

## Section 106 Program Comment for Rail ROW Appendix A: Exempted Activities List

### I. General Rule

A. **The federal agency is responsible for determining if an undertaking is covered by one or more activities in the Exempted Activities List.** At its discretion, the federal agency may require the Project Sponsor to provide relevant documentation, such as plans, photographs, or materials specifications, so that the federal agency can determine whether the Exempted Activities List applies.

B. Whenever possible, **historic materials must be repaired rather than replaced.** At its discretion, the federal agency may require the Project Sponsor to provide written justification explaining why repair is not feasible. In cases where existing historic materials are beyond repair, replacement must be carried out in-kind as defined below.

C. Several of the activities in the Exempted Activities List require that the **work be “in kind.”** For purposes of this program comment, “in-kind” means 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. For more information, see The Secretary of the Interior’s (SOI) Standards for Rehabilitation, at <https://www.nps.gov/tps/standards/rehabilitation.htm>. Except where specified in the Exempted Activities List, a Project Sponsor is not required to involve an SOI-qualified professional in carrying out in-kind work. However, the federal agency, at its discretion, may require the Project Sponsor to provide documentation demonstrating that the work would be in-kind, utilize nondamaging or reversible methods, etc.

D. Certain activities, as specified in the Exempted Activities List, require that the federal agency and Project Sponsor ensure the **work is performed by or under the supervision of individuals that meet the SOI’s Professional Qualification Standards** in Architectural History, Architecture, and/or Historic Architecture (see 36 CFR Appendix A to part 61), as appropriate, and must be performed in accordance with the SOI Standards for the Treatment of Historic Properties (<https://www.nps.gov/tps/standards.htm>). If an SOI-qualified professional is not available to assist in the evaluation and/or design of a specified activity, that activity is not exempt from Section 106 review.

E. The Exempted Activities List **does not apply to archaeological sites of any nature located within undisturbed portions of rail ROW.** Therefore, if an exempted activity would cause ground disturbance in undisturbed portions of the rail ROW, the federal agency is responsible for complying with Section 106 regarding consideration of potential effects to archaeological sites before approving the undertaking.

F. The Exempted Activities List **does not apply to non-railroad or rail transit related buildings or structures located within or adjacent to rail ROW within an undertaking's APE**. The federal agency remains responsible for determining whether an activity in the Exempted Activities List has the potential to affect non-rail historic properties and for complying with Section 106 with regard to those properties before approving the undertaking.

G. If an **unanticipated discovery** of a non-rail historic property, archaeological site of any nature, or human remains, or an **unanticipated adverse effect** on a previously identified non-rail historic property is made during the implementation of an activity on the Exempted Activities List, the Section 106 requirements at 36 CFR 800.13 and/or applicable burial law, as appropriate depending on the nature of the resource, apply because effects to such resources are not covered by this program comment. At minimum, the Project Sponsor must cease all work in and secure the area and notify the federal agency within 72 hours. The federal agency will consult with SHPO, federally recognized Indian tribes, NHOs, and other stakeholders as appropriate, to determine the appropriate course of action. The Project Sponsor must comply with any applicable state or local law regarding the resource. If an undertaking involves multiple activities on the Exempted Activities List, those that do not involve or affect the non-rail resource, as determined by the federal agency, may continue.

H. The Project Sponsor must comply with the **requirements** of any applicable easements, covenants, and/or state or local historic preservation ordinances. Other federal and state laws such as the **National Environmental Policy Act** and **Section 4(f)** of the USDOT Act also remain applicable to activities exempted from Section 106, as appropriate.

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**Appendix A: Exempted Activities List**

**A. Track and Trackbed**

1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (*i.e.*, existing subgrade, subballast, ballast, and rails and crossties (track)). These activities must not include alterations to the trackbed that would result in a substantial visual change (*i.e.*, elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.
2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.

**B. Bridges and Tunnels**

1. In-kind maintenance and repair of bridges and tunnels.
2. In-kind replacement of bridge hardware and mechanical and electrical components (*e.g.* brackets, rivets, bearings, motors).
3. Maintenance or repair of tunnel ventilation structures and associated equipment (*e.g.*, fans, ducting).
4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.
5. Replacement of tunnel ventilation structures that are located and publicly visible within a previously identified historic district, provided the replaced structures are substantially the same size as or smaller than the existing structures and are visually compatible with the surrounding built environment.
6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.
7. Maintenance, installation, repair, or replacement of lighting, signal and communications systems, railings, and other safety- and security-related equipment or elements located within the interiors of tunnels.
8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.

9. Actions to strengthen or repair deteriorating non-character defining structural components of bridges that are intended to maintain their useful life and safe use and that do not substantially alter the bridge from its existing appearance.
10. The following activity must be performed or supervised by an SOI-qualified professional:  
In-kind replacement of character-defining structural or nonstructural components of a bridge superstructure or substructure that do not diminish the overall integrity of the bridge. This does not include demolition of a bridge and replacement with an entirely new structure.

**C. Railroad and Rail Transit Buildings (e.g., Passenger Stations and Depots, Maintenance and Equipment Buildings, Interlocking Towers) and Boarding Platforms**

1. Modifications (e.g., repair, extension, widening, slope adjustments, changes in height) to non-character defining passenger platforms and walkways that are necessary to meet Americans with Disabilities Act (ADA) requirements or other federal or municipal public or life safety codes and standards, provided those changes do not require associated improvements such as relocation of station doors, construction of ramps, etc. When the original material and construction used something other than common concrete or asphalt methods (e.g., decorative brick or tile), new materials (e.g., non-slip) may be used but must visually match the existing decorative pattern.
2. Maintenance or repair of escalators, elevators, or stairs. Repair of decorative (i.e., non-mechanical) elements must be in-kind. Repair of stairs constructed of material other than common concrete (e.g., brick, tile, marble) must be in-kind.
3. Cleaning, painting, or refinishing of surfaces with a like color and where the products or methods used would not damage the original surface.
4. Maintenance, repair, or replacement of fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or computer equipment and devices.
5. Installation of new fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or computer equipment and devices, except within publicly accessible areas of stations or depots. Such new installations must, to the extent feasible and when appropriate, use a minimally obtrusive design; match the color of surrounding paint, wall coverings, finishes, etc.; avoid damaging or removing historic fabric; be attached to non-historic fabric; be concealed within existing enclosures or conduit or behind walls and ceilings; be co-located with existing similar modern equipment, etc.
6. Maintenance, repair, or replacement of HVAC or electrical systems.

7. Installation of new HVAC or electrical systems, except within publicly accessible areas of stations or depots. Such new installations must, to the extent feasible and when appropriate, use a minimally obtrusive design; match the color of surrounding paint, wall coverings, finishes, etc.; avoid damaging or removing historic fabric; be attached to non-historic fabric; be concealed within existing enclosures or conduit or behind walls and ceilings; be co-located with existing similar modern equipment, etc.
8. Minor ADA improvements at passenger stations that do not damage, cover, alter, or remove character-defining architectural spaces, features, or finishes. Examples include the installation of restroom stalls/partitions, hardware and fixtures such as grab bars, tilt frame mirrors, and sinks and toilets; tactile warning strips on floors, passenger walkways, and platforms; cane detectors; sidewalk curb cuts; automatic door openers; and handrails.
9. Maintenance, repair, or replacement of previously installed ADA elements.
10. Maintenance, repair, or replacement of pumps, air compressors, or fueling stations.
11. Removal of mechanical equipment inside railroad and rail transit facilities not visible to the public. Examples include relay panels, switchgear, and track diagram boards. If the equipment to be removed includes obsolete or outdated technology, the Project Sponsor must contact the SHPO, railroad museums or railroad historical societies, museums, educational institutions, or similar entities to determine if there is an entity that may be interested in purchasing or receiving the equipment as a donation, as appropriate. The Project Sponsor must demonstrate to the federal agency that it has made a good faith effort to contact such parties prior to removal and disposition of such equipment.
12. Addition of new mechanical equipment in basements, beneath platforms, in designated mechanical equipment areas, or in areas that are otherwise out of public view.
13. Paving, painting, or striping of existing parking surfaces.
14. In-kind maintenance or repair of platform boarding canopies and supports.
15. In-kind maintenance or repair of architecturally distinctive light poles and fixtures.
16. State-of-good-repair (“SOGR”) activities not included elsewhere in this section that are necessary to keep a station, depot, or other railroad or rail transit building inhabitable and safe, as required by applicable federal or municipal fire, life safety, or health codes or standards, and in transportation-related use that meet the following conditions:

- a. Maintenance and repair activities that affect character-defining architectural features (e.g., elevator head houses and portals; roofs; doors; windows; stairs; platform canopies; columns; floors; ceilings) must be in-kind.
  - b. SOGR activities do not include demolition, decommissioning, or mothballing of railroad or rail transit buildings that are not in use, or reconfiguring the interior spaces of passenger stations for a new use (e.g., enclosing a passenger waiting area to create new office, baggage handling, or event space).
17. Maintenance, repair, or replacement activities that are not included elsewhere on this list and involve non-character-defining non-structural elements, features, systems, hardware, and fixtures in the interior or on the exterior of non-station railroad or rail transit buildings.
18. In-kind maintenance or repair of original architectural features in the interior or on the exterior of passenger stations (e.g., handrails, ticket counters, mouldings).
19. In-kind maintenance or repair of character-defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.
20. Maintenance, repair, or replacement of non-character defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.
21. The following activities must be performed or supervised by an SOI-qualified professional:
- a. Replacement of character defining escalators, elevators, or stairs, and decorative elements related thereto.
  - b. ADA improvements at passenger stations that involve the modification or removal of character-defining features such as stairs, floors, ceilings, doors, windows, roofs, platform boarding canopies and supports, benches/seating, or ticket counters; or that involve the addition of new ramps, stairs, escalators, elevators, wheelchair lifts, wheelchair lift enclosures, station identifier and wayfinding signage, and public information display systems (“PIDS”).
  - c. SOGR activities that include replacement of character-defining architectural features or otherwise require substantial rehabilitation to address deteriorated conditions. As previously indicated, SOGR activities do not include demolition, decommissioning, or mothballing of railroad or rail transit buildings that are not in use, or reconfiguring the interior spaces of passenger stations for a new use (e.g., enclosing a passenger waiting area to create new office, baggage handling, or event space).

- d. Installation of new fire or security alarm or fire suppression systems, physical access controls, security cameras, wireless internet, and similar safety, security, or computer equipment and devices within publicly accessible areas of stations or depots.
- e. Installation of new HVAC or electrical systems within publicly accessible areas of stations or depots.
- f. Replacement of platform boarding canopies and supports.
- g. Replacement of architecturally distinctive light poles and fixtures.
- h. Replacement of original architectural features in the interior or on the exterior of passenger stations (e.g., handrails, ticket counters, mouldings).
- i. Replacement of character-defining signage (e.g., station identifier, wayfinding) within publicly accessible areas of stations or depots.

#### **D. Signals, Communications, and Power Generation**

1. Maintenance, repair, or replacement of component parts of signal, communications, catenary, electric power systems, or other mechanical equipment that retains the visual appearance of the existing infrastructure. This includes replacement of individual signal masts or transmission lines, but does not include demolition and replacement of an entire catenary system or signal bridge.
2. Maintenance, repair, or replacement of radio base stations.
3. Maintenance, repair, or replacement of the mechanical components of traction power substations, e.g., transformers, circuit breakers, electrical switches. This does not include demolition and replacement of an entire substation.
4. In-kind maintenance or repair of signal bungalows, signal houses, control houses, instrument houses, and structures of similar function.
5. Installation, repair, or replacement of communications equipment on locomotives and rolling stock that are actively used for intercity passenger rail, rail transit, or freight rail. This does not apply to historic trains used for tourism.
6. The following activities must be performed or supervised by an SOI-qualified professional:
  - a. Replacement of signal bungalows, signal houses, control houses, instrument houses, and structures of similar function.

## **E. Railroad and Rail Transit/Roadway At-Grade Crossings and Grade Separations**

1. Maintenance, repair, or rehabilitation of at-grade railroad and rail transit crossings including installation of railroad and rail transit crossing signs, signals, gates, warning devices and signage, highway traffic signal preemption, road markings, paving and resurfacing, and similar safety improvements.
2. Replacement of at-grade railroad and rail transit crossings on existing railroads, rail transit lines, and roadways, including components such as crossing signs, signals, gates, warning devices and signage, highway traffic signal pre-emption, road markings, paving and resurfacing, and similar safety features.
3. Expansion of sidewalks, constructed with common concrete or asphalt methods, along the sides of an existing at-grade railroad or rail transit crossing.
4. In-kind maintenance or repair of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses).
5. In-kind rehabilitation or replacement of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses). This does not include modifications to existing grade separation structures (e.g., bridges, overpasses) that would result in a substantial increase in height or overall massing or substantial change in appearance. Replacements must be substantially the same appearance and size as existing.
6. Addition of lanes, turning lanes, road widening, and pavement markings at existing at-grade crossings when the crossing does not involve an individual National Register-listed or known historic roadway or a roadway that is a contributing resource to a National Register-listed or known historic district.
7. Construction of curbs, gutters, or sidewalks adjacent to existing roadway at existing at-grade crossings when the crossing does not involve an individual National Register-listed or eligible roadway or a roadway that is a contributing resource to a National Register-listed or eligible historic district.
8. The following activities must be performed or supervised by an SOI-qualified professional:
  - a. Addition of lanes, turning lanes, road widening, and pavement markings at existing at-grade crossings when the crossing involves an individual National Register-listed or eligible roadway or a roadway that is a contributing resource to a National Register-listed or eligible historic district.



- b. Construction of curbs, gutters, or sidewalks adjacent to existing roadway at existing at-grade crossings when the crossing involves an individual National Register-listed or eligible roadway or a roadway that is a contributing resource to a National Register-listed or eligible historic district.

#### **F. Safety and Security**

1. Maintenance, repair, replacement, or installation of the following security and intrusion prevention devices adjacent to tracks or in railyards or rail transit yards: Security cameras, closed captioned television (“CCTV”) systems, light poles and fixtures, bollards, emergency call boxes, access card readers, and warning signage.
2. Maintenance, repair, replacement, or installation of security and safety fencing, guardrails, and similar intrusion prevention and fall protection measures.
3. Maintenance, repair, replacement, or installation of safety equipment/fall protection equipment on rail bridges, signal bridges, or other non-station structures for the protection of rail workers or the public. Examples include railings, walkways, gates, tie-off safety cables, anchors, and warning signage.
4. Maintenance, repair, replacement, or installation of wayside detection devices.
5. Maintenance, repair, replacement, or installation of bridge clearance/strike beams.

#### **G. Erosion Control, Rock Slopes, and Drainage**

1. Placement of riprap and similar bank stabilization methods to prevent erosion affecting bridges and waterways.
2. Erosion control through slide and slope corrections.
3. Rock removal and re-stabilization activities such as scaling and bolting.
4. Maintenance, repair, or replacement of pre-cast concrete, cast iron, and corrugated metal culverts that lack stone or brick headwalls. This does not include culverts such as those built by the Civilian Conservation Corps or those made out of unique materials (e.g., a hollowed log).
5. Expansion through horizontal elongation of pre-cast concrete, cast iron, and corrugated metal culverts that lack stone or brick headwalls for the purpose of improved drainage.
6. Embankment stabilization or the reestablishment of ditch profiles.

7. Corrections to drainage slopes, ditches, and pipes to alleviate improper drainage or changing alluvial patterns.
8. In-kind maintenance, repair, or replacement of retaining walls. Replacements must be substantially the same size and appearance as existing.
9. In-kind maintenance or repair of stone or brick culvert headwalls and wingwalls.
10. Maintenance, repair, or replacement of culvert headwalls and wingwalls constructed of concrete.
11. Maintenance, repair, or alterations to the interiors of culverts and related drainage pathways.
12. The following activities must be performed or supervised by an SOI-qualified professional:
  - a. Replacement of stone or brick culvert headwalls and wingwalls.
  - b. Vertical extension of stone or brick culvert headwalls using in-kind materials and design compatible with existing.

#### **H. Environmental Abatement**

1. Removal or abatement of environmental hazards such as asbestos, treated wood, and lead or heavy-metal coatings and paintings. Activities that replace coatings, paint, flooring materials, etc. must be of the same color and appearance as the materials that have been removed or abated.
2. Removal of contaminated ballast, subballast, subgrade, and soils.

#### **I. Operations**

1. Establishment of quiet zones\*, including the installation of required warning devices and additional safety measures installed at grade crossings that do not entail closing of existing roadways. (\*A quiet zone is an FRA exemption to the rule requiring trains to sound their horns when approaching public highway-rail grade crossings. More information on the creation of quiet zones is available in FRA's regulations at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings, and in guidance promulgated by FRA's Office of Railroad Safety (for example, see <https://www.fra.dot.gov/Page/P0841> and <https://www.fra.dot.gov/eLib/Details/L04781>.)

2. Increased frequency of train or rail transit operations that do not result in noise or vibration impacts. The lead federal agency may, at its discretion, require a noise and vibration study be prepared by a qualified subject matter expert before approving the undertaking.
3. Temporary storage of rail cars or rail transit cars on active rail lines.
4. Maintenance, repair, or replacement of noise barriers. If a replaced noise barrier is to be located and publicly visible within a National Register-listed or eligible historic district, it must be substantially the same size as or smaller than existing and be visually compatible with the surrounding built environment.

**J. Landscaping, Access Roads, and Laydown Areas**

1. In-kind replacement of landscaping.
2. Mowing, seeding/reseeding, planting, tree trimming, brush removal, or other similar groundcover maintenance activities.
3. Maintenance of access roads and laydown areas.

**K. Utilities**

1. Maintenance, repair, or replacement of above-ground and underground utilities (e.g., electrical, sewer, compressed air lines, fuel lines, fiber optic cable).
2. Maintenance, repair, replacement, or installation of utility lines and conduit inside tunnels that does not involve affixing new equipment to the exterior face of tunnel portals.
3. Affixing conduit, repeaters, antennae, and similar small-scale equipment on the exterior masonry face of tunnel portals where the color of the equipment matches the existing masonry in order to limit its visibility and does not damage the masonry construction.

**L. Bicycle and Pedestrian Facilities, Shared Use Paths, and Other Trails**

1. Maintenance, repair, or replacement of existing bicycle lanes, pedestrian walkways, shared use paths (e.g., bicycle, pedestrian), and other trails intended for non-motorized transportation that are constructed with common materials (i.e., non-decorative concrete, asphalt, pavement, or gravel).
2. Adding lanes to existing shared use paths or other trails constructed with common materials.

3. Adding at-grade crossings for pedestrians and bicycle facilities, shared use paths, or other trails.
4. Maintenance, repair, replacement, or installation of bicycle aid stations, bicycle racks, and bicycle storage sheds, and similar amenities. Installation of new bicycle storage structures must be visually compatible with the surrounding building environment when located adjacent to historic passenger stations or within National Register-listed or eligible historic districts.
5. Maintenance, repair, replacement, or installation of information kiosks or displays, wayfinding signage, and similar amenities for pedestrian, bicyclists, or other path or trail users.
6. Maintenance, repair, or replacement of curbs, gutters, or sidewalks constructed with common materials.

**M. Construction/Installation of New Railroad or Rail Transit Infrastructure**

For any of the activities listed below, the federal agency shall require the work be performed by or under the supervision of an SOI-qualified professional, based on the scope of work and location of a specific proposal. As with all activities in this Exempted Activities List, but especially important for construction/installation of new railroad or Rail Transit infrastructure, consideration must be given to the potential for effects to non-rail properties within or adjacent to the rail ROW.

1. Minor new construction and installation of railroad or rail transit infrastructure that is compatible with the scale, size, and type of existing rail infrastructure, such as buildings for housing telecommunications equipment, signal instruments, and similar equipment; storage buildings that house landscaping or maintenance of way equipment or specialty vehicles for track repairs or inspections; locomotive and train or rail transit car service and inspection facilities; trailers or temporary structures for housing rail personnel; fueling stations; underground utilities; overhead utilities, transmission lines, and communications poles, and signage. This does not include substantial new construction, such as construction of new passenger stations, railyards or rail transit yards, or tunnels, or demolition of existing structures.
2. Construction of new at-grade crossings.
3. Construction of new erosion control, drainage, or stormwater management infrastructure, such as culverts or retaining walls.