

HISTORIC PRESERVATION - SECTION 106 WORKSHEET FOR FTA PROJECTS

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Updated 1/2/2020.

The Section 106 process, as described in 36 CFR Part 800, consists of four basic steps, with each step having a series of tasks to complete. You may use this checklist to track the progress of your Section 106 evaluation. **Remember: Section 106 must be finalized before NEPA approval, which must be completed prior to the approval of Federal funds for project implementation activities, including final design and construction.**

Step 1: Initiate Section 106 Process (§ 800.3)

- ___ Yes or No – Does the proposed project meet the definition of an “undertaking” as defined in § 800.16(y)? (Does the project involve federal funds, permits, licenses or approvals?)
 - If no, then Section 106 does not apply.
 - If yes, please go onto the next question.

- ___ Yes or No – Does the “undertaking” have the potential to cause effects to historic properties, assuming such historic properties were present? Most, but not all, projects involving construction have the potential to cause direct and/or indirect effects. Certain other types of activities typically have no potential to cause effects (e.g., vehicle and equipment purchases, operations, planning, etc.).
 - If no, then no Section 106 consultation is required.
 - If yes, please continue with the next item in this checklist.

- ___ Identify appropriate SHPO/THPO and federally-recognized Indian tribes. If needed, work with FTA to draft government-to- government consultation plan for tribal consultation. **Only FTA signs consultation letters to tribal governments.**

- ___ Identify other consulting parties (e.g., local/state historic preservation groups, developers, neighborhood associations, local governments).

- ___ Plan to involve the public (may coordinate with NEPA public involvement).

- ___ Consider if, what, and how some project information may need to remain confidential (e.g., sensitive archaeological sites).

- ___ If the proposed project is an undertaking and has the potential to cause effects, proceed to **Step 2**. *If the proposed project is a major project, has unusual circumstances, or you have other concerns, please contact the FTA Region 1 office and provide a project location map and detailed project description before proceeding.*

Step 2: Identify and Evaluate Historic Properties (§ 800.4)

- ___ Define and document the Area of Potential Effects (APE). This geographic area should encompass both direct and indirect effects. Consultation with the SHPO/THPO on FTA’s determination of the APE is required under the Section 106 regulations.

- ___ Identify historic properties within the APE. This includes any known National Register of Historic Places (NRHP) eligible or listed properties, which includes all National Historic Landmarks (*National Historic Landmarks require outreach to the National Park Service as part of the Section 106 consultation process*) and may include properties of

significance to Indian tribes. This should also include any known or potential archaeological resources within the APE.

— Review existing information on historic properties within the APE (e.g., previous historic surveys, land use records, maps, SHPO and local agency databases). It is often helpful at this point, especially for larger projects, to plot the known and potential resources on a map showing the APE, showing the boundaries of listed historic properties.

— Coordinate with FTA to gather information from federally-recognized Indian tribes, as appropriate.

— Evaluate the historic significance of properties identified in the APE, regardless of age. Apply National Register criteria (36 CFR Part 63) to properties identified within the APE that have not been previously evaluated for NRHP eligibility.

— If FTA determines that the criteria are met and the SHPO/THPO agrees, the property is considered eligible for the NRHP for Section 106 purposes.

— If FTA determines that the criteria are not met and the SHPO/THPO agrees, the property is not considered eligible for the NRHP.

— SHPO/THPO agreement on the eligibility of properties is typically sought at the same time that the FTA submits its finding of effect. However, their agreement may be requested earlier in the process on an as-needed basis.

— Seek information from consulting parties to identify issues related to the undertaking's potential effects (direct and indirect) on historic properties.

— If no known NRHP-eligible or NRHP-listed properties are identified within the APE, or if there are historic properties present but the undertaking will have no effect upon them, FTA will review the submitted request for a finding of *No Historic Properties Affected*. After review, FTA will submit a finding and supporting documentation to SHPO/THPO for a 30-day review.

— The finding and supporting documentation must be distributed to all other consulting parties. Additionally, the documentation must be available for public review before there is an approval of the undertaking.

— If SHPO/THPO concurs with or does not object to a *No Historic Properties Affected* finding within 30 days of receipt, then Section 106 is complete (note that if the project is physically located within the boundaries of a historic site, receipt from SHPO/THPO will be necessary for a *de minimis* impact determination under Section 4(f)). Include a discussion of the finding and concurrence in the NEPA document that will be submitted to FTA.

— If NRHP-eligible or NRHP-listed historic properties are identified within the APE and would be affected by the undertaking, proceed to **Step 3**.

Step 3: Assess Adverse Effects (§ 800.5)

— Apply criteria of adverse effect to historic properties within the APE in accordance with § 800.5(a), in consultation with SHPO/THPO and consulting parties. (*An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of an historic property that qualify it for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.*)

— If there is an adverse effect, consider modifications to the project or agree to conditions that avoid adverse effects.

— Yes or No – Would the proposed project adversely affect any of the NRHP-eligible or NRHP-listed properties within the APE?

- If no, then prepare a request for FTA to make a finding of *No Adverse Effect*. (See attached Submittal Guidelines)
- If yes, then prepare a request for FTA to make a finding of *Adverse Effect*. (See attached Submittal Guidelines)

— FTA will submit the finding of effects and supporting documentation of *No Adverse Effect* or *Adverse Effect* to the SHPO/THPO for a 30-day review. FTA will request the SHPO/THPO to concur within 30 days of receipt of the finding. You must provide all other consulting parties copies of the finding and supporting documentation.

— If a *No Adverse Effect* is found and if SHPO/THPO and/or consulting parties concur or do not object to the finding within 30 days, Section 106 is complete and the project may proceed following FTA's direction (note that if the project is physically located within the boundaries of a historic site, receipt from SHPO/THPO will be necessary for a *de minimis* impact determination under Section 4(f)). If there are objections, you must work with FTA to consult with each objecting party to resolve the matter. The finding and supporting documentation must be available for public review before there is an approval of the undertaking.

— If an *Adverse Effect* is found, proceed to **Step 4**.

Step 4: Resolve Adverse Effects (§ 800.6)

— Continue consultation to consider ways to avoid, minimize, or mitigate adverse effects on historic properties.

— FTA will notify the ACHP of the adverse effect finding and provide documentation as outlined in § 800.11(e). FTA will make a determination as to whether the Advisory Council on Historic Preservation (ACHP) should be invited to participate in the resolution of adverse effects through consultation with FTA's Federal Preservation Officer. In any case where there are adverse effects on a National Historic Landmark or where a Programmatic Agreement (PA) is prepared, FTA will invite ACHP to participate in the consultation.

— Negotiate and draft agreed-upon terms in an agreement document (Memorandum of Agreement (MOA)). In certain circumstances, such as where "effects on historic properties cannot be fully determined prior to approval of an undertaking," a Programmatic Agreement (PA) might be used instead of an MOA.

— Have signatories, invited signatories (the project sponsor), and concurring parties sign the MOA/PA, as appropriate.

— Distribute copies of the signed MOA/PA to all consulting parties, and make it available for public review before there is an approval of the undertaking. FTA will file a copy of the signed MOA/PA with ACHP.

— Implement the undertaking in accordance with the signed MOA/PA upon NEPA approval.

YOU MAY NEED TO RECONCILE THE PROCESS DESCRIBED HEREIN WITH SPECIFIC REQUIREMENTS ESTABLISHED BY THE VARIOUS SHPO/THPOs.

FOR PROJECTS RECEIVING FEDERAL FUNDS OR APPROVALS, EFFECTS TO HISTORIC PROPERTIES MUST ALSO BE EVALUATED UNDER SECTION 4(f). PLEASE SEE [FTA'S SOP](#) ON SECTION 4(f).

IF PROJECT PLANS CHANGE AFTER COMPLETION OF THE ENVIRONMENTAL/SECTION 106 REVIEW, YOU MUST NOTIFY FTA WHO WILL THEN NOTIFY THE CONSULTING PARTIES AND REEVALUATE YOUR FINDINGS.

Section 106 Submittal Guidelines

In accordance with § 800.11, please include the appropriate documentation with a cover letter requesting a determination of effect from FTA.

No Historic Properties Affected

- Project description including the nature of federal involvement
- Project location
- APE map and description (it may be helpful to plot properties listed on the NRHP on this map, even if outside the APE)
- Description of steps taken to identify historic properties
- If any historic properties are present but not affected, an explanation of the basis for determining they will not be affected
- Copies or summaries of any consultation with local historical commission or other consulting parties

No Adverse Effect

- Project description including the nature of federal involvement
- Project location
- APE map and description
- Photographs, maps, and drawings, as necessary
- Description of steps taken to identify historic properties
- Description of affected historic properties, including information on the characteristics that qualify them for the NRHP
- Description of the project's effects on historic properties
- An explanation of why the criteria of adverse effect were found inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects
- Copies or summaries of any views provided by consulting parties and the public

Adverse Effect

- Project description including the nature of federal involvement
- Project location
- APE map and description
- Photographs, maps, and drawings, as necessary
- Description of steps taken to identify historic properties
- Description of affected historic properties, including information on the characteristics that qualify them for the NRHP
- Description of the project's effects on historic properties
- An explanation of why the criteria of adverse effect were found applicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects
- Copies or summaries of any views provided by consulting parties and the public
- Draft MOA/PA