

RAIL

MOVING AMERICA FORWARD



Section 106 Basics for Potential FRA Grantees

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Presenters



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Agenda

- **Objectives: Basic 5 W's and H of Section 106**
 - What
 - Why
 - Where
 - Who
 - When
 - How
- **Q&A**



Photo Credit: APTA Committee, John Smatlak

Objectives

WHO

is responsible for completing the Section 106 process?

WHAT

- is Section 106 and the Program Comment for Rail ROW?
- information does FRA need from a grantee?

WHEN

should you begin thinking about Section 106 and preparing Section 106 materials?

FRA wants to help you, the Grantee, understand the basics of Section 106

WHY

does FRA need to comply with Section 106?

WHERE

does Section 106 fit into the grant lifecycle?

HOW

- do you assist FRA in complying with Section 106?
- does Section 106 affect the obligation of grant funding for your project and project delivery?
- long does the Section 106 process take?

WHAT & WHY

WHAT is Section 106?

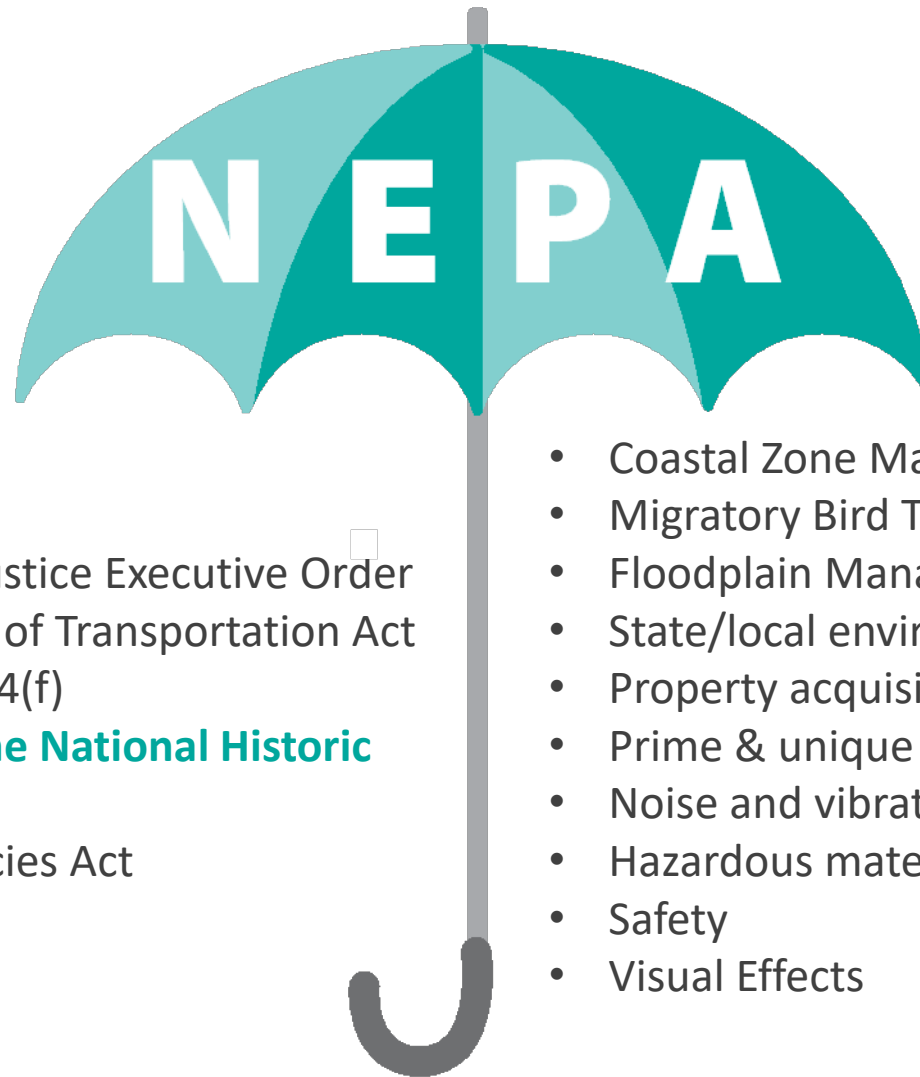
WHY does FRA need to comply with Section 106?

Section 106 of the National Historic Preservation Act

- Requires federal agencies to consider the effects of their undertakings on historic properties
 - For FRA, undertakings are typically federally funded projects (i.e., grants and loans) and new safety rules
 - Historic properties are:
 - Districts, sites, buildings, structures, or objects
 - Generally, 50 years of age or older
 - Listed in or eligible for listing in the National Register of Historic Places (NRHP)
- Follows a decision-making process established in regulations at 36 CFR 800
- Must be complete prior to the obligation of FRA grant funding and implementation of a project
- Is one of several federal environmental review requirements under the “NEPA umbrella”



The NEPA Umbrella

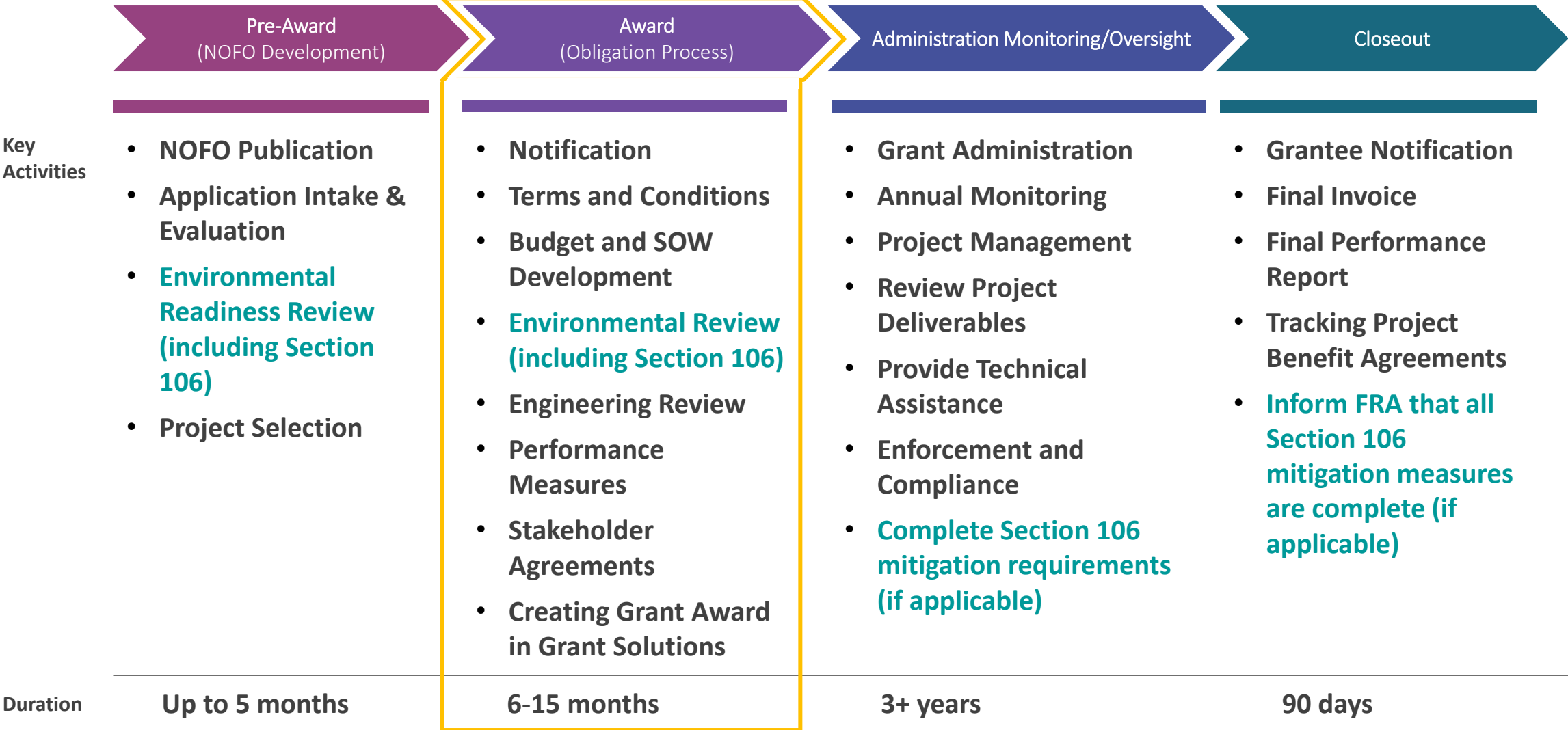


- Clean Air Act
- Clean Water Act
- Environmental Justice Executive Order
- U.S. Department of Transportation Act of 1966; Section 4(f)
- **Section 106 of the National Historic Preservation Act**
- Endangered Species Act
- Coastal Zone Management Act
- Migratory Bird Treaty Act
- Floodplain Management Executive Order
- State/local environmental laws
- Property acquisition
- Prime & unique farmland
- Noise and vibration
- Hazardous materials/waste
- Safety
- Visual Effects

WHERE & WHEN

WHERE does Section 106 fit into the grant lifecycle?
WHEN should the Section 106 process begin?

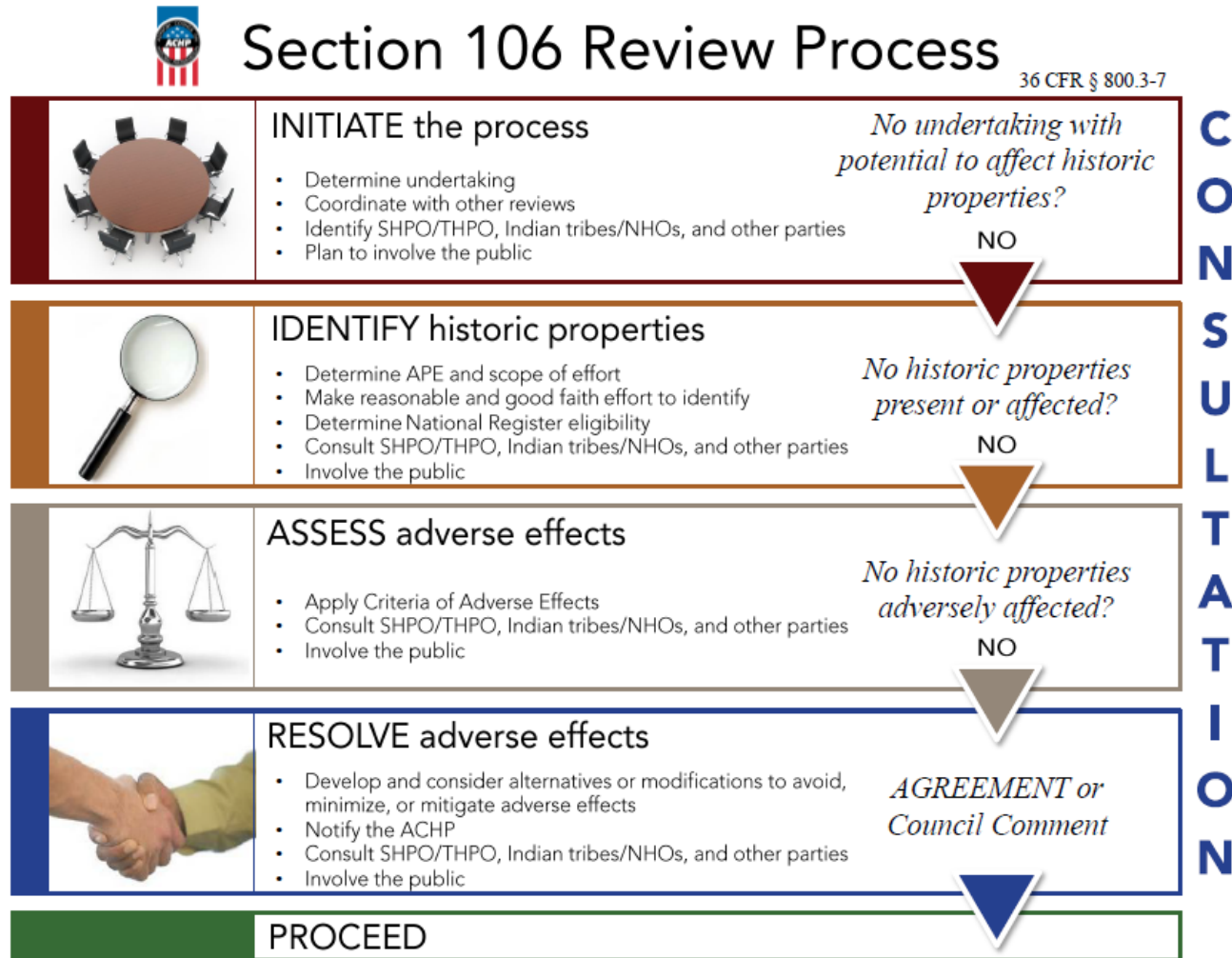
Section 106: A Critical Pathway to Grant Obligation



HOW & WHAT

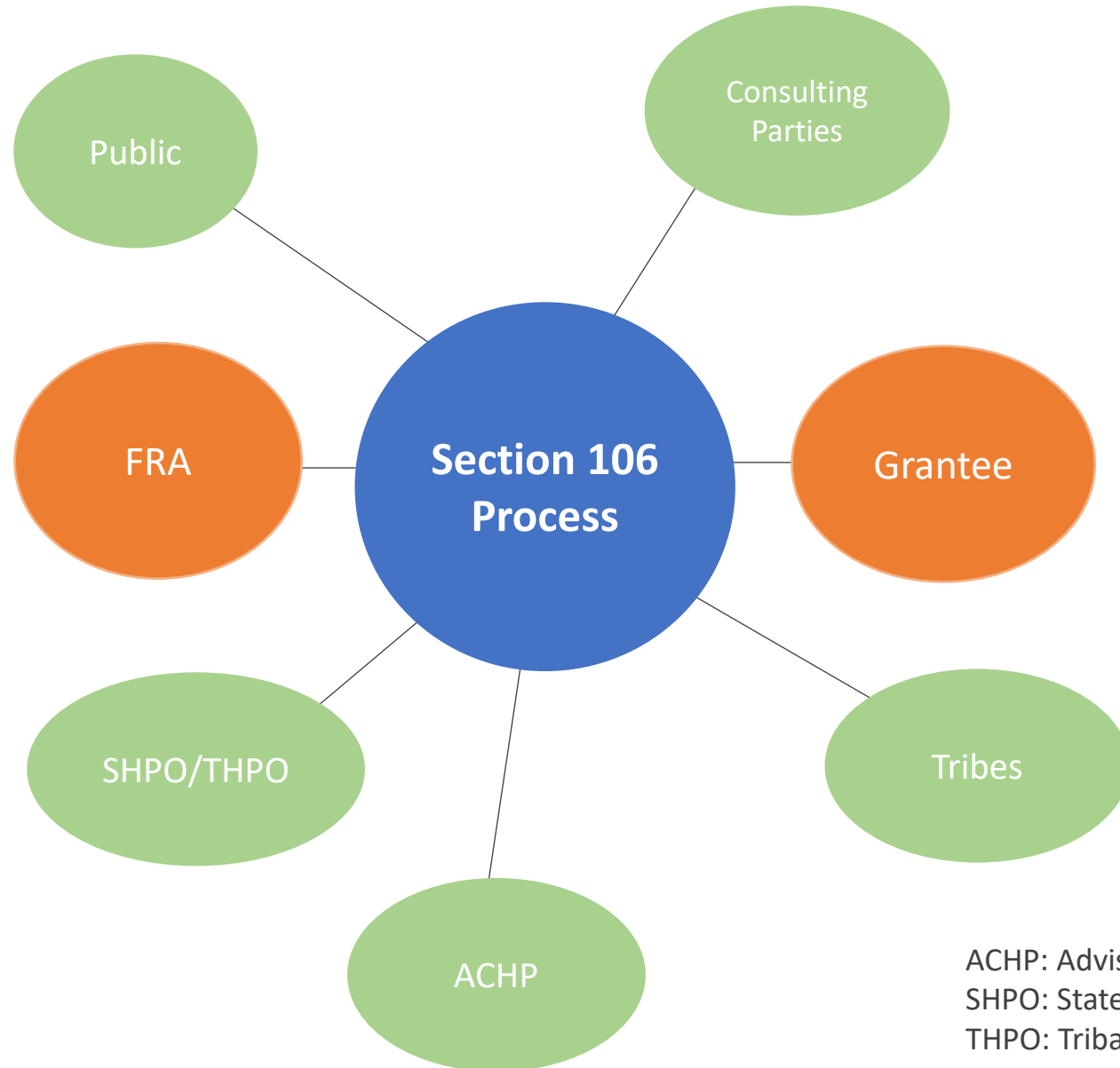
HOW does FRA conduct Section 106 review?
WHAT information does FRA need?

The Section 106 Process: Standard 4-Step



Graphic credit: <https://www.achp.gov/digital-library-section-106-landing/section-106-review-process-flowchart>

Key Concepts: Participants in the Section 106 Process



ACHP: Advisory Council on Historic Preservation
SHPO: State Historic Preservation Officer
THPO: Tribal Historic Preservation Officer

Key Concept: Area of Potential Effects (APE)

- Geographic area or areas within which an undertaking may directly or indirectly cause alteration in the character or use of a historic property
- Will be unique for each project depending upon the scale and nature of the undertaking
- May extend beyond the rail right-of-way (ROW) and involve non-rail properties
- Includes primary work sites, as well as access roads, staging areas, etc.

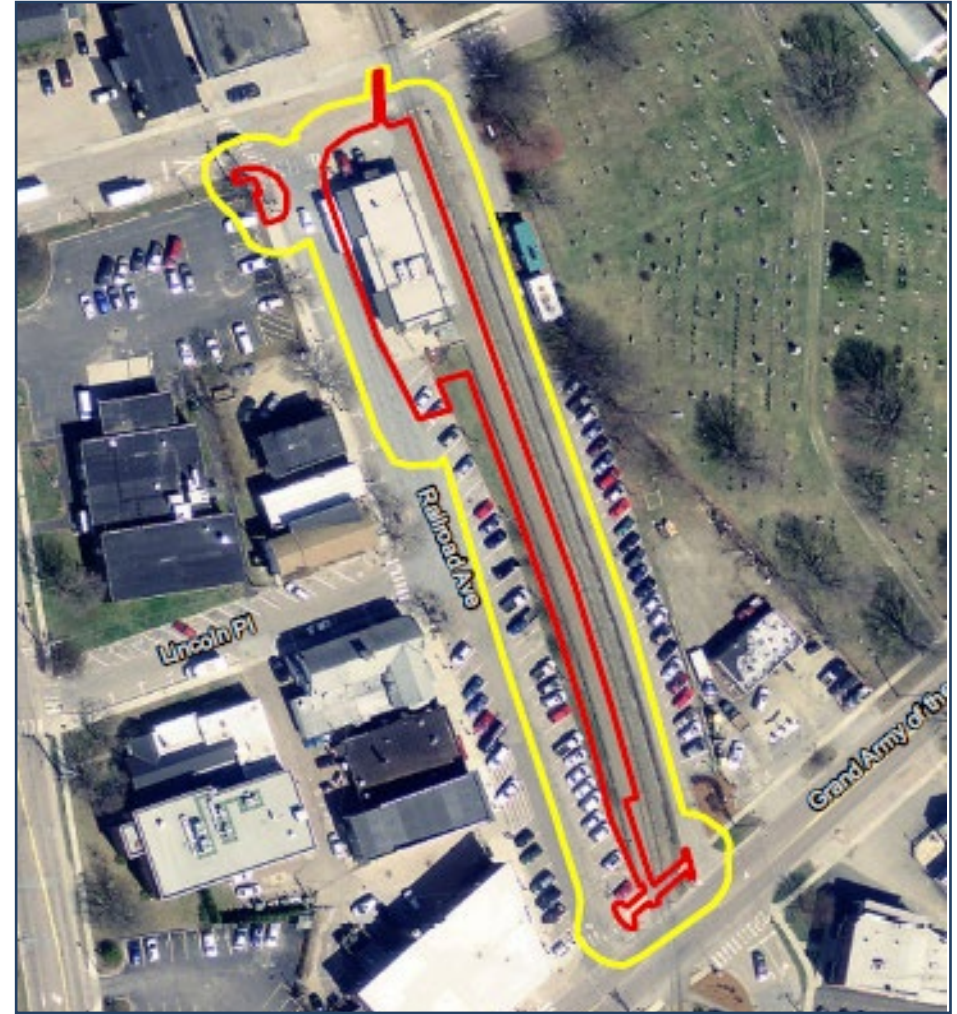


Photo Credits: FRA Project Files

Defining the APE

- Information you, as the Grantee, need to provide for FRA to define the APE:

Where will ground-disturbing activities take place?

- *Examples:* Locations of pile driving, in-water work including barge anchors, placement of riprap, removal of debris, tree/vegetation clearing, construction of new temporary or permanent access roads, new equipment or materials staging areas.



What needs to be demolished, cut down, destroyed, etc. in order to facilitate your project?

Are there historic districts (e.g., neighborhoods, downtown commercial areas) immediately adjacent to your project?

From how far away will your project be seen?

- *Will work only be internal, within a building?*
- *Will people be able to see your project from nearby buildings?*
- *Is vegetation or are other visual intrusions shielding your project?*

How far away will construction and/or operational activities be heard or vibrations felt?

Key Concepts: National Register of Historic Places (NRHP)

- **NRHP:** Official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture
- Have historic significance at the local, state, and/or national level
- Through Section 106, you must identify historic properties that are listed in OR eligible for listing in the NRHP
 - Listed: Designated by the Keeper following a formal nomination process and review by a professional review board
 - Eligible for Listing: Determined by federal agencies, in consultation with SHPO and/or THPO
 - Previously unidentified resources that meet NRHP criteria



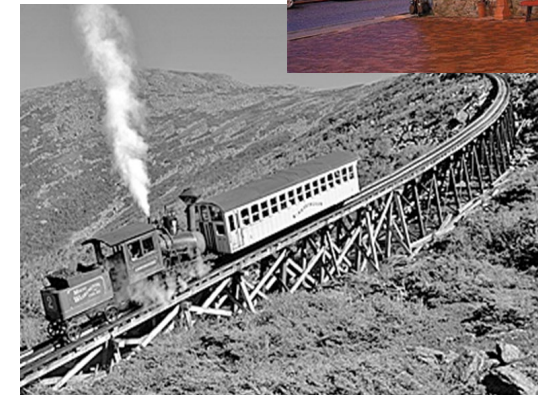
Photo Credits: history.delaware.gov

Key Concepts: Historic Property and NRHP Eligibility Criteria

Historic properties possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- Are associated with **events** that have made a significant contribution to the broad patterns of our history; or
- Are associated with the lives of significant **persons** in our past; or
- Embody the **distinctive characteristics** of a type, period, or method of construction, or represent the work of a master, possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or
- Have yielded or may be likely to yield information **important in history or prehistory.**

- Events
- Persons
- Architecture/design
- Archaeology



Identifying and Evaluating Historic Properties in the APE

Information the Grantee needs to provide to help FRA identify and evaluate historic properties:

- What resources are already listed in the National Register of Historic Places?
- What resources does the SHPO have listed as eligible in their records?
- What resources are 45 years of age or older?



- Do you have records (e.g., construction, maintenance, inspections, hazardous materials remediation) that show previous ground disturbance or modifications?
- Do you have a cultural resources report for your project or previous projects in the area?
- Do you have an archaeological report for your project or previous projects in the area?

If SHPO concurs with FRA that there are no historic properties in the APE, Section 106 review is complete.

Determining Effects

Will your project result in the following effects to any historic properties identified in the APE?

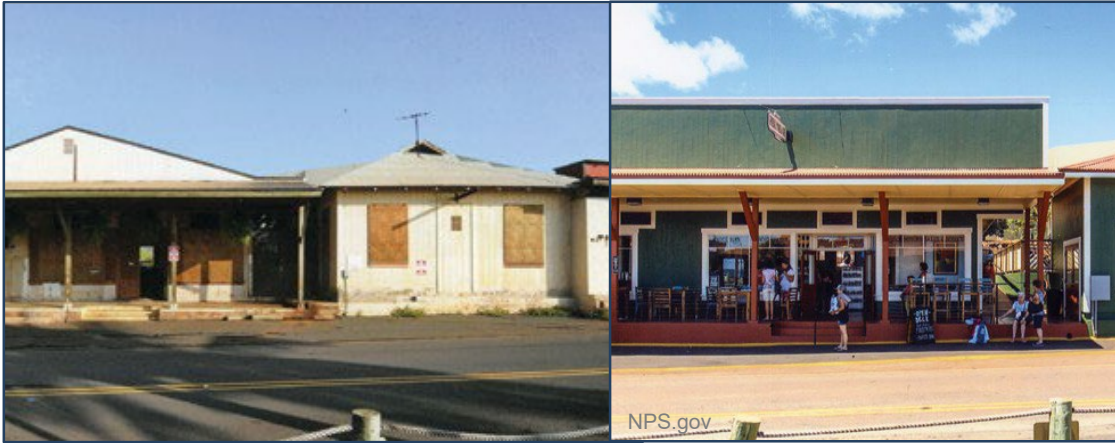
- Demolition, removal, and replacement
- Alteration or rehabilitation
- Damage or destruction
- Introduction of visual, atmospheric, and/or audible elements
- Change in setting
- Neglect or abandonment
- Transfer, lease, or sale



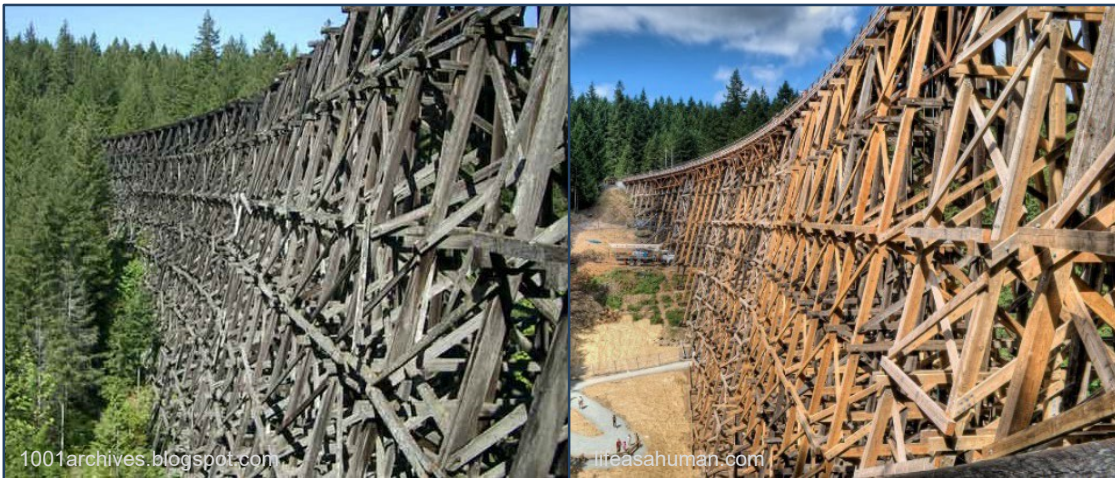
If SHPO concurs there are no adverse effects to historic properties, the Section 106 process is complete.

Key Concept: Effects

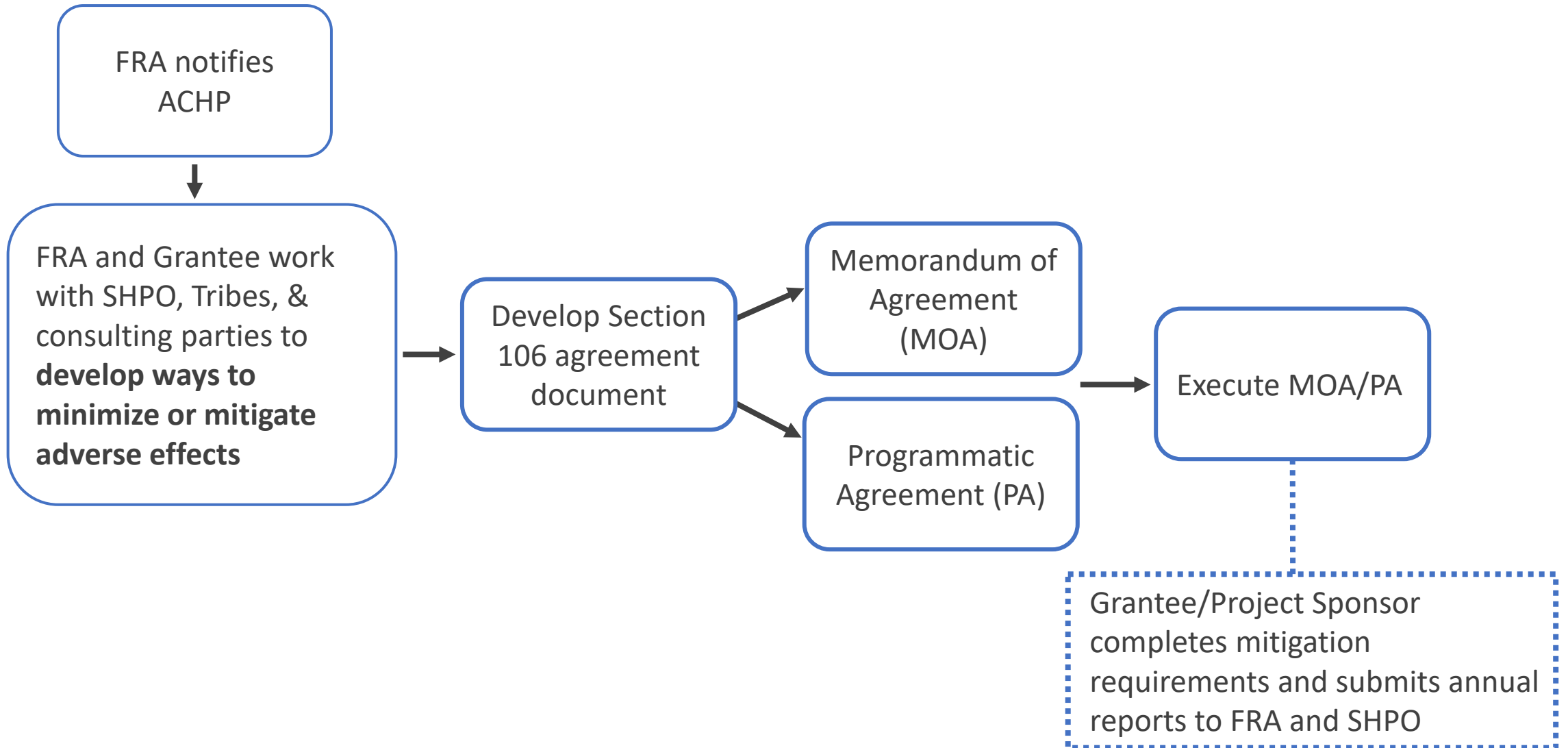
Not Adverse



Adverse



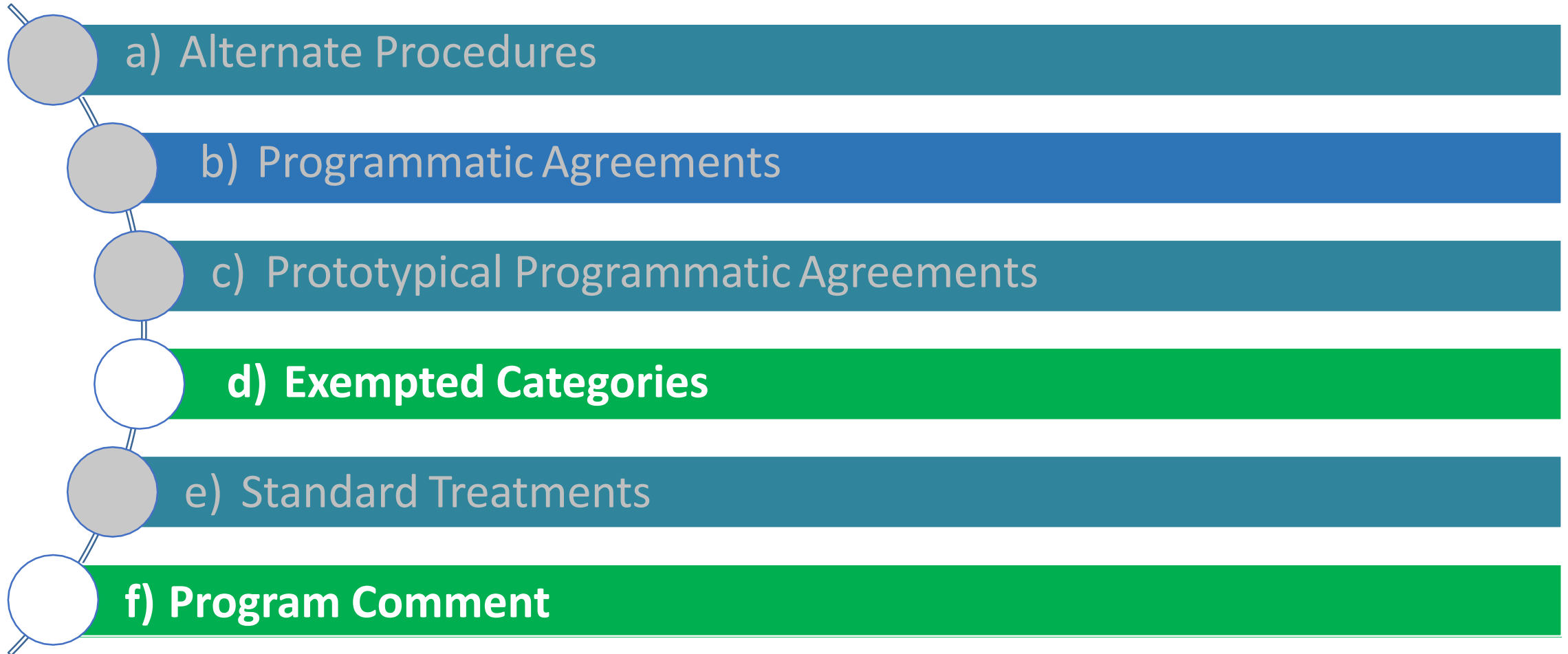
Resolving Adverse Effects



WHAT

WHAT is the Program Comment for Rail ROW?

The Section 106 Process: ACHP Program Alternatives (36 CFR 800.14)



Applicability: Section 106 Program Comment for Rail ROW

- Applies to activities that:
 - Are federal undertakings
 - Affect rail properties
 - Listed or eligible for listing in the National Register of Historic Places
 - Treated as eligible, based on such factors as age and integrity
 - Are located within:
 - Existing rail ROW (in part or in full)
 - Disturbed portions of the rail ROW
- Applies to projects for which the environmental review has not started or is already in process
- Some projects will be subject to:
 - Both the application of the Program Comment and a standard Section 106 review
 - Other Section 106 Program alternative or agreement document



Appendix A: Overview of Exempted Activities

- 95 total exempted activities
- 13 category types
 - Track and Trackbed
 - Bridges and Tunnels
 - Railroad Buildings and Boarding Platforms
 - Signals, Communications, and Power Generation
 - Roadway At-Grade Crossing and Grade Separations
 - Safety and Security
 - Erosion Control, Rock Slopes, and Drainage
 - Environmental Abatement
 - Operations
 - Landscaping, Access Roads, and Laydown Areas
 - Utilities
 - Bicycle and Pedestrian Facilities, Shared Use Paths, and Other Trails
 - Construction/Installation of New Railroad Infrastructure

Section 106 Program Comment for Rail ROW Appendix A: Exempted Activities List

A. Track and Trackbed

1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (*i.e.*, existing subgrade, subballast, ballast, and rails and crossties (track)). These activities must not include alterations to the trackbed that would result in a substantial visual change (*i.e.*, elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.
2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.

B. Bridges and Tunnels

1. In-kind maintenance and repair of bridges and tunnels.
2. In-kind replacement of bridge hardware and mechanical and electrical components (*e.g.*, brackets, rivets, bearings, motors).
3. Maintenance or repair of tunnel ventilation structures and associated equipment (*e.g.*, fans, ducting).
4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.
5. Replacement of tunnel ventilation structures that are located and publicly visible within a previously identified historic district, provided the replaced structures are substantially the same size as or smaller than the existing structures and are visually compatible with the surrounding built environment.
6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.
7. Maintenance, installation, repair, or replacement of lighting, signal and communications systems, railings, and other safety- and security-related equipment or elements located within the interiors of tunnels.
8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.

Projects That Don't Qualify for Section 106 Program Comment

Examples of projects *not* exempt from Section 106 review:

- **Demolition/replacement** of railroad bridges
- **Repair/rehabilitation** of railroad bridges that do not follow the specified criteria in the Exempted Activities List (e.g., change in super- or sub-structure material from timber to concrete)
- Projects located **outside of existing rail ROW** (e.g., rail line relocations)



Section 106 Program Comment for Rail Rights-of-Way

- Focuses on railroad infrastructure located in railroad ROW
- Includes a list of maintenance, repair, and upgrade activities that are exempt from Section 106 review
 - “User friendly” version of ***Exempted Activities List*** available on FRA’s website: <https://railroads.dot.gov/rail-network-development/environment/final-section-106-program-comment-rail-rights-way>
- FRA delivered a webinar on December 6, 2018
 - Available on FRA’s website: <https://railroads.dot.gov/rail-network-development/training-guidance/webinars>

WHAT

WHAT should be included about Section 106 in a grant application?

Grant Application: Environmental Readiness

- Potential FRA grantees **do not** initiate Section 106 consultation just to **apply** for an FRA grant or loan
- In the environmental readiness section of the application, explain whether FRA or another federal agency completed or is currently conducting the Section 106 process for your project

- *No Section 106 consultation for your project yet?*



Provide FRA with information to help us determine how long the process may take →

Sample information	Description
Age of infrastructure	Age of railroad infrastructure involved with your project
Proximity to historic properties	Explain if there are any resources within or surrounding your project area that are historic properties
Project schedule	Account for the time it may take to do Section 106 review in your project schedule
Exempted activity	Explain if you think all or part of your project would qualify as an exempted activity under the Rail ROW Program Comment.
Budget costs	Include in your project budget costs for qualified staff to prepare Section 106 review materials

Grant Application: Environmental Readiness

Potential FRA grantees *may* conduct some *informal coordination* to gather *preliminary* historic resource information for the environmental readiness section of an FRA grant application

- The SHPO can provide:
 - A desktop search of their historic property and archaeological survey records (if this info was *not* on their website)
 - Recommendations on *qualified* cultural resource consultants
 - Recommendations on *potential* consulting parties (including Federally Recognized Tribes) for the project
 - *State-specific* Section 106 documentation requirements or forms, or submission requirements
 - SHPO *does not* have to provide any of this assistance

RESOURCES



For a preliminary *desktop survey* of historic properties within your project area:

- National Register of Historic Places
<https://www.nps.gov/subjects/nationalregister/database-research.htm>
- State Historic Preservation Office (SHPO) website
<https://www.nps.gov/subjects/nationalregister/state-historic-preservation-offices.htm>

HOW

HOW long does the Section 106 process take?

HOW does this affect the obligation of grant funding for a project?

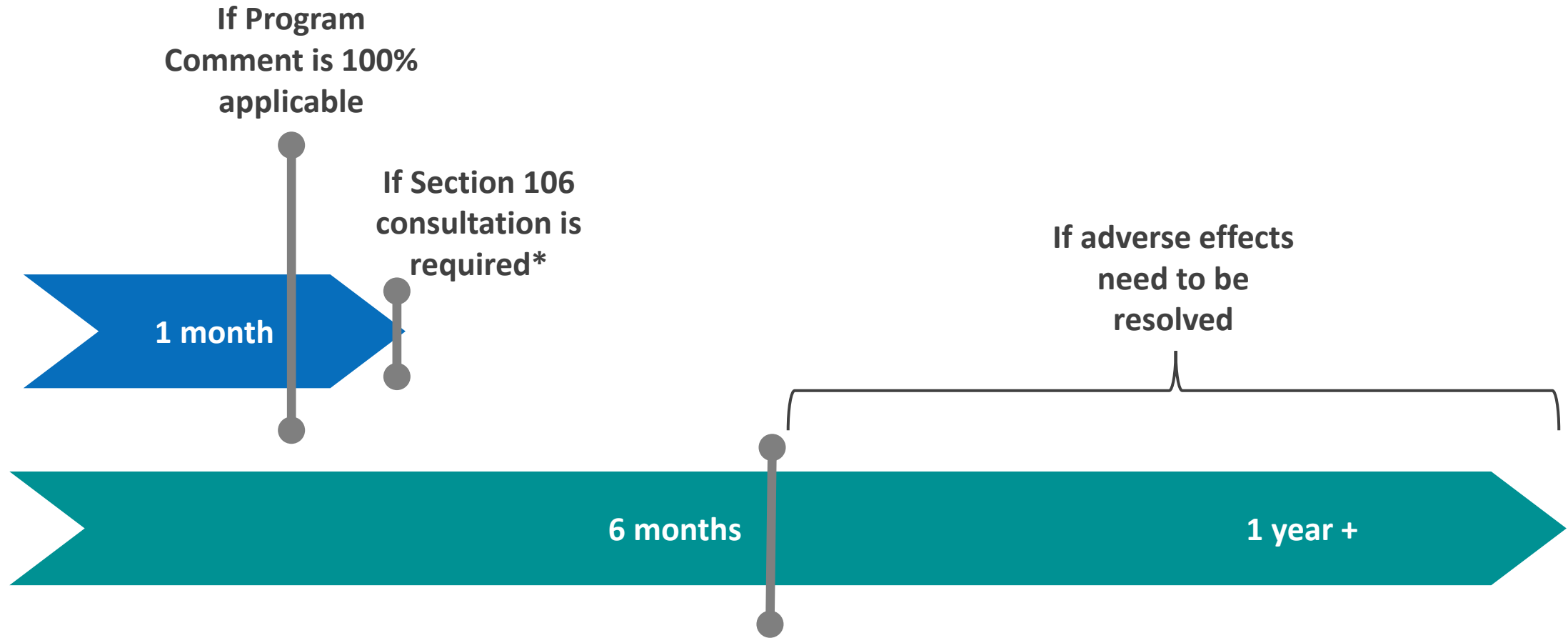
Section 106 Time Frames

Time frames vary depending upon:

- The type & location of project
- The type & number of historic properties involved
- Whether the project will have adverse effects to historic properties
- If there is public interest regarding the project
- When in the project planning/design process FRA receives adequate documentation from the Grantee to advance the Section 106 process



Potential Time Frames Once FRA Receives Adequate Documentation



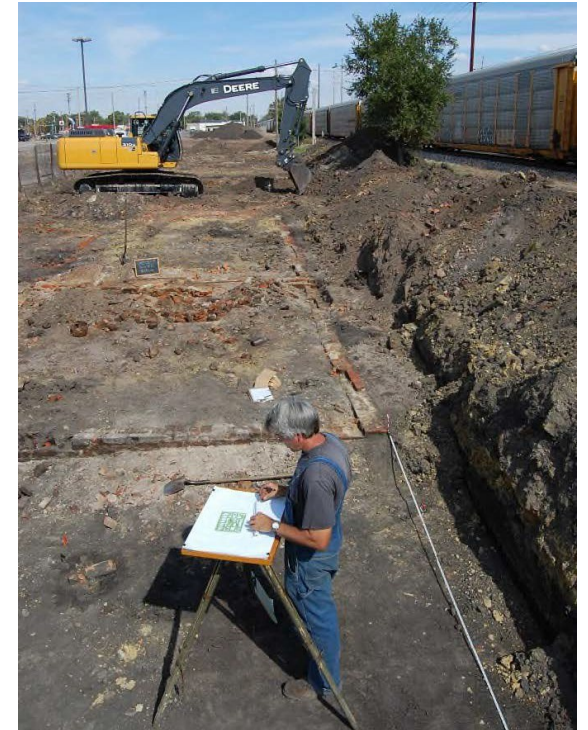
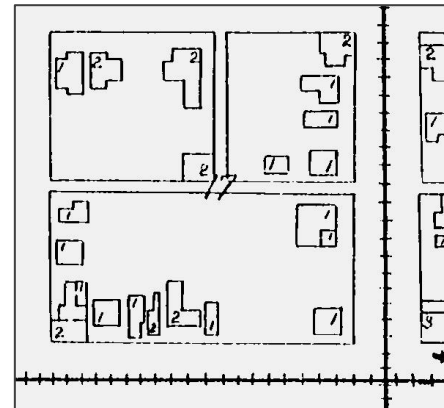
*30-day regulatory review by SHPO and consulting parties for every submission (some projects require multiple submissions).

WHO

WHO is responsible for completing this process?

Grantees Should...

- Begin the process early on in the grants management lifecycle
- Review the ***Exempted Activities List*** to see if all or parts of the project may be covered
- Ask FRA for technical assistance once you are awarded a grant
- Use appropriate cultural resource professionals to prepare draft Section 106 materials for FRA
- Prepare letters, materials, presentations for and/or actively participate in consulting party meetings
- Complete architectural and/or archaeological surveys following SHPO/state standards, if necessary
- Prepare agreement documents, if necessary



Grantees Can...

- As previously explained, a grantee may *informally* coordinate with SHPO to do a records search, identify potential consulting parties (including federally recognized Indian Tribes), understand state-specific requirements, etc.
- Initiate Section 106 consultation *if* authorized by FRA
- Engage with SHPO, THPO, Tribes, or consulting parties *when* instructed to or authorized by FRA



Grantees Should Engage Qualified Professionals

Grantees must assist FRA by:

- Identifying, evaluating, and assessing effects to historic properties
 - This often requires hiring a qualified **consultant**, such as an architectural historian and/or archaeologist, to perform background research and/or a field survey
 - Some SHPOs maintain and can provide lists of recommended cultural resources consultants



Photo Credit: Alpha Stock Images

Grantees Should Engage Qualified Professionals

Consultant qualifications typically include:

- Meeting the Secretary of the Interior's (SOI) Professional Qualification Standards:
<https://www.nps.gov/articles/sec-standards-prof-quals.htm>
- Previous Section 106 support to federal agencies
- Knowledge of any state-specific requirements
- Hold applicable state permits/licenses for conducting archaeological fieldwork
- Experience with transportation/railroad infrastructure



Photo Credit: Alpha Stock Images

FRA Is Responsible for...

1. Providing technical assistance to Grantees
2. Verifying appropriate application and usage of the *Program Comment for Rail ROW: Exempted Activities List*
3. Authorizing Grantees to initiate Section 106 consultation
4. Reviewing and approving all Section 106 materials related to defining the APE, identification/evaluation of historic properties, and effects determinations; this includes reviewing architectural and/or archaeological survey reports
5. Government-to-government consultation with federally recognized Indian tribes
6. Making effects determinations
7. Enforcing terms of MOA/PA, including monitoring Grantee's implementation of mitigation measures



Working with FRA

BEST PRACTICES		COMMON MISTAKES	
Grantees are encouraged to	Begin early! Account for Section 106 review in project planning/schedule	And avoid	Starting the process too late in the project planning/design process and/or too late in the grant cycle
	Engage qualified professionals to conduct fieldwork and/or prepare Section 106 consultation materials		Not having qualified individuals to conduct necessary fieldwork or help prepare Section 106 documents
	Be aware that historic properties often include railroad infrastructure		Not providing the information needed or requested by FRA in a timely manner
	Not asking for technical assistance from FRA		
			Poor project planning, where time and financial considerations are not reasonably considered in the project schedule

Helpful Resources and Training

FRA: <https://railroads.dot.gov/rail-network-development/environment/final-section-106-program-comment-rail-rights-way>

ACHP:
<https://www.achp.gov/protecting-historic-properties>

Section 106 Resources

Section 106 Regulations (36 CFR Part 800):
<https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf>

Section 106 Review Process: <https://www.achp.gov/sites/default/files/2018-05/Section%20106%20Review%20Process.Handout.2017.jpg>



Helpful Resources and Training

A Citizen's Guide to Section 106 Review:

<https://www.achp.gov/sites/default/files/documents/2019-04/CitizenGuide2015v4-spreads%20layout.pdf>

Section 106 and Infrastructure Projects:

<https://www.achp.gov/section-106-and-Infrastructure-Projects>

Guidance on Agreement Documents:

<https://www.achp.gov/initiatives/guidance-agreement-documents>

Recommended On-Line Training

ACHP's website: <https://www.achp.gov/training>

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