



# Section 106 Overview for FRA Grantees

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# Agenda

- Objectives: The 5 Ws and H of Section 106
  - Why & Where
  - What
  - How
  - Who & When
- FRA Project Example
- 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 you?

## WHEN

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

**FRA wants to help you, the Grantee, understand the basics**

## WHERE

does Section 106 fit into the grant lifecycle?

## WHY

does FRA need to comply with Section 106?

## 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?

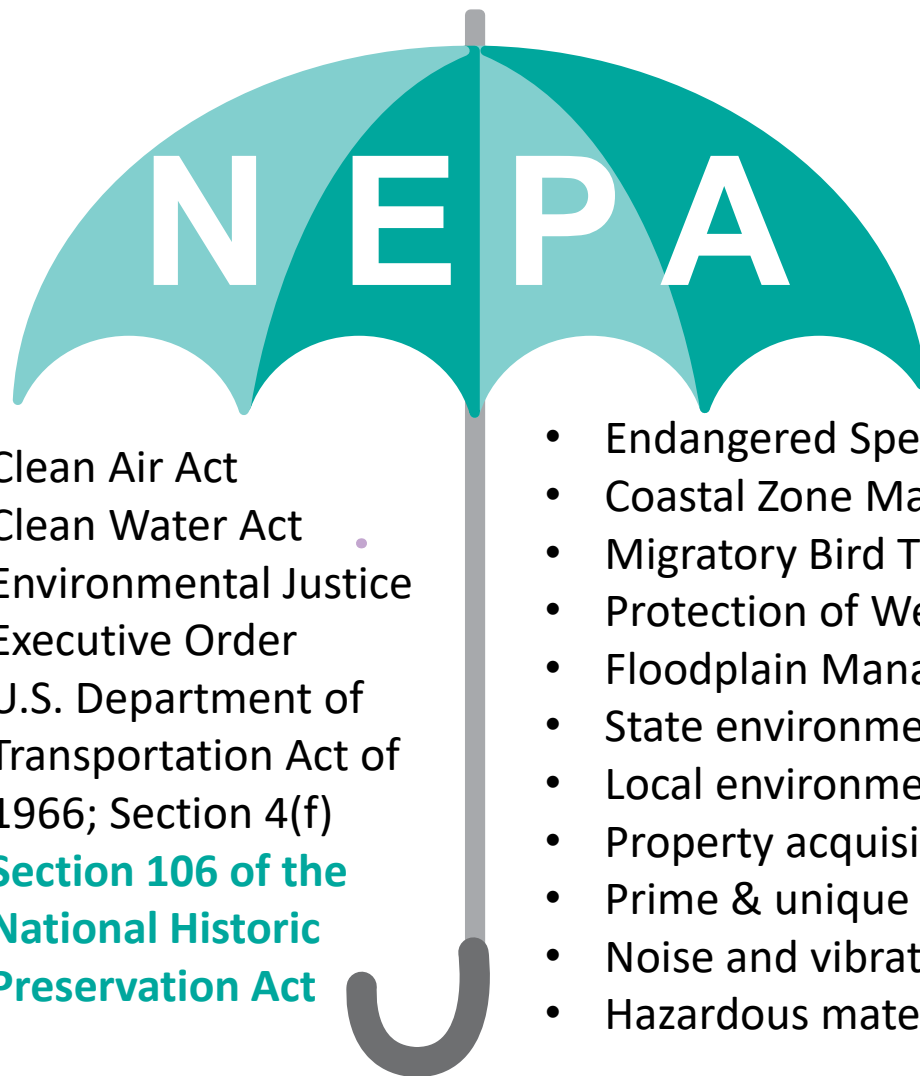
A dark blue background featuring silhouettes of approximately ten people sitting around a long table, engaged in a meeting or discussion. The scene is dimly lit, with light coming from windows in the background, creating a professional and collaborative atmosphere.

# WHY & WHERE

- **WHY** does FRA need to comply with Section 106?
- **WHERE** does Section 106 fit into the grant lifecycle?



# 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
- Protection of Wetlands Executive Order
- Floodplain Management Executive Order
- State environmental laws
- Local environmental laws
- Property acquisition
- Prime & unique farmland
- Noise and vibration
- Hazardous materials/waste

# Section 106: A Critical Pathway to Grant Obligation

	Pre-Award (NOFO Development)	Award (Obligation Process)	Administration Monitoring/Oversight	Closeout
Key Activities	<ul style="list-style-type: none"> <li>• NOFO Publication</li> <li>• Application Intake &amp; Evaluation</li> <li>• Project Selection</li> </ul>	<ul style="list-style-type: none"> <li>• Notification</li> <li>• Terms and Conditions</li> <li>• Budget and SOW Development</li> <li>• <b>Environmental Review, including Section 106</b></li> <li>• Engineering Review</li> <li>• Performance Measures</li> <li>• Stakeholder Agreements</li> <li>• Creating Grant Award in Grant Solutions</li> </ul>	<ul style="list-style-type: none"> <li>• Grant Administration</li> <li>• Annual Monitoring</li> <li>• Project Management</li> <li>• Review Project Deliverables</li> <li>• Provide Technical Assistance</li> <li>• Enforcement and Compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Grantee Notification</li> <li>• Final Invoice</li> <li>• Final Performance Report</li> <li>• Tracking Project Benefit Agreements</li> </ul>
Duration	Up to 5 months	6-12 months	3+ years	90 days

A dark blue background image showing the silhouettes of several people sitting around a long table in a meeting room, with large windows in the background.

# WHAT

- **WHAT** is Section 106?
- **WHAT** information does FRA need?





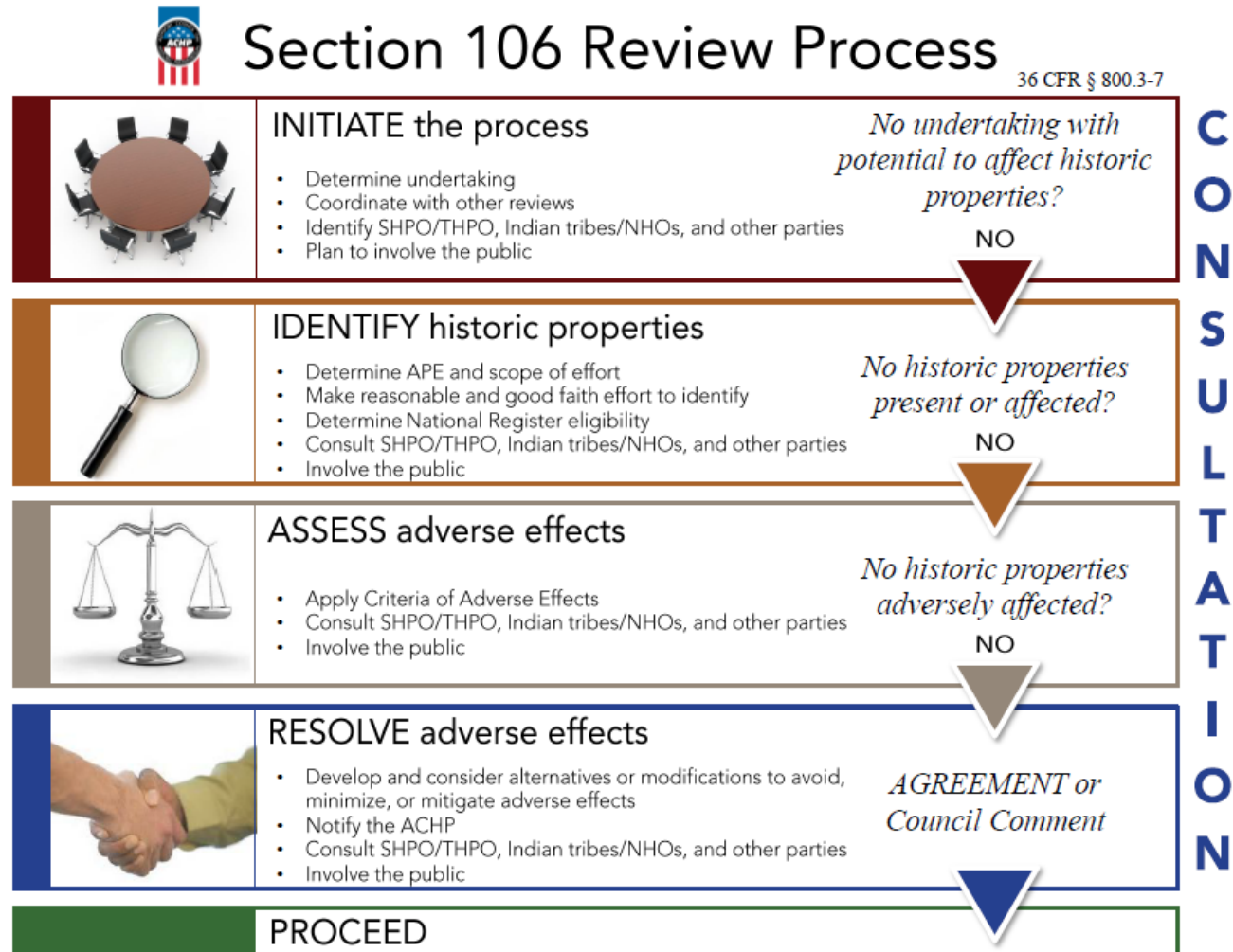
# Section 106 of the National Historic Preservation Act

- Requires Federal agencies to consider the effects of their undertakings on historic properties
  - Undertakings include federally funded projects (i.e., grants and loans), issuance of permits and licenses, and safety approvals
  - 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)
- Is one of several Federal environmental review requirements under the “NEPA umbrella”
- Must be complete prior to the obligation of FRA grant funding and implementation of a project
- Follows a decision-making process established in the Advisory Council on Historic Preservation’s (ACHP) regulations at 36 CFR 800





# 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***

- Lead Federal agency
- Grantee
- State Historic Preservation Officer/Tribal Historic Preservation Officer
- Tribes
- Consulting parties
- The public
- Advisory Council on Historic Preservation

## Key Concepts: 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)

- Official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture
- Maintained by the U.S. Department of the Interior's National Park Service
- Have historic significance at the local, state, and/or national level
- Section 106 must consider 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 State Historic Preservation Officers (SHPO) and/or Tribal Historic Preservation Officers (THPO)



*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 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
- Have yielded or may be likely to yield information **important in history or prehistory**.


- **Events**
- **Persons**
- **Architecture/design**
- **Archaeology**





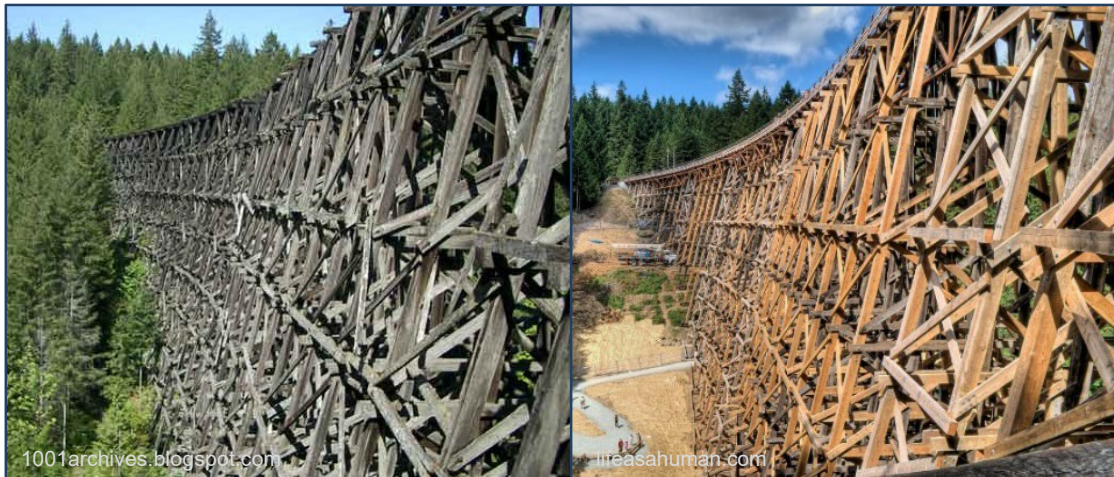
# Identifying and Evaluating Historic Properties in the APE

Information you, as the Grantee, need 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 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?

# Key Concepts: Effects

## Not Adverse



## Adverse





# Determining Effects

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

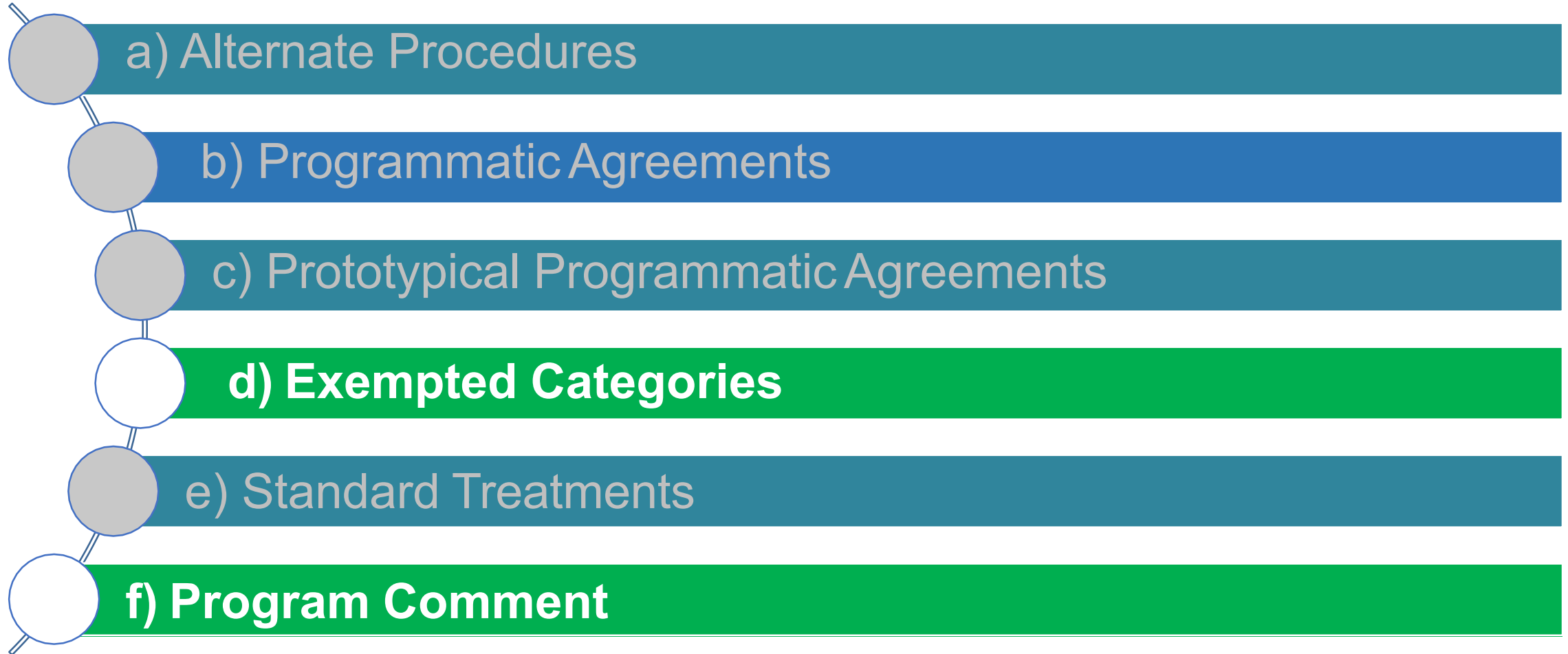
- Demolition, removal and replacement
- Alteration or rehabilitation
- Damage or destruction
- Introduction of visual, atmospheric, and/or audible elements
- Change in setting
- Neglect or abandonment
- Transfer, lease, or sale





# *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
- 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
<b>A. Track and Trackbed</b> <ol style="list-style-type: none"><li>1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (<i>i.e.</i>, 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>i.e.</i>, elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.</li><li>2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.</li></ol>
<b>B. Bridges and Tunnels</b> <ol style="list-style-type: none"><li>1. In-kind maintenance and repair of bridges and tunnels.</li><li>2. In-kind replacement of bridge hardware and mechanical and electrical components (<i>e.g.</i> brackets, rivets, bearings, motors).</li><li>3. Maintenance or repair of tunnel ventilation structures and associated equipment (<i>e.g.</i>, fans, ducting).</li><li>4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.</li><li>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.</li><li>6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.</li><li>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.</li><li>8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.</li></ol>



# 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>

A dark blue background featuring silhouettes of approximately ten people sitting around a long table in a meeting room. The room has large windows in the background, and the overall lighting is dim, creating a professional and collaborative atmosphere.

# HOW

- **HOW** do I assist FRA in complying with Section 106?
- **HOW** long does the Section 106 process take?
- **HOW** does this affect the obligation of grant funding for my project and project delivery?





# Section 106 Process Outcomes

YES

- Grantee proposes Exempted Activity category(ies)/ number(s), and provides justification/supporting documentation, if appropriate, to FRA
- FRA documents Exempted Activity category(ies)/ number(s) in NEPA decision document (i.e., CE Worksheet).

Section 106 complete

## Is your project entirely covered by the Program Comment: Exempted Activities List?

- FRA notifies ACHP
- FRA and Grantee involve SHPO, Tribes, & consulting parties in developing ways to minimize or mitigate adverse effects
- Develop Section 106 agreement document (Memorandum of Agreement [MOA] or Programmatic Agreement [PA])
- Execute MOA/PA among FRA, Grantee & SHPO (& other consulting parties when appropriate)

Section 106 complete



Grantee implements terms of MOA/PA; FRA provides oversight

NO

Would your project adversely affect historic properties?

YES

NO

- Grantee prepares draft SHPO consultation package
- FRA approves consultation package
- 30-day SHPO review
- FRA receives SHPO concurrence
- FRA documents outcome in NEPA decision document

Section 106 complete

# Implementation: If the Program Comment Is Applied...

**Step 1** Grantee reviews Exempted Activities list to see if proposed project activities are included.

**Step 2** Grantee identifies potentially applicable exempted activities by referring to Appendix A Category and Number for each activity in SOW (ex. A.1 or C.21.d)

**Step 3** Grantee identifies any activities that do not appear to be covered by Appendix A and coordinates with FRA on Standard Section 106 review.\*

**Step 4** Grantee submits information to FRA as environmental documentation following the normal submission procedures.\*

**Step 5** FRA verifies applicability of proposed exemptions and ensures applicability of Appendix A is noted in final NEPA document (e.g., cultural resources section of CE worksheet).\*

\*For SOW elements not covered by the Program Comment, Grantee will work with FRA to prepare a Standard Section 106 Consultation Package

# Implementation: Exempted Activities, Documentation Requirements

- FRA may require you, as the Grantee, to provide relevant documentation to verify appropriate usage of the *Exempted Activities List*
- Triggers may include use of “in-kind” materials, replacement vs. repair, use of SOI-Qualified Personnel, or extensive ground disturbance
- Documentation may include:
  - Plans
  - Photographs
  - Materials specifications
  - Replace vs. repair justification
  - SOI-qualified professional credentials
  - Documentation of prior ground disturbance
    - Maintenance and/or construction records
    - Hazardous materials remediation records
    - Research by SOI-qualified archaeologist
    - Archaeological reports
    - Auger tests





# Implementation: If Section 106 Consultation is Required

● Grantee Steps ● FRA Steps

## STEP 1

Grantee may informally coordinate with SHPO

The image shows a form titled "VERMONT STATE OF VERMONT" and "AGENCY OF CULTURAL AFFAIRS". The form is for "HISTORIC PRESERVATION PROJECT REVIEW COVER FORM". It includes fields for "TOWN", "COUNTY", "PROJECT NAME", "LOCATION", "PROJECT DATE", "CITY/TOWN/VILLAGE", and "COUNTY". There are checkboxes for "1. DOES THIS INFORMATION RELATE TO A PREVIOUSLY SUBMITTED PROJECT? Please check box." and "2. IS THIS A NEW PROJECT?". The form also includes a section for "PLEASE PROVIDE A BRIEF DESCRIPTION OF THE PROJECT" and a footer with the email "Vermont SHPO ProjectReview@vermont.gov".

- Identify state-specific requirements (e.g., survey methodologies, documentation and/or report standards; project initiation/review request forms)
- Request to conduct records searches for the preliminary identification of historic properties in the project area
- Request recommendations re: consulting parties that may have an interest in the project, including Federally-Recognized Indian Tribes
- Request recommendations re: professionally qualified cultural resources firms or individuals to assist grantee with conducting fieldwork, preparing reports, etc.

## STEP 2

Grantee completes architectural and/or archaeological surveys, using professionally qualified personnel (if necessary)

STEP  
3

Grantee drafts Section 106 consultation materials for FRA's review, approval and signature; this includes any required survey reports

FRA reviews Section 106  
consultation materials

STEP  
4

STEP  
5

Grantee responds to/addresses  
FRA comments, if necessary

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graph TD; Step6((STEP 6)) -.-> Step7((STEP 7));
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FRA approves and signs  
finalized materials

STEP  
6

STEP  
7

Grantee distributes Section 106 consultation  
materials to SHPO and consulting parties on  
behalf of FRA



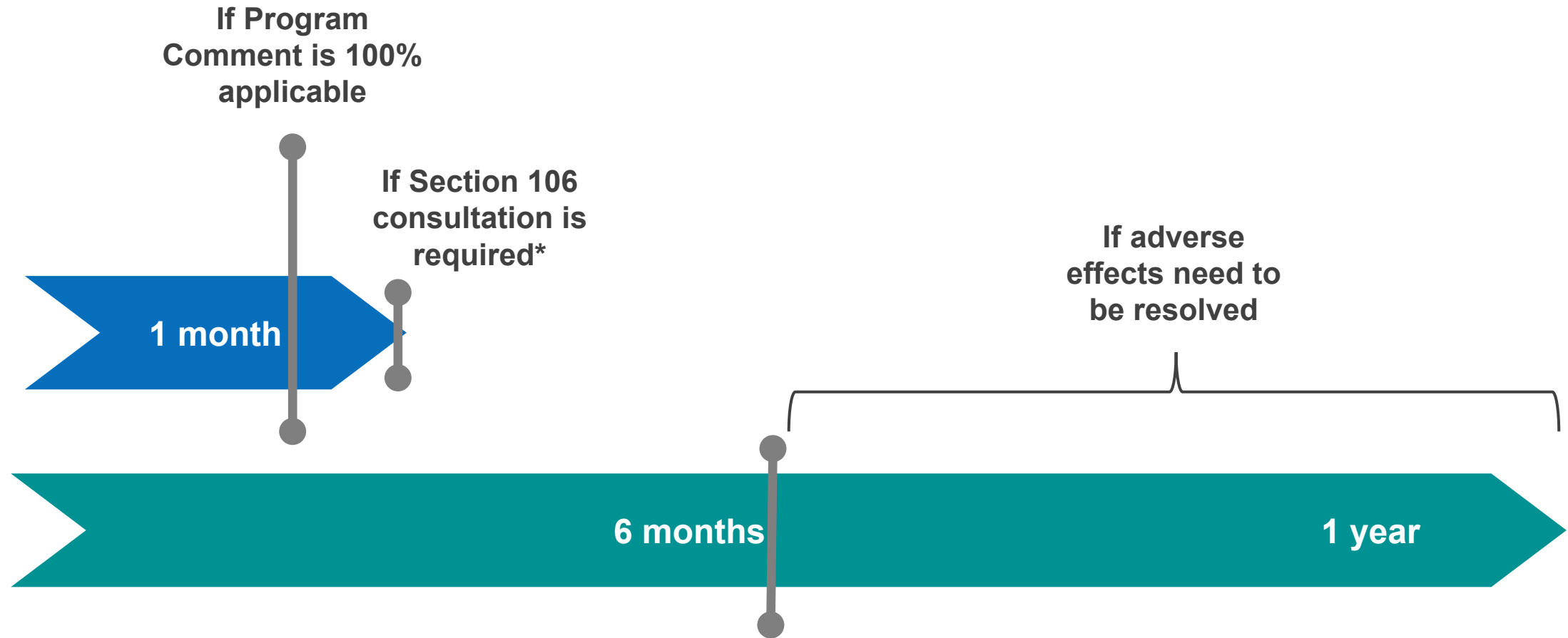
## Section 106 Time Frames

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 controversy regarding the project
- When in the project planning/design process FRA receives adequate documentation from the Grantee to advance the Section 106 process



# Time Frames Once FRA Receives Adequate Documentation



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

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# WHO & WHEN

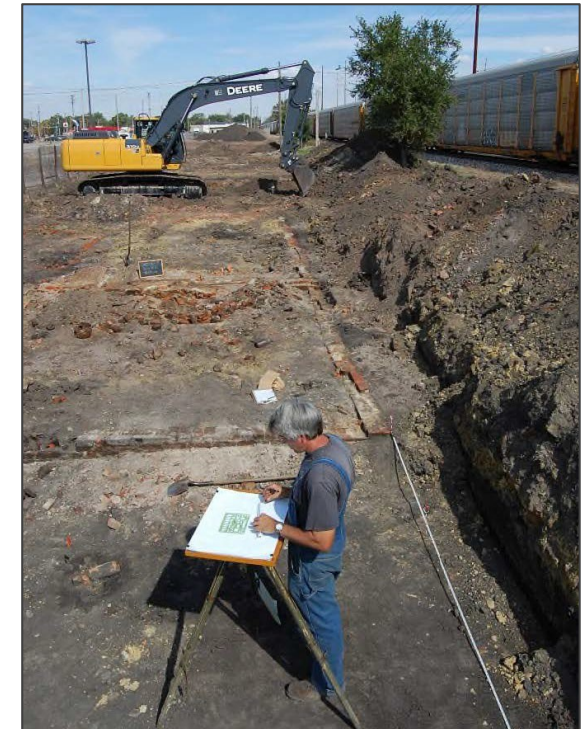
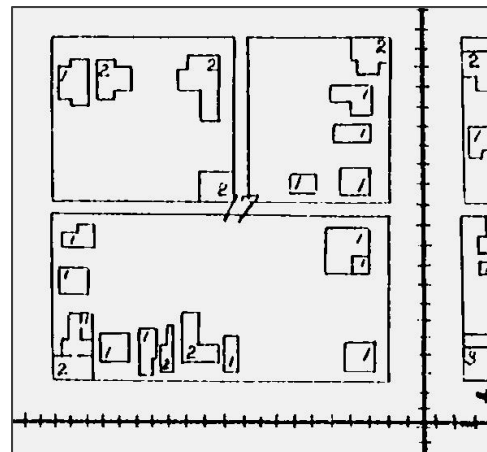
- **WHO** is responsible for completing this process?
- **WHEN** should the Section 106 process begin?





# *As the Grantee, You Should...*

- Begin the process early on in the grants management lifecycle
- Ask FRA for technical assistance
- Use appropriate cultural resource professionals (your own staff, if qualified; consultants you hire) to prepare draft Section 106 materials for FRA
- Prepare materials/presentations for and/or actively participate in consulting party meetings
- Complete architectural and/or archaeological surveys following SHPO/state standards, if necessary



# And...

- Review the ***Exempted Activities List*** to see if all or parts of the project may be covered
  - If you believe your project is exempt from Section 106 review, provide supporting justification to FRA (narrative, photos, engineering plans, materials specifications, methods, etc.)
  - If you have questions about what information may help FRA determine if your project is exempt from Section 106 review, coordinate with the FRA Regional/Project Manager and FRA Environmental Protection Specialist

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Section 106 Program Comment for Rail ROW Appendix A: Exempted Activities List	
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2.	Restoration of double tracking on a currently single-tracked line that had historically been double-tracked.
<b>B. Bridges and Tunnels</b>	
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).
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8.	Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.

## As the Grantee, You Can Only...

- **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, but **do not** submit materials to SHPO related to the APE, identification/evaluation of historic properties, or assessment of effects independent of FRA (this includes submittal of architectural or archaeological survey reports)
- Engage with SHPO, THPO, Tribes, or consulting parties **when** instructed to or authorized by FRA



# Grantees Should Engage Qualified Professionals

When a standard Section 106 review is required, 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 field surveys
    - 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:
  - Meet the Secretary of the Interior's (SOI) standards
  - Previous support to Federal agencies
  - Knowledge of the Section 106 4-step process and any state-specific requirements, forms, report formats, or survey guidelines or methodologies, etc. for conducting and documenting cultural resource surveys
  - Hold applicable state permits/licenses for conducting archaeological fieldwork
  - Experience applying the National Register eligibility criteria, particularly to transportation/railroad infrastructure

# *FRA Is Responsible for...*

- Providing technical assistance to Grantees
- Verifying appropriate application and usage of the *Program Comment for Rail ROW: Exempted Activities List*
- Authorizing Grantees to initiate Section 106 consultation
- 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
- Government-to-government consultation with federally recognized Indian tribes
- Making effects determinations
- 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

# FRA-Funded Project Example

**Grant Application Project Description:** The State DOT requests funding for FD/construction of upgrades to or replacements of a total of 23 railroad bridges to the 286,000-lb Class I standard that allows trains to operate at 25 to 40 mph. The project will also upgrade approximately 60 miles of track to a state-of-good-repair through the replacement of ties, rails, and ballast. The current deteriorated condition of the rail infrastructure means that trains must slow to 10 mph in several locations. The proposed improvements will enable the safe and efficient transportation of goods by freight rail, which will have local and regional economic benefits.



*Photo Credit: FRA's project files*

## Next Steps?

- ☐ Information needed for Section 106 review?
- ☐ Applicability of the Program Comment: Exempted Activities?
- ☐ Standard Section 106 review?



# Helpful Resources and Training

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

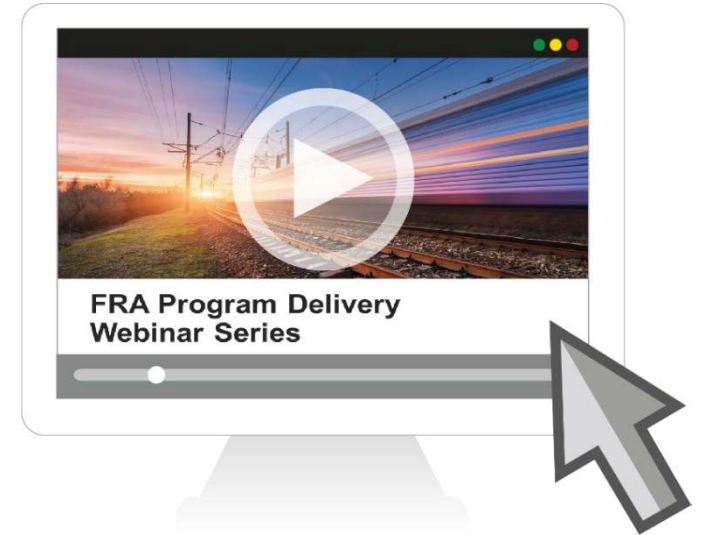
**ACHP:** <https://www.achp.gov/protecting-historic-properties>;  
<https://www.achp.gov/training>

## 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

The trainings below can be accessed via ACHP's website ([www.achp.gov](http://www.achp.gov))

- *What is Section 106?* (15 minutes)
- *Successfully Navigating Section 106 Review: An Orientation for Applicants* (45 minutes)



# CONTACT US

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Washington, DC 20590

For more information visit us at  
[www.fra.dot.gov](http://www.fra.dot.gov)



Connect with us **USDOTFRA**

## Presenters:

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Federal Railroad Administration

**Laura Shick**  
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Protection Specialist  
Federal Railroad Administration

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