

Positive Train Control Infrastructure:

*Section 106 Review Process under the
Advisory Council on Historic Preservation's
May 2014
Program Comment*

For More Information:

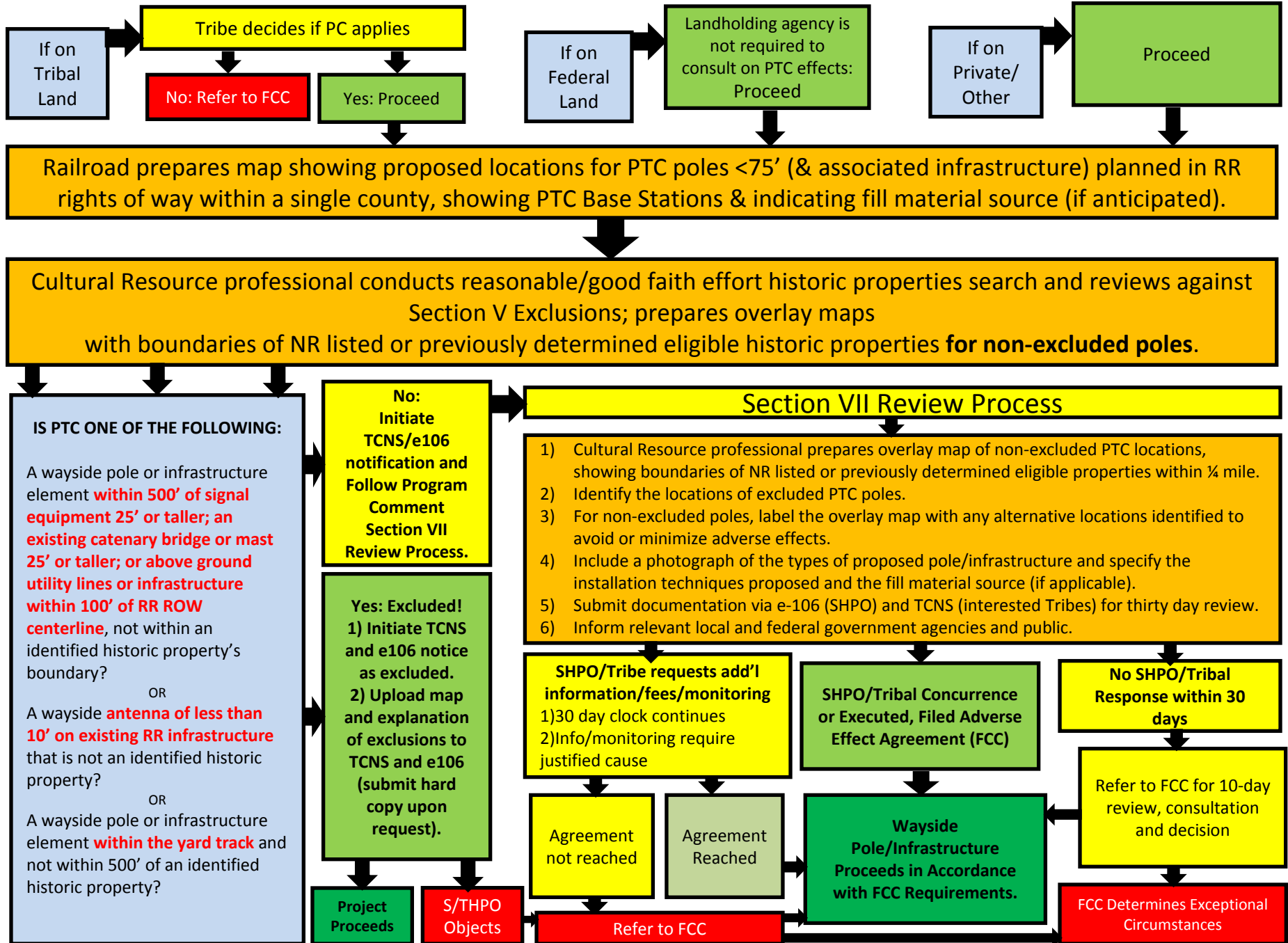
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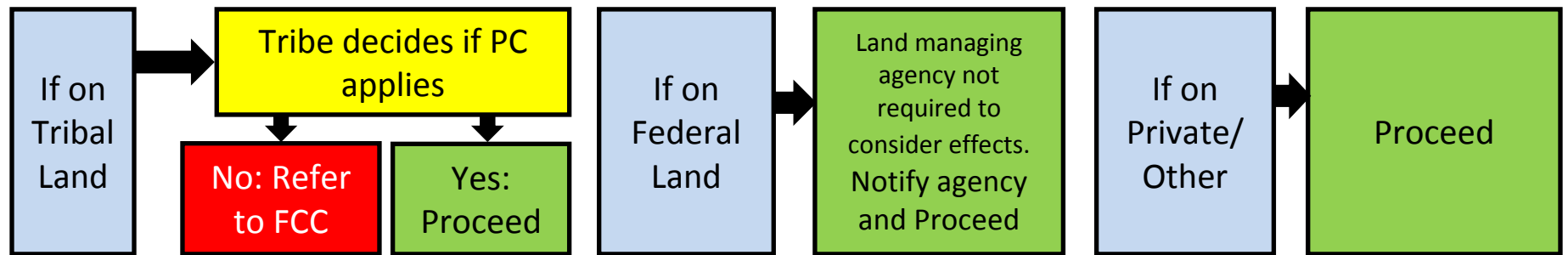
Background

- In May 2014, the Advisory Council on Historic Preservation (ACHP) issued a Program Comment to tailor Section 106 review of Positive Train Control (PTC) infrastructure.
- The full Program Comment is available through a link on the ACHP website: <http://www.achp.gov/news-positive-train-control-5192014.html>
- The Program Comment excludes some specified PTC infrastructure from standard Section 106 review, and streamlines such review for other PTC infrastructure.
- Railroads must use the FCC Tower Construction Notification System (TCNS) to ensure that Tribal Nations are appropriately included in the process.
- The Program Comment provides direction on how and when monitoring may be appropriate/required, and establishes more definitive timeframes for Section 106 review.
- The following slides walk through the Program Comment requirements and introduce a flow chart illustrating the review process.

APPLYING THE POSITIVE TRAIN CONTROL PROGRAM COMMENT FOR SECTION 106 REVIEW



Step 1: Determine whether the infrastructure is proposed on Tribal, Federal or Private Land.



Most consultations will be with the State Historic Preservation Office, unless the infrastructure is proposed on Tribal lands, where the Tribal Nation decides whether to follow the Program Comment.

The Program Comment relieves other Federal Agencies from Section 106 obligations with respect to PTC infrastructure that is covered under the Program Comment.

Step 2: Hire a Cultural Resource Professional and develop the required mapping.

Railroad prepares map showing proposed locations for PTC poles less than 75' high and associated infrastructure that is planned in railroad rights of way within a single county, showing PTC Base Stations and indicating fill material source (if anticipated).



Cultural Resource Professional conducts reasonable/good faith effort historic properties search and prepares overlay with boundaries of NR listed or previously determined eligible historic properties.

Many states require archaeologists to hold a state permit or license in order to conduct the records searches required to identify historic properties. Such searches must almost always be performed in the SHPO office or in the State Archives.

Historic properties are those formally determined eligible for listing, or those listed, in the *National Register of Historic Places*. Note: Cultural resource professionals should confirm with the SHPO staff that they have access to the most current eligibility information, as the most recent determinations may be in processing and not yet on file.

Step 3: Confirm Exclusions.

IS PTC ONE OF THE FOLLOWING:

A wayside pole or infrastructure element **within 500' of signal equipment 25' or taller; an existing catenary bridge or mast 25' or taller; or above ground utility lines or infrastructure within 100' of RR ROW centerline**, not within an identified historic property's boundary? *Section V A (1)*

OR

A wayside **antenna of less than 10' on existing RR infrastructure** that is not an identified historic property? *Section V A (2)*

OR

A wayside pole or infrastructure element **within the yard track** and not within 500' of an identified historic property? *Section V A (3)*

Cultural Resource Professional reviews maps to confirm Section V Exclusions.

Railroads identify the excluded infrastructure locations, *Cultural Resource Professional confirms that no identified historic properties near the infrastructure disqualify the exclusion at each location.*

Excluded infrastructure must be identified on mapping, and the applicable Section V exclusion must be specified for each location.

Note: Batching excluded infrastructure submissions separately will facilitate SHPO and Tribal clearances and allow reviewing offices to focus review efforts on non-excluded batches.

Step 4A: Excluded Infrastructure.

Excluded Infrastructure:

Wayside poles or infrastructure elements **within 500' of signal equipment 25' or taller; an existing catenary bridge or mast 25' or taller; or above ground utility lines or infrastructure within 100' of RR ROW centerline**, not within an identified historic property's boundary;
OR
Wayside **antennae of less than 10' on existing RR infrastructure** that is not an identified historic property;
OR
Wayside poles or infrastructure elements **within the yard track** and not within 500' of an identified historic property.

- 1) Initiate TCNS/e106 notice as Excluded PTC; and
- 2) Upload mapping and explanation of exclusions to TCNS and e106
(also provide hard copy upon request)

No SHPO or Tribal Objection:

Section 106 complete after 30-day review period ends

SHPO/Tribe Objects within 30-day review period: Notify the FCC

Railroad consults with SHPO/Tribe and resolves concern

FCC resolves, usually within 10 days

A SHPO or Tribal Nation may identify a pole as ineligible for an exclusion because it is within the boundaries of a historic property about which a railroad was previously unaware.

SHPO/Tribal concerns about excluded poles will not be considered outside of the 30-day period except in extraordinary circumstances.

Step 4B: Non-Excluded Infrastructure.

Initiate TCNS and e106 notification and Follow Program Comment Section VII Review Process for Non-excluded PTC Infrastructure.



PREPARE SUBMISSION:

- 1) Develop overlay maps for non-excluded PTC sites showing the boundaries of NR listed or determined eligible properties within ¼ mile.**
- 2) Identify the locations of excluded PTC poles (if any in batch) on map.**
- 3) For non-excluded poles, identify any alternative PTC locations considered possible to avoid or minimize adverse effects.**
- 4) Specify the type of proposed pole/infrastructure, provide photographs, and describe installation techniques and the fill material source.**

SUBMIT DOCUMENTATION FOR 30-DAY REVIEW:

- 1) Upload via e-106 for SHPO and FCC access**
- 2) Provide hard copy forms to SHPOs upon request**
- 3) Upload via TCNS for Tribal Nations access**

ALERT LOCAL AND FEDERAL GOVERNMENT AGENCIES AND THE PUBLIC.

APPLYING THE POSITIVE TRAIN CONTROL PROGRAM COMMENT FOR SECTION 106 REVIEW

Section VII Review Process for Non-Excluded PTC Infrastructure

POSSIBLE OUTCOME #1:

SHPO and Tribal Nations Concur on No Adverse Effect
or Agree on Adverse Effect Agreement
and Execute and File Agreement with the FCC Federal Preservation Officer

Section 106 is Complete
Project Proceeds

(in Accordance with Adverse Effect Agreement, if Applicable, and
upon completion of NEPA/other regulatory requirements)
Environmental Assessment is required if Section 106 process
resulted in Adverse Effect Agreement

APPLYING THE POSITIVE TRAIN CONTROL PROGRAM COMMENT FOR SECTION 106 REVIEW

Section VII Review Process for Non-Excluded PTC Infrastructure

POSSIBLE OUTCOME #2:

**No SHPO/Tribal Response (or no Substantive Response) within 30 days,
Railroad refers to FCC (as Reason 1)**

SHPOs and Tribes that **have posted a reply in TCNS** can be referred via email to PTCQuestions@fcc.gov

Tribes that **have not posted a project-specific reply in TCNS** can be referred through link in TCNS.

Include copies or summaries of any communications with SHPO/Tribe that are not in TCNS or e106

The non-responsive SHPO and/or Tribal Nation will have no further opportunity to participate in review unless the FCC decides otherwise and informs all parties within 10 business days.

FCC Determines Exceptional Circumstances and Advises Railroad on Next Steps

Project Proceeds in Accordance with FCC Requirements

APPLYING THE POSITIVE TRAIN CONTROL PROGRAM COMMENT FOR SECTION 106 REVIEW

Section VII Review Process for Non-Excluded PTC Infrastructure

POSSIBLE OUTCOME #3:

SHPO and/or Tribe Raises Substantive Concern(s) within 30 days

Agreement not reached within the 30-day timeframe

Railroad refers to FCC (as Reason 2) and continues to consult with SHPO/Tribe for 10 more business days

SHPOs and Tribes that have replied through TCNS can be referred via email to PTCQuestions@fcc.gov

Tribes that have not posted a reply in TCNS can be referred via TCNS

No Agreement= Refer to FCC Reason 3: FCC Consults 10 (or more) business days to Resolve

Railroad Reaches Agreement with SHPO/Tribe
(if Adverse Effect Agreement executed, must be filed with FCC)

Project Proceeds in Accordance with FCC Requirements

FCC Determines Exceptional Circumstances, Advises Railroad on Next Steps

APPLYING THE POSITIVE TRAIN CONTROL PROGRAM COMMENT FOR SECTION 106 REVIEW

