

## **FCC Section 106 Process and Consulting Party Involvement Q&A**

### **What is Section 106 of the National Historic Preservation Act (NHPA)?**

Section 106 of the NHPA requires federal agencies to consider the effects of federal Undertakings on historic properties. The FCC treats the construction of communications towers and the collocation of communications equipment using FCC-licensed spectrum as federal Undertakings subject to Section 106 review.

### **How does the FCC conduct the Section 106 Process?**

The National Historic Preservation Act (NHPA) of 1966 is implemented through the FCC's environmental rules. The Commission has entered into two Nationwide Programmatic Agreements (NPAs) with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO): The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission ([Wireless Facilities NPA](#)), and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas ([Collocation NPA](#)). The Wireless Facilities NPA describes the Commission's Section 106 processes for new tower construction and the Collocation NPA addresses the Section 106 review process for the treatment of collocation of communications equipment on existing structures. The NPAs do not apply on Tribal lands unless a Tribal Historic Preservation Officer (THPO) or Tribal government elects to follow them.

### **Who typically implements the Section 106 Process for FCC Undertakings?**

Commission licensees and Applicants are delegated the responsibility for initiating the Section 106 review process for proposed facilities, providing notice to the public and local government, identifying and evaluating historic properties, and assessing effects. Facilities constructed by FCC licensees or to support FCC-licensed services are subject to historic preservation review and must comply with the Commission's regulations implementing the NHPA. Tower owners that are neither licensees nor applicants must also follow these rules if they intend to host antennas supporting licensed service.

### **How does the FCC define an "Applicant" in the Section 106 Process?**

An Applicant is a Commission licensee, permittee, or registration holder, or an Applicant or prospective Applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity. See Wireless Facilities NPA at Section II.A.2

## **Who Participates in the Section 106 Process?**

The following parties are entitled to participate as consulting parties during Section 106 review:

- Advisory Council on Historic Preservation;
- State Historic Preservation Officers (SHPO);
- Federally recognized Indian Tribes/THPOs;
- Native Hawaiian organizations;
- Local governments; and
- Applicants for federal assistance, permits, licenses, and other approvals.

Other individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting parties “due to the nature of their legal or economic relation to the Undertaking or affected proper ties, or their concern with the Undertaking’s effects on historic properties.” 36 CFR § 800.2(c)(5); *see also* Wireless NPA at Section V.F (encouraging applicants to grant consulting party status “to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation”). See further below for additional questions and answers regarding consulting parties.

## **What is the FCC’s Section 106 Process?**

The Section 106 process for FCC Undertakings includes consultation with the appropriate SHPO, as well as notification to Tribal Nations that have expressed an interest in reviewing projects proposed in their designated areas of interest. The Commission maintains two databases, the E-106 system and the Tower Construction Notification System (TCNS), to facilitate communications with these parties.

In preparing the Submission Packet for the SHPO and consulting parties pursuant to Section VII of the Wireless Facilities NPA, an Applicant shall:

- (1) define the area of potential effects (APE) (defined at Section II.A.3 of the Wireless Facilities NPA);
- (2) identify Historic Properties (defined at Section II.A.9 of the Wireless Facilities NPA) within the APE;
- (3) evaluate the historic significance of identified properties as appropriate; and
- (4) assess the effects of the Undertaking on Historic Properties.

For each Undertaking within the scope of the Wireless Facilities NPA, the Applicant shall initially determine whether there are no Historic Properties affected, no adverse effect on Historic Properties, or an adverse effect on Historic Properties. The Applicant shall prepare a Submission Packet and submit it to the SHPO/THPO and to all consulting parties, including any Indian Tribe or Native Hawaiian organization (NHO) that is participating as a consulting party.

On or before the date that the Applicant sends its Submission Packet (described below) to the SHPO/THPO, the Applicant provides notice to the public and the local government.

Written notice must be provided to the public and to the local government that has primary land use jurisdiction over the project site on or before the date the Applicant submits the Submission Packet to the SHPO/THPO or Indian Tribe.

Typically, notice to the public is provided by publishing notice in a local newspaper of general circulation. Written notice may also be provided through the public notification provisions of the relevant local zoning or local historic preservation process for the proposed facility. The Applicant may also use other appropriate means of providing public notice, including seeking the assistance of the local government.

If the Applicant receives a comment from the public regarding potentially affected Historic Properties, the Applicant shall consider the comment and either include it in the initial submission to the SHPO/THPO or, if the initial submission has already been made, immediately forward the comment to the SHPO/THPO for review. An Applicant need not submit to the SHPO/THPO any comment that does not substantially relate to potentially affected Historic Properties. See Wireless Facilities NPA at Section V.E.

The SHPO/THPO shall have 30 days from receipt of the requisite documentation to review the Submission Packet.

If the SHPO/THPO receives a comment or objection, in accordance with Section V.E of the Wireless Facilities NPA, more than 25 but less than 31 days following its receipt of the initial submission, the SHPO/THPO shall have five calendar days to consider such comment or objection before the Section 106 process is complete or the matter may be submitted to the Commission.

If the SHPO/THPO determines the Applicant's Submission Packet is inadequate, or if the SHPO/THPO identifies additional Historic Properties within the APE, the SHPO/THPO will immediately notify the Applicant and describe any deficiencies. The SHPO/THPO may close its file without prejudice if the Applicant does not resubmit an amended Submission Packet within 60 days following the Applicant's receipt of the returned Submission Packet. Resubmission of the Submission Packet to the SHPO/THPO commences a new 30-day period for review. See Wireless Facilities NPA at Section VII.A.

### **What is a Submission Packet?**

A Submission Packet is the document to be submitted initially to the SHPO/THPO to facilitate review of the Applicant's findings and any determinations with regard to the potential impact of the proposed Undertaking on Historic Properties in the APE. Any documents required to be submitted along with FCC Forms 620 or 621 (application forms for new wireless facilities and collocations, respectively) are part of the Submission Packet. See Wireless Facilities NPA at Section II.A.13

### **What is a Historic Property?**

A historic property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or NHO that meet the National Register criteria. *See Wireless Facilities NPA at II.A.9.*

### **What is the Area of Potential Effects (APE)?**

The Wireless Facilities NPA defines APE as 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. *See Wireless Facilities NPA at Section II.A.3.*

The APE for direct effects is limited to the area of potential ground disturbance and any property, or any portion thereof, that will be physically altered or destroyed by the Undertaking. The APE for visual effects is the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register. *See Wireless Facilities NPA at Section VI.C.2-3.*

If the Applicant determines, or the SHPO and/or the Tribe/THPO recommends, an alternative APE for visual effects, the Applicant and the SHPO and/or Tribe may mutually agree to an alternative APE. *See Wireless Facilities NPA at Section VI.C.5.*

### **How does one become a consulting party on FCC Undertakings?**

An individual or organization that wishes to be a consulting party may submit a request to the Applicant. The Applicant shall consider all written requests from individuals and organizations seeking to participate as consulting parties and determine which should be consulting parties.

An Applicant is encouraged to grant such status to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation.

Any individual or organization denied consulting party status may petition the Commission for review of such denial. The Applicant may seek assistance from the Commission in identifying and involving consulting parties. *See Wireless Facilities NPA at Section V.F.*

### **What are consulting parties entitled to?**

Consulting parties are entitled to:

- (1) Receive notices, copies of submission packets, correspondence and other documents provided to the SHPO/THPO in a Section 106 review; and
- (2) be provided an opportunity to have their views expressed and taken into account by the Applicant, the SHPO/THPO and, where appropriate, by the Commission.

*See Wireless Facilities NPA at Section V.G.*

### **Does consulting party participation in the Section 106 Process require use of the E-106 system?**

No. E-106 is a voluntary system designed to save users time and resources by automating and expediting the exchange of information and correspondence in the Section 106 process. Consulting parties can participate through written communication outside of the E106 System. Written communications may include communications by e-mail or facsimile.

### **Additional Resources:**

[FCC Tower and Antenna Siting Webpage](#)

[Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process](#)

[National Programmatic Agreement for the Collocation of Wireless Antennas](#)

[FCC Environmental Compliance and Historic Preservation Review Workshop and Section 106 Review of Wireless Facilities Presentation](#)

[Advisory Council on Historic Preservation Section 106 Webpage](#)