks prior to these meetings, VA will provide the other parties with the following information (subject to the confidentiality requirements of 36 CFR § 800.11(c), and other applicable laws):

1. A list of all undertakings reviewed in the previous year under Sections 4 through 8 of this Program Comment, including the following:

- a. building or site identification, including location;
- b. a brief undertaking description;

c. portfolio outcome, with completion date;

C. Assessing Overall Effectiveness: In addition to providing an opportunity for the parties to discuss the specific information described in paragraph B, the annual meetings will also provide the parties an opportunity to assess the overall effectiveness of the Program Comment in addressing the preservation of historic properties, consistent with the operational mission and activities of VA. Specifically, the annual meetings will provide the parties an opportunity to discuss the planning, design, review, and implementation of undertakings affecting historic properties, and to discuss and evaluate the following issues:

1. Whether the time periods allocated for review and consultation in the Program Comment have been adequate to ensure consideration of potential alternatives that avoid, minimize, or mitigate harm to historic properties; and
2. Whether problems or misunderstandings have arisen in the course of applying the Program Comment and, if so, how those problems could be avoided in the future.

Authority: 36 CFR 800.14(e)

Dated: October 22, 2018.

John M. Fowler,

Executive Director.

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