



August 3, 2026

Dear Fellow Council Members,

In response to the Council's call to provide input regarding Section 106 regulation changes by August 3, NCSHPO convened a working group to identify points of concern and generate a broad list of discussion concepts to address perceived problems with the Section 106 process. The discussion concepts were then submitted to the broader NCSHPO membership of 59 State Historic Preservation Officers for feedback. The following is a summary of their conclusions as they relate to the five questions we were advised to consider by the Executive Director in his June 11 email to Council Members.

Question 1. Could the Section 106 regulations, or any portion thereof, be streamlined to more effectively achieve the statutory objectives of the NHPA? If so, what changes should be made?

Members identified the following areas where streamlining could occur while preserving the statutory purposes of the National Historic Preservation Act.

Clarify Areas of Potential Effect (APEs) and Address NEPA Language

NCSHPO recommends standardizing APE evaluations based on the seven aspects of integrity as defined in National Park Service guidance, which include location, design, setting, materials, workmanship, feeling, and association. These are the characteristics which determine a historic property's eligibility for the National Register, and they provide a consistent point of reference for assessing whether an undertaking may have the potential to cause adverse effects. New guidance should be developed at 36 CFR 800.5(1) regarding application of the criteria of adverse effect using these aspects of integrity to increase predictability and provide for reasonable and proportionate mitigation measures within the existing Section 106 framework.

Although specific references to indirect and cumulative effects could be removed from 36 CFR 800.5(a)1 and from the statutory definition of *Area of potential effects* found at 36 CFR 800.16, these effects retain the potential to alter a property's aspects of integrity and therefore must be considered in the Section 106 process. Any attempt to restrict consideration only to direct and proximate effects would, in addition to failing to meet the intent of Section 106, cause disproportionate and devastating harm to cultural landscapes, Tribal resources, and archaeological sites in ways that may not be apparent for years to come.

In general, NCSHPO members support removing the bulk of the language in 36 CFR 800.8 regarding coordination with NEPA, retaining only 36 CFR 800.8(a)1, which encourages early coordination. We further suggest adding language specifying that compliance with NEPA does not constitute compliance with Section 106 and that each statute imposes independent legal requirements that must be satisfied separately.

Improve Agency Communication and Accountability

NCSHPO recommends that regulations focus on raising agency standards by requiring that they initiate consultation early, respond to SHPO comments within a 30-day period, provide complete submissions adequate for meaningful review, employ qualified staff that meet the Secretary of Interior's Standards, and maintain regular communication on project status throughout the process. We suggest adding language to 36 CFR 800.3 to require early discussion with SHPOs/THPOs to identify potential issues prior to formal initiation of consultation. We also suggest adding timeframes to 36 CFR 800.6 (a)(1) and to 36 CFR 800.6 (b)(1)(iv) for notifying ACHP of adverse effect findings and for submitting MOAs to ACHP staff.

NCSHPO disagrees with any effort to set arbitrary limits on consultation. There is no data to suggest that consultation has led to significant delays in the Section 106 process, and any attempt to curtail meaningful consultation directly undermines the core principles of the National Historic Preservation Act.

Encourage and Expand the Use of Programmatic Agreements (PAs)

Programmatic agreements are perhaps the most powerful tools available for streamlining Section 106 and are currently underutilized. They allow tailored and consensus-based review procedures for projects, agencies and programs, and have a documented history of providing predictable review while preserving protections for historic properties. Additionally, they afford flexible development of efficiencies that align with state laws and regional considerations. NCSHPO supports regulatory language and guidance that would broaden development and use of these agreements, particularly those that address recurring low-impact activities, or are tailored to large-scale projects.

Many members support the development of a PA to streamline low-impact flood restoration work and allow faster movement on floodplain projects. Many also show a strong interest in working with the Army Corps of Engineers to create a straightforward PA for that agency's activities, while rescinding the current Appendix C regulations that have led to persistent confusion and legal challenges.

Overall, our members agree that expanded use of PAs would appropriately address most efficiency concerns in ways that many other suggested concepts would not. Some of these concepts, such as artificially narrowing definitions of terms that are already defined in law, represent an avoidance of Section 106 responsibilities and invite legal disputes. Others, such as exempting certain transmission and right-of-way activities altogether, fail to recognize the

efficiencies that can be achieved with PAs. In July, NCSHPO coordinated with ACHP, BPA, SWPA, and WAPA to complete a Nationwide Programmatic Agreement (NPA) for multi-state transmission line operations and maintenance. This NPA incorporates the concerns of all stakeholders while respecting the fundamental principles of the National Historic Preservation Act, and provides a model for development of future agreements.

Designate a Lead Federal Agency

NCSHPO continues to support regulatory requirements to designate a lead federal agency in undertakings that involve multiple agencies. This issue has been identified often in committee hearings and round table discussions and has received broad agreement. Because there is no regulatory requirement to designate a lead agency, project proponents are forced to navigate the different 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.

Question 2. Is there any portion of the Section 106 regulations that are difficult to interpret or have become unnecessary, ineffective, or ill-advised? If so, please identify them.

As discussed above, NCSHPO supports removing the bulk of the language in 36 CFR 800.8 regarding coordination with NEPA, retaining only 36 CFR 800.8(a)1, which encourages early coordination of Section 106 and NEPA. While some concepts, like the concept of a “good faith effort” in identification of historic properties, or proper delegation of federal responsibilities to other parties, may require further clarity, NCSHPO members generally agree that this level of detail is best left to ACHP guidance documents.

Question 3. Have the Section 106 regulations, or any portion thereof, become outdated? If so, how can they be modernized to better accomplish the statutory objectives of the NHPA?

The Section 106 regulations as written provide a remarkably resilient framework for implementing the complex and nuanced requirements of the National Historic Preservation Act. While modifications to the regulations may be necessary at times to keep them current, an extensive re-write of the regulations aimed at bypassing or fast-tracking key aspects of the NHPA is unwarranted and unlikely to yield any efficiency, as it would involve a vast retooling of the mechanisms that agencies and stakeholders rely on to carry out the process. Programmatic agreements as provided for in the regulations already allow wide latitude for tailoring and flexibility within the legal bounds of the NHPA.

Question 4. Can any new technologies be leveraged to modify or streamline the Section 106 regulations? If so, please identify them.

Over the years, NCSHPO's members have routinely pointed out that investments in up-to-date technology are instrumental to a smooth Section 106 process. While some SHPOs possess sophisticated electronic submission systems, Geographic Information Systems (GIS), and document digitization systems, many still lack the funds to bring those systems to fruition or to support yearly maintenance costs.

Adequate funding of these systems would improve access to historic property information and survey data, and reduce avoidable stakeholder conflicts by allowing early identification of properties. GIS viewshed models can be extremely useful in the proper identification of APEs. A one-time appropriation to SHPOs to develop or improve these technologies, supported by relatively modest yearly maintenance funds, would make the Section 106 process exponentially more efficient and consistent nationwide.

Question 5. What additional information should the ACHP collect regarding the Section 106 process? Should the collection of such data be directed in the regulations?

The ACHP should collect information on average consultation timelines, timing of consultation initiation, completeness of agency submissions, staffing capacity, utilization of programmatic agreements, implementation of agreement documents, frequency and causes of project delays, and measures of consultation outcomes and effectiveness. Compilation of these data would provide evidence to support future decision-making, and help distinguish operational challenges from issues requiring regulatory revision.

In general, the Council has so far operated on the assumption that Section 106 is a significant source of project delay, yet little evidence has been presented to show either that Section 106 is the primary cause of delays or that sweeping regulatory changes would improve project timelines. As a result, consequential decisions are being made based primarily on anecdotal evidence. NCSHPO recommends that ACHP collect accurate, verifiable data regarding whether the Section 106 process is a source of project slowdown, and where in the process that slowdown occurs.

In polling its members, NCSHPO found that SHPOs overwhelmingly complete reviews in far less time than the 30 days allotted by regulation, and that agencies frequently do not initiate consultation until projects have already been under development for months or even years. While stakeholder review and consultation continues to be a prime of focus for regulatory "streamlining", there is no data to support that consultation is a significant source of delay.

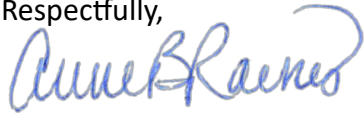
Summary

The conclusion of NCSHPO and its members is that the principal challenges affecting the Section 106 process are operational rather than regulatory. Earlier consultation, stronger agency accountability, improved staffing and training, better guidance, expanded use of programmatic

agreements, technology modernization, and improved performance data are far more likely to support efficiency than broad revisions to the regulations themselves.

NCSHPO is happy to offer the above recommendations regarding regulatory change, but suggests that regulatory revisions should be viewed as small component of a broader effort to improve the Section 106 process if efficiency is the goal. We caution that a continuation down the current path of broad de-regulation, unguided by data, will lead only to more confusion and lawsuits aimed at Federal agencies, and cause lasting harm to the historic properties under their care.

Respectfully,

A handwritten signature in blue ink, reading "Anne B. Raines". The signature is fluid and cursive, with the first name "Anne" being more prominent.

Anne B. Raines
President

CC:

Erik Hein, Executive Director, NCSHPO

Reid Nelson, Executive Director, ACHP