



National Conference of  
State Historic Preservation Officers

February 25, 2026

Travis Voyles  
Acting Chairman  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001

Dear Acting Chairman Voyles,

On behalf of its members, the National Conference of State Historic Preservation Officers (NCSHPO) appreciates the opportunity to respond to your recent request for review of the regulations found in 36 CFR 800. As the State Historic Preservation Officers representing all 59 states, territories, and freely associated states, our members offer the critical diversity of perspectives necessary to achieve a well-rounded approach to regulatory change. Although these varied viewpoints do not always allow for consensus on every issue, there are many areas in which SHPOs are in general agreement.

So far we have been heartened to see, in recent committee hearings and discussions, the overwhelming and bipartisan support for the National Historic Preservation Act and its goals. This spirit of support makes us optimistic that regulatory change, applied judiciously, can help to achieve the greater clarity that is needed for increased efficiency in the Section 106 process. While many preservation successes achieved in past decades can be traced to the thoughtful and well-considered regulations implemented by the ACHP, we agree that there is value in reexamining these regulations as one of several avenues for streamlining reviews.

Under existing regulations, SHPOs have consistently worked with federal agencies to offer quick review windows and to expand efficiencies through state and nationwide programmatic agreements. In most cases, Section 106 reviews are completed by SHPOs in a matter of days. We recognize, however, that more complex situations sometimes arise where clarity is lacking in the regulations, and where more guidance is needed. To this end, we offer the following areas of consideration:

- 1) **Designation of Lead Agencies:** As you know, this issue has been specifically raised in committee hearings. Because there is no regulatory requirement to

designate a lead agency, project proponents may be forced to navigate the differing requirements of two or more agencies, particularly for projects with long, linear footprints like powerline or pipeline construction, that pass through many jurisdictions.

Establishing a straightforward requirement to designate a lead agency in these cases, along with clear instructions on how that designation should take place, would reduce burdens for SHPOs and project proponents as well as federal agencies.

- 2) **Delegation of Federal Responsibilities:** Our members continue to express concerns that tasks are frequently delegated by agencies to consultants or “responsible entities” with little or no training, and that agencies often don’t get involved in the process until permits are being sought. As a result, these delegates often turn to SHPOs for Section 106 guidance, leading to longer timelines, increased confusion, and added strain on limited state resources.

We recommend that this gap be addressed in regulatory updates or accompanying guidance to provide agencies with clearer direction on how to meet their Section 106 obligations, including that agencies take a more active involvement with responsible entities in the early stages of the process. We also recommend that federal programs be audited, much in the same way that state programs are audited now, to ensure that this guidance is followed.

- 3) **Area of Potential Effects (APE):** Our members report ongoing confusion surrounding identification of the Area of Potential Effects (APE), and note inconsistencies in how they are determined by agencies. Depending on the agency’s policies, the identified APE may be very narrow, encompassing only the limited footprint of a project and ignoring obvious effects beyond that footprint; or it may be unmanageably broad, stretching identification of potential effects to impractical limits.

We would welcome more guidance that clearly defines the parameters for identifying the APE, ensuring that such determinations are reasonable for assessing impacts to the integrity of historic properties without being unnecessarily burdensome to industry. Specifically, it would be helpful to have more clarity on how to properly address APEs that extend into historic districts, as well as APEs from projects that result in significant visual changes to large cultural landscapes.

We further recommend that any regulations conflicting with the definitions outlined in 36 CFR 800 (e.g., Appendix C to 33 CFR Part 325) be revised to align with new guidance.

- 4) **Program Comments:** In recent years, confusion and controversy has surrounded the use of program comments. These program alternatives were originally intended to address discrete, repetitive undertakings with predictable outcomes. However, the lack of specificity in 36 CFR 800.14(e) has led to frequent and intensive study, review, and dialogue, requiring significant time and resources from SHPOs, THPOs, the Advisory Council, and other stakeholders.

We recommend that future regulations clarify the intended scope and purpose of program comments. We further recommend establishing clearer standards for the level of effort required to submit a program comment, including requiring draft program comments to be more comprehensive and detailed before initiating the 45-day review period.

- 5) **Reasonable and Good Faith Effort:** The regulations in 36 CFR 800.4(b)(1) address the required level of effort to identify historic properties, and compel a federal agency to make a “reasonable and good faith effort” prior to an undertaking. Our members have observed that this standard is interpreted inconsistently across agencies. When too little effort is put into identification of properties in advance of an undertaking, this can lead to costly and avoidable mitigation in later stages. When too much effort is applied, agencies can sink more time and cost into an undertaking than is necessary for the scope of the project. A clearer standard for level of effort would help avoid both scenarios.
- 6) **SHPO-Initiated Program Alternatives:** The regulations in 36 CFR 800.15, which are reserved for Tribal, state, and local program alternatives, have yet to be completed. Some of our members have expressed interest in exploring the potential for SHPO-initiated program alternatives. These program alternatives would allow states to be more proactive in managing their historic properties while reducing the need for active involvement by the ACHP.

NCSHPO would welcome the opportunity to further discuss the details of this section if the Council decides to move forward with completing 36 CFR 800.15. More broadly, we believe that SHPOs are best positioned to identify and develop effective solutions within their own states, and that the Section 106 process is most effective when SHPOs take a strong and active role.

- 7) Long, Linear Projects:** These types of projects have been pointed out in committee meetings and discussions as having strong potential to delay the Section 106 process. NCSHPO recognizes that they are an area of concern and invites the ACHP to more clearly identify which types of long, linear projects it perceives to be the greatest challenge. For example, are the most significant issues associated with pipelines, broadband, railroads, highways, transmission lines, or another type of undertaking? A more precise definition would help focus the conversation, and would be especially helpful in discussions surrounding areas of potential effect.

The issues listed above are not exhaustive but reflect some that our members consider most in need of attention. Many may require regulatory change while others may be better addressed through supplementary guidance. Additionally, there are many areas where efficiencies can be sought through sustained collaboration or targeted funding.

One of the issues most frequently cited by SHPOs is the need for additional staffing. The volume of Section 106 reviews and pressure for expedited timelines have increased over time, while SHPO funding through the HPF has not meaningfully increased. SHPOs must maintain staff not only in Section 106 review positions specifically, but also in positions related to survey, inventory, the National Register (related both to structures and to archaeology) and, in most cases, GIS and database management, in order to fulfill the SHPO role in Section 106 in its entirety. With recent decreases in federal staff, an even greater burden has been placed on SHPOs.

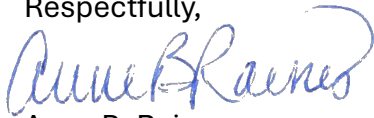
Technology is another ongoing concern. While some SHPOs maintain up-to-date GIS databases and online submission portals, which are vital to reducing review times, others lack these capabilities or are still in early stages of development. The NCSHPO Technology and Survey Strategies Committee is currently assessing technological needs and gaps across our membership, and is collaborating with ACHP staff to assist in exploring new technology to improve access to data and increase uniformity. Some SHPOs have also suggested the creation of an online consultation network to facilitate communication between stakeholders, including clarifying appropriate points of contact for Tribes and Tribal Historic Preservation Officers (THPOs), which are often difficult to determine.

With both staffing and technology shortfalls, insufficient funding remains the limiting factor. In some states, agencies like state departments of transportation partner with SHPO offices to provide funding for dedicated staff and technological needs like digitization of GIS data. It would be very helpful to explore ways to expand application of these partnership models to federal agencies, particularly those with the highest volumes of reviews, or to seek other avenues for dedicated funding.

Overall, whether through regulatory change, supplementary guidance, or stronger investment in staff and technology, NCSHPO and its members see many meaningful opportunities to improve efficiency and predictability in the Section 106 process, and we appreciate the invitation extended by the Council to participate in this conversation. As it continues, we recommend that future working groups analyze examples of real-life projects, with both successful and unsuccessful outcomes, to determine points for improvement. We would be happy to submit some examples if needed.

Clear regulations are essential to any successful process, and as Federal agencies' primary partners in implementing Section 106, State Historic Preservation Officers stand ready to assist the Council in identifying practical improvements. We look forward to continued collaboration and respectfully request the opportunity to remain engaged as this discussion advances. Thank you for your consideration.

Respectfully,



Anne B. Raines

President

CC:

Erik Hein, Executive Director, NCSHPO

Reid Nelson, Executive Director, ACHP

Kelly Fanizzo, General Counsel, ACHP