



The Advisory Council on Historic Preservation Program Comment for Federal Communications Projects (Originally: *Program Comment for Communications Projects on Federal Lands and Property*)

Background, Applicability, and Dispute Resolution



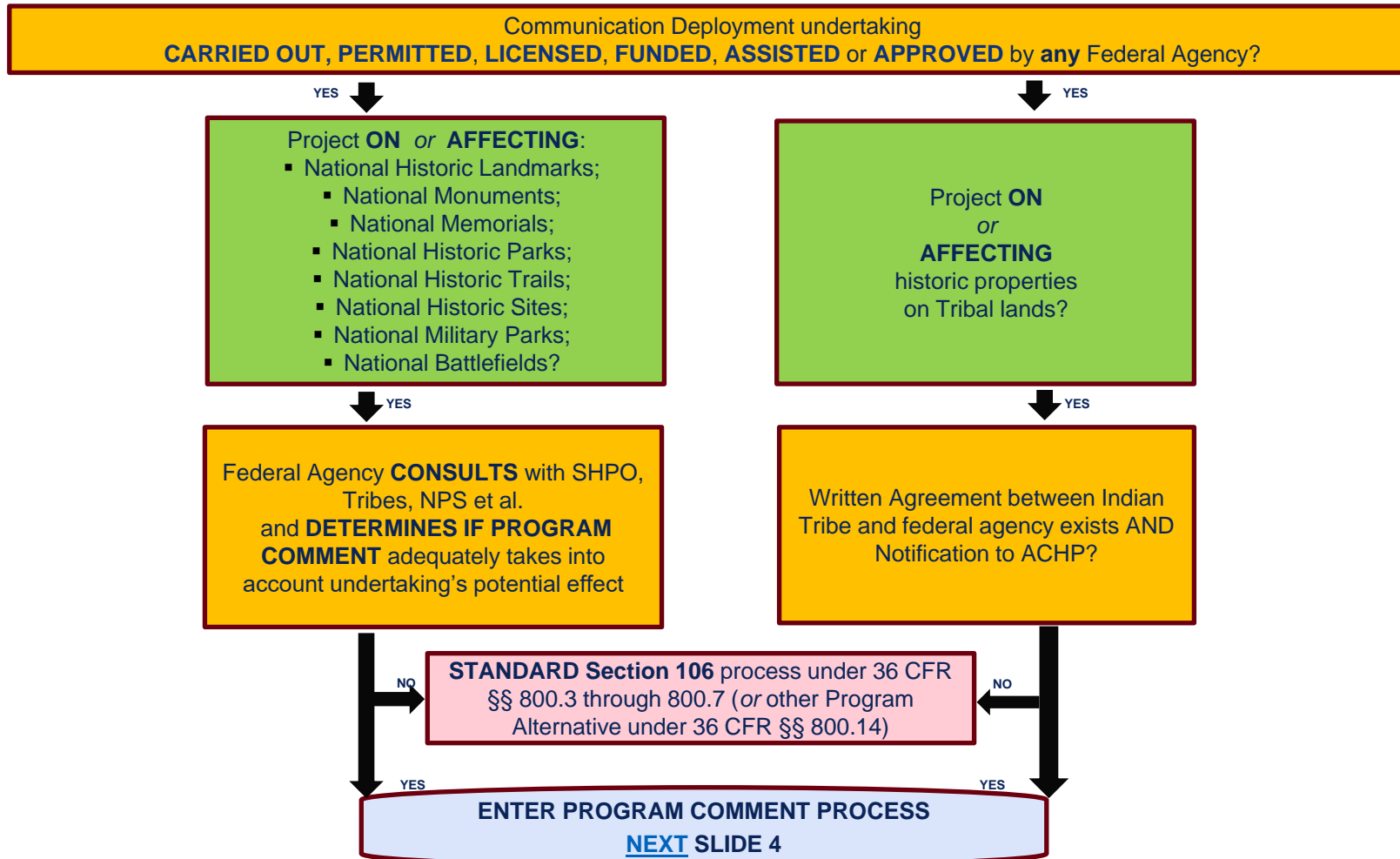
- The regulations of the Advisory Council on Historic Preservation (ACHP) at 36 CFR part 800 set forth the processes that federal agencies follow to comply with their responsibilities under Section 106 of the National Historic Preservation Act (Section 106).
- In May 2017, the ACHP, at the request of the Department of Homeland Security, issued the Program Comment for Communications Projects on Federal Lands and Property to accelerate the Section 106 review of various broadband deployment projects.
- In March 2024, ACHP amended the program comment at the request of the NTIA to expand its availability to all federal agencies with communications undertakings on or off federal lands.

PURPOSE: The purpose of the Program Comment is to provide an alternate method to the standard Section 106 review process that provides process efficiencies as allowed by the Section 106 regulations, without modifying federal agency stewardship responsibilities under Section 110(a) of the National Historic Preservation Act.

APPLICABILITY: The Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, approved, or assisted by any federal agency.

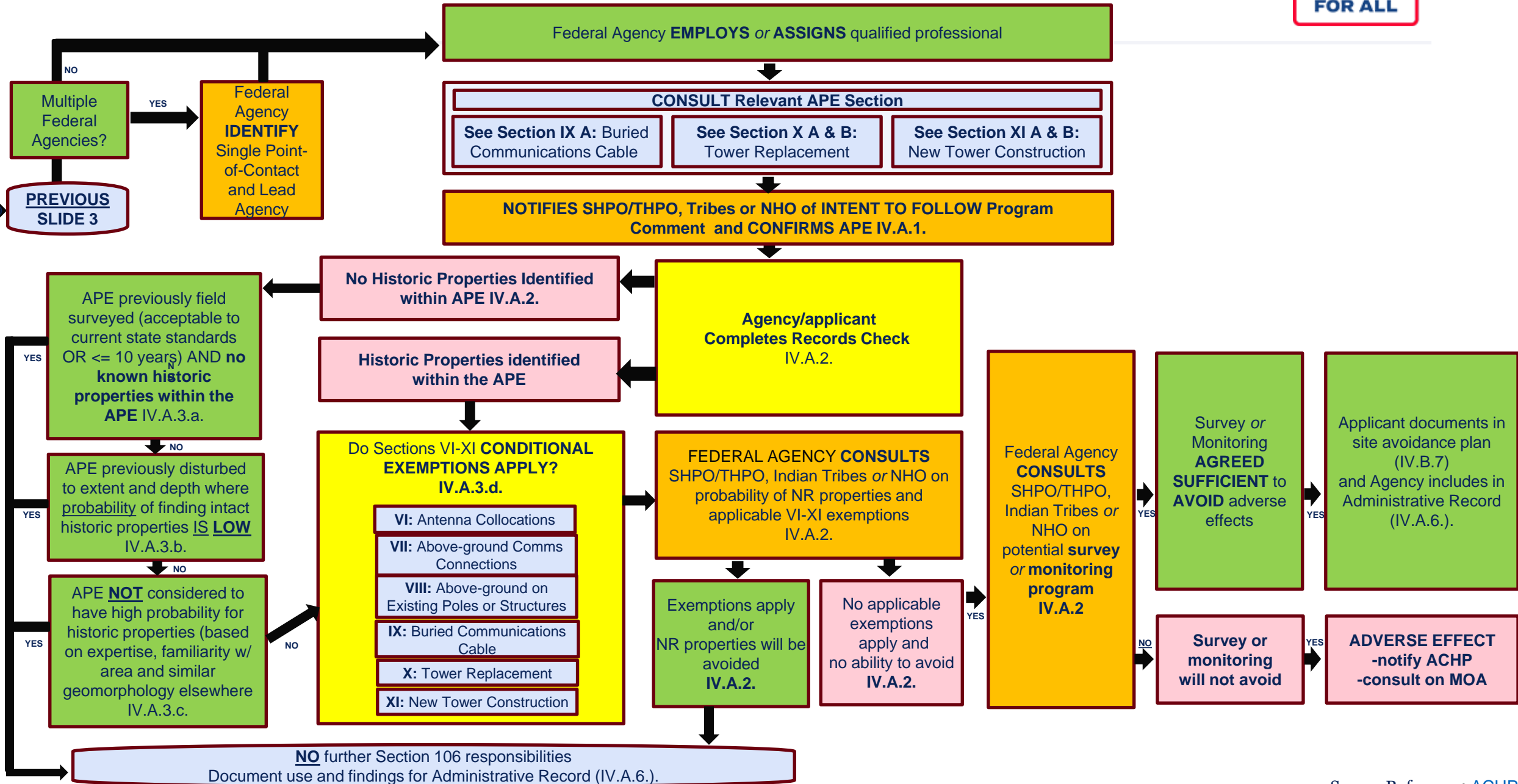
- A federal agency may also elect to use the Program Comment as a substitute for existing procedures such as Memoranda of Understanding or consultation protocols but is encouraged to coordinate with parties to those procedures first.
- In the event of a dispute over the implementation or use of the Program Comment, a federal agency must consult with the objecting party to resolve the dispute.
- Should resolution on the dispute not be reached, the federal agency shall:
 - Request the ACHP to provide its advisory comments to resolve the dispute.
 - Take the ACHP's comments into account before finalizing its approach to complying with Section 106.
 - Notify all consulting parties regarding its approach to complying with Section 106 for a communications undertaking that is the subject of a dispute.

Applicability of Program Comment



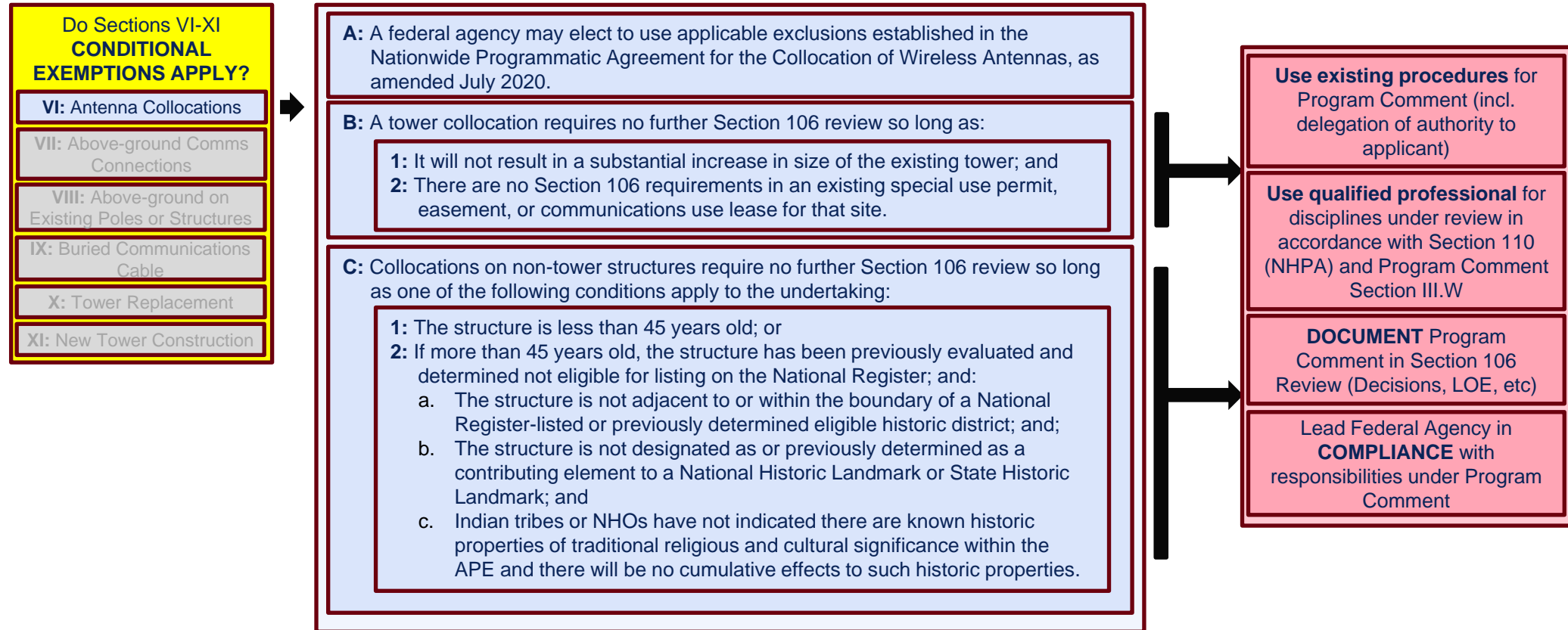
- Use existing procedures for Program Comment (incl. delegation of authority to applicant) IV.A.4.
- Use qualified professional for disciplines under review in accordance with Section 110 (NHPA) and Section III.W & IV.A.5.
- DOCUMENT** Program Comment in Section 106 Review (Decisions, LOE, etc) IV.A.6.
- Lead Federal Agency fulfills **COMPLIANCE** responsibilities for participating agencies under Program Comment IV.A.7.

Applying the Program Comment Process



Conditional Exemptions: VI

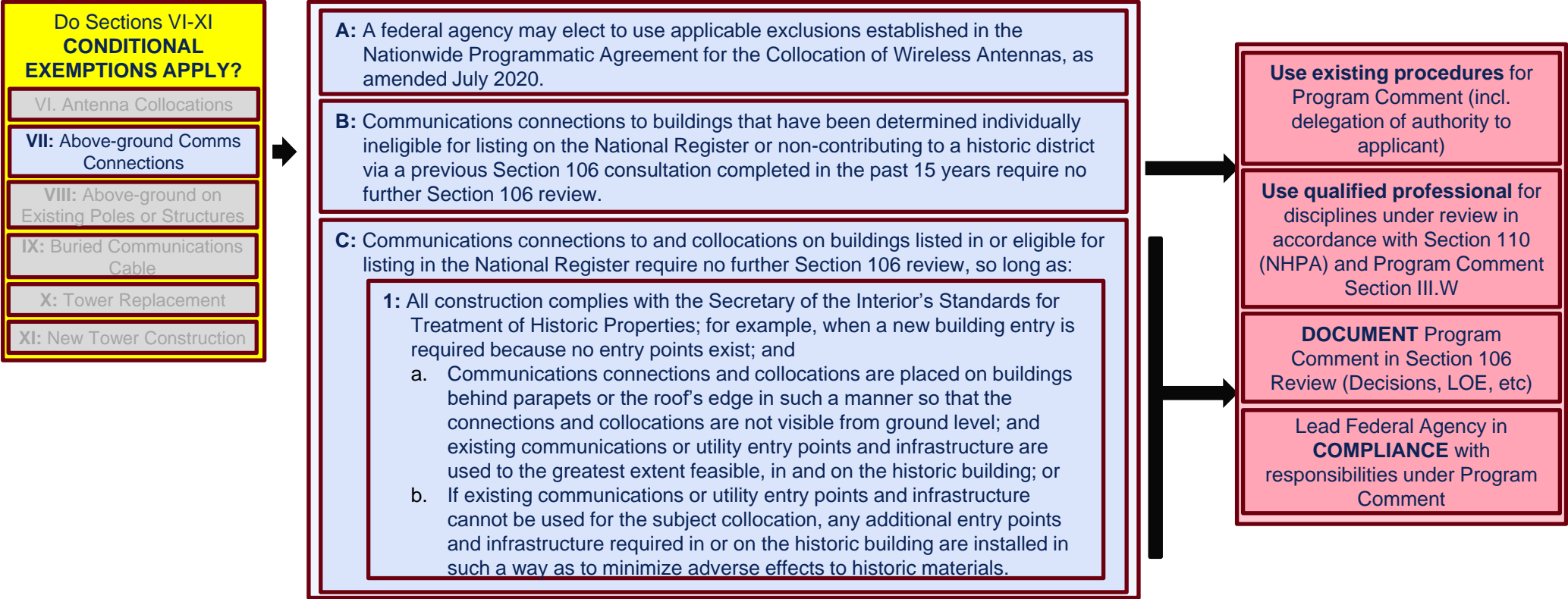
Collocation of Communications Antennae



NOTE: Collocations supporting the use of FCC licensed spectrum are subject to (or excluded from) Section 106 review by the FCC, removing the Section 106 review obligations of the federal agencies named in the Duplicative Wireless Review Program Comment

Conditional Exemptions: VII

Above-ground Communications Connections to and Collocations on Buildings



NOTE: Collocations supporting the use of FCC licensed spectrum are subject to (or excluded from) Section 106 review by the FCC, removing the Section 106 review obligations of the federal agencies named in the Duplicative Wireless Review Program Comment

Conditional Exemptions: VIII

Placement of Above-ground Communications and Cable Lines on Existing Poles or Structures

- Do Sections VI-XI
CONDITIONAL
EXEMPTIONS APPLY?**
- VI: Antenna Collocations
 - VII: Above-ground Comms Connections
 - VIII: Above-ground on Existing Poles or Structures**
 - IX: Buried Communications Cable
 - X: Tower Replacement
 - XI: New Tower Construction

A: The placement of above-ground communications and cable lines on existing poles or structures requires no further Section 106 review, as long as:

- 1: No new structures or poles need to be added to accommodate the new lines; and
- 2: The structure or pole is not a historic property and does not contribute to the significance of a historic district.

B: When replacement of structures or poles is planned, the undertaking requires no further Section 106 review, as long as the following conditions are met:

- 1: The location of the replacement pole will be either:
 - a. No more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole, provided that the construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines; *or*
 - b. Within an existing ROW or easement which has been surveyed.
- 2: The replacement structures or poles are consistent with the quality and material of the originals; and
- 3: Any proposed height increase of the replacement structures or poles is no more than 10 percent of the height of the originals or 5 feet, whichever is greater; and
- 4: The original pole or structure is not a historic property and does not contribute to a historic district.

C: When infill structures or poles need to be added along an extant line, the undertaking requires no further Section 106 review, as long as:

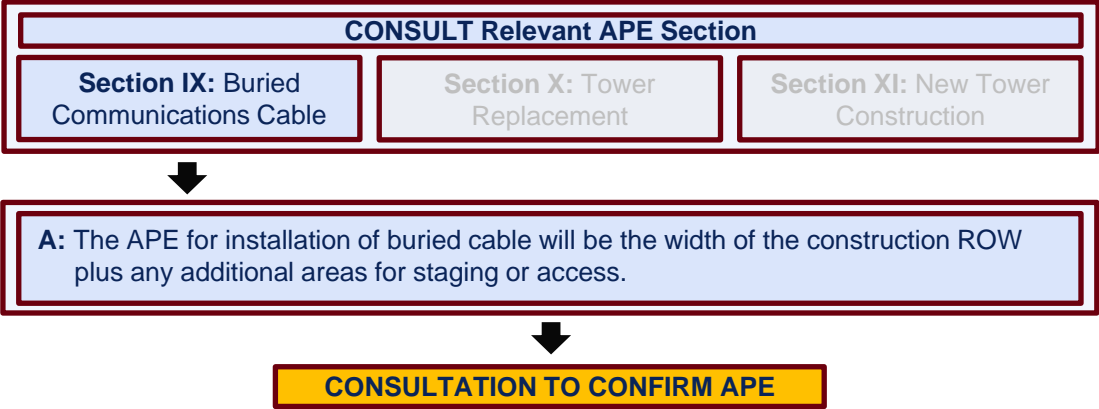
- 1: The addition of new structures or poles within existing ROWs or corridors is not proposed within the boundary of a known historic property; and
- 2: The additional structures or pole(s) are 100 feet or more beyond the boundary of any National Register listed or previously determined eligible historic districts significant for their visual setting; and
- 3: The additions are of generally consistent quality and material with the originals; and
- 4: The height of any added structure or pole is no greater than 10 percent taller than the height of the originals, or 5 feet, whichever is greater.

- Use existing procedures for Program Comment (incl. delegation of authority to applicant)
- Use qualified professional for disciplines under review in accordance with Section 110 (NHPA) and Program Comment Section III.W
- DOCUMENT** Program Comment in Section 106 Review (Decisions, LOE, etc)
- Lead Federal Agency in **COMPLIANCE** with responsibilities under Program Comment

Conditional Exemptions: IX

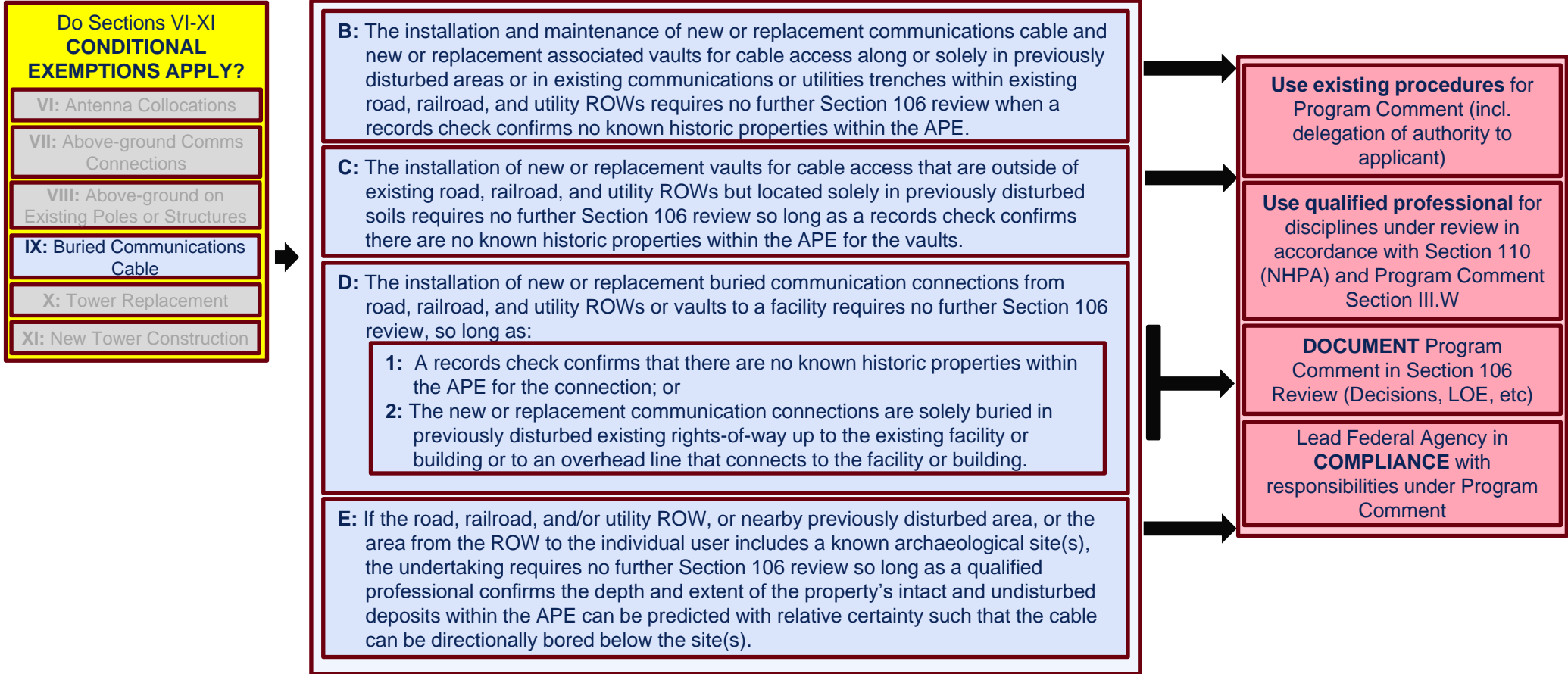


Installation of Buried Communications Cable



Conditional Exemptions: IX

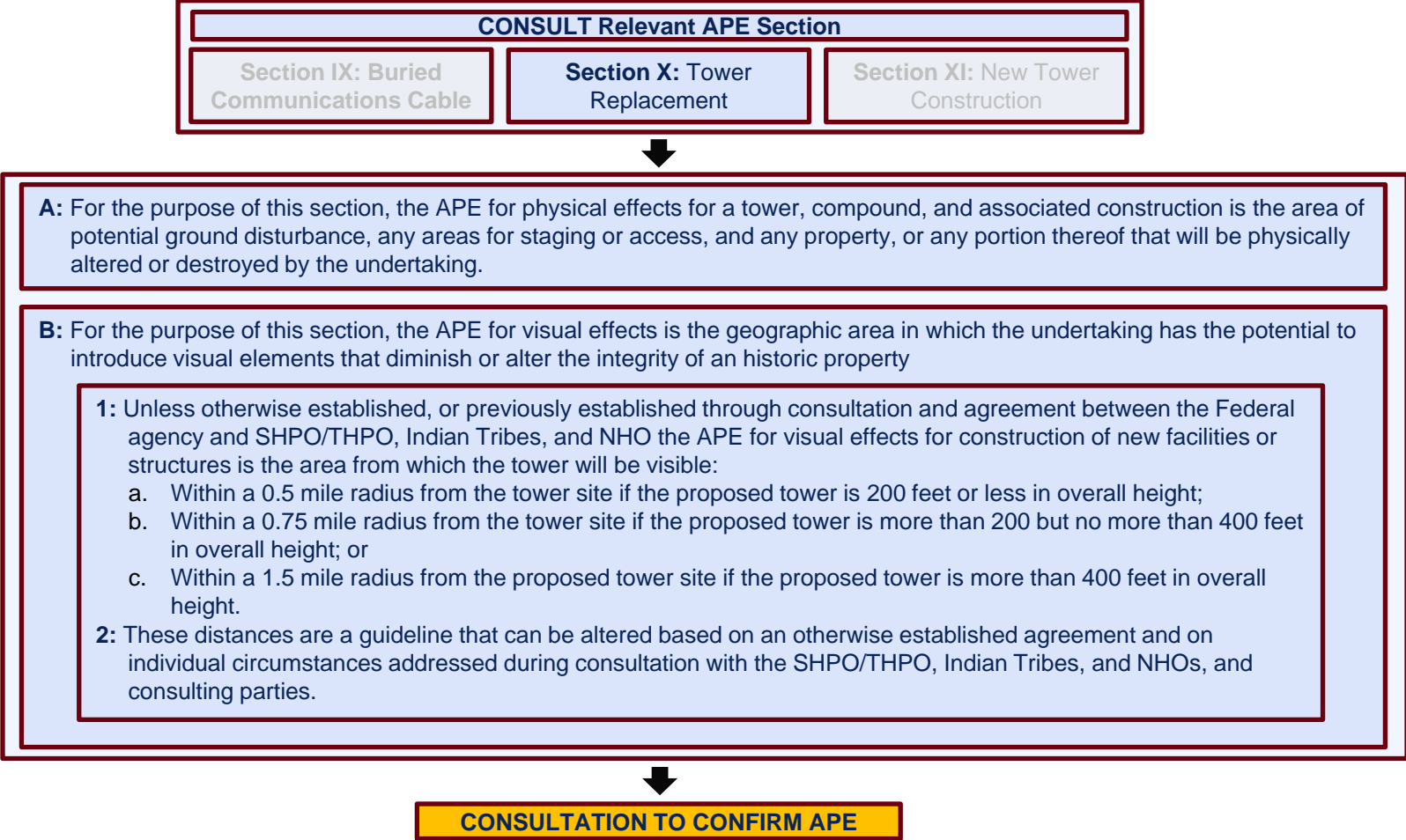
Installation of Buried Communications Cable



Conditional Exemptions: X



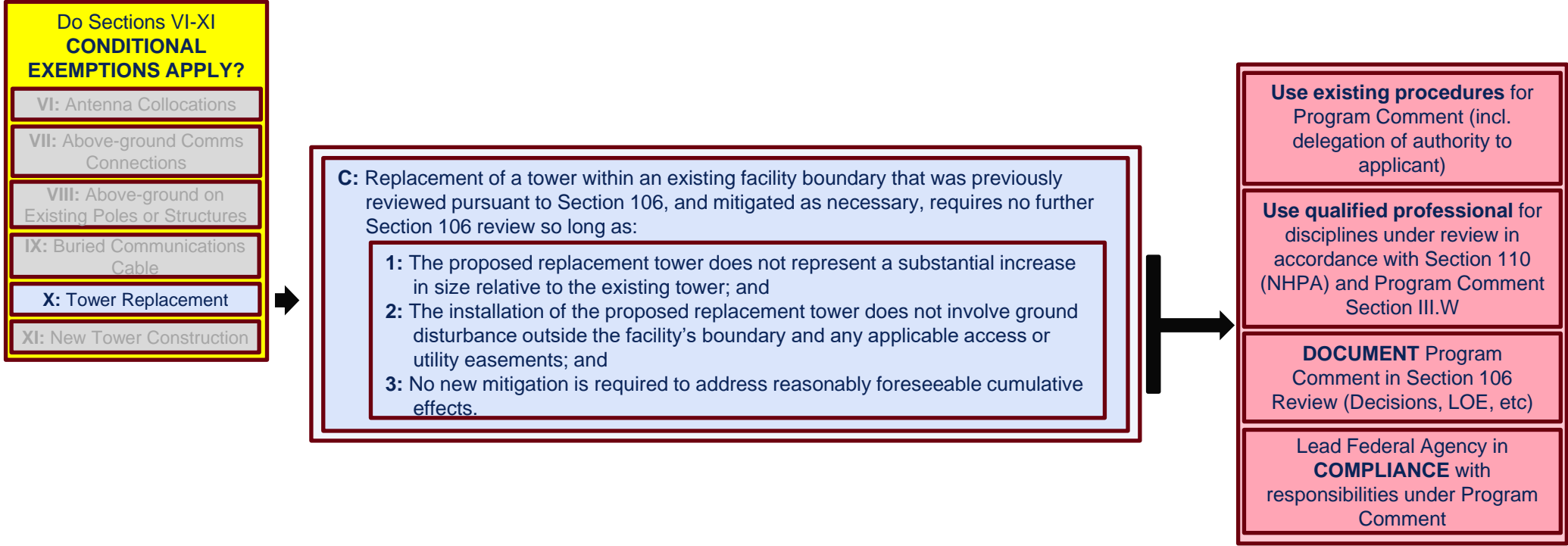
Communications Tower Replacement



NOTE: Towers supporting the use of FCC licensed spectrum are subject to (or excluded from) Section 106 review by the FCC, removing the Section 106 review obligations of the federal agencies named in the Duplicative Wireless Review Program Comment

Conditional Exemptions: X

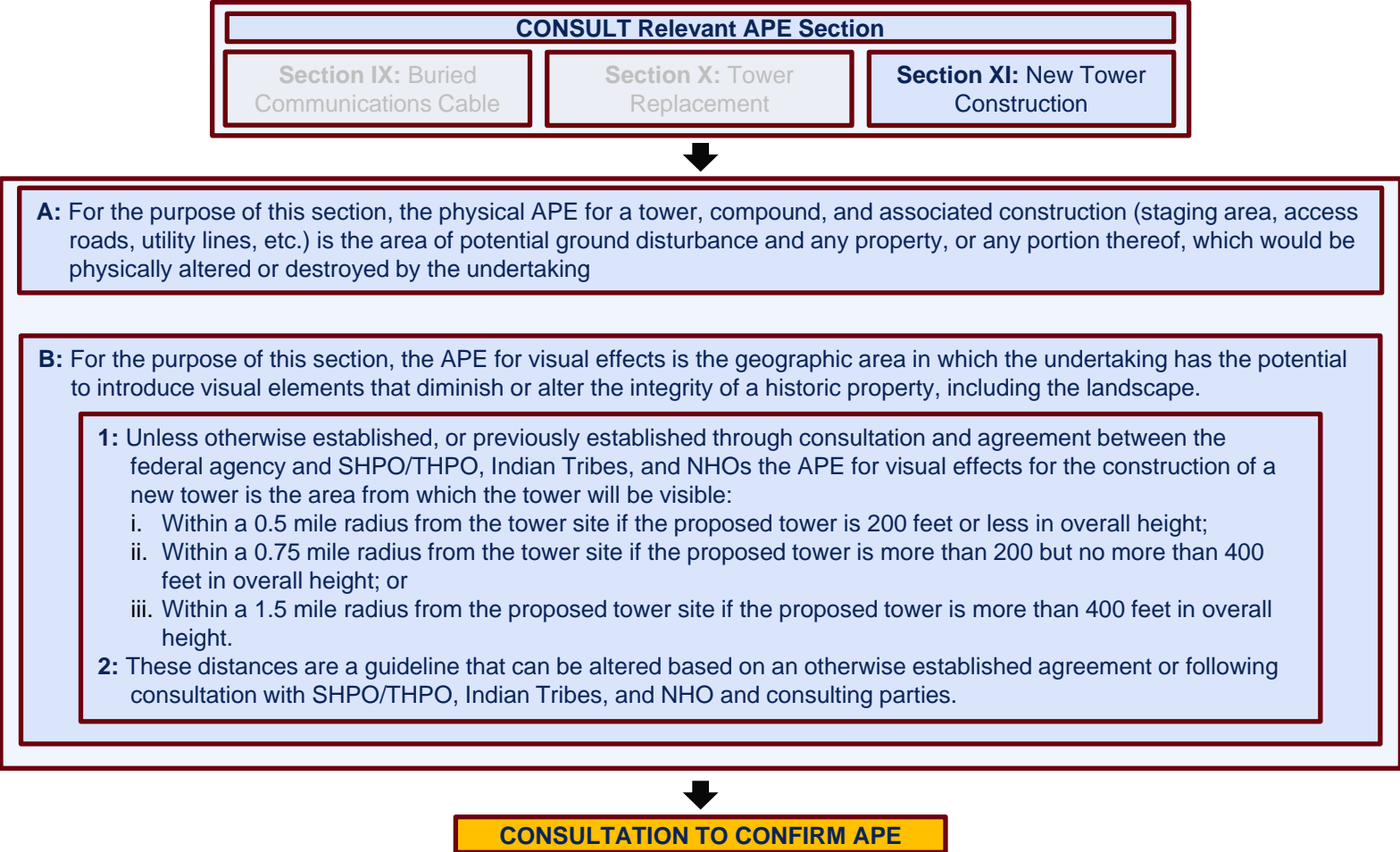
Communications Tower Replacement



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Conditional Exemptions: XI

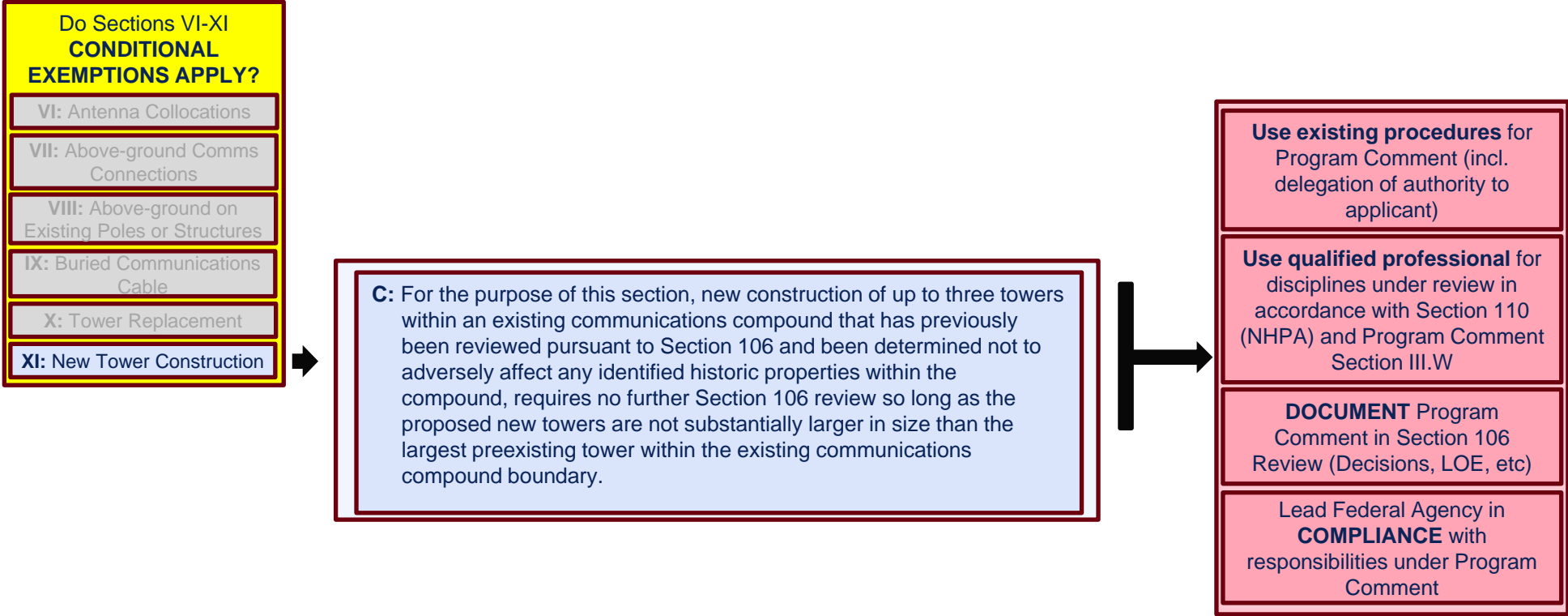
New Communications Tower Construction



NOTE: Towers supporting the use of FCC licensed spectrum are subject to (or excluded from) Section 106 review by the FCC, removing the Section 106 review obligations of the federal agencies named in the Duplicative Wireless Review Program Comment

Conditional Exemptions: XI

New Communications Tower Construction



NOTE: Towers supporting the use of FCC licensed spectrum are subject to (or excluded from) Section 106 review by the FCC, removing the Section 106 review obligations of the federal agencies named in the Duplicative Wireless Review Program Comment

Implementation Considerations



XII. Removal of obsolete communications equipment and towers

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

XIII. Unanticipated discoveries

- A. If previously unidentified historic properties or unanticipated effects to historic properties, including audible, atmospheric, and cumulative effects, are discovered during project implementation, the contractor shall immediately halt all activity within a 50-foot radius of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours, the federal agency shall notify the relevant SHPO, THPO, Indian Tribe or NHO, and ACHP of the inadvertent discovery, and determine whether a Discovery Plan is necessary, and whether 50 feet is sufficient for protection measures.
- B. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal or Tribal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act and its implementing regulations (43 CFR part 10), and consistent with the Discovery Plan.
- C. The federal agency shall ensure that in the event human remains, funerary objects, sacred objects, or items of cultural patrimony are discovered during implementation of an undertaking, all work within 50 feet of the discovery will cease, the area will be secured, and the federal agency's authorized official will be immediately contacted. The federal agency will be guided by the principles within the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects (adopted March 1, 2023). The federal agency will also comply with applicable state and local laws regarding the discovery of human remains.
- D. The Discovery Plan for inadvertent discoveries will include the following provisions.
 - 1. Immediately halting all construction work involving subsurface disturbance in the area of the find and in the surrounding area where further subsurface finds can be reasonably expected to occur, and immediately notify SHPO, THPO, Indian Tribes (as appropriate), and NHOs of the find;
 - 2. A qualified professional will immediately inspect the site and determine the area and nature of the affected find. Construction work may then continue in the area outside the find as defined by federal agency;
 - 3. Within five working days of the original notification, the federal agency, in consultation with SHPO, THPO, Indian Tribes, as appropriate, and NHOs, will determine whether the find is eligible for the National Register;
 - 4. If the find is determined eligible for listing in the National Register, the federal agency will prepare a plan for its avoidance, protection, or recovery of information in consultation with the SHPO, THPO, Indian Tribes, as appropriate, and NHOs. Any dispute concerning the proposed treatment plan will be resolved by the federal agency. The ACHP is available to provide technical assistance in developing the plan.
 - 5. Work in the affected area will not proceed until either: a) The plan is implemented; or b) The determination is made that the unanticipated find is not eligible for inclusion in the National Register. Any disputes over the evaluation of unanticipated finds will be resolved in accordance with the requirements of 36 CFR § 800.4(c)(2) as appropriate.

XIII. Emergencies

Should the federal agency determine that an emergency or natural disaster has occurred during the implementation of any undertakings covered under this Program Comment, the federal agency shall notify the appropriate SHPO, THPO(s), Indian Tribes, NHO(s), and the ACHP within seven days as to how the agency intends to repair or replace the communications equipment or facilities or undertake other relevant actions in response to the emergency or natural disaster. The federal agency shall ensure that any approvals, licenses, or permits issued for these emergency response activities refer to compliance with the terms of this Program Comment.