

Challenges in the Environmental Review Process

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Overview

- Introduction to the Environmental Process
- Roles of FTA and Transit Agencies
- Challenges
 - Project Description
 - Real Estate Acquisition
 - Historic Properties
 - Understanding the Process



National Environmental Policy Act



NEPA

Clean Air Act

Rivers and Harbors Act

Environmental Justice

Clean Water Act

Magnuson-Stevens Fishery Conservation and Management Act

Endangered Species Act

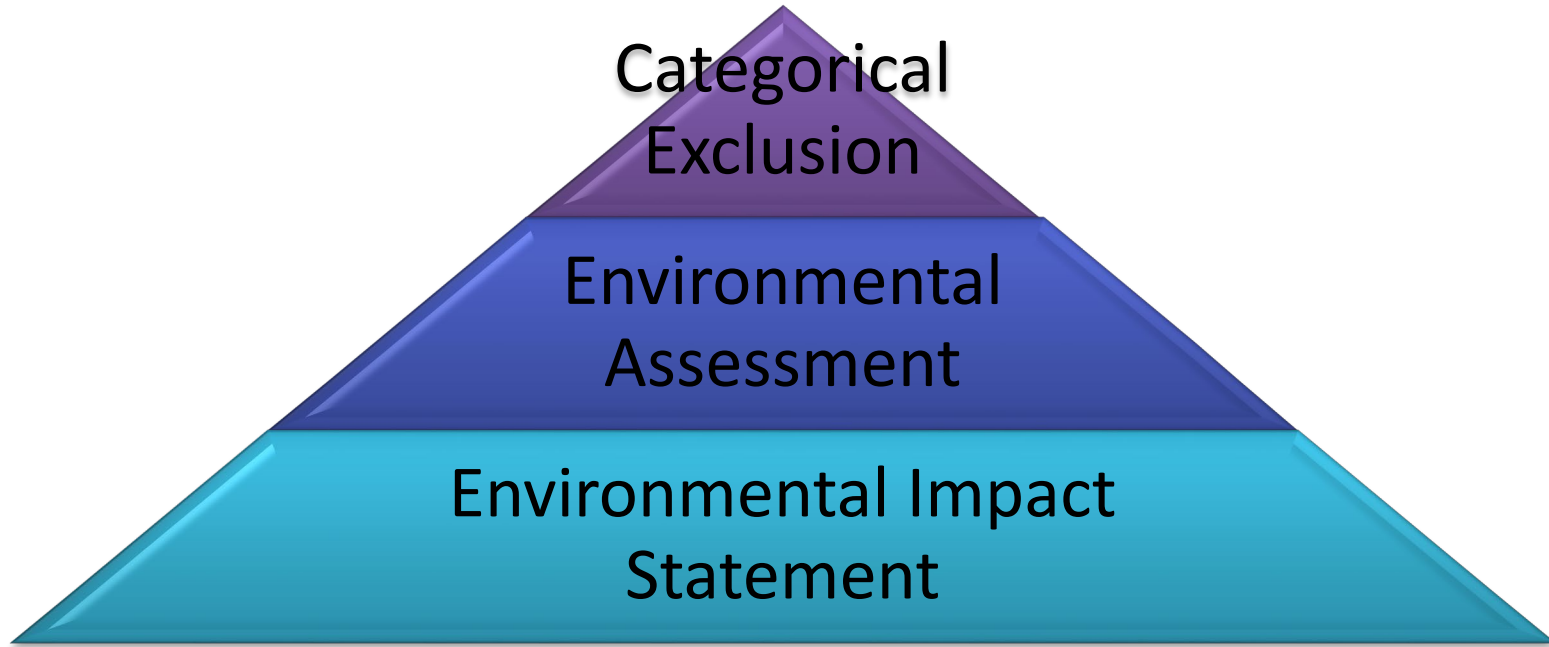
Section 106 of the National
Historic Preservation Act

Flood Plain Management

Section 4(f) of the USDOT Act

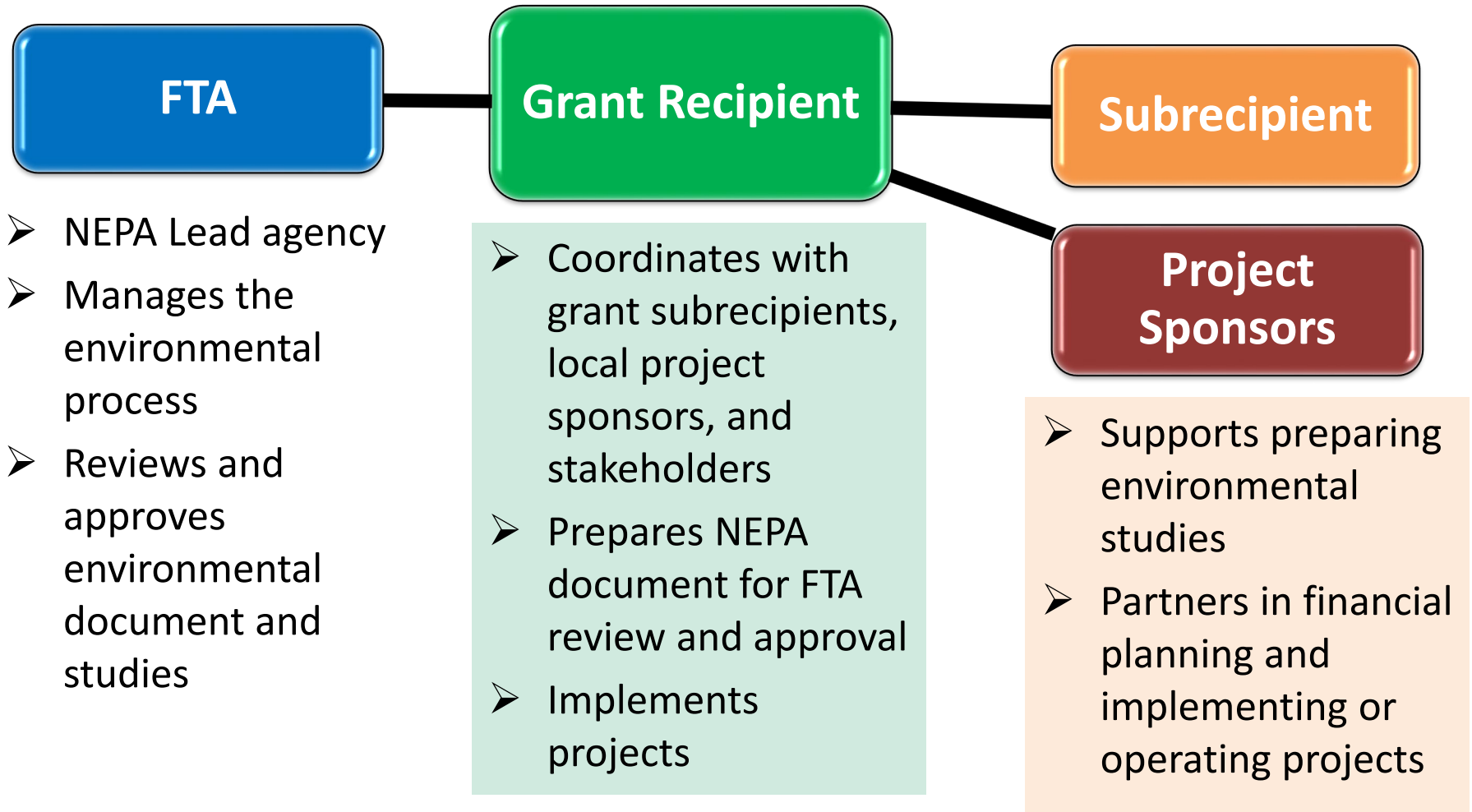


Environmental Class of Action

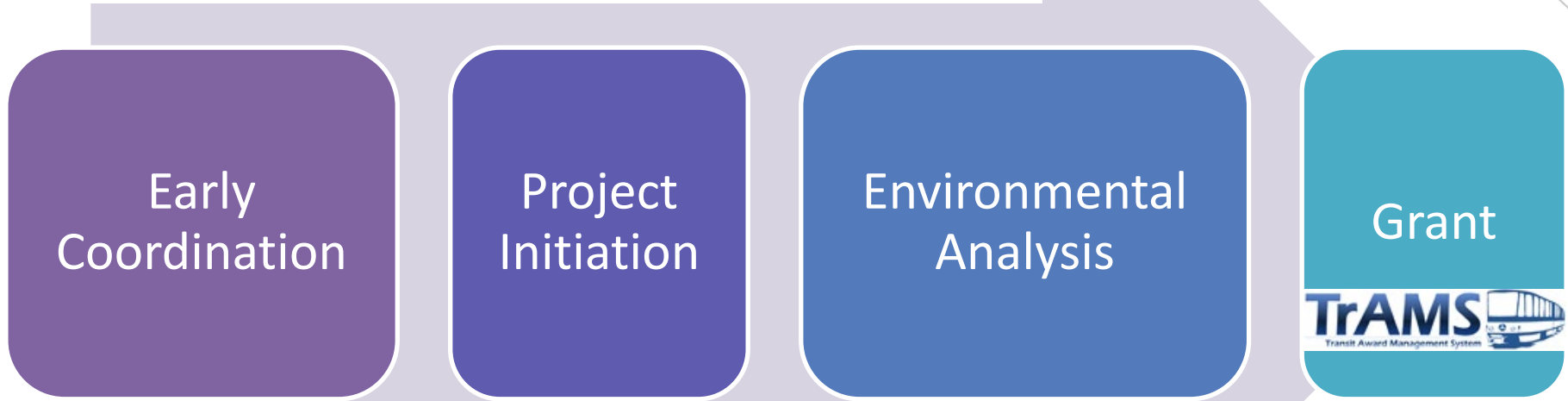


FTA Class of Action (FY 22)	Completed	Pending
Categorical Exclusion (CE)(c list)	4985	--
Categorical Exclusion (CE)(d list)	35	22
Environmental Assessment (EA)	4	5
Environmental Impact Statements (EIS)	2	7

Roles in the Environmental Process



Project Planning and Development



- Pre-grant transmittal
- Informal discussion on project scope and purpose and need

- Grantee presents project description, schedule, financial plan, and support for NEPA readiness

- FTA determines NEPA class of action and provides guidance on environmental documentation

- Environmental document is included with the grant application in TrAMS

Challenges

Evolving Project
Description

Section 106
Consultation

NEPA

Real Estate
Acquisition

Understanding
the Process

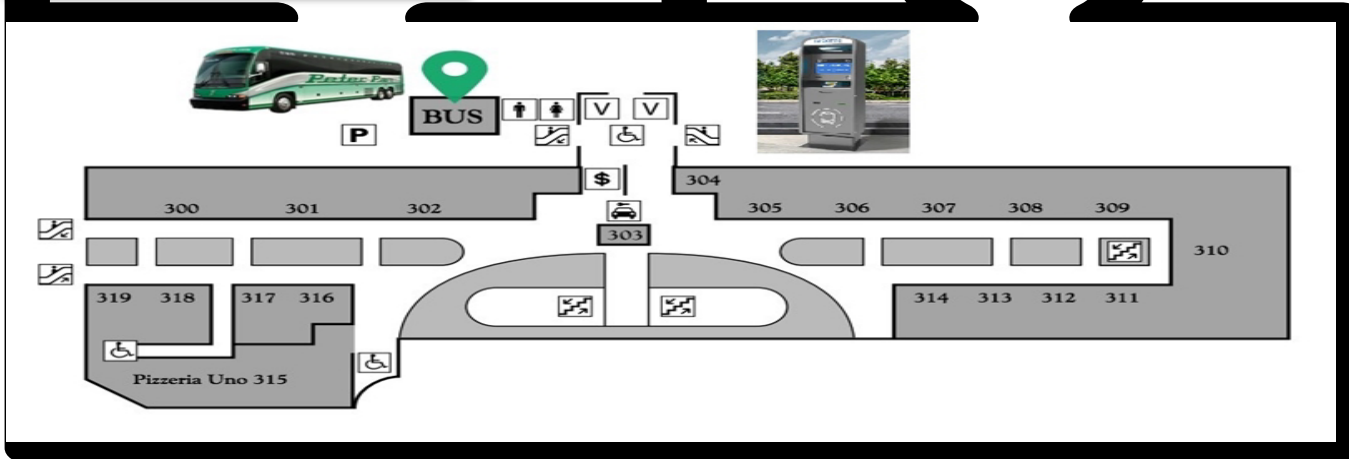


What is a Complete Project Description?

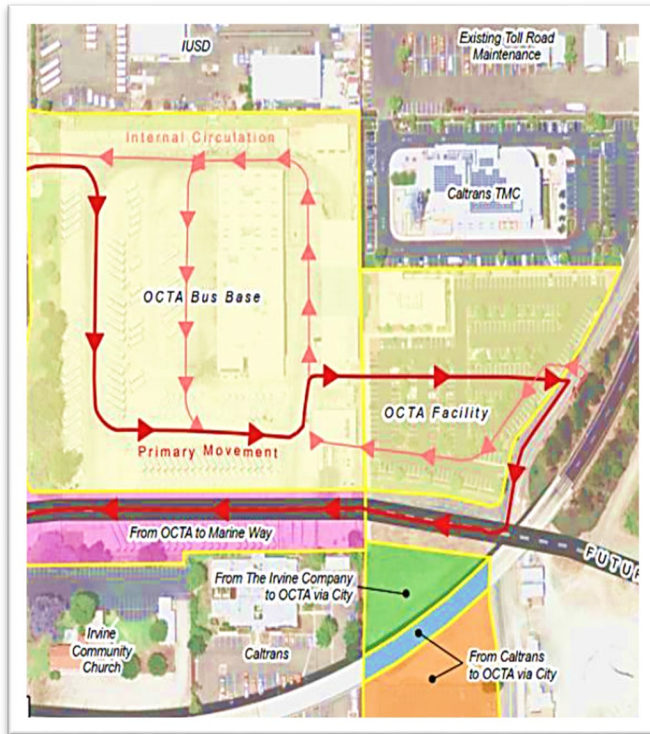
Example: The project seeks to expand the existing FTA funded land purchase and park-and-ride lot with the additional land purchase of adjacent parcels to accommodate long-term parking for current and future transit passengers.



Complete Project Description



What is Real Property Acquisition?



- Real property acquisition involves the acquisition of interests in property necessary to **construct, operate, and/or maintain** an FTA-funded transit project or facility.
- This includes acquisition of **fee title, fee title subject to a life estate, leasing** (where the lease term, including extension options is 50+ years, permanent easements and temporary construction easements.
- Easements include **surface and subsurface** permissions



When can Acquisition Occur?

- Acquisition occurs **after NEPA** (23 CFR 771.113)
 - Actual offers to acquire the property and actual relocations may NOT occur during NEPA. (FTA Circular 5010.1E).
- “Early/Advanced” acquisitions may occur under **limited circumstances**:
 - Hardship or protective buy [23 CFR § 771.118(d)(3)]
 - Corridor Preservation [49 U.S.C. § 5323(q)]

~~X Local funds are used to acquire property~~



Categorical Exclusions

Acquisition or Transfer of interest in real property CE(c)(6)

- Acquisition or transfer of an interest in real property that is not within or adjacent to environmentally sensitive areas
- No substantial change in functional use of the property or
- No substantial displacements

Hardship and Protective Acquisition CE(d)(3)

- Hardship acquisition** is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner
- Protective acquisition** is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site.

Acquisition of ROW CE(d)(4)

- No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.



Early/Advanced Acquisition Limitations

- Early or Advanced Acquisitions may be separate projects from the future transit project on that property.
- No project development on the acquired property until NEPA process for development is complete.
- There is no assurance of project approval of a future transit project on that property.
- Acquisition cannot prejudice consideration of alternatives.



Discuss with FTA

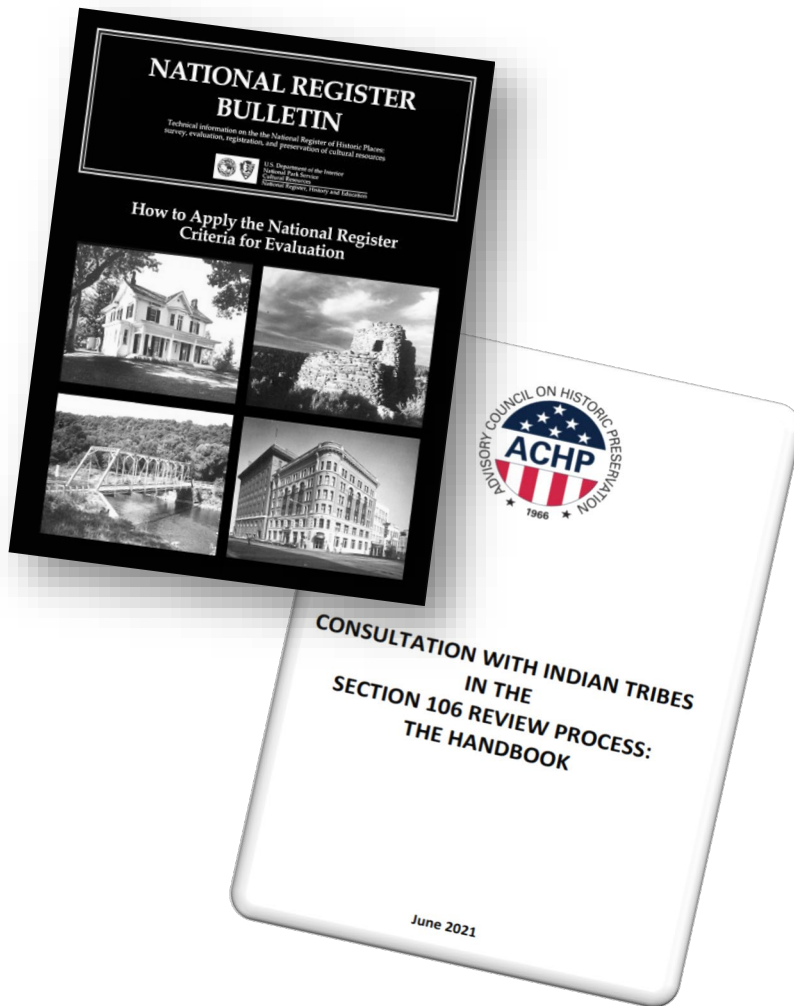
- Timing and justification for real estate acquisition
- Source of funding for the acquisitions
- Compliance with transportation planning requirements (e.g. Regional Transportation Plan, Federal Transportation Improvement Plan, etc.)
- Compliance with NEPA
- Consideration of future project and alternatives
- Compliance with the Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act)

FTA Real Property Acquisition and NEPA FAQ (2021)

<https://www.transit.dot.gov/regulations-and-programs/environmental-programs/fta-real-property-acquisition-and-national>



What is Section 106?

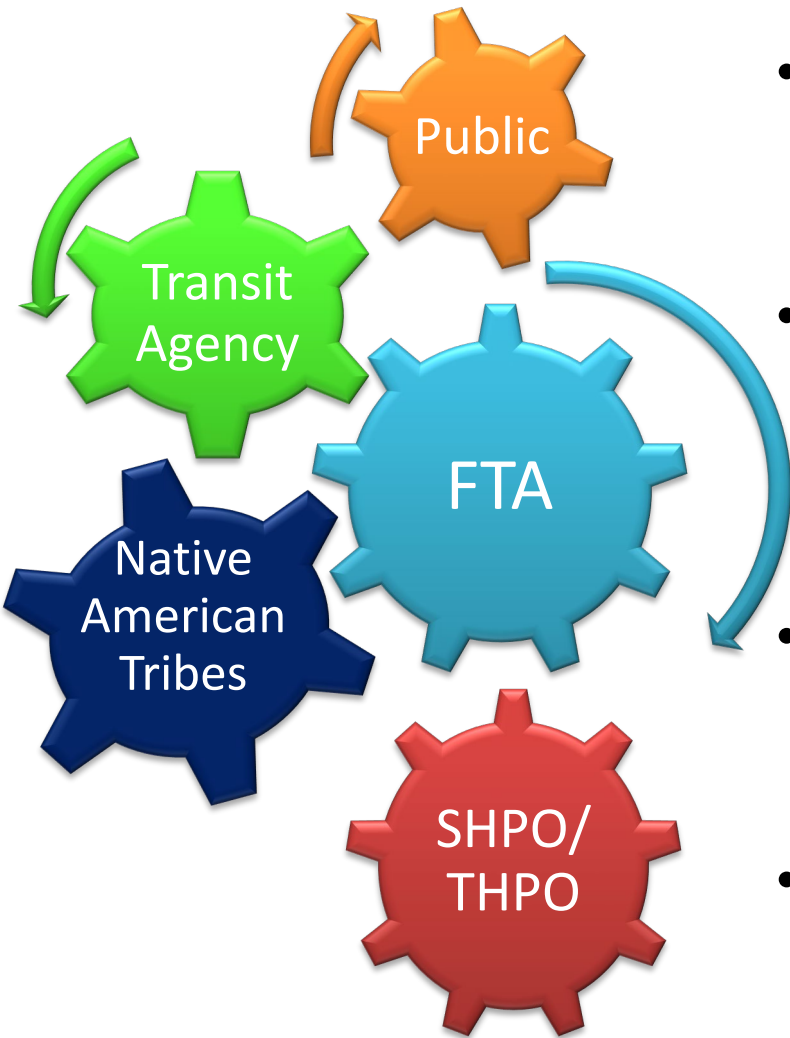


Section 106 of the [National Historic Preservation Act of 1966 \(NHPA\)](#) requires Federal agencies to take into account the effects of their undertakings on historic properties (36 CFR Part 800).

Historic properties are properties included in or eligible for inclusion in the National Register of Historic Places (36 CFR Part 800.16(I)(1)).



Section 106 Challenges

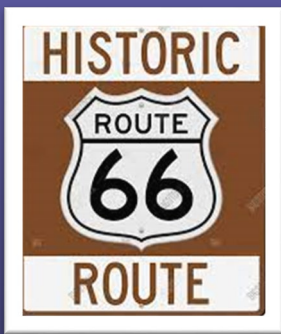


- Section 106 consultation must be complete before FTA can issue approval for NEPA and grants
- Consultation may require multiple submittals and meetings with stakeholders and Native American Tribes
- Consultation with SHPO/THPO may take longer than 30 days to review and comment on materials provided
- Missteps or disagreements as part of the Section 106 process can lead to significant project delays

Section 106 Exceptions



Installation, maintenance, repair, or expansion of Electric Vehicle Supply Equipment and charging stations (11/2022)



Effects on the Interstate Highway System, except for limited elements (such as historic bridges, tunnels, and rest areas) (2005)



Effects to rail properties within rail rights-of-way for listed of maintenance, repair, and upgrade activities or designated excluded historic rail properties (2018)

Area of Potential Effects

Is the project on or adjacent to historic properties or historic districts?

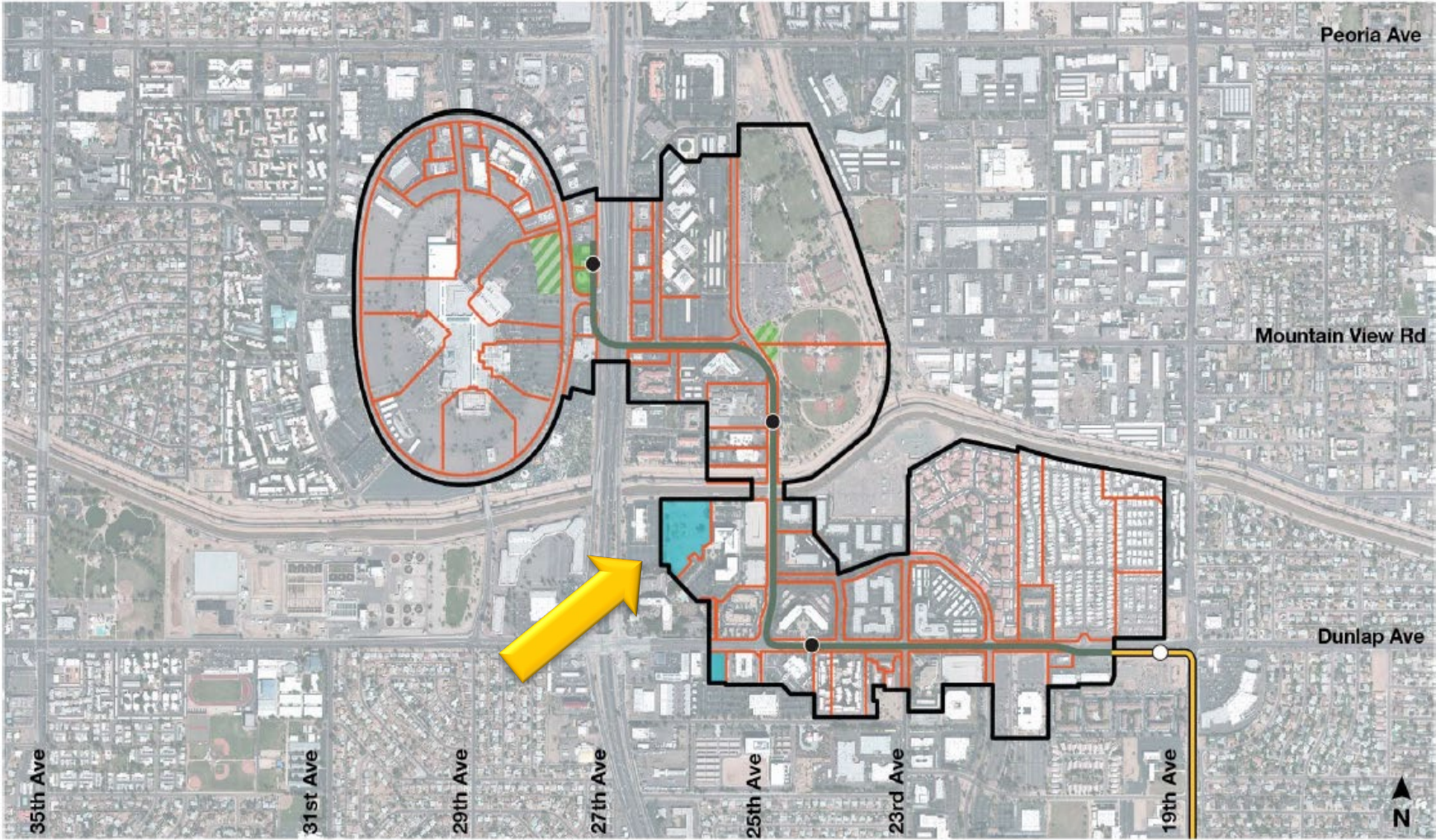
Is the project on or near Tribal lands or traditional cultural resources?

Does the project alter, demolish, or acquire a historic property?









Where does soil disturbance occur?



Area of Potential Effects



LEGEND

-  Existing Valley Metro Rail/Station
-  Northwest Extension Phase II
-  Proposed Phase II Station
-  Area of Potential Effects
-  Parcel Boundary
-  Potential Construction Staging Area
-  Transit Center
-  Potential Park-and-ride

1/4 Mile 1/2 Mile



Complete Information Leads to Completing Section 106 Consultation

Consultation Letter. The letter should include the following:

- Name and address of building or parcel
- Year the building was constructed
- National Register status: listed, eligible, or potentially eligible (over 50 years old)
- Description of the building (including character-defining features)
- Identification of the Area of Potential Effect (APE)
- Scope of Work (description of the proposed undertaking)
- Extent (depth, width) of any ground disturbance
- Any archaeological work that has previously been conducted (with reference to resulting report)
- Any previous modifications to the historic building materials
- Whether the building is in or near a historic district (if so, name the district)
- Statement as to whether the proposed work will meet the Secretary of the Interior's Standards for the Treatment of Historic Properties
[\[https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf\]](https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf)
- Request for concurrence with a finding “no historic properties affected” OR “no adverse effect” OR “adverse effect” (per the National Historic Preservation Act, 36 CFR 800).
- Email address of person who should receive SHPO's response. Note that all responses will be via email unless a hard copy is specifically requested.



Environmental Review Process

Environmental Program Overview

Environmental Review Process ▾

Overview

Legislation, Regulation, and Guidance

Preparing Environmental Documents

Environmental Decision Documents

Environmental Standard Operating Procedures

Environmental Resources Information ▾

Overview

Rail ROW Program Comment

Environmental Management Systems

Environmental Training and Technical Assistance

Environmental Resources

Environmental Standard Operating Procedures

 [fta-sops-managing-environmental-review-process-dec-2019.pdf](#)

FTA's Office of Environmental Programs developed environmental standard operating procedures (SOPs) to provide additional direction and recommendations to FTA staff who manage the environmental review process. The environmental review process SOPs supplement existing resources, such as FTA environmental regulations and various guidance documents. While initially developed for FTA staff, sponsors of FTA-funded projects may also find these SOPs useful.

The SOPs are listed and can be accessed individually in the table below. The table also indicates each SOP's applicability to categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs).

SOP No.	SOP Name	Purpose	Applicability (CE, EA, EIS)
00	SOPs Introduction and Background	Describes the applicability/ scope of the SOPs including general responsibilities and references.	CE, EA, EIS
1	Environmental Project File and Considerations for Administrative Records	Provides guidance to ensure that FTA has records of all necessary written materials, electronic or hard copy, that pertain to FTA's environmental review process for a project.	CE, EA, EIS
2	Project Initiation and Determining NEPA Class of Action	Provides guidance for the earliest phase of the environmental review process for FTA projects.	CE, EA, EIS

Reference: <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-standard-operating-procedures>



References

- FTA Guidance Center

<https://www.transit.dot.gov/guidance>

- FTA Environmental Standard Operating Procedures

<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-standard-operating-procedures>

- FTA Guidance on CE Implementation (updated 2023)

<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/guidance-implementation-ftas-categorical-exclusions>

- FTA Real Property Acquisition and NEPA) FAQ (2021)

<https://www.transit.dot.gov/regulations-and-programs/environmental-programs/fta-real-property-acquisition-and-national>

