



# FTA

FEDERAL TRANSIT ADMINISTRATION

## **Region 5 Section 106 of the National Historic Preservation Act – Overview and Compliance Webinar**

**May 31, 2018**



U.S. Department of Transportation  
Federal Transit Administration

## 106 Webinar Logistics

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- ▶ Documents referenced during the presentation may be downloaded via the “File Download” box
- ▶ Participant lines will be muted during the presentation, so please type any questions in the chat box
- ▶ We will take breaks periodically to answer questions via the chat box
- ▶ Region 5 staff will respond to questions verbally during the presentation
- ▶ We may not be able to get to all questions
- ▶ FTA is recording the presentation and will develop a Webinar Q&A document to be posted to the Region 5 website in mid-June



## Overview: Section 106 Of The National Historic Preservation Act

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- ▶ What is Section 106?
- ▶ How does Section 106 fit into the National Environmental Policy Act (NEPA) process?
- ▶ Who are the Section 106 players and what are their roles?
- ▶ What are the steps in the Section 106 process?
- ▶ Quiz: Does Section 106 apply to my Project?
- ▶ Where can I get more information on Section 106?

# 106

## What Is Section 106?

### What?

- Section 106 stems from the National Historic Preservation Act (NHPA) of 1966
- Intent to protect historic properties that are defined as archeological sites and historic architectural resources
- Implemented through regulations at 36 CFR 800

### Why?

- Historical and cultural foundations of the Nation should be preserved
- Historic properties are being lost or substantially altered, often inadvertently
- Preservation of this irreplaceable heritage is in the public interest

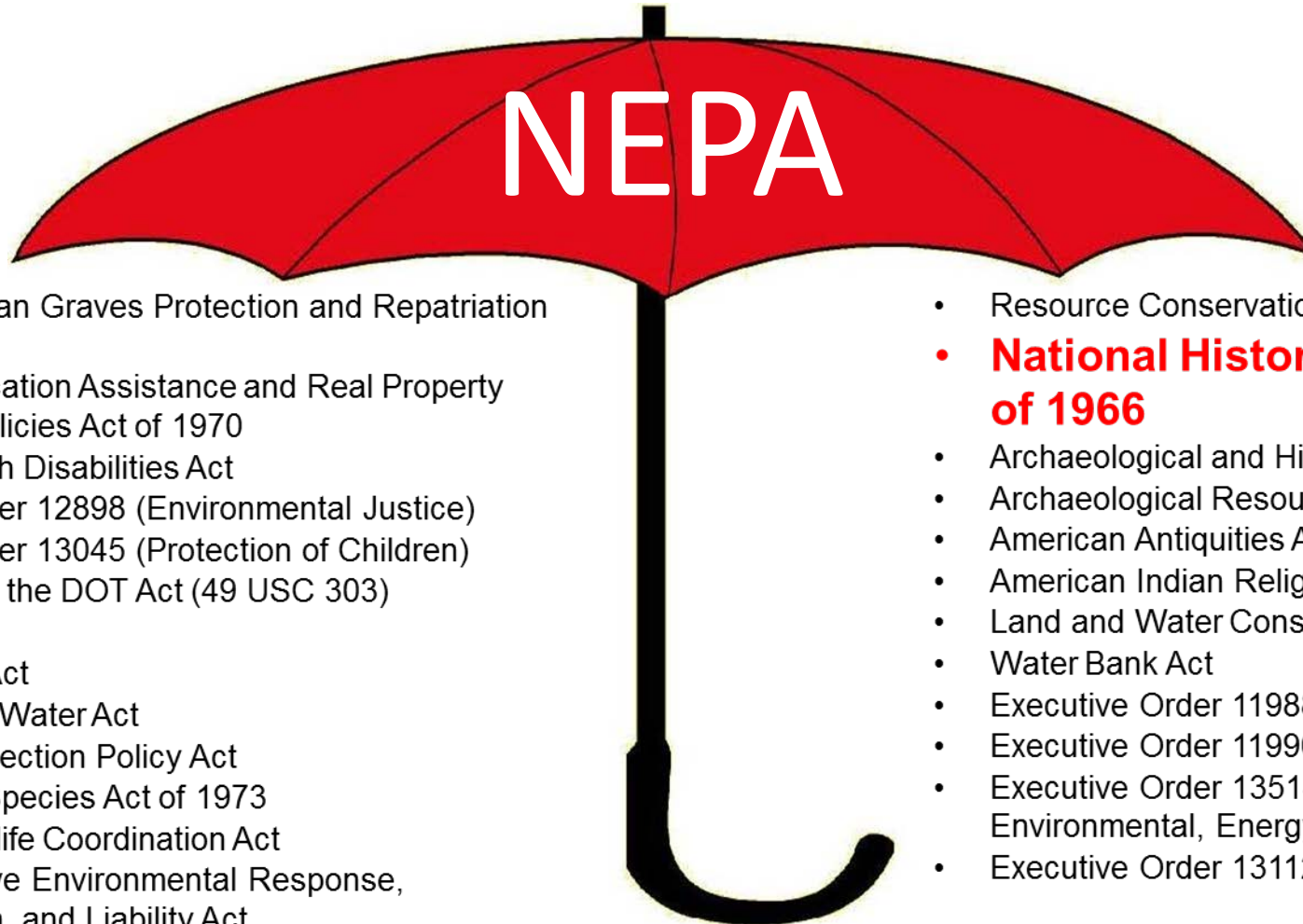
### Who?

- The Federal agency is the primary “who” responsible for Section 106 of the NHPA

### When?

- Early
- Before an action is taken
- In coordination with NEPA

## How Does Section 106 Fit Into The NEPA Process?



- Native American Graves Protection and Repatriation Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Executive Order 13045 (Protection of Children)
- Section 4(f) of the DOT Act (49 USC 303)
- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Farmland Protection Policy Act
- Endangered Species Act of 1973
- Fish and Wildlife Coordination Act
- Comprehensive Environmental Response, Compensation, and Liability Act

- Resource Conservation and Recovery Act of 1976
- **National Historic Preservation Act of 1966**
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- American Antiquities Act
- American Indian Religious Freedom Act
- Land and Water Conservation Fund Act
- Water Bank Act
- Executive Order 11988 (floodplains)
- Executive Order 11990 (wetlands)
- Executive Order 13514 (federal leadership in Environmental, Energy, and Economic Performance)
- Executive Order 13112 (Invasive Species)

# 106

## How Does Section 106 Fit Into The NEPA Process?

- ▶ Detailed project description to FTA – triggers NEPA Class of Action Determination and Section 106 Consultation Determination
- ▶ Public Involvement may serve both processes
- ▶ Final NEPA Determination occurs **AFTER** the Section 106 Process has been completed



# 106

## Who Are The Section 106 Players And What Are Their Roles?

### 106 Players Acronyms

SHPO/THPO: State Historic Preservation Officer/Tribal Historic Preservation Officer

ACHP: Advisory Council on Historic Preservation

NHO: Native Hawaiian Organizations



Source: Council on Environmental Quality and Advisory Council on Historic Preservation, *NEPA and NHPA, A Handbook for Integrating NEPA and Section 106*, March 2013



# 106

## Overview: FTA's Role In The Section 106 Process



- ▶ Ensure that the Section 106 process is carried out correctly and in a timely manner
- ▶ Conduct government to government consultation with Tribal governments
- ▶ Designate Consulting Parties
- ▶ Participate in (and lead if necessary) meetings with Consulting Parties and the Public
- ▶ Make Section 106 findings and determinations
- ▶ Make sure the process is properly documented



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## Overview: SHPO/THPO's Role In The Section 106 process

- ▶ **Consult with Federal agencies regarding effects of Federal projects on historic properties**
- ▶ Assist local units of government with historic preservation initiatives
- ▶ Maintain a state-wide survey of historic properties
- ▶ Nominate properties to the National Register of Historic Places
- ▶ Create and implement the State Preservation Plan
- ▶ Administer state program of Federal preservation tax incentive programs
- ▶ Provide public information, education, training and technical assistance



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## Overview: Applicant's Role In The Section 106 Process

- ▶ Make recommendations on potential Consulting Parties
- ▶ Make recommendations on the Area of Potential Effects (APE)
- ▶ Conduct appropriate inventories to identify Historic Properties within the APE
- ▶ Make recommendations of properties eligible for the National Register of Historic Places
- ▶ Assess and make recommendations on potential effects to eligible properties
- ▶ Prepare appropriate documentation supporting the above recommendations



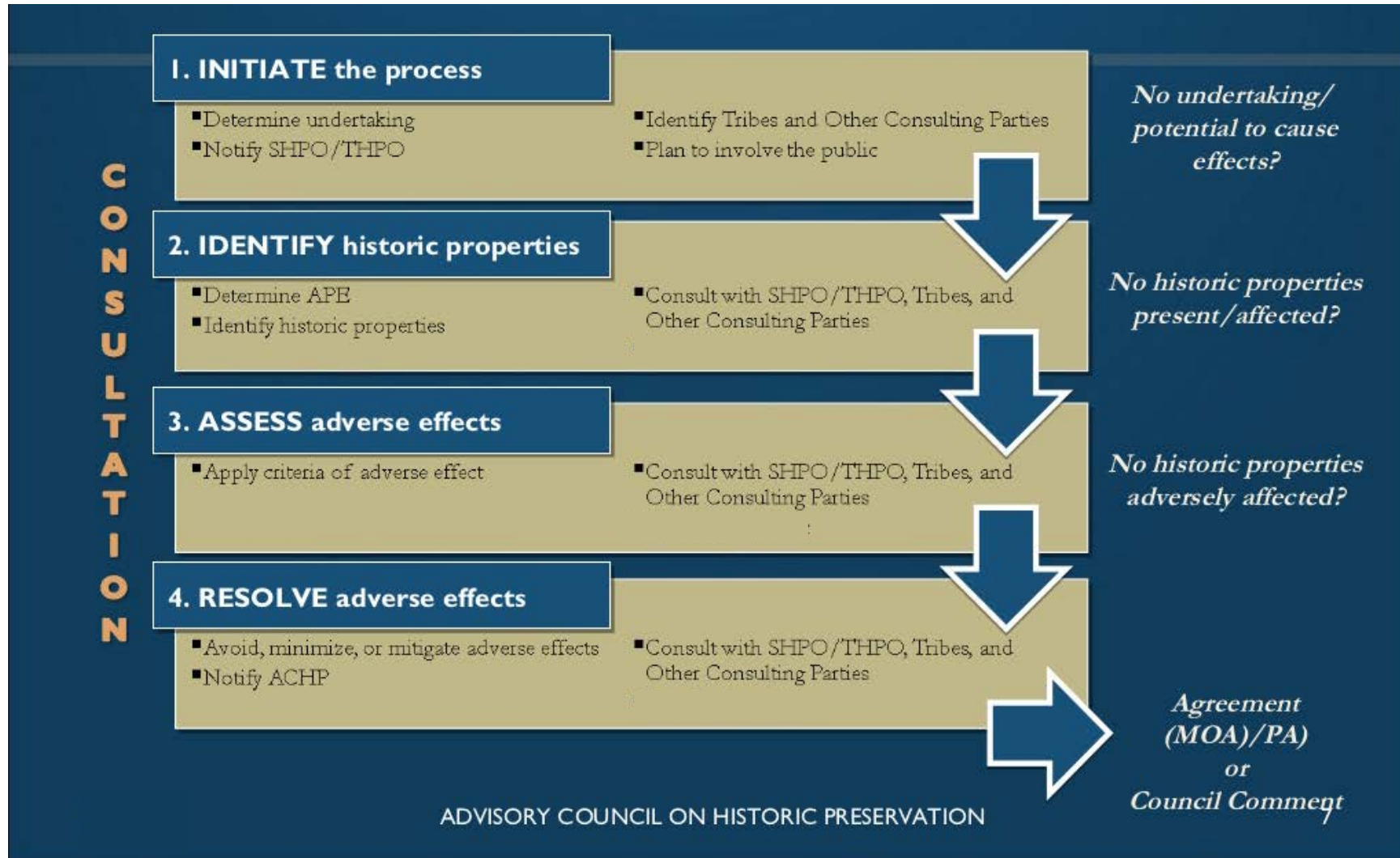
## Questions: What Is Section 106 And How Does It Fit Into NEPA?

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- ▶ Please use the chat box
- ▶ We will answer a couple of questions and then move on to the next topic
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## What Are The Steps In The Section 106 Process?



# 106

## Step 1: Initiate The Section 106 Process

### Initiate the Section 106 Process

- FTA establishes an undertaking
- **FTA and the Applicant** notify the appropriate SHPO/THPO
- **FTA and the Applicant** create a plan to involve the public
- **FTA and the Applicant** identify other consulting parties

### Undertaking

*A project, activity, or program funded in whole or in part by a federal agency, including those carried out by or on behalf of a federal agency, those carried out with federal financial assistance, and those requiring a federal permit, license, or approval.*

**36 CFR § 800.16(y)**



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## Step 1: Initiate The Section 106 Process

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graph TD; A[ ] --> B[FTA decides that the undertaking is a type that has the potential to affect historic properties (most projects involving construction) and initiates consultation with SHPO and other consulting parties.]; A --> C[FTA makes a finding of no undertaking or no potential to cause effects (e.g., a bus purchase). Section 106 Process completed.]; B --> D[FTA FEDERAL TRANSIT ADMINISTRATION];
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**FTA** decides that the undertaking is a type that has the potential to affect historic properties (most projects involving construction) and initiates consultation with SHPO and other consulting parties.

or

**FTA** makes a finding of **no undertaking** or **no potential to cause effects** (e.g., a bus purchase).  
Section 106 Process completed.



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# Step 1: Initiate The Section 106 Process

Organization	Consulting party status/role
State Historic Preservation Officer (SHPO)	Provides concurrence on findings and determinations
Tribal Historic Preservation Officer (THPO)	On tribal lands, may take the role of the SHPO
Local governments	Entitled to participate as a consulting party
Indian Tribes	It is the responsibility of the agency official (FTA) to make a <b>reasonable and good faith effort</b> identify Indian tribes and Native Hawaiian organizations that <b>shall be consulted</b> in the section 106 process.
Additional interested parties (including public)	May participate as a consulting party



## Step 2: Identify Historic Properties

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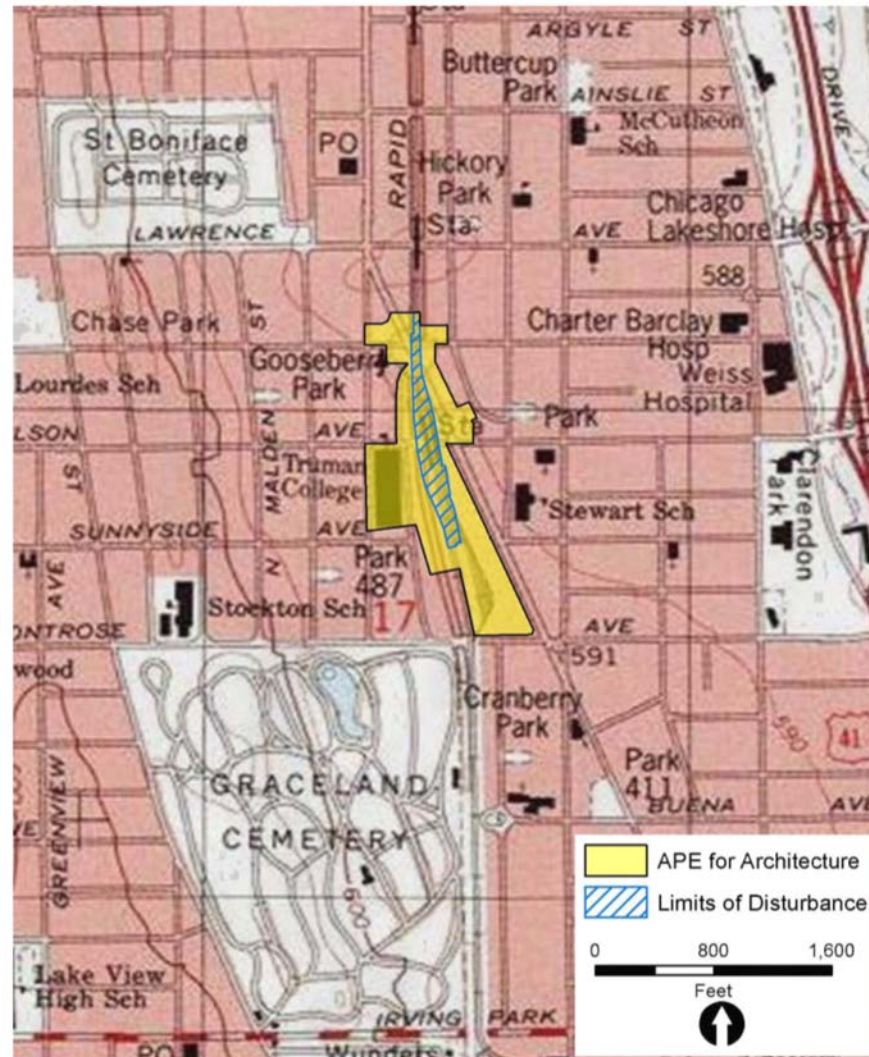


### Identify Historic Properties

- **FTA in consultation with the Applicant** determines and documents the scope of identification efforts and the Area of Potential Effects (APE), and receives concurrence from SHPO
- **FTA in consultation with the Applicant** identifies historic properties within the APE and determines NRHP eligibility, and receives concurrence from SHPO



## Step 2: Identify Historic Properties – Establish the Area of Potential Effects (APE)



### Area of Potential Effects

*The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist*

**36 C.F.R. § 800.16(d)**

## 106 Step 2: Identify Historic Properties – Identify Historic Properties within the APE

### National Register of Historic Places (NRHP) Criteria For Evaluation

Districts, sites, buildings, structures, and objects must possess integrity of location, design, setting, materials, workmanship, feeling and association and meet one of four criteria:

**Criterion A:** are associated with events that have made a significant contribution to the broad patterns of history;

**Criterion B:** are associated with the lives of persons significant in our past;

**Criterion C:** that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

**Criterion D:** that have yielded or may be likely to yield information important in prehistory or history.



Criterion D: Data Recovery



Criterion B: Association with a Significant Person



Criterion C: Engineering



## Step 2: Identify Historic Properties - Special Considerations

- ▶ National Historic Landmarks
- ▶ Traditional Cultural Properties
- ▶ Archeological Sites



Bears Ears National Monument and Traditional Cultural Property

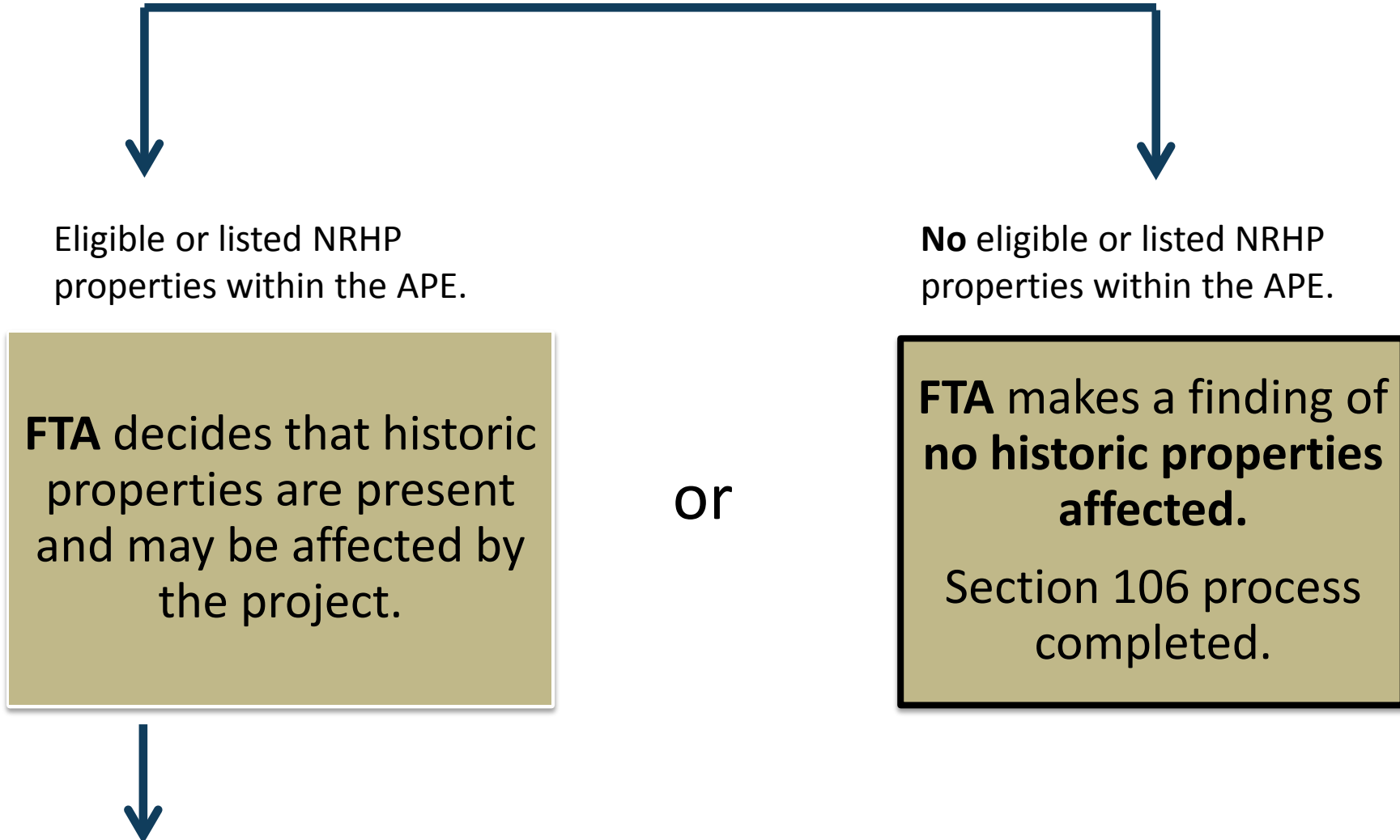


Medicine Wheel , Archaeological Site



Mt. Vernon, National Historic Landmark

## Step 2: Identify Historic Properties – Eligibility Determinations



## Questions: Initiation of Section 106 (Step 1) and Identification of Historic Properties (Step 2)

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## 106 Step 3: Assessment Of Effects – What Is A Section 106 Adverse Effect?

### Criteria of Adverse Effect

*An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.*

**36 C.F.R. § 800.5(a)(1)**

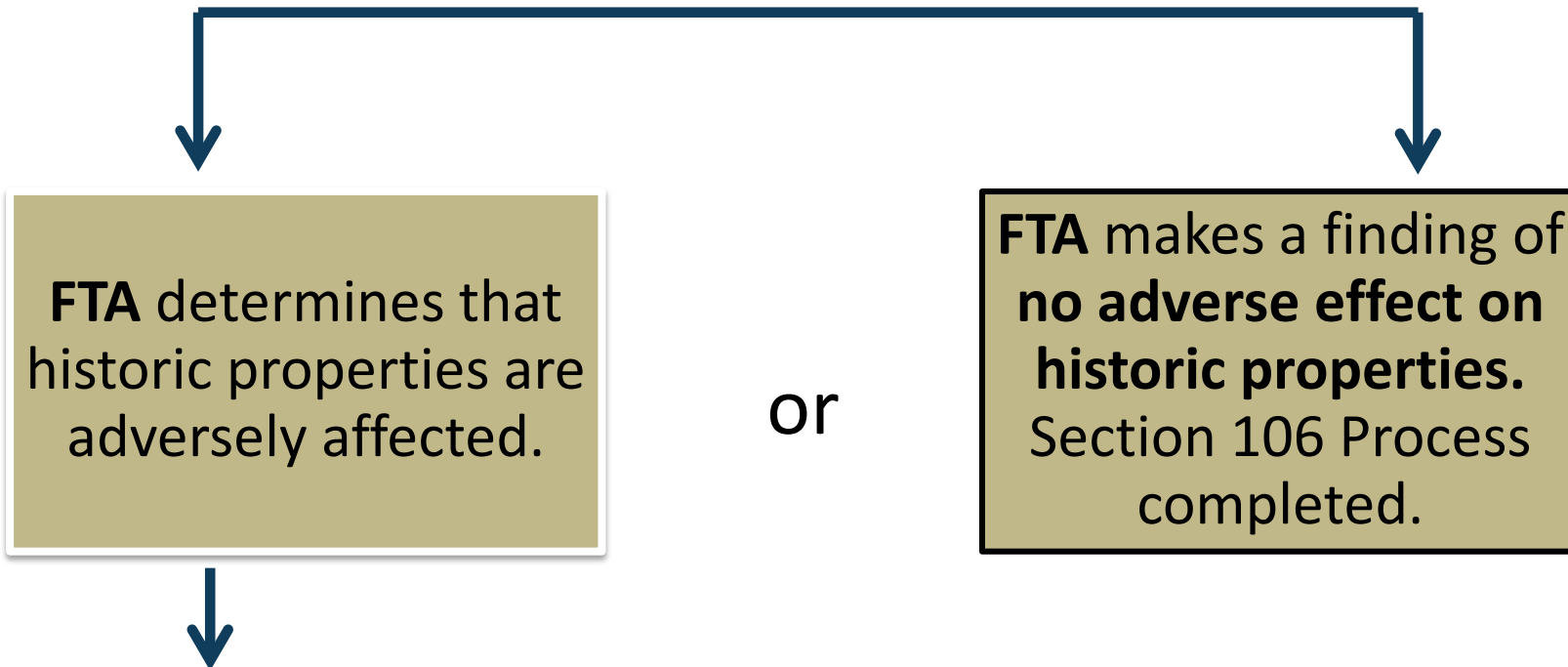




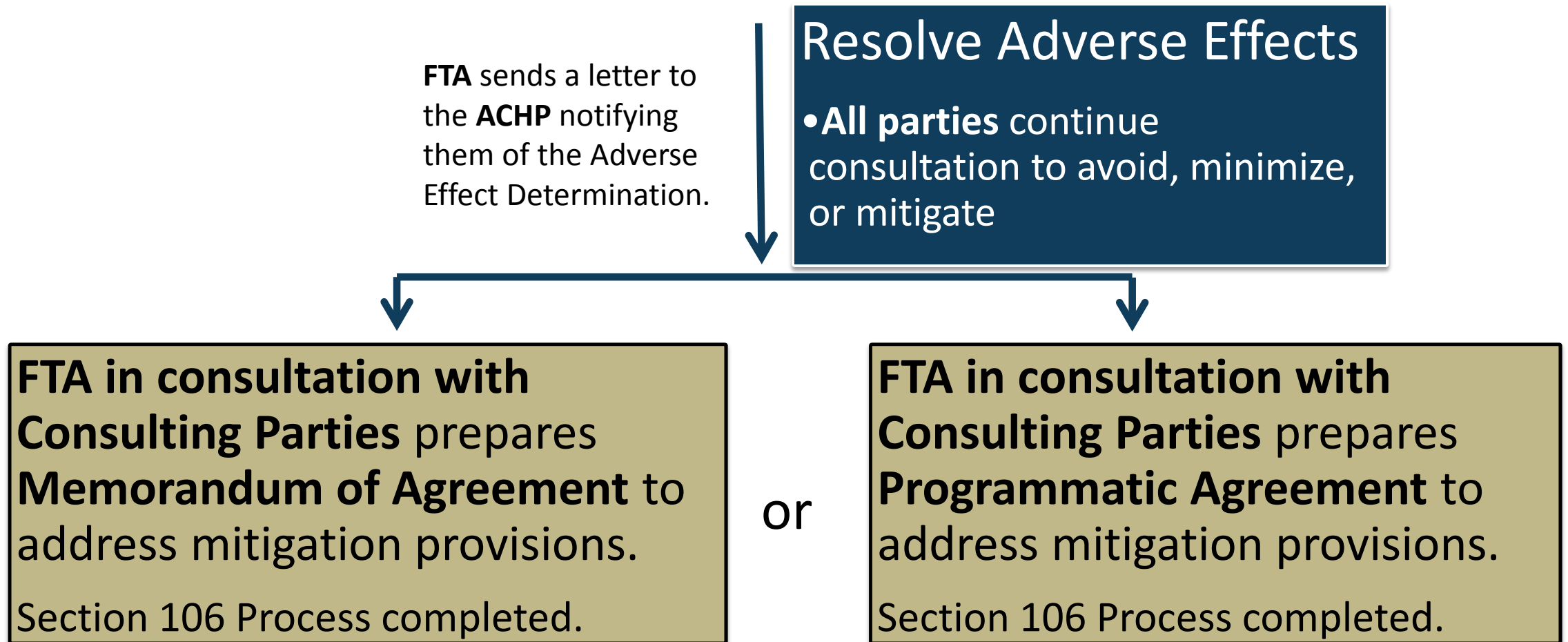
## 106 Step 3: Assessment of Effects

### Assess Adverse Effects

- FTA in consultation with Applicant and Consulting Parties applies criteria of adverse effect



## 106 Step 4: Resolve Adverse Effects



FTA sends the **executed** agreement to **ACHP**

## 106 Questions: Assess Adverse Effects (Step 3) and Resolve Adverse Effects (Step 4)

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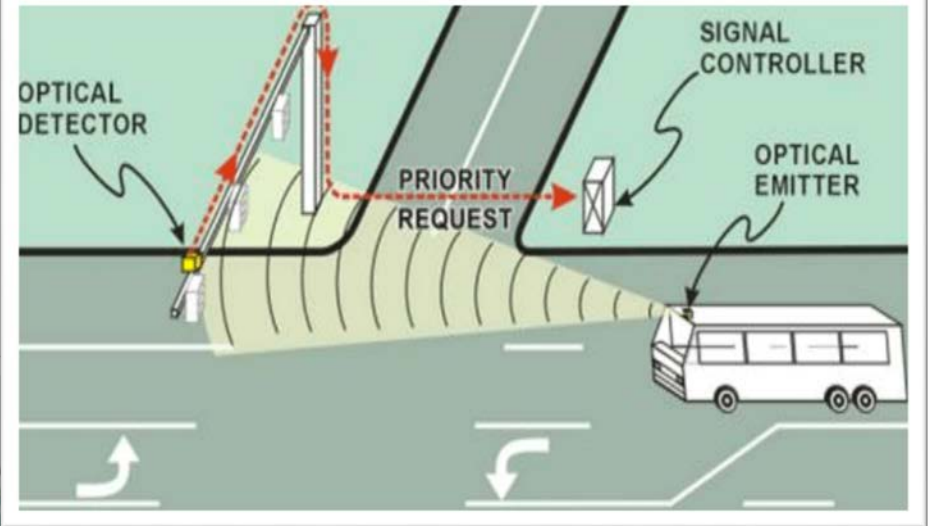
# 106 Does Section 106 Apply to my Project?



CTA's Loop Link, Image from [www.Chicagonow.com](http://www.Chicagonow.com)



Cleveland's Health Line Station , Image from [www.bridgemi.com](http://www.bridgemi.com)



Transit Signal Priority, Image from <https://nyc.streetsblog.org>

# 106

## Does Section 106 Apply to my Project?

- ▶ Is the project a undertaking as defined in the Section 106 regulations?

36 CFR § 800.16(y) defines an undertaking as: *a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.*

- ▶ If the project is an undertaking, does it have the potential to affect historic properties, assuming such properties are present?

Effects resulting from an undertaking can be either **direct** or **indirect**. Direct impacts include but are not limited to physical destruction or damage, alterations inconsistent with preservation standards, relocation of a property, or a change in use of a property. Indirect effects include but are not limited to changes to physical features of property's setting, and visual, atmospheric, or audible intrusions.

## 106 Rolling Stock Purchase



Your agency is using FTA funds to purchase rolling stock for an existing bus route. There are no changes to the route and no anticipated construction of facilities or infrastructure associated with the maintenance and operation of the new buses.



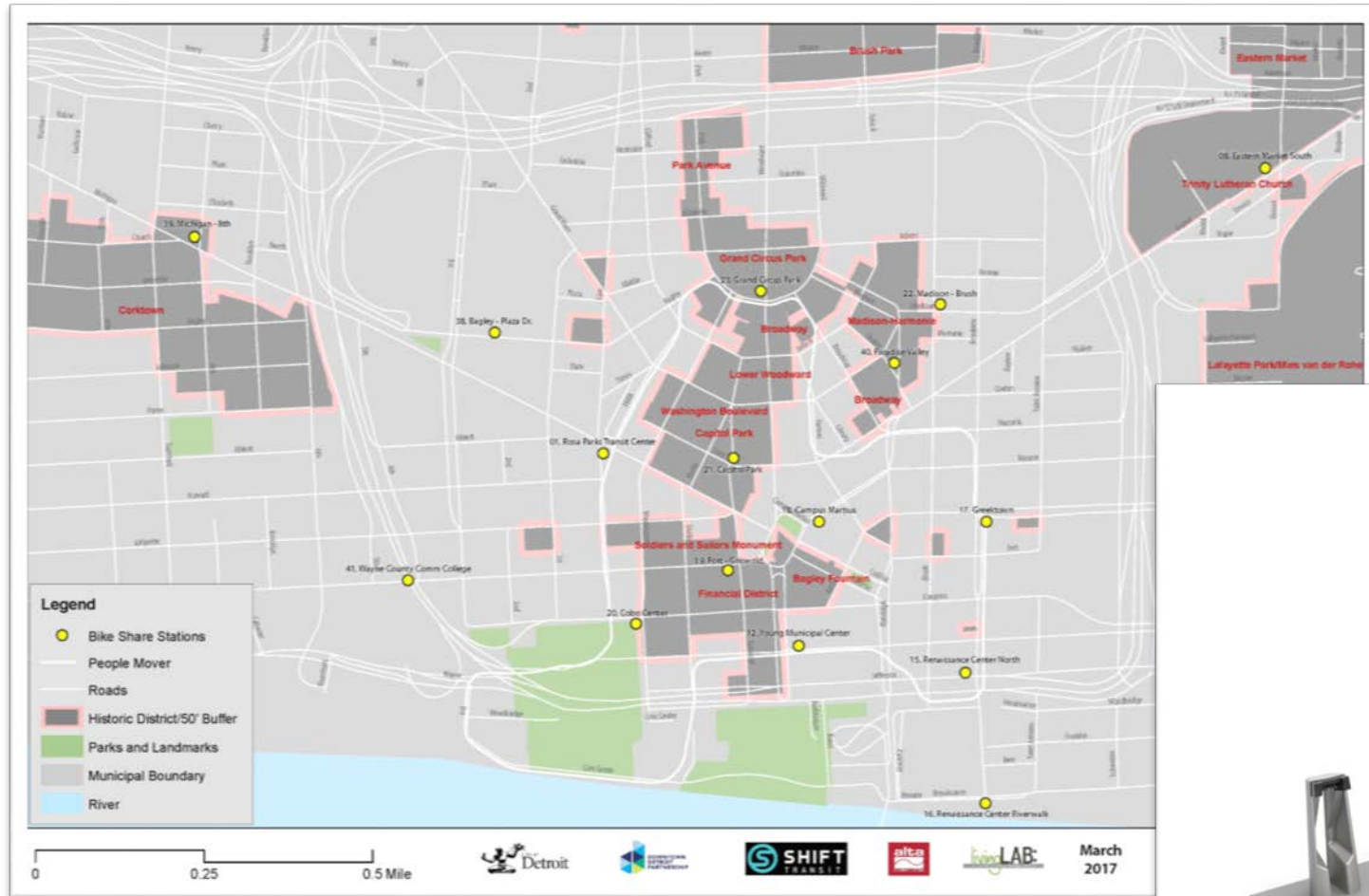
## 106 Equipment Purchase



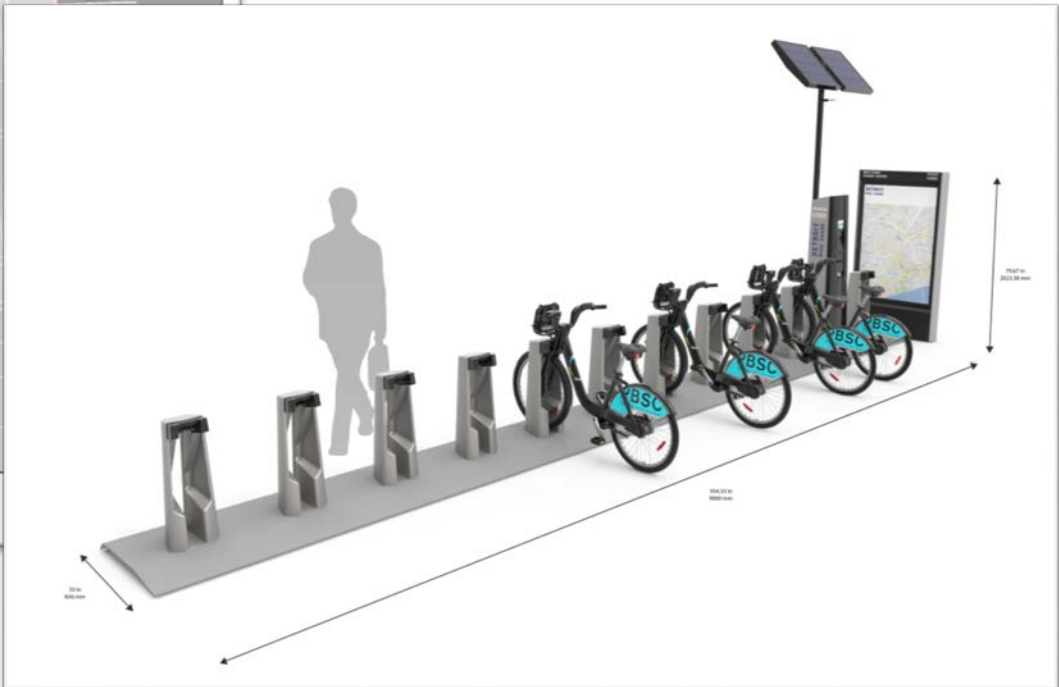
Your agency is using FTA funds to purchase rolling stock because it is transitioning to electric vehicles. These buses also require the purchase and installation of charging stations (such as the one pictured above), which must be located at multiple locations along the route.



# 106 Bike Share



Your agency, with FTA funding, has decided to invest in a bike share program that will locate more than 40 bike rental kiosks in proximity to other transit stops. The kiosks have a footprint of 30 feet by 4 feet, with signage measuring approximately 7 feet in height. New concrete slabs will be installed.



# 106 Facility Maintenance or Addition

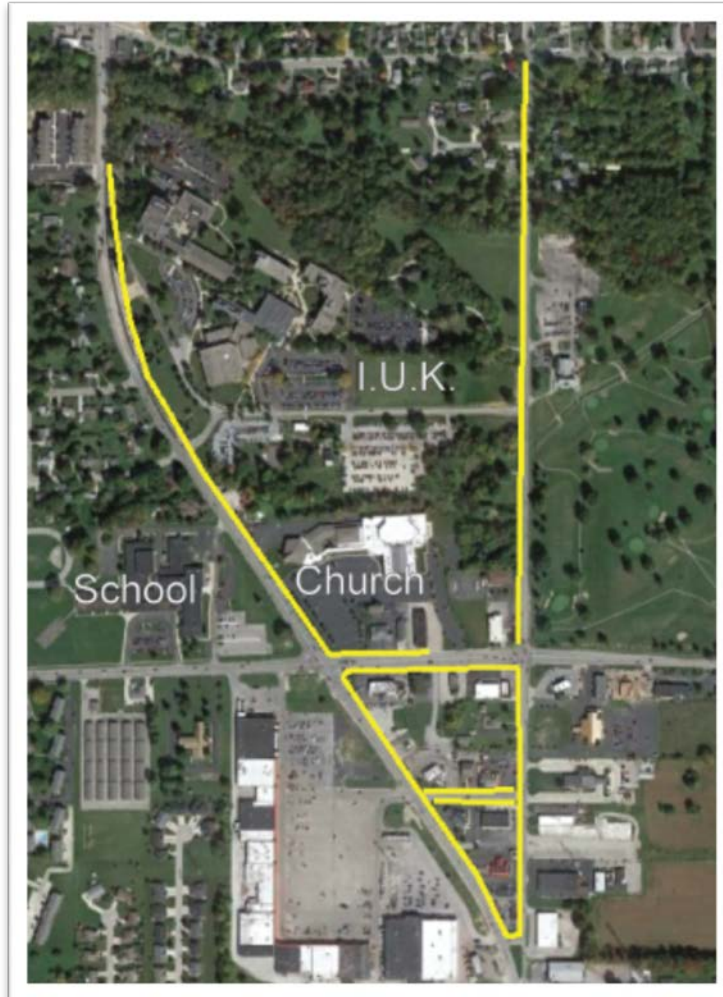
Your existing bus operation and maintenance garage and associated administrative facility, both of which are approximately 30 years old, are no longer adequate for your operational needs. A small expansion of your facilities will allow you to address these operational needs by enlarging spaces designated for bus operations, training, the operator's check-in area, and other back of house functions. The expansion will occur within the boundaries of your existing property on previously disturbed land that is currently paved for parking. You are seeking FTA funds for the project.





## 106

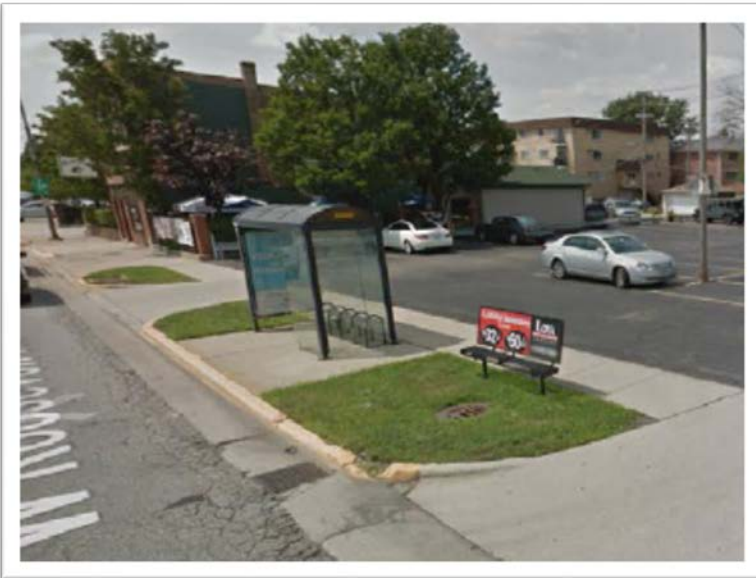
## Installing New Sidewalks



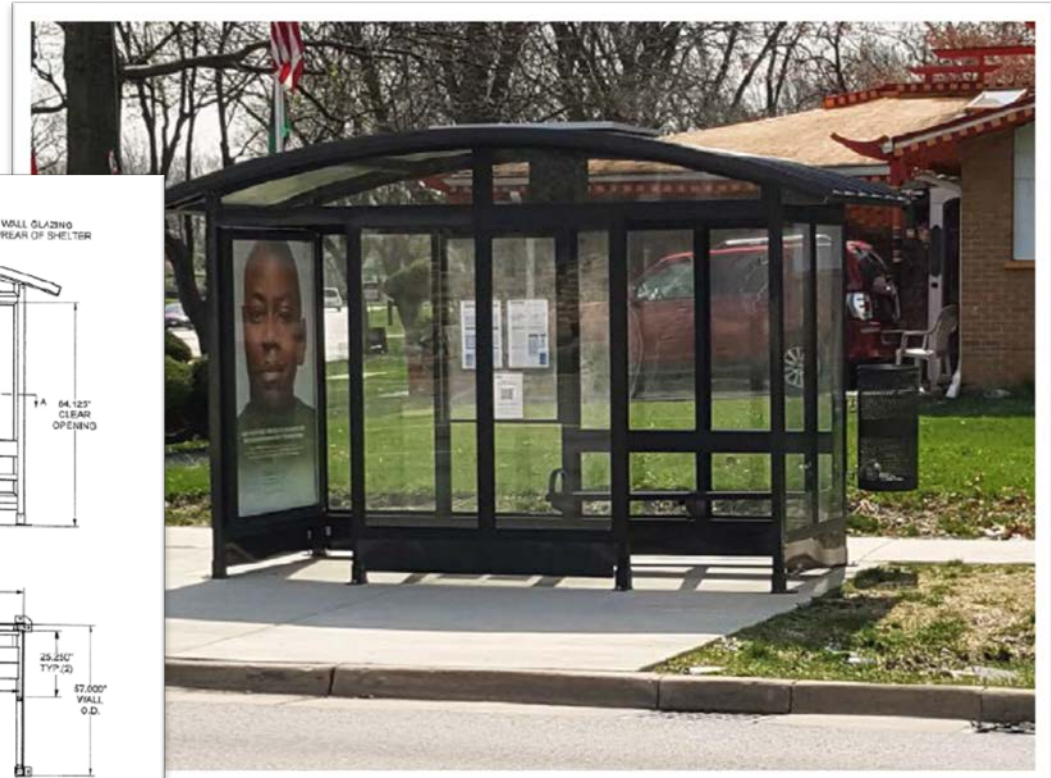
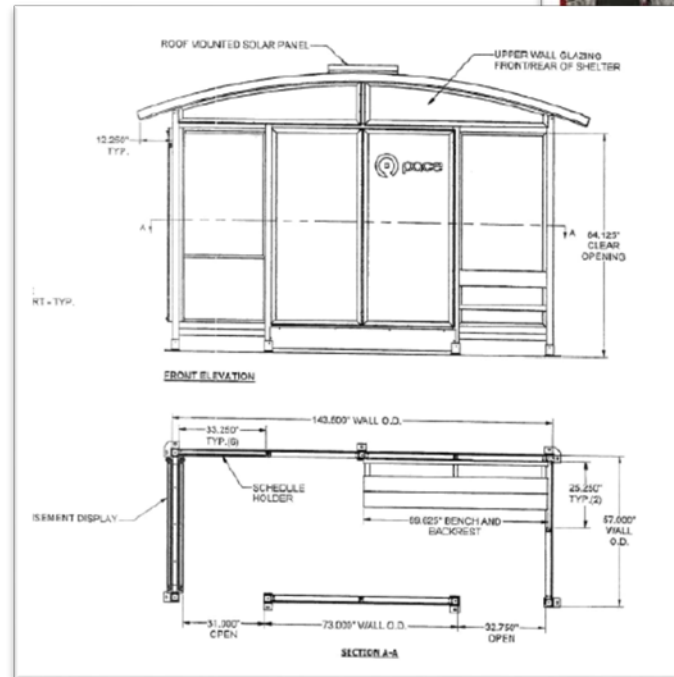
Your agency is proposing to build sidewalks to create a safer environment and improve accessibility for pedestrians in an area with a potential for high pedestrian traffic. Approximately 1.75 miles of sidewalk are proposed and would be built within the existing right-of-way. The total disturbance is approximately 6,000 square yards, which would include the driveways that will need to be reconstructed to allow for the sidewalk. Your agency is seeking FTA funds to complete the project.

# 106 Replacing Existing Bus Shelters

Your agency has identified 5 bus shelters that are past their useful life and are slated for replacement with FTA funds. The replacement shelters will have approximately the same dimensions. After removal of existing shelters, the condition of the associated concrete pads will be assessed and any necessary repairs to or replacement of the existing pads will occur.



Existing shelter, 12'x5' footprint



Replacement shelter design and dimensions



## 106 Installing New Bus Shelters

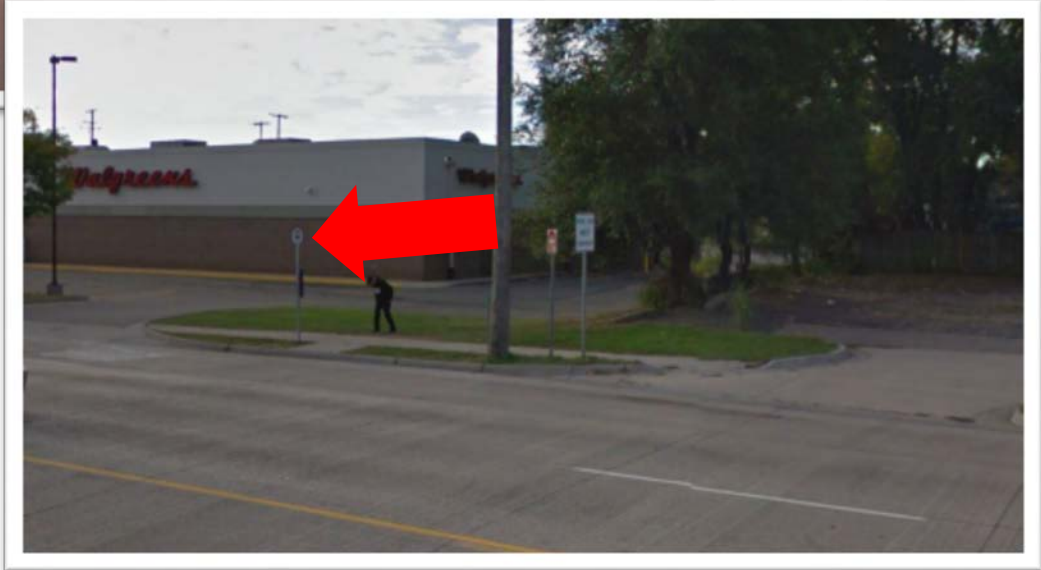
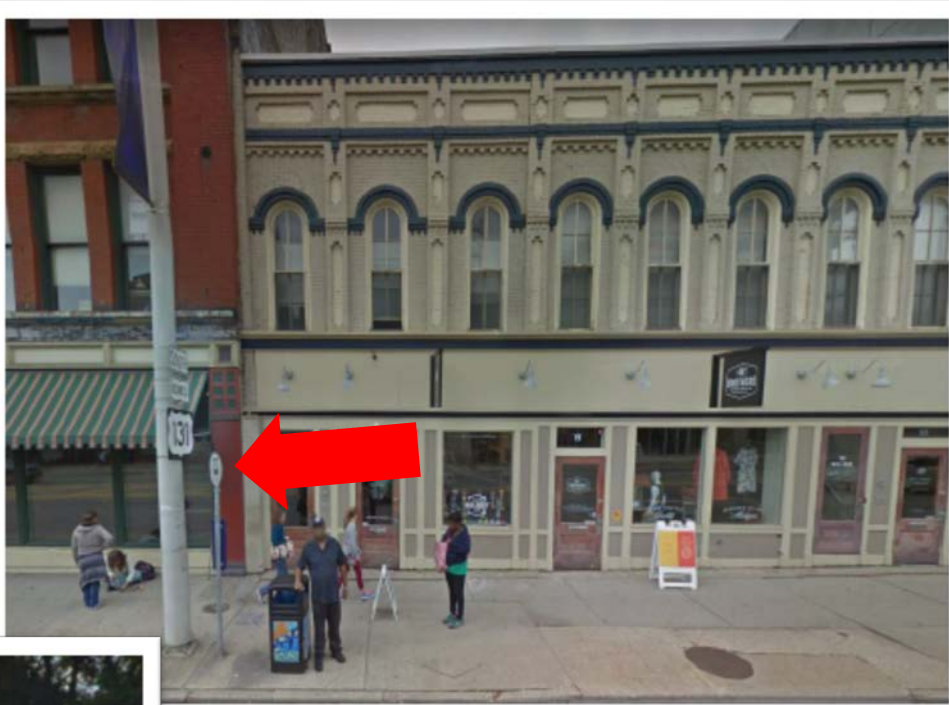
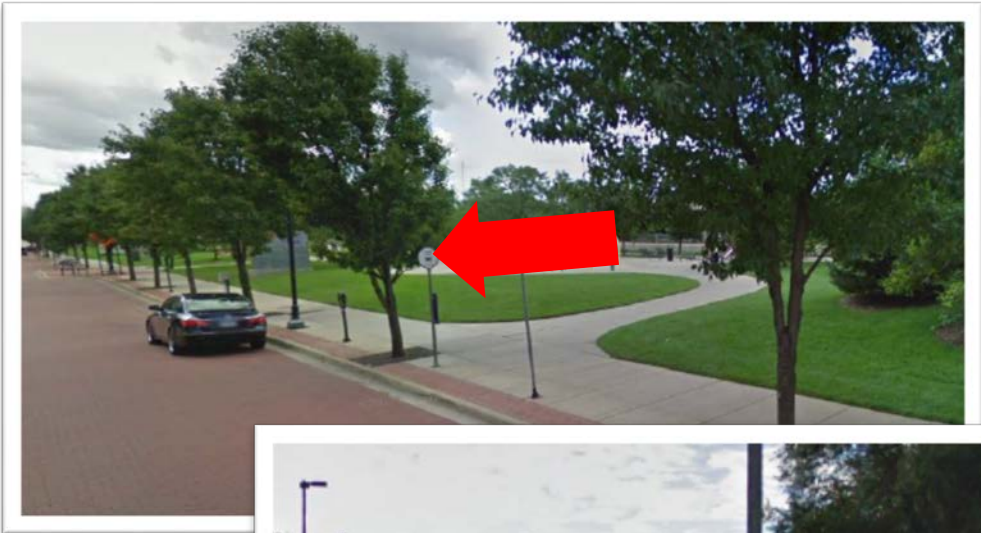
Your agency, with FTA funding, is preparing to install 10 shelters at existing stops that are currently marked with poles and flags. The new shelters will have a footprint of 6 feet by 9 feet. Concrete pads, requiring 6 inches of excavation will be part of the installation. The proposed shelter design is shown at the right. Four of the proposed locations are shown on the next slide.





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Proposed Bus Shelter Locations





# 106

## Where Can I Get More Section 106 Information?

- ▶ Advisory Council on Historic Preservation, Section 106 Website (<http://www.achp.gov/work106.html>)
- ▶ Advisory Council on Historic Preservation, Regulations Implementing Section 106, 36 C.F.R. § 800 (Access at <http://www.ecfr.gov/>)
- ▶ FTA Environmental Analysis & Review Website ([http://www.fta.dot.gov/13835\\_5222.html](http://www.fta.dot.gov/13835_5222.html))
- ▶ FTA Region 5 Environmental Website (<https://www.transit.dot.gov/about/regional-offices/region-5/environment>)





## Next Steps

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- ▶ May 31, 2018: The presentation can be downloaded today through Adobe Connect
- ▶ June 21, 2018: A recording of the presentation as well as a Q&A document will be posted on the Region 5 website

**Thank you!**

