

May 31, 2018

Region V Webinar: Section 106 of the National Historic Preservation Act – Overview and Compliance

Questions & Answers

1. I will be starting a building expansion project soon. I have talked with my FTA Project Manager, but do I need to complete any paperwork once the [Section] 106 process starts? Application?

- There is no standard application for Section 106 consultation because it is a consultative process. The documentation compiled and the format within which it is prepared varies based on the scope of the project and the requirements of the specific State Historic Preservation Office (SHPO), FTA's primary partner in the Section 106 process. FTA leads the Section 106 process and will provide project-specific guidance for the documentation (research, field investigations, and analysis) that must be compiled. Links to each SHPO in Region V can be found on [FTA's Region V environmental webpage](#), which provides additional guidance on State-specific requirements. The Advisory Council on Historic Preservation (ACHP) offers an [online toolkit](#) with additional information on the Section 106 process.

2. What is a realistic time frame to complete the process for a simple project?

- The timeline for a simple project would need to assume 1) the undertaking¹ results in no adverse effects; 2) the undertaking is confined to relatively small geographic space; and 3) there is no controversy and minimal interest from the public. The timeline is also affected by whether or not the SHPO office agrees to consolidate the submittals for the different [steps of the Section 106 review process](#). The SHPO has a [30-day review period](#) for each submittal; a simple project could require between one and three submittals.

3. Is there any consideration of a temporary or ongoing adverse effect? I'm thinking about a new structure that casts more shadow on a historic resource, but the new structure doesn't block any historic viewsheds of the historic resource.

- Yes, Section 106 directs a federal agency to take into account the effects of an undertaking on historic resources, assuming such properties are present, and take measures to resolve adverse effects [as outlined by the ACHP in 36 CFR § 800](#). Adverse effects (as defined at [36 CFR § 800.5](#)) can be temporary or permanent (ongoing).² Temporary effects are most often related to construction. For example, construction-related vibration may require the preparation and implementation of a [Construction Protection Plan](#) that puts protective measures for historic properties in place during construction. Permanent effects are typically addressed with the development and implementation of a [Memorandum of Agreement \(MOA\) or a Programmatic Agreement \(PA\)](#). These documents lay out treatment measures to resolve adverse effects through modifications to the undertaking that could avoid, minimize, or mitigate adverse effects.

¹ 36 CFR 800.16(y) "Undertaking means 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."

² 36 CFR 800.5(a)1 "Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative."

4. Does the totality of the [ground] disturbance make a difference?
 - If your undertaking has any amount of ground disturbance, you should consult with your Pre-Award Manager to determine if Section 106 review is required. The totality of ground disturbance can make a difference in terms of the potential effects, and may influence the results of the effects assessment conducted as part of the Section 106 review. The ACHP provides [archaeological guidance](#) for projects that include ground disturbance.

5. I submitted to my FTA advisor plans, details, site location, etc., and I was told I still needed a CE.
 - A CE (categorical exclusion) is one of three classes of action under the National Environmental Policy Act (NEPA). They are actions that do not individually or cumulatively have significant environmental effects or impacts and are excluded from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) when there are no unusual circumstances (40 CFR 1508.4, 23 CFR 771.118). Projects must comply with NEPA and other environmental requirements, such as Section 106, the regulations that implement the National Historic Preservation Act (NHPA). While these two statutes and their implementing regulations are separate, FTA does try to [coordinate the requirements of both to maximize efficiency](#). Therefore, when you talk to your Pre-Award Manager, they will work with you to determine what level of NEPA analysis and documentation is required along with whether Section 106 review is necessary based on the scope of your project. FTA cannot award a grant until both NEPA and Section 106 have been completed.

6. What about visual and audible effects during construction -- those should be a potential affect to historic properties even though no ground disturbance?
 - That is correct. Section 106 takes into account direct and indirect effects as defined in [36 CFR § 800.5 as well as](#) “reasonably foreseeable [effects](#) caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” An undertaking may require no ground disturbance but still have visual, audible, or even atmospheric effects that must be analyzed as part of Section 106 to determine what effects, if any, will occur on historic properties.

7. If we are repairing sidewalks do we need to do a 106?
 - If repair work is limited to the existing footprint and no additional ground disturbance is required, it is likely that your undertaking would not require Section 106 review. However, the determination to initiate Section 106 is based on the specific details of your project, so you should always consult with your Pre-Award Manager and get their confirmation as to whether Section 106 would apply. Please provide a sufficient level of detail for FTA to make this determination; for additional guidance see FTA’s sample project description document.

8. If the sidewalk is in the right-of-way, how is it also on the historic property?
 - Project infrastructure does not have to occur within the boundaries of a historic property to affect that property. A new sidewalk located entirely within the right-of-way could visually affect adjacent historic properties. Additionally, the ground disturbance within the right-of-way could

disturb archaeological sites that are historic properties, in which case there would be a direct effect. See [36 CFR § 800.5](#) for additional information about the criteria for adverse effects.

9. Why is 106 (CE) required for putting up a new bus shelter at an existing bus stop that currently is without a shelter?

- A CE is related to the NEPA process, and an FTA grant cannot be awarded without a NEPA approval (see Question 5 above). Section 106 is part of the NHPA, and compliance with this law is also required for an FTA grant to be awarded. Section 106 applies to all federal undertakings, as defined at [36 CFR § 800.16\(y\)](#), that have the potential to cause effects to historic properties if such properties exist. See the ACHP's [guidance](#) for additional information on the Section 106 process.

In the case of new shelter installation at an existing bus stop that currently only has a pole and flag indicator, the new shelter is an increase in infrastructure. The shelter introduces a new visual element to the streetscape, which could alter the viewsheds to and from the proposed location. Thus, there are potential for visual effects on historic properties assuming such properties are present. Further, the new shelter may require ground disturbance as part of installation. Ground disturbance could have to the potential to effect archaeological resources that could be historic properties afforded protection under Section 106, if such properties exist.

10. Would a completely different shelter design that doesn't fit the historic district look require review?

- Some new and replacement shelters may require Section 106 review if they have the potential to effect historic properties. If FTA determines Section 106 is required, the proposed shelter's location within a National Register-listed or eligible historic district or in close proximity to a historic properties will be addressed in the assessment of effects and may require changes to the shelter design based on the context. In some cases, a locality may have a [historic preservation commission](#) whose guidelines for projects require [design review of new construction](#), which may include the installation or replacement of shelters. Your FTA Pre-Award Manager can provide additional guidance in such a case.

11. What if you are adding lights (to an existing shelter)?

- If you are modifying an existing bus shelter with lights or other small-scale features such as signage that stays within the footprint and shell of the shelter, it is likely Section 106 review would not be required. Make sure to discuss the scope of your project with your Pre-Award Manager to confirm whether the proposed work would require Section 106 review.

12. There is no potential effect even if the style of the new shelters is different?

- If the replacement shelter has the same approximate dimensions as the existing shelter and it is to be placed in the same location, it is likely that Section 106 would not be required. However, FTA will need to see a scope of work, images of the existing shelter, renderings of the proposed shelter, a description of any ground disturbing activities, and any other relevant information (e.g., is the shelter within a [historic district](#)) to make a determination whether Section 106 review is required.

13. If an existing shelter was removed or destroyed several years ago, is there a time limit for how long it can count as a replacement vs new installation?

- No, the proposed location is considered in its current state. The installation of a new shelter with federal funds is an undertaking under Section 106 with the potential to effect historic properties assuming they are present and [Section 106 review would be required](#).

14. Can you post examples of well-done section 106 review processes – especially for new bus shelter installations?

- Links to the Section 106 presentation and sample project descriptions are available on our website, both of which contain examples of the information your FTA Pre-Award Manager will need to make a determination as to whether Section 106 review is required. The ACHP also provides examples of [successful projects](#) on their website, along with [citizen's guide](#) to Section 106.