



FEDERAL TRANSIT ADMINISTRATION

# **Section 106 of the National Historic Preservation Act – Coordination with Metro Transit and the Minnesota SHPO**

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# 106 Overview: Section 106 of the National Historic Preservation Act

- ▶ What is Section 106?
- ▶ How does Section 106 fit into the NEPA process?
- ▶ Who are the Section 106 players and what are their roles?
- ▶ What are the steps in the Section 106 process?
- ▶ Where can I get more Section 106 information?



## What is Section 106?

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“The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.”

– *National Historic Preservation Act of 1966, Section 106, 16 U.S.C. § 470f*

**106**

## What is Section 106? (continued)

### What?

Section 106 stems from National Historic Preservation Act of 1966

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 primary who - Section 106 of NHPA – “the head of any Federal agency”

### When?

- Early
- Before an action is taken
- With the NEPA process

## Section 106



# What is Section 106? (continued)

## What is the National Register of Historic Places?

“....to take into account the effect of the undertaking on any district, site, building, structure, or object that is included or eligible for inclusion **in the National Register.**” (*National Historic Preservation Act of 1966, Section 106, 16 U.S.C. § 470f*)

The screenshot shows the National Park Service website's National Register of Historic Places Program: About Us page. The header features the National Park Service logo and the text "National Park Service U.S. Department of the Interior". Below the header is a navigation bar with links: Find a Park, Discover History, Explore Nature, Working with Communities, Get Involved, Teachers, Kids, and About Us. The main content area is titled "National Register of Historic Places Program: About Us" and includes a paragraph about the program's purpose. A sidebar on the left contains links: About Us », NR Fundamentals », How to List a Property », Weekly List », Database / Research », and Publications / Guidance ».

**National Park Service**

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### National Register of Historic Places Program: About Us

*The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.*

#### What We Do

- Review nominations submitted by states, tribes, and other federal agencies and list eligible properties in the National Register
- Offer guidance on evaluating, documenting, and listing different types of historic places through the [National Register](#)

## How does Section 106 fit into the NEPA process?



# NEPA Umbrella

- 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)

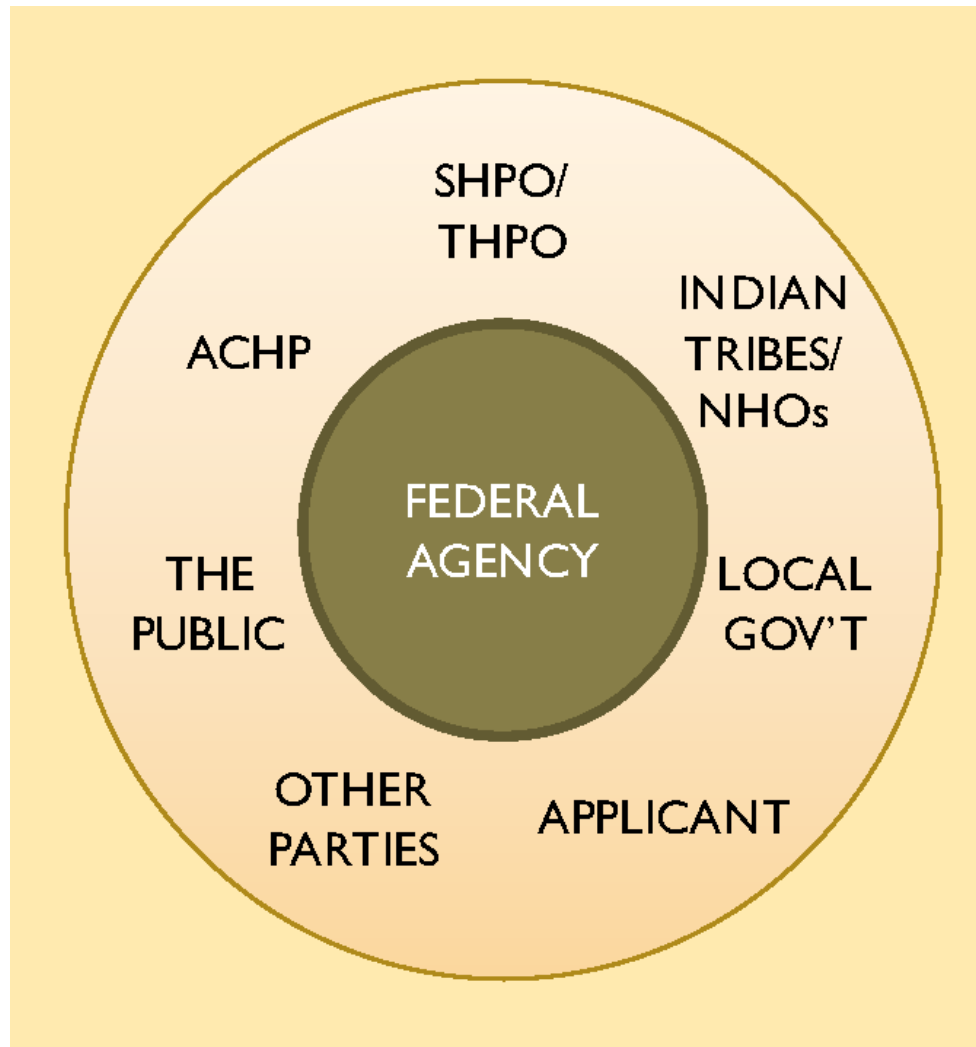
## How does Section 106 fit into the NEPA process? (continued)

- ▶ “One Pager” project description to FTA – triggers NEPA Class of Action Determination and Section 106 Process Determination
- ▶ Public Involvement may serve both processes
- ▶ Final NEPA Determination occurs AFTER end of Section 106 Process





## Who are the Section 106 players and what are their roles?



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



## Section 106

# 106 Who are the Section 106 players and what are their roles? FTA's Role in the Section 106 Process

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



## Section 106

# 106 Who are the Section 106 players and what are their roles? Minnesota SHPO's Role in the Section 106 Process

- ▶ **Consult with Federal agencies regarding impact of Federal projects on historic resources**
- ▶ Assist local units of government with historic preservation initiatives
- ▶ Maintain a state-wide survey of historic resources
- ▶ 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



## Section 106

# 106 Who are the Section 106 players and what are their roles? Metro Transit'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



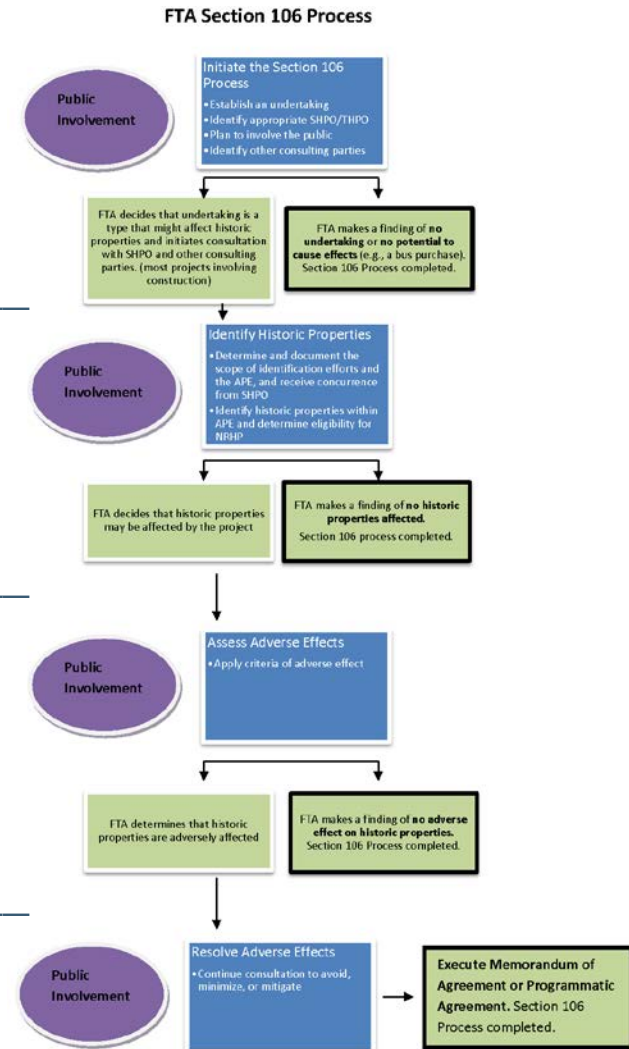
# What are the steps in the Section 106 process?

## 1. Initiate the Section 106 Process

## 2. Identify Historic Properties

## 3. Assess Adverse Effects

## 4. Resolve Adverse Effects



## Step 1. – Initiate the Section 106 Process

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### Initiate the Section 106 Process

- Establish an undertaking
- Identify appropriate SHPO/THPO
- Plan to involve the public
- Identify other consulting parties

**Public  
Involvement**



## Step 1. – Initiate the Section 106 Process (continued)

### Who are the Consulting Parties?

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 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	May participate as a consulting party

106

## Step 1. – Initiate the Section 106 Process (continued)

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graph TD; A[Step 1. – Initiate the Section 106 Process (continued)] --> B[FTA decides that undertaking is a type that might affect historic properties and initiates consultation with SHPO and other consulting parties. (most projects involving construction)]; 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 logo];
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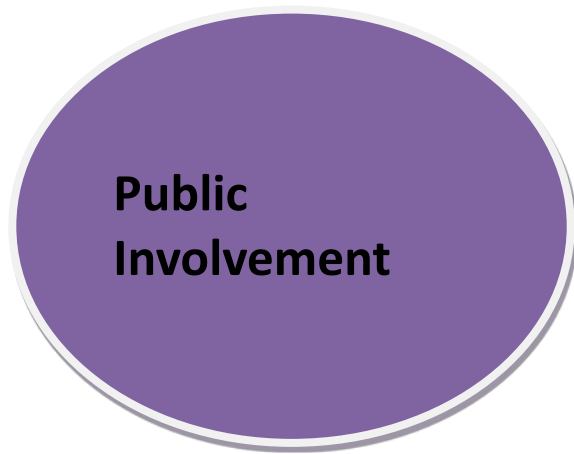
FTA decides that undertaking is a type that might affect historic properties and initiates consultation with SHPO and other consulting parties. (most projects involving construction)

or

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

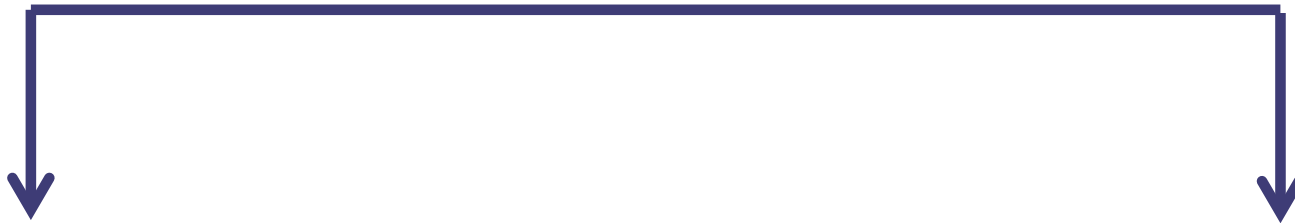


## Step 2. – Identify Historic Properties



### Identify Historic Properties

- Determine and document the scope of identification efforts and the APE, and receive concurrence from SHPO
- Identify historic properties within APE and determine eligibility for NRHP

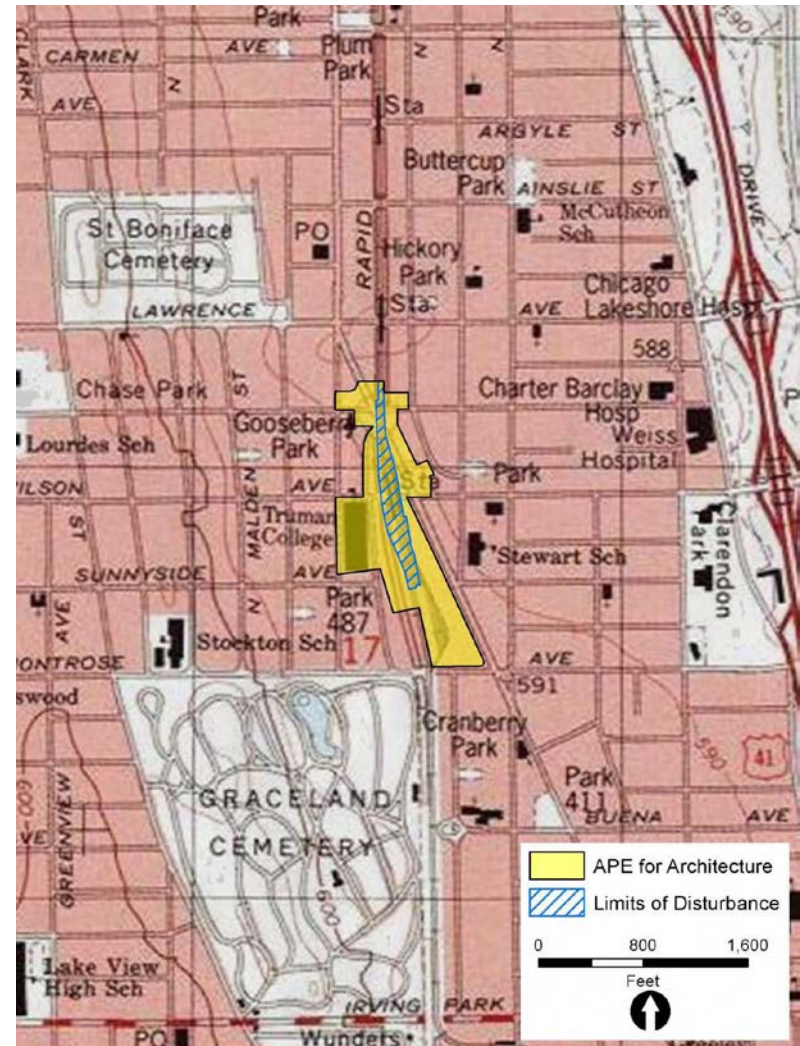


# 106 Step 2. – Identify Historic Properties (continued) Identify the Area of Potential Effects (APE)

## 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 (continued) Identify eligible historic properties within the APE

### National Register Criteria For Evaluation

Is the property old enough to be considered historic (*generally* at least 50 years old)? Does it still look much the way it did in the past? Is the property: related to important events or historical patterns; associated with a significant person; possessive of distinctive architectural or engineering qualities; or likely to provide historical information?





## 106 Step 2. – Identify Historic Properties (continued) Special considerations for types of historic properties

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



106

## Step 2. – Identify Historic Properties (continued)



Eligible or listed NRHP properties within the APE.

FTA decides that historic properties may be affected by the project.

**No** eligible or listed NRHP properties within the APE.

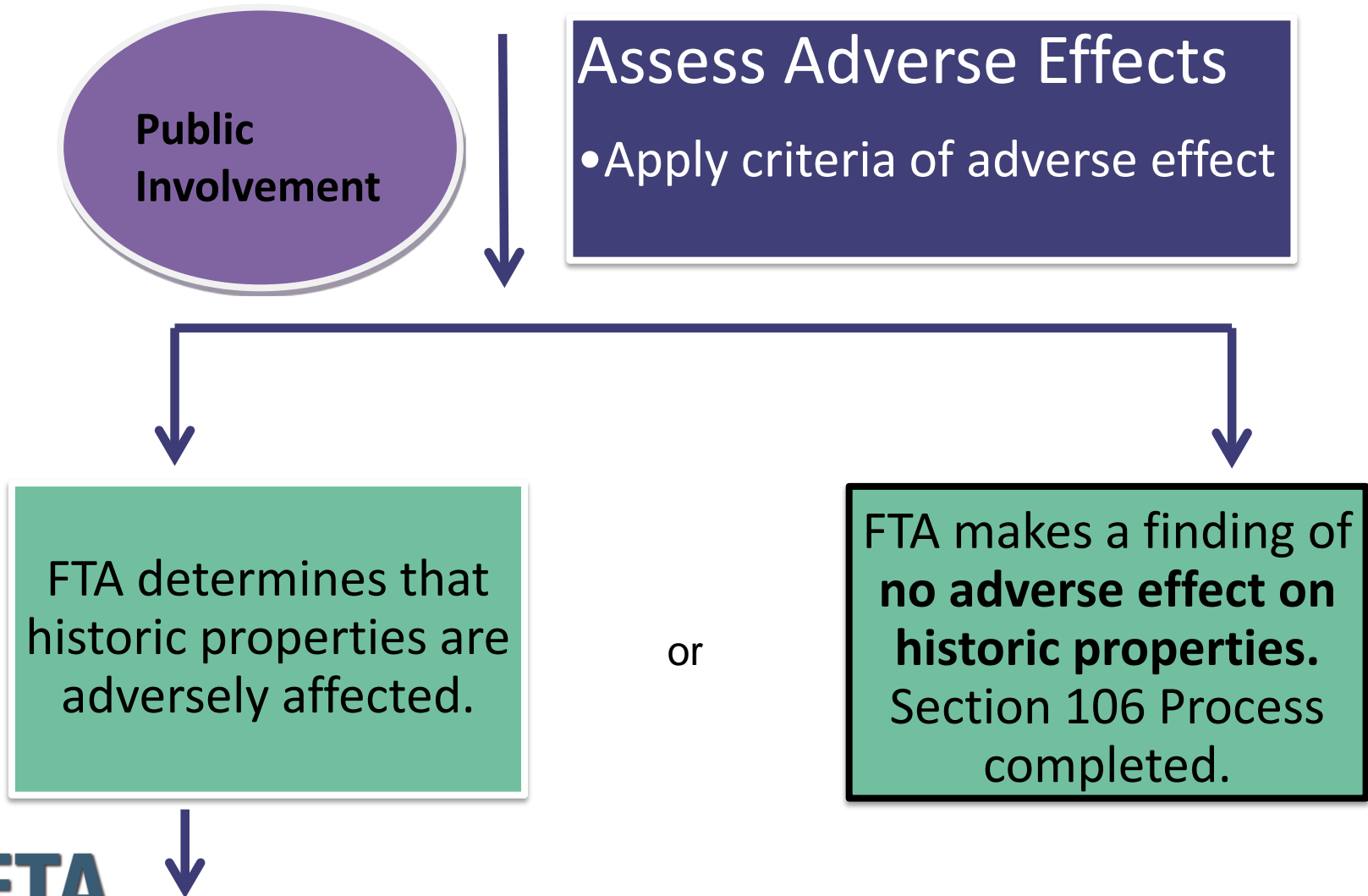
FTA makes a finding of **no historic properties affected.**

Section 106 process completed.

or

106

## Step 3. – Assess Adverse Effects



## 106 Step 3. – Assess Adverse Effects (continued) 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)





## Step 3. – Assess Adverse Effects (continued)



## Step 4. – Resolve Adverse Effects

Send letter to the ACHP **notifying** them of the Adverse Effect Determination.

**Public  
Involvement**

### Resolve Adverse Effects

- Continue consultation to avoid, minimize, or mitigate

Prepare **Memorandum of Agreement** to address mitigation provisions  
Section 106 Process completed.

or

Prepare **Programmatic Agreement** to address mitigation provisions  
Section 106 Process completed.

Send **executed** agreement to ACHP

## Step 4. – Resolve Adverse Effects (continued) What if there are disagreements?

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- ▶ Section 106 regulations lay out specific alternative procedures for handling situations where there is not immediate agreement.
  - ▶ Determinations of Eligibility – resolution by seeking determination from the Keeper of the National Register of Historic Places.
  - ▶ Determinations of Effect – resolution by involving the ACHP.
  
- ▶ Or... further consultation and coordination with the SHPO

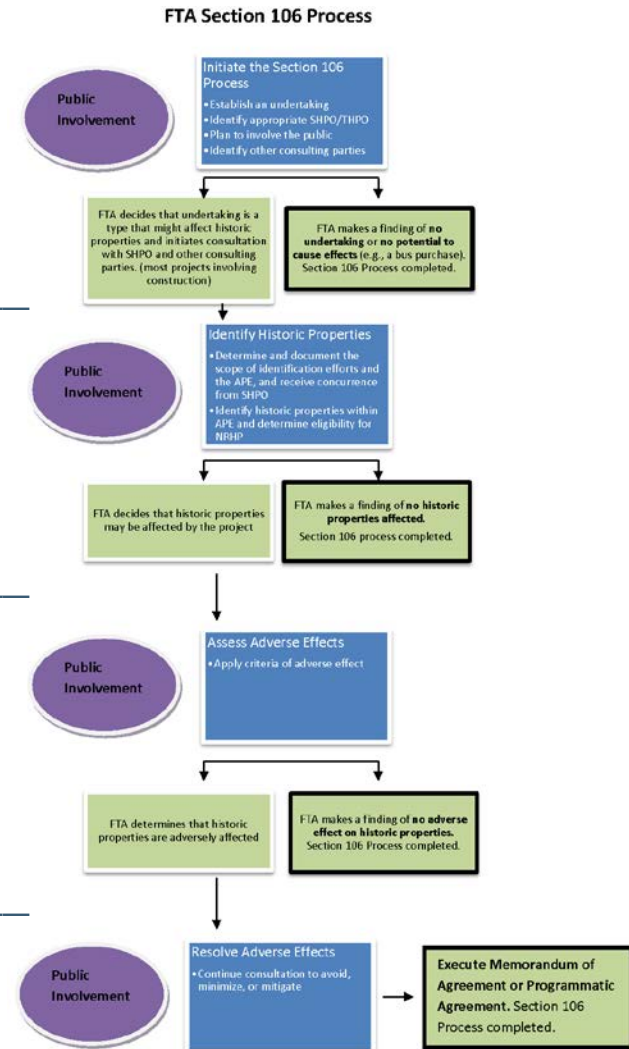
# What are the steps in the Section 106 process?

## 1. Initiate the Section 106 Process

## 2. Identify Historic Properties

## 3. Assess Adverse Effects

## 4. Resolve Adverse Effects



## 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))
- ▶ Minnesota State Historic Preservation Office, Project Review Website (<http://www.mnhs.org/shpo/review/projectreview.php>)





# Thank you

## Questions and Answers

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