



Section 106 Review of Wireless Facilities

FCC Environmental Compliance Workshop

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* This presentation and its contents are for informational purposes only; the Commission's rules in part 47 of the Code of Federal Regulations and the Commission's previous reports and orders adopting those rules represent the binding rules and determinations of the Commission.

Overview

- Introductions
- FCC:
 - Introduction to the Nationwide Programmatic Agreements
 - Effect Findings
 - Memorandum of Agreement
 - FCC Electronic Tools
 - Forms 620 and 621
- Advisory Council on Historic Preservation
 - General Role in Section 106
 - Section 106 and Infrastructure Projects
 - Involvement in FCC Undertakings

Environmental Compliance

- The FCC licenses spectrum for non-federal uses, including consumer and commercial use as well as state and local governmental use. It does not issue licenses for towers.
- Geographic area license holders determine where to deploy the infrastructure needed to use the spectrum to meet coverage objectives.
- In constructing wireless infrastructure, licensees must comply with the FCC's environmental rules, which implement the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).
- The FCC is responsible for ensuring that its actions and undertakings consider and comply with all applicable environmental laws and regulations.

Section 106 of the National Historic Preservation Act

- The National Historic Preservation Act (NHPA):
 - Created the National Register of Historic Places (NRHP).
 - Created the Advisory Council on Historic Preservation (ACHP).
 - Required each agency to develop Historic Preservation Programs and employ a Federal Preservation Officer (FPO).
- Section 106 of the NHPA requires federal agencies to consider the effect of federal undertakings on NRHP eligible and listed properties.
- The NHPA defines an undertaking to include, among other things, projects “requiring a Federal permit, license, or approval.”
- The FCC has consistently treated tower construction as an “undertaking” under the NHPA due to its relation to licensing and antenna structure registration.

FCC Program Alternatives Governing Section 106 Reviews

- The ACHP's rules (36 CFR Part 800) establish the Section 106 review requirements and identify "program alternatives" to create historic preservation review processes specific to an agency's undertakings.
- In August 2000, the ACHP established a Telecommunications Working Group to develop a streamlined Section 106 review process for wireless facilities.
- The Commission has entered into two Nationwide Programmatic Agreements (NPAs) with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO).
- The streamlined review requirements of the Collocation NPA (2001), as amended, and the Wireless Facilities NPA (2005) establish applicants' Section 106 obligations under the FCC's environmental rules.

The Section 106 Process

- The Wireless Facilities NPA broadly defines “applicant” to include Commission licensees, permittees, or registration holders, applicants or prospective applicants for wireless or broadcast licenses, authorizations or ASR, and their duly authorized agents, employees, and contractors.
- The FCC’s rules delegate Section 106 obligations to applicants, who follow the streamlined review requirements of the Collocation NPA (2001) and Wireless Facilities NPA (2005).
- An ACHP delegation letter allows applicants (and their consultants) to act on behalf of the FCC to initiate review and to prepare and distribute reports and findings to SHPOs, Tribes, and consulting parties prior to construction.

Premature Construction/Clearance

- An applicant violates Section 1.1312 of the FCC's environmental rules if it begins constructing a facility, including clearing soil or vegetation, disturbing ground or digging, before ascertaining whether the facility may have a significant environmental impact by completing Section 106 and reviewing the NEPA checklist.
- The Competition and Infrastructure Policy Division (CIPD) Infrastructure Team is the first line of environmental compliance review.
- The Enforcement Bureau is primarily responsible for enforcement of provisions of the Communications Act, the Commission's rules, orders, and various licensing terms and conditions. The Wireless Telecommunications Bureau has concurrent jurisdiction with the Enforcement Bureau over environmental enforcement.

General FCC NPA Provisions

- The NPAs do not apply on Tribal Lands unless a Tribal Historic Preservation Officer (THPO) or Tribal government agrees.
- NPAs do not apply on Federal Lands, but land managing agencies may avail themselves of similar rules by following the Broadband on Federal Lands Program Comment.
- NPAs encourage applicants to hire the appropriate Secretary of the Interior qualified professionals to support Section 106 review.
- The FCC employs a Federal Preservation Officer (FPO) and Deputy FPO to assist with the Section 106 process.
- The FCC becomes involved in Section 106 reviews when potential adverse effects are identified, to resolve disputes between parties, or at the request of a Tribe.

FCC 2001 Collocation NPA Overview

- Most antennas placed on existing towers are excluded from routine NHPA Section 106 review.
- Collocation on a tower constructed before 3/16/01 is ordinarily excluded provided that the antenna will not substantially increase the tower size and the tower has no pending complaints or unresolved adverse effects.
- Collocation on a tower constructed after 3/16/01 is excluded provided that the tower completed Section 106 review prior to construction, the antenna will not substantially increase the tower size, and the tower has no pending complaints or unresolved adverse effects.

FCC Collocation NPA Amendments

ADDITIONAL 2016 COLLOCATION AMENDMENT EXCLUSIONS:

- Collocations on and in buildings and structures that are not historic or in or near historic districts.
- Collocations on or in buildings or structures that are historic or in/near historic districts that are not National Historic Landmarks that meet size and visibility limitations and require no new ground disturbance.
- Collocations on utility poles or transmission towers in/near historic districts that meet size and visibility limitations and require no new ground disturbance.
- Collocations on lighting structures that the SHPO agrees are non-contributing elements within a historic district.

FCC Collocation NPA Amendments

2020 COLLOCATION AMENDMENT:

- Eliminates Section 106 review for certain collocations that involve a limited expansion beyond the boundaries of a tower site.
- Specifically, this amendment revises the definition of “substantial increase in size” to be consistent with its use in the Wireless Facilities NPA.
- As a result, collocations that do not “expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries” may qualify for Section 106 exclusion provided they adhere to other applicable size and equipment limitations.

FCC 2005 Wireless Facilities NPA Overview

- Applies to the construction and modification of “facilities,” which can be either towers or antennas.
- “Towers” are structures built for the sole or primary purpose of supporting licensed or authorized antennas and associated fencing, equipment, cabling, switches, power, and shelters.
- Excludes from Section 106 review:
 - Tower enhancement, replacement, and temporary towers.
 - Towers in industrial parks, malls, and communications or utilities rights of ways, provided the site is not in or near historic properties.
- Clarifies roles of applicants, SHPOs, and consulting parties.
- Establishes Tribal Outreach requirements.

Section 106 Review

- SHPO has 30 days to concur or comment on applicant's submittal (Form 620 for new towers or Form 621 for collocation).
- Concurrence on *No Historic Properties Affected* or *No Adverse Effect on Historic Properties* concludes Section 106 review (once Tribal consultation is complete).
- Failure to Concur OR Adverse Effect finding = Consultation continues.

Conditional No Adverse Effect

- Introduced in 1992 revisions to ACHP regulations (36 CFR § 800.5(b)).
- Permitted under FCC rules and the NPA.
- Permits the SHPO to “condition” the recommendation for a no adverse effect by requesting certain steps to reduce or eliminate the adverse effect.
- Use of this option does not trigger a Memorandum of Agreement (MOA) or require the applicant to file an environmental assessment (EA).

Adverse Effect

- When an applicant determines that a project will have an adverse effect and the SHPO and/or the THPO concurs, the applicant must notify the FCC and the ACHP.
- The ACHP does not always participate in a project but must be asked. The applicant is responsible for submitting the documentation and request to the ACHP.
- An adverse effect does not stop a project.
- To go forward, the applicant must submit an alternatives analysis and a mitigation plan. If the Form 620/621 identifies an adverse effect, these two elements must be included in the original documentation to the SHPO and THPO.

Alternatives Analysis

- Demonstrate to SHPO, THPO, FCC, and consulting parties that the applicant has considered other sites.
- Provide maps that show other sites.
- Provide a narrative that explains the reason for the preferred site.
- The applicant may request that any proprietary information be restricted to the FCC.

Mitigation Suggestions

- Lower the height of the tower.
- Reduce the size of the communications gear.
- Paint the tower and gear.
- Install a stealth tower.
- Plantings.
- Provide a benefit to the affected historic property.

Providing a Benefit to an Historic Property

- Prepare or update a National Register nomination.
- Commission Historic American Building Survey (HABS) or Historic American Engineering Record (HAER) documentation.
- Develop and install wayfinding signs or historical markers.
- Prepare a brochure.
- Develop a cell phone tour.
- Work with the SHPO and local community to identify historic preservation needs.

The MOA

- Applicant should negotiate with SHPO, THPO, and consulting parties on the stipulations for mitigation.
- Applicant should prepare the MOA following the FCC template available on our website.
- Draft MOAs should be sent to S106.MOA@fcc.gov for Commission review.
- All MOAs are reviewed by the FCC DFPO, FPO, and an FCC attorney.
- Most MOAs do not require that all of the mitigation measures be completed prior to construction.
- The MOA should include a reporting requirement to notify all of the signatories that the mitigation measures have been completed.

FCC NPA Electronic Tools

<https://www.fcc.gov/wireless/systems-utilities/tower-construction-notifications>

- Tower Construction Notification System (TCNS)
 - Voluntary system developed to facilitate Tribal Section 106 participation.
 - Tribes and Native Hawaiian Organizations designate geographic areas of interest. The FCC protects this information as confidential.
 - Project information supplied by the applicant is automatically forwarded to interested Tribes.
 - Tribes may respond if interested in further participation.
 - TCNS provides NOTIFICATION, it does not substitute for Section 106 process or government-to-government consultation unless the Tribe disclaims interest.

FCC NPA Electronic Tools

<https://www.fcc.gov/wireless/systems-utilities/tower-construction-notifications>

- E-106

- Electronic database used to file FCC forms supporting NPA reviews.
- Applicants first notify Tribes using TCNS and then file Form 620/621 triggering shot clocks.
- Form 620 is used for new towers; Form 621 is used for collocations.
- Applicants can refer non-responsive SHPOs/Tribes for FCC follow up.

PRO TIPS: Preparing Forms 620 and 621

- The FCC Form 620 is prepared for new towers; the FCC Form 621 is used for collocations.
- Follow the instructions found in the “Section 106 Tools” section at <https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting>.
- Procedures are detailed in Section VII of the 2005 NPA.
- The NPA encourages the use of Secretary of the Interior-qualified professionals to identify historic properties within the Area of Potential Effect (or “APE”).

PRO TIPS: Preparing Forms 620 and 621

- All fields in the Submission Packet should be filled out.
- Identification of historic properties and evaluation of effects should be carried out by the properly qualified individuals.
- The Form instructions include photograph requirements for the Submission Packet. Captures from Google Street view are not generally sufficient to meet these requirements.

ACHP Coordination with FCC



ADVISORY COUNCIL ON HISTORIC PRESERVATION
Preserving America's Heritage

FCC Environmental Compliance
Workshop
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General Role in 106

- Promulgate regulations that implement Section 106
- Policy roles in interagency initiatives
 - Workforce development
 - Climate change
 - Digital information
 - Indigenous issues
- 24 statutorily designated members address broader policy issues and direct program initiatives, making recommendations re HP to President, Congress, and heads of other federal agencies

ACHP & FCC

- 2 National Programmatic Agreements: a tailored approach to Section 106 to wireless facilities (tower construction and co-location)
 - Consultation
 - Identification effort
 - Assessment of effects

Tribal Consultation



- Early Coordination with Indian Tribes During Pre-Application Processes: A Handbook (2019)
 - Online Training Course – Early Coordination with Indian Tribes for Infrastructure Projects
 - For more information, visit: <https://www.achp.gov/indian-tribes-and-native-hawaiians>

Section 106 & Infrastructure Projects

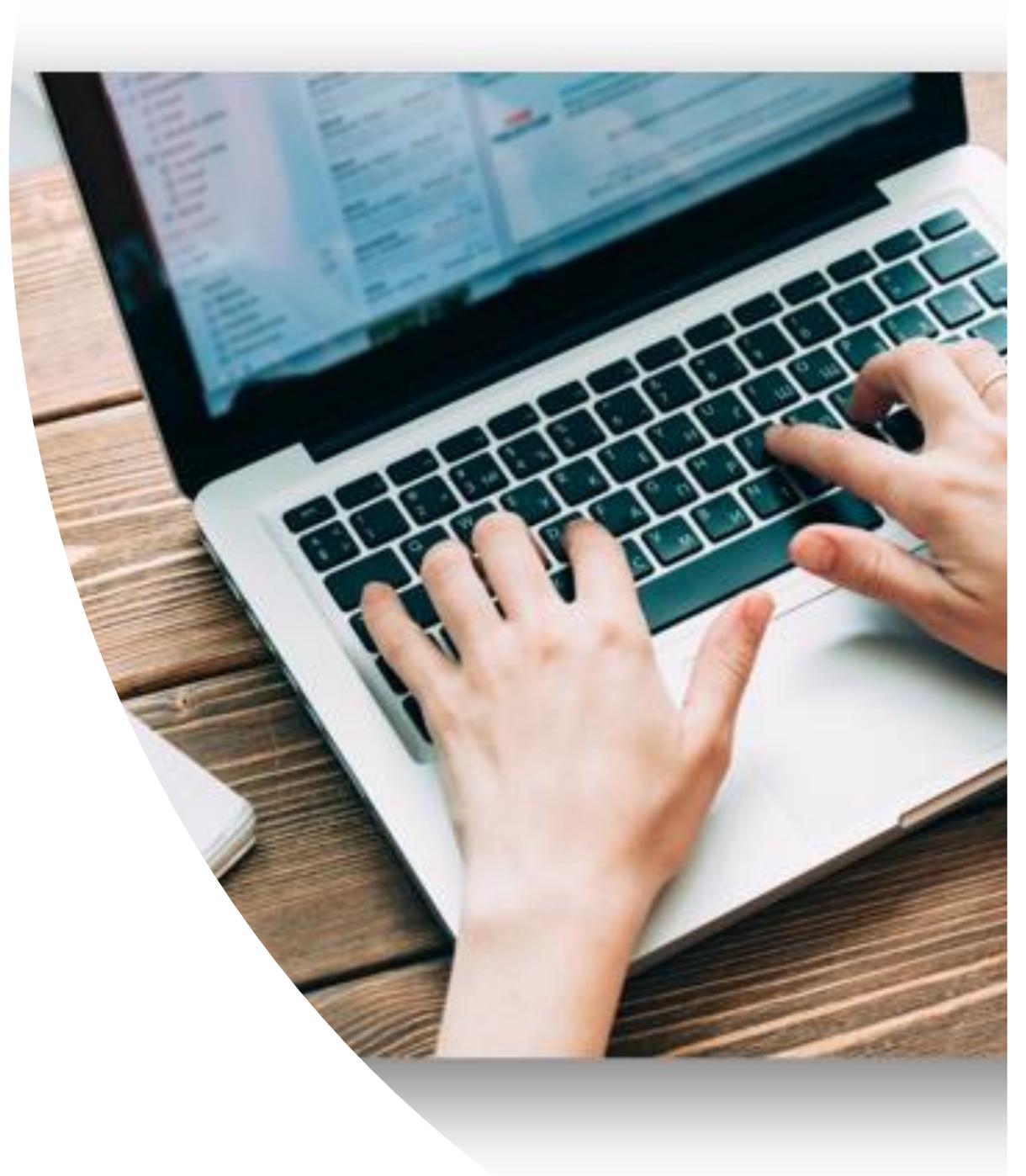
- Inter-agency coordination:
 - Federal Permitting Improvement Steering Council
 - Broadband Workgroup
- Section 106 program alternatives
- https://www.achp.gov/broadband_and_106

Involvement in FCC Undertakings

- Appendix A Criteria: ACHP may participate when the undertaking
 - Has substantial impacts on important historic properties
 - Presents important questions of policy or interpretation
 - Has potential for procedural problems
 - Presents issues of concern to Indian Tribes or Native Hawaiian Organizations
- For FCC → 90%+ NP rate
- Most common adverse effect: visual impacts

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QUESTIONS?

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