

**REVISED DRAFT**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,**  
**THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS,**  
**AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**REGARDING MAJOR LEASING ACTIONS**

**WHEREAS**, the mission of the United States Department of Veterans Affairs (VA) is to fulfill President Lincoln’s promise to care for those who have served in our nation’s military and for their families, caregivers, and survivors.; and

**WHEREAS**, enrollment in VA programs has increased due to changes in the Veterans population demographics and residential geographic relocation trends, as well as the expansion of health care and benefit eligibility, after the passing of the [\*Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics \(PACT\) Act of 2022\*](#); and

**WHEREAS**, VA requires flexibility to establish health care facilities to meet the needs of current and future Veterans populations and has determined that [leasing](#) in accordance with [VA Directive 7815](#), as amended, is a viable alternative to address this critical issue and has included information about its leasing process in Attachment A; and

**WHEREAS**, 54 U.S.C. § 306108 of the National Historic Preservation Act (NHPA, 54 U.S.C. § 300101 et seq.) and its implementing regulations codified in 36 CFR Part 800 (collectively “Section 106”), require federal agencies to take into account the effects of undertakings they carry out, license, or assist on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment; and

**WHEREAS**, leasing is understood to have no effect to historic properties but subsequent construction activities (defined as Lease Actions) may modify properties and may affect historic properties and therefore constitute Undertakings as defined by 36 CFR § 800.16(y) with varying potential to adversely affect historic properties; and

**WHEREAS**, VA determined a programmatic approach to major leasing actions (Undertakings), or those with an annual rent of more than \$3.926 million, would best simplify and standardize review processes nationwide pursuant to 36 CFR § 800.14(b)(2) following consultation between April and June 2024 with the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and the National Association of Tribal Historic Preservation Officers (NATHPO) as organizations with relevant expertise in Section 106, and from November 2023 until January 2024 solicited opinions from State Historic Preservation Officers (SHPOs), Tribal representatives, political officials, and members of the public through an associated National Environmental Policy Act (NEPA) scoping process; and

**WHEREAS**, in accordance with 36 CFR § 800.1(c), the VA agency official shall ensure that the Section 106 process is initiated early in the Undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for an Undertaking; and

**WHEREAS**, this programmatic agreement may be applied when VA is the sole or lead agency, but it may not be applied: on Tribal lands except when Tribal lands are under the jurisdiction of an Indian Tribe that is a Tribal Signatory to the programmatic agreement; or when an Undertaking subject to this programmatic agreement has the potential to affect a National Historic Landmark (NHL); and

**WHEREAS**, this programmatic agreement does not change, modify, or otherwise impede VA’s compliance with Federal Management Regulation (FMR) 102-83.75 which requires compliance with Executive Order 13006 to give first consideration to locating federal facilities in historic buildings and districts within central business areas; and

**WHEREAS**, this programmatic agreement does not invalidate nor supersede any existing VA Section 106 agreements; and

**WHEREAS**, VA invited Indian Tribes to government-to-government consultation and Native Hawaiian Organizations and Alaska Native Corporations to consultation on August 29, 2025, and held consultations virtually on Microsoft Teams on October 2, 2024, and June 17, 2025, to discuss a draft of this programmatic agreement; and

**WHEREAS**, VA hosted virtual consultations with Indian Tribes, THPOs, and Tribal representatives, Native Hawaiian Organizations, Alaska Native Corporations, and NATHPO regarding the proposed programmatic agreement in meetings on Microsoft Teams on October 2, 2024, and June 17, 2025, to discuss a draft of this programmatic agreement; and

**WHEREAS**, VA hosted virtual consultation meetings with SHPOs and NCSHPO on October 1, 2024, and June 16, 2025; and with other consulting parties on October 7, 2024, and June 18, 2025, to discuss a draft of this programmatic agreement; and

**WHEREAS**, VA provided Indian Tribes, THPOs, and Tribal representatives, Native Hawaiian Organizations, and Alaska Native Corporations the opportunity to participate in the development of this programmatic agreement to provide a review process for undertakings associated with VA’s Major Leasing Program from October 2, 2024, to November 2, 2024, and received comments from the Catawba Indian Nation; and from December 20, 2024, to January 31, 2025, on a draft of this programmatic agreement and received responses and comments from the THPO of the Fort Independence Indian Reservation, the THPO of the Gun Lake Tribe (Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, the THPO of the Navajo Nation, a representative of the Oahu Hawaiian Canoe Racing Association, and the THPO of the Pueblo de San Ildefonso; and again from [date] to [date] and received comments from [list]; and

**WHEREAS**, VA provided representatives of ACHP, NCSHPO, SHPOs, and the National Trust for Historic Preservation (NTHP) the opportunity to comment on the proposed Undertakings to be covered by this programmatic agreement from October 1, 2024, to November 1, 2024, and received comments from the ACHP and three SHPOs (Alaska, Colorado, Georgia); and from December 20, 2024, to January 31, 2025, on a draft of this programmatic agreement and received comments from eight SHPOs (Alabama, Arizona, Delaware, Georgia, Kansas, Mississippi, Montana, and Ohio); and again from [date] to [date] and received comments from [list]; and

**WHEREAS**, VA invited representatives of [accredited Veterans Service Organizations](#) (VSOs) to consult on the proposed Undertaking via email on August 26, 2024; and hosted a consultation session on October 7, 2024, to discuss the proposed Undertakings to be covered by this programmatic agreement and solicit feedback; and provided these representatives the opportunity to comment on the proposed programmatic agreement from October 7, 2024, to November 7, 2024, and received no comments; and from December 20, 2024, to January 31, 2025, on a draft of this programmatic agreement and received no comments; and again from [date] to [date] and received comments from [list]; and

**WHEREAS**, VA solicited comments from members of the public and representatives of Indian Tribes and Consulting Parties from November 2023 until January 2024 through an associated NEPA scoping process and included information about the proposed Undertakings to be covered by this programmatic agreement and anticipated effects to historic properties and this programmatic agreement in a draft

programmatic environmental assessment published in the [Federal Register on November 17, 2023](#), and in a posting to the [VA Environmental Program Office website](#); and

**WHEREAS**, VA provided opportunities for public review and comment on this proposed programmatic agreement via dedicated email address [historicpreservation@va.gov] and by publishing information on the development of this programmatic agreement through a [dedicated project webpage](#) on the VA Office of Construction and Facilities Management website and requested public comment on the proposal by October 1, 2024, and the draft programmatic agreement by January 31, 2025; and

**WHEREAS**, nothing in this programmatic agreement prohibits the ACHP from providing guidance and comments regarding the coordination of Section 106 reviews to VA, notifying VA of objections or concerns from consulting parties or members of the public, and participating in the resolution of adverse effects for any leasing Undertaking; and

**NOW, THEREFORE**, VA, the NCSHPO, and the ACHP agree that the Section 106 review of major leasing actions shall be implemented in accordance with the following Stipulations in order to take into account the effects of these Undertakings on historic properties:

#### STIPULATIONS

VA shall ensure the following stipulations are implemented:

##### I. DEFINITIONS

- a. The definitions provided in 36 CFR § 800.16(a) through (z) inclusive shall apply and are incorporated by reference.
- b. *Lease*: A contract by which one party conveys land or property to another for a specific time. This programmatic agreement applies to the initial lease and lease renewals/re negotiations. VA defines leases as Major, Mid-Level, or Minor based on annual rent. This programmatic agreement applies only to Major leases. Leasing is understood to have no effect to historic properties; however, subsequent construction activities (defined below as Lease Actions) may modify and affect historic properties.
- c. *Lease actions*: The construction projects or activities necessary to plan, construct, and occupy a space leased by VA.
  - i. *Move-in Ready*: A lease action with no significant renovation or construction needed to occupy and activate. Renovation activities are minor and generally completed in under one week. No associated ground disturbance.
  1. Lease actions that require significant rehabilitation, renovation, or construction will be defined as Build-Out lease actions. In those cases, VA shall follow the appropriate Build-Out stipulations of this programmatic agreement.
  - ii. *Build-Out*: A lease action that requires the renovation or rehabilitation of an existing space to meet the proposed function. Such construction may include moving walls, changing or installing air-conditioning systems, installing cabinetry and/or medical safes, changing doors, or altering materials. Ground disturbance is unlikely for most because construction is limited to a building's interior, but construction of additions is possible.

- iii. *Build-to-Suit*: A lease action that requires the construction of a new building, structure, or parking lot. Under a build-to-suit arrangement, VA leases a location and works with a developer to construct a new building or structure with associated parking and landscaping. Ground disturbance highly likely.
- d. *Area of Potential Effect (APE)*: the geographic area of areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. This is to include staging areas and/or utility corridors associated with an undertaking.
- e. *Design criteria*: VA established requirements and guidance, from planning to occupancy, of leased property as set in VA's [Technical Information Library](#).
- f. *Disturbed soils*: Soils unlikely to possess intact and/or distinct soil horizons with little potential to retain historic properties within their original depositional contexts as determined by a qualified professional.
- g. *Ground disturbance*: Extensive natural or human-caused modification of the ground surface so much that the likelihood of finding evidence of intact historic properties is negligible as assessed by a qualified professional. Activities that occur on pavement, such as construction laydown yards and staging areas, would not disturb soils so long as the area was paved and remains paved throughout construction activities.
- h. *Historic*: Listed in or determined eligible for listing in the National Register of Historic Places (36 CFR § 60.4) whether individually or as a contributing resource to a historic district.
  - i. Within this programmatic agreement, use of “historic” shall refer only to National Register eligibility, not the age of an archaeological site.
- i. *Indigenous knowledge*: Body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. This type of specialized information may be used by consulting parties, Indian Tribes, and/or Native Hawaiian Organizations when identifying places of significance. See the 2024 ACHP [Policy Statement on Indigenous Knowledge and Historic Preservation](#).
- j. *Market survey*: Field visit conducted to identify properties that may possess the criteria to meet the government's need.
- k. *Notify / Notification*: VA's submission of the informational form included as Attachment A. Under this programmatic agreement, notification is a submission of information, not a request for concurrence. Concurrence with this form is not required under this programmatic agreement.
- l. *Qualified staff or personnel*: Federal or contractor staff who meet the applicable Secretary of the Interior's *Professional Qualification Standards* for architectural history, history, archaeology, architecture, and/or historic architecture (36 CFR Part 61; 48 FR 44738- 9).
- m. *Records check*: Collection and review of information about whether historic properties (buildings, structures, sites, historic districts, landscapes and individual objects that are eligible for or listed in the National Register pursuant to 36 CFR § 60.4) are known to exist within the respective Area of Potential Effects (APE) from SHPO, Tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the

SHPO, THPO, or Tribal representatives. VA may delegate responsibility for conducting Records Checks to the owner of the leased property, however final approval of adequacy of record will be by VA qualified staff.

i. A Records Check may include information about traditional cultural places and properties, cultural and/or sacred practices, or other traditional knowledge if such records are kept.

n. *Rehabilitation*: The act or process of making possible compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. Rehabilitations must meet the standards of 36 CFR § 67.7 as documented by concurrence between VA and the respective SHPO, THPO, and/or Indian Tribe depending on if the Undertaking is located on Tribal lands.

## II. APPLICABILITY

a. The Anti-Deficiency Act (31 U.S.C. §1341) prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for the obligation of funds arising from the terms of this programmatic agreement shall be subject to the availability of appropriated funds for that purpose, and that this programmatic agreement shall not be interpreted to require the obligation of funds in violation of the Anti-Deficiency Act.

b. Pursuant to 54 U.S.C. § 306133, VA may disqualify or otherwise dismiss a lease offer if the potential lessor demolishes, damages, or otherwise modifies a historic property in anticipation of an award without regard to the stipulations of this programmatic agreement.

c. This programmatic agreement applies only when VA is the lead federal agency for Section 106 compliance for a major leasing action (Undertaking).

d. This programmatic agreement applies only when VA is leasing space from another entity (private developer, federal government agency, municipal or state agency). It does not apply to VA's Enhanced-Use Lease (EUL) nor historic out lease programs.

e. VA shall consult with individual Indian Tribes (Tribes) to determine whether this programmatic agreement may apply on Tribal lands per 36 CFR § 800.2(c)(2)(i) and:

i. An Indian Tribe (Tribe) may authorize use of this programmatic agreement for any major leasing action (Undertaking) located on Tribal lands by submitting the Tribal Signatory Page in Attachment B signed by an authorized Tribal Official or designated representative of the Tribe authorizing such intent to the VA Federal Preservation Officer (VA FPO).

ii. Once a Tribe submits the Tribal Signatory Page, the Tribe will become a Signatory to the programmatic agreement and provisions of the programmatic agreement will be applicable to the proposed Undertaking (and any additional Undertakings) that may occur on or affect historic properties on the associated Tribal lands.

iii. Once a Tribe becomes a Signatory to the programmatic agreement, the Tribe will remain a Signatory until the Tribe terminates its participation in the



programmatic agreement per Stipulation IX.c. Termination by a signatory Tribe that is a Signatory will be limited to termination of the programmatic agreement's applicability on Tribal lands under the jurisdiction of that Tribe.

iv. At any point after a Tribe becomes a Signatory, the Tribe and a VA FPO may agree that the VA shall follow 36 CFR §§ 800.3-800.7 or another applicable program alternative for a particular Undertaking that would otherwise be subject to this programmatic agreement proposed to occur on or have the potential to affect historic properties on Tribal lands.

f. This programmatic agreement does not apply to Undertakings that may affect properties listed as National Historic Landmarks (NHLs) or when NHLs are located within the respective APE. VA shall consult in accordance with 36 CFR Part 800, specifically 36 CFR § 800.10, for undertakings that may affect NHLs.

g. VA shall consult in accordance with 36 CFR Part 800 when an Undertaking requires leased space of more than twenty-five (25) acres or a building greater in size than 225,000 gross square feet (GSF).

### III. COMMUNICATIONS

a. All comment and review periods shall be counted in days. "Day" means one calendar day, including weekends and federal holidays. VA shall extend a deadline that would otherwise fall on a weekend or a holiday to the next business day.

b. All Signatories shall send and accept official notices, comments, requests for additional information, objections, draft and final deliverables, and all other communications required by this programmatic agreement via email. Information specific to individual Undertakings may be uploaded to digital systems at the request of the specific Tribe(s), THPO(s), or SHPO. A Signatory may request to receive these items in hardcopy from the VA FPO. The Signatories may choose to meet via webinar, by phone, or in-person as necessary to implement this programmatic agreement.

c. Time periods and schedules shall be counted from the date of distribution via email.

d. Any written comments emailed by the Signatories within the established time frame shall be considered in implementation of this programmatic agreement. Failure of the Signatories to respond within established time frames shall not preclude VA from proceeding in implementation of this programmatic agreement.

### IV. ROLES & RESPONSIBILITIES

a. Advisory Council on Historic Preservation (ACHP)

i. ACHP is the federal agency responsible for the administration of the requirements of the National Historic Preservation Act (NHPA) and is a Signatory to this programmatic agreement.

ii. At any time during implementation of this programmatic agreement, VA or any party, regardless of their participation as a consulting party, may request the ACHP's involvement or comment.

- 255           b. Certified Local Government (CLG)
- 256                 i. Reflects the interests of their community and its citizens in preservation matters.
- 257                 ii. At their discretion, advise and assist VA as the responsible federal agency, in
- 258                     Section 106 matters.
- 259           c. Native Hawaiian Organization
- 260                 i. Reflects the interests of their Organizations and members in preservation
- 261                     matters.
- 262                 ii. At their discretion, advise and assist VA as the responsible federal agency, in
- 263                     Section 106 matters.
- 264           d. State Historic Preservation Officers (SHPOs)
- 265                 i. Reflects the interests of their state and its citizens in preservation matters.
- 266                 ii. Advise and assist VA, as a federal agency, in Section 106 matters.
- 267           e. Tribal Historic Preservation Officers (THPOs)
- 268                 i. Reflects the interests of their Tribe and its citizens in preservation matters.
- 269                 ii. At their discretion, advise and assist VA as the responsible federal agency, in
- 270                     Section 106 matters.
- 271           f. Tribal representative
- 272                 i. Reflects the interests of their Tribe and its citizens in preservation matters.
- 273                 ii. At their discretion, advise and assist VA as the responsible federal agency, in
- 274                     Section 106 matters.
- 275           g. VA Federal Preservation Officer (VA FPO)
- 276                 i. VA is the federal agency responsible for completing review and consultation
- 277                     under Section 106 of the NHPA for major leasing activities.
- 278                 ii. VA shall retain qualified staff in order to identify and evaluate historic properties.
- 279                 iii. Serves as the Agency Official.
- 280                 iv. Serves as the primary Point of Contact for all Signatories regarding this
- 281                     programmatic agreement.
- 282                 v. Serves as the primary Point of Contact for any consultations or discussions
- 283                     concerning identification of human remains or other material and cultural items.
- 284                 vi. Ensures that qualified personnel participate as required by this programmatic
- 285                     agreement.
- 286                 vii. Ensures training is made available to VA Historic Preservation Office (HPO) and
- 287                     Office of Real Property staff within 180 days of execution of this programmatic
- 288                     agreement and that training materials are updated as necessary.
- 289                 viii. Ensures distribution of the list of proposed leases described in Stipulation V and
- 290                     the annual report documenting past/ongoing lease actions described in
- 291                     Stipulation IX.

h. Director of the VA Office of Real Property (ORP)

- i. In coordination with the VA FPO, track Major Leases as Move-In Ready, Build-Out, or Build-to-Suit.
- ii. Submit all Major Lease proposals to VA FPO for Section 106 review under this programmatic agreement including new leases, lease renewals, and leased space modifications.
- iii. Attend or assign a delegate to attend the Annual meeting.
- iv. Inform VA FPO of the status of Major Lease Undertakings prior to distribution of the proposed leases as described in Stipulation V of this programmatic agreement and the annual report described in Stipulation X of this programmatic agreement.

V. INITIATION OF CONSULTATION

- a. Following the close of the government fiscal year, VA shall email a letter detailing proposed leases to all Signatories and pertinent Indian Tribes, Native Hawaiian organizations, SHPOs, and CLGs.
  - i. In this consultation letter, VA shall include a list of the proposed major leases, the location (city/county, and state), and specifications (size of building, required parking, and function).
  - ii. All Signatories, Indian Tribes (including Native Alaska Villages), Native Hawaiian Organizations, Native Alaska Corporations, and SHPOs may notify the VA FPO of any questions or concerns about historic properties in/around these locations within thirty (30) days of receiving this letter, including additional consulting parties that should be notified and asked to comment as consultation continues. VA shall take into consideration these comments when making decisions regarding the applicability of this programmatic agreement for an Undertaking.
  - iii. VA shall produce and distribute this letter no later than January 31st following the close of the respective government fiscal year.
- b. VA's correspondence to Indian Tribes shall include an invitation to consult government-to-government on any of the proposed Undertakings.
  - i. This process provides all Indian Tribes an opportunity to review the locations of proposed leasing actions to identify places of cultural and/or religious significance and/or Traditional Cultural Places and Properties.
  - ii. VA shall arrange a time and method of consultation acceptable to both parties should an Indian Tribe request government-to-government consultation.
  - iii. To the fullest extent authorized by applicable law(s), VA shall keep the content of the discussion confidential unless the Indian Tribe authorizes disclosure in the Annual Report.
- c. Concurrent with distribution of the letter detailing proposed leases, VA shall post a copy of the letter to the VA HPO website for 30 days for public review and comment.
  - i. VA shall include the [historicpreservation@va.gov](mailto:historicpreservation@va.gov) email address in the posting so the public may notify the VA FPO of any questions or concerns about historic



properties in/around these locations, including additional consulting parties that should be notified and asked to comment as consultation continues.

- ii. VA shall take these comments into consideration when making decisions regarding the applicability of this programmatic agreement for an Undertaking.

- d. Following distribution and posting of this letter, and if no information is received concerning these specific undertakings, VA shall include the following lease actions in the annual report described in Stipulation X but exempt the actions from further Section 106 review because these Undertakings have little to no potential to affect historic properties:

- i. Move-in ready lease actions.

- e. Following distribution and posting of this letter, and if no information is received concerning these specific undertakings, VA shall include the following lease actions in the annual report described in Stipulation X but exempt the actions from further Section 106 review because these Undertakings are likely to have no effect on historic properties pursuant to 36 CFR § 800.4(d)(1):

- i. Build-Out major lease actions limited to internal modifications in buildings less than 40-years-old with no ground disturbance.

- f. If VA selects a building for Build-Out Lease Action and that building is historic, VA shall consult with the respective SHPO, THPO, and/or Tribal representative to determine if proposed plans conform to the Secretary of the Interior's *Standards for Rehabilitation*. VA shall utilize standard Section 106 protocols and procedures for these specific Undertakings.

- i. If VA determines the plans meet the rehabilitation standards and the respective SHPO, THPO, and/or Tribal representative concurs, VA shall conclude consultation and proceed with design plans.

- ii. If, after a good faith effort to avoid or minimize adverse effects, VA determines rehabilitation is not achievable while still meeting the goals of the specific leasing undertaking, VA shall consult pursuant to 36 CFR § 800.6 to resolve adverse effects.

## VI. CONSULTATION REGARDING IDENTIFICATION OF HISTORIC PROPERTIES

- a. Following receipt of responses to a Request for Proposal, VA shall complete an Historic Properties Form (Attachment C) for viable parcels.

- i. VA shall include a description of the proposed lease action including any anticipated ground disturbance; a list of known historic properties in the APE as identified in the Records Check and received following the distribution described in Stipulation V; and plans for additional built resource and archaeological investigations, if necessary. VA shall adhere to current state and/or Tribal standards for archaeological investigations.

- 1. For Build-Out major leasing actions, VA shall delineate the APE to be the footprint of the leased space if modification is limited to the building interior and there is no proposed ground disturbance. If VA requires external modification of the building and/or utility

installations/improvements, VA shall delineate such an APE to include, at minimum, the footprint of the building and associated parking; the viewshed or direct line-of-sight of character-defining features proposed for modification; the path of any proposed ground disturbance with a buffer of not less than twenty-four (24) inches in all directions, including depth; and adjacent construction lay-down yards set on grass or other pervious surfaces as specific to the lease undertaking.

a. If the building proposed for a Build-Out major leasing action is more than forty (40) years old and has not been evaluated for National Register eligibility or was determined ineligible strictly due to its age (i.e., it was not 50 years of age when evaluated but held significance under Criteria a-d), VA shall either:

i. Assume the building is historic, or

ii. Consult with the respective SHPO, THPO, or Tribal representative, if the property is located on Tribal lands, to determine eligibility.

2. For Build-to-Suit major leasing action, VA shall delineate such an APE to include, at minimum, the entirety of the leased property; the viewshed or direct line-of-sight of the property; the path of any proposed utilities involving ground disturbance with a buffer of not less than twenty-four (24) inches in all directions, including depth; and adjacent construction lay-down yards set on grass or other pervious surfaces as specific to the lease undertaking.

a. If the parcel has not been archaeologically surveyed, VA shall conduct testing to the appropriate state or Tribal standards in areas that have not been previously disturbed. VA may, at its discretion, delegate this responsibility for testing to lessors. VA shall require qualified personnel to conduct testing. VA also shall test the path of any new utility corridors required for development of the parcel.

b. VA shall submit this plan to pertinent SHPO, THPO, Tribal representatives, and/or Native Hawaiian Organizations for a 30-day review.

i. The plan shall include a signature line and comment box for the convenience of the reviewer. Failure of the reviewers to respond within established time frames shall not preclude VA from proceeding with its determination of effect.

ii. Qualified VA personnel shall consider all information received prior to selection of a parcel.

## VII. NOTIFICATION OF DETERMINATION OF EFFECT

a. Following selection of a parcel, VA shall post the exact address and request any additional information concerning historic properties for fourteen (14) days for public review and comment.

- i. VA shall include the [historicpreservation@va.gov](mailto:historicpreservation@va.gov) email address in the posting so the public may notify the VA FPO of any questions or concerns about historic properties in/around these locations, including additional consulting parties that should be notified and asked to comment as consultation continues.
  - ii. VA shall take these comments into consideration when making decisions regarding the applicability of this programmatic agreement for an Undertaking.
- b. Following close of this public review period, VA shall notify pertinent SHPO, TPO, Tribal representatives, and/or Native Hawaiian Organizations of its determination of effect using the form included as Attachment C.
- c. Qualified VA personnel shall make determinations of effect based on the results of the process to identify historic properties.
  - i. A determination of No Historic Properties Affected per 36 CFR § 800.4(d)(1) shall be made when no historic properties, including TCPs and cultural landscapes, were identified in the APE for:
    - 1. Build-Out major lease actions with interior and exterior modifications with no ground disturbance that will have no visual effect to historic properties, and the building is less than forty (40) years of age or was determined ineligible for listing in the National Register of Historic Places.
    - 2. Build-to-Suit major lease actions where an above-ground assessment and archaeological investigations determined that no historic properties were located within the APE.
  - ii. A determination of No Adverse Effect to Historic Properties per 36 CFR § 800.5(d)(1) shall be made for:
    - 1. Build-Out major lease actions where:
      - a. Interior and/or exterior modifications is required,
      - b. No ground disturbance, or ground disturbance is required but there are no historic properties present, or construction would avoid soils within ten (10) meters of known archaeological deposits and known deposits would be fenced off, and
      - c. Building is less than forty (40) years of age or was determined ineligible for listing in the National Register of Historic Places through consultation on an unrelated federal undertaking or other review, and
      - d. Historic buildings are located within the APE, but modifications would not affect existing viewsheds or association as determined by qualified professionals.
    - 2. Build-to-Suit major lease actions where:
      - a. Historic built resources are not present within the APE or built resources are present within the APE, but construction and operation will not affect integrity of feeling, association, and/or design; and

- b. Traditional Cultural Properties are not present within the APE or are present with the APE, but construction and operation will not affect the cultural practice, and
      - c. No archaeological sites are located within the footprint of ground disturbance or sites have been identified but will be avoided.
    - iii. A determination of Adverse Effects to Historic Properties per 36 CFR § 800.5(d)(2) shall be made for all undertakings where the stated criteria is not met and VA shall consult in accordance with 36 CFR § 800.6 to resolve adverse effects.
- VIII. POST-REVIEW DISCOVERIES INCLUDING IDENTIFICATION OF HUMAN REMAINS AND/OR FUNERARY OBJECTS
- a. Excluding the discovery of human remains and/or funerary objects, if potential historic properties or if unanticipated effects on historic properties are found during the implementation of a Major Lease Undertaking, lessors will notify the VA FPO. Subsequently, VA and the lessor shall follow the steps at 36 CFR § 800.13(b) (Post-review Discoveries) and reference the guidance of the ACHP's [Policy Statement on Burial Sites, Human Remains, and Funerary Objects](#).
  - b. If lessors notify VA of the identification of human remains and/or funerary objects, VA shall direct lessors and their construction project managers to immediately halt all activity within a 100 foot radius of the remains, clearly mark the area, and implement measures as appropriate to protect the discovery from damage, looting, and vandalism.
    - i. The lessor shall report any discovery of human remains to local authorities in accordance with applicable state and/or Tribal laws and ordinances.
    - ii. VA shall have a qualified professional in archaeology or other appropriate inspect the area of the discovery to determine the extent of the discovery, provide recommendations regarding National Register of Historic Places eligibility of the discovery, and proposed measures to avoid, minimize, or mitigate adverse effects if the discovery is determined to be National Register-eligible.
    - iii. Within 72 hours of the discovery, VA shall notify the Signatories and pertinent SHPO, THPO, Indian Tribes (including Alaska Native Villages), Alaska Native Corporations, and Native Hawaiian Organizations of the discovery in writing describing the measures that have been implemented to comply with this stipulation and the preliminary assessment of the National Register of Historic Places eligibility of the discovery and the measures proposed to avoid, minimize, or mitigate adverse effects, if eligible. In making its evaluation, VA may assume the discovery to be National Register of Historic Places eligible for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).
      - 1. VA shall take into account any Indian Tribe's, Native Hawaiian Organization's, and/or Alaska Native Corporation's recommendations regarding National Register eligibility of the discovery and the proposed measures to avoid, minimize, or mitigate adverse effects, if determined or assumed to be National Register-eligible.

- iv. VA shall consult with SHPO, THPO or Tribal representative, the applicant, and any participating Indian Tribes (including Alaska Native Villages), Native Hawaiian Organizations, and Alaska Native Corporations on final measures to avoid, minimize, or mitigate adverse effects within fifteen (15) calendar days of the initial discovery and eligibility determination. Upon agreement regarding such measures, VA and the applicant will implement them.
- v. If an agreement cannot be reached on final measures to avoid, minimize, or mitigate adverse effects, VA shall utilize the dispute resolution process in Stipulation XI.

#### IX. EMERGENCY PROCEDURES

- a. Pursuant to 36 CFR § 800.12(d), VA shall conduct or direct its lessor to conduct any and all immediate rescue and salvage operations necessary to preserve life or property in an emergency without Section 106 review.
- b. VA shall proceed in accordance with 36 CFR § 800.12 to address the effects of emergency situations on historic properties when in the process of construction, whether for a Build-Out or Build-to-Suit lease action. Once a leased space is operational, VA shall proceed pursuant to Stipulation V – VIII, and Stipulation VIII, if necessary, of this programmatic agreement when proposing an undertaking that responds to an emergency situation.
  - i. VA shall utilize these procedures whether the emergency situation was formally declared by the appropriate legal authority or is identified by the agency official and is site-specific, such as a wall collapse or vehicular crash.

#### X. ANNUAL REPORTING OF PAST/ONGOING LEASE ACTIONS

- a. Each year this programmatic agreement is in effect, unless otherwise amended, VA FPO shall produce an annual report of all undertakings carried out in that government fiscal year (October 1 – September 30) pursuant to this programmatic agreement. VA may, at its discretion, combine this distribution with the Annual Distribution of proposed leasing actions described in Stipulation V of this programmatic agreement.
  - i. VA shall include the legal street address of each leased facility, the specific lease action, the presence of historic properties within the APE, and VA's consultation actions pursuant to this programmatic agreement.
  - ii. VA shall produce and distribute this annual report no later than January 31<sup>st</sup> following close of the respective government fiscal year.
  - iii. VA shall email a copy of the annual report to all Signatories, all SHPOs, and representatives of Indian Tribes and Native Hawaiian organizations. VA FPO may send this email, ask the VA Office of Tribal Government Relations (VA OTGR) to send this email, and/or utilize a service such as GovDelivery to send this email.
- 1. VA's invitation to Tribes and their representatives shall include an invitation to consult government-to-government (i.e., privately) on any past leasing Undertaking.

- 542 a. VA shall arrange a time and method of consultation acceptable  
543 to both parties.
- 544 b. To the fullest extent authorized by applicable law(s), VA shall  
545 keep the content of the discussion confidential unless the Tribe  
546 or NHO authorizes disclosure to other agencies and parties.
- 547 b. VA shall host a virtual consultation meeting with all Signatories sometime between  
548 October 15, 2027, and December 31, 2027, to review implementation of this  
549 programmatic agreement and to discuss any programmatic or policy issues encountered  
550 in the implementation of its stipulations. VA FPO and a representative of VA ORP will  
551 attend this meeting.
- 552 i. VA shall notify all Signatories of the date of the meeting no less than thirty (30)  
553 days before the event.
- 554 ii. The format of this meeting, whether in-person or virtual, shall be at VA's  
555 discretion.
- 556 iii. VA shall invite NATHPO to participate in the meeting. It is understood that  
557 NATHPO does not represent nor speak for all Indian Tribes.
- 558 iv. VA shall invite NTHP to participate in the meeting as a party with specialized  
559 Section 106 expertise.
- 560 v. The Signatories shall meet every two (2) years from the date of execution of this  
561 programmatic agreement for the duration of this programmatic agreement  
562 unless all Signatories agree to cancel. Cancellation of a meeting shall not prohibit  
563 the Signatories from meeting again in the future.
- 564
- 565 XI. DISPUTE RESOLUTION
- 566 a. Should any Signatory, Indian Tribe, Native Hawaiian Organization, THPO, SHPO, Tribal  
567 representative, or other consulting party to a specific Major Leasing Undertaking object  
568 in writing to the VA FPO regarding an Undertaking reviewed under this programmatic  
569 agreement, VA shall consult with the objecting party to resolve the objection for not more  
570 than sixty (60) days. A summary of this consultation will be included in the annual report  
571 pursuant to Stipulation IX. VA's responsibilities that are not the subject of the dispute  
572 remain unchanged.
- 573 i. If VA and the objecting party consult and achieve consensus, VA shall implement  
574 the decisions of that consultation effort and proceed.
- 575 ii. If VA determines the objection cannot be resolved through consultation:
- 576 1. VA shall forward documentation relevant to the objection to all  
577 Signatories, including VA's proposed resolution to the objection. The  
578 Signatories shall provide VA with their response within thirty (30) days of  
579 receiving adequate documentation. Prior to reaching a final decision on  
580 the dispute, VA shall consider advice or comments received from all  
581 Signatories regarding the dispute. VA shall then proceed according to its  
582 final decision and notify the Signatories and the objecting party.



- 583 2. If the Signatories do not provide their advice regarding the dispute within  
584 the thirty (30) day period, VA may make a final decision on the dispute  
585 and proceed accordingly. Prior to reaching such a final decision, VA shall  
586 consider timely comments from any Signatory regarding the dispute. VA  
587 shall then proceed according to its final decision and notify the  
588 Signatories and the objecting party.

589  
590 XII. AMENDMENT

- 591 a. This programmatic agreement may be amended when such an amendment is agreed to  
592 in writing by all Signatories, including current Indian Tribes that are Signatories to the  
593 programmatic agreement at the time of the amendment's execution. Signatories will  
594 consider any comments or proposals from Indian Tribes, Native Hawaiian Organizations,  
595 SHPOs/THPOs, and other consulting parties for amending this programmatic agreement.  
596 The amendment will be effective on the date a copy signed by all Signatories is filed with  
597 the ACHP and published on the [VA HPO webpage](#).
- 598 b. An appendix to this programmatic agreement may be modified without amendment to  
599 this programmatic agreement upon written agreement of the Signatories, including  
600 current Indian Tribes that are Signatories at the time of the amendment's execution.  
601 Otherwise, the appendices will be amended pursuant to Stipulation XII.a. Modified  
602 appendices shall replace the outdated appendices and be distributed to the Signatories  
603 and published on the VA HPO webpage.

604  
605 XIII. TERMINATION

- 606 a. Any Signatory to this programmatic agreement (with the exception of a Tribal Signatory  
607 as described below) may terminate it by providing ninety (90) days notice to the other  
608 Signatories, and that Signatory shall consult among all Signatories during the period prior  
609 to termination to seek agreement on amendments or other actions that would avoid  
610 termination per Stipulation XII.
- 611 b. In the event of termination of this programmatic agreement, VA shall comply with 36 CFR  
612 Part 800 for all proposed undertakings that were previously covered by this programmatic  
613 agreement.
- 614 c. When an Indian Tribe signs the programmatic agreement as a Signatory, notice of  
615 termination by that Indian Tribe only terminates the applicability of the programmatic  
616 agreement on those Tribal lands and does not apply to any other jurisdiction. The Indian  
617 Tribe will remain a Signatory to the programmatic agreement until the Indian Tribe  
618 terminates its participation in writing to the Signatories.

619  
620 XIV. ADMINISTRATION

- 621 a. This programmatic agreement shall take effect when signed by the Signatories and filed  
622 with the ACHP. This programmatic agreement may be executed in counterparts, and each  
623 Signatory will have a separate signature page.

- b. This programmatic agreement shall take effect on Tribal lands on the date an executed signature page signed by an authorized or designated representative of the Indian Tribe is filed with the ACHP in accordance with Stipulation II.e of this programmatic agreement.
- c. VA is responsible for maintaining the record of consultation, and the record of Section 106 review for each Undertaking. Upon request, the Agency Official may make consultation records available to any consulting party, though reserves the right to withhold or redact sensitive information pursuant to VA policies and federal laws, including Section 304 of NHPA (54 U.S.C. 307103); Section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh); Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056); and Section 552(b) of the Freedom of Information Act (5 U.S.C. 552) .

XV. DURATION

- a. This programmatic agreement shall remain in effect until September 30, 2035, unless otherwise amended per Stipulation XII to extend the duration of the programmatic agreement or terminated per Stipulation XIII prior to that date.

Execution of this programmatic agreement by VA, NCSHPO, and the ACHP and implementation of its terms evidence that VA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**Attachment A – VA Leasing Process**

**Attachment B – Tribal Signatory Page**

**Attachment C - Historic Properties Form**

**Attachment D – Consultation Flow Chart**