National Trust *for* Historic Preservation®

February 27, 2026

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

**Re: Potential Updates to Section 106 Regulations, 36 C.F.R. Part 800**

Dear Vice Chairman Voyles,

The National Trust for Historic Preservation in the United States ("National Trust") thanks you for this opportunity to comment on the initiative by the Advisory Council on Historic Preservation ("ACHP") to "consider how the Section 106 regulations might be modified, clarified, and streamlined to better accomplish the statutory objectives and requirements of the National Historic Preservation Act."[1] While the Section 106 process is highly efficient and successful, the National Trust agrees that there are ways in which it could be improved. The National Trust is also aware of the concerns about the Section 106 process that were raised during the Senate Committee on Energy and Natural Resources hearing on October 29, 2025. We are committed to working with both the ACHP and interested members of Congress to address those concerns and look forward to collaboratively developing solutions that balance the needs of federal agencies with their responsibilities under the National Historic Preservation Act ("NHPA").

## I. Four Key Issues

In your email to ACHP members on January 30, 2026 you identified four "salient, substantive issues that will need our attention":

1. Defining the undertaking and establishing the area of potential effects
2. Assessing indirect and cumulative effects
3. Managing review/scope of review for long linear projects with limited federal involvement
4. Managing timelines for review.[2]

The National Trust agrees that these were the key issues identified by the Senate, and we believe that there are reasonable changes that can be made to 36 C.F.R. Part 800 to address each one. In many cases, small changes to existing regulations could positively impact multiple issues.

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[1] *Email from Vice Chair Voyles to ACHP members* (Jan. 30, 2026).

[2] *Id.*

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The National Trust offers the following recommendations in response to these issues:

### 1. Issue new guidance on defining the undertaking & establishing the Area of Potential Effects ("APE")

The Section 106 regulations state that the Area of Potential Effects "may be different for different kinds of effects," 36 C.F.R. § 800.16(d), but there is currently no guidance on how to account for those differences. In our experience, many agencies are confused by this, and the approach to designating different types of APEs can be highly inconsistent from agency to agency. New guidance on this issue would be extremely useful and would help standardize and streamline the identification of APEs.

For example, distinguishing between APEs for ground disturbing impacts and APEs for visual impacts, and providing guidance on how to treat them differently, could help focus identification efforts and streamline the review process. The ACHP could also provide specific guidance on what adverse effects to consider within different types of APEs and how to define their geographic scope. Some federal agencies have already developed internal guidance on these issues, like the Bureau of Land Management's Visual Resource Management program, which helps to identify and account for visual impacts.[3] The ACHP should study this and other successful agency programs and incorporate their best practices into new guidance.

### 2. Assessing indirect and cumulative effects

In most cases, the consideration of indirect and cumulative effects is essential for reasonable federal agency decision making under Section 106. For example, transportation projects often generate development activities by third parties that are reasonably foreseeable and extend well beyond the footprint of the transportation project itself. The consideration of these clear and well-known types of indirect and cumulative adverse effects is one of the core protections of Section 106, and helps to ensure that the agency can meaningfully "take into account" the full effects of the undertaking. Consideration of cumulative effects cannot be eliminated without unreasonably undermining the NHPA.

There are many examples where the consideration of cumulative and indirect adverse effects during Section 106 consultations resulted in positive outcomes. For example, in Charleston, SC, a proposed cruise terminal expansion that would have inflicted substantial indirect and cumulative adverse effects upon the Charleston National Historic Landmark District was ultimately abandoned in part due to the consideration of those adverse effects under Section 106. Instead, the same land was recently sold by the South Carolina State Ports Authority for $250 million, and a $2 billion mixed-use development is

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[3] *See* https://www.blm.gov/programs/recreation/recreation-programs/visual-resource-management.

now planned on the site that will generate $47 million annually in tax revenue.[4]

Another relevant example is the 1993 proposal for a Disney's America theme park, which would have been located just west of Manassas National Battlefield Park. Although no federal funds were being used for the project, Disney needed the approval of the Federal Highway Administration ("FHWA") in order to build an interchange on I-66 to access the new development. FHWA readily recognized that a meaningful evaluation of the project's impacts had to extend well beyond the footprint of the federal approval for the interchange, and needed to encompass not only the entire Disney campus, but also the sprawling commercial and residential development that would have been triggered by the theme park. Ultimately, Disney withdrew its plans, thus avoiding what would have been an absolutely devastating array of adverse effects.[5]

While the consideration of indirect and cumulative effects is incredibly important, the National Trust is open to exploring ways in which their consideration could be further refined to achieve better consistency and predictability for federal agencies and permit applicants. If the ACHP were to follow our suggestion regarding the development of new guidance for different kinds of APEs, more nuanced consideration of indirect and cumulative effects could be included in that guidance. Ultimately, the National Trust strongly opposes any diminution or elimination of the consideration of cumulative and indirect effects, but we do acknowledge that there may be opportunities to improve this crucial aspect of Section 106 review.

### 3. Develop Program Alternatives for Long Linear Projects with Limited Federal Involvement

One of the greatest strengths of the Section 106 regulations is the flexibility provided by the program alternatives established in 36 C.F.R. § 800.14. The ACHP is empowered to develop nationwide programmatic agreements, exemptions, alternate procedures, and standard treatments. These program alternatives could be used to effectively address the Section 106 compliance issues currently being experienced by "long linear projects with limited federal involvement". The National Trust suggests that the ACHP confer with its staff to identify the specific issues that these types of projects are experiencing and identify the most appropriate program alternative(s) to address them. Ultimately, there is no need for any regulatory changes to address this category of projects, because they are ideally suited for the ACHP to provide an alternative pathway to Section 106 compliance by using the existing program alternatives.

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[4] *See* https://www.postandcourier.com/business/ben-navarro-union-pier-sc-ports-matri-holdings/article_7f4d9764-f9dd-11ef-b164-077a1ca3b7e1.html *and* https://www.postandcourier.com/news/charleston-city-union-pier-navarro/article_689972d6-9ad8-11ef-8998-ef8f5b16ae66.html.

[5] *See* https://www.smithsonianmag.com/history/inside-disneys-controversial-plan-to-open-a-theme-park-inspired-by-american-history-180985150.

### 4. Managing Timelines for Review

The identification of historic resources potentially affected by a federal undertaking is an indispensable element of Section 106 compliance. However, that effort should not be overly burdensome nor unreasonable. The National Trust believes that the "level of effort" for identification prescribed by 36 C.F.R. § 800.4(b)(1) could be amended to ensure that identification efforts are finite and more predictable for all federal undertakings without compromising the core protections of the NHPA. For example, a time limit could be established for the identification of previously unidentified historic resources. The complete identification of known resources should remain a firm requirement, but the search for previously unidentified resources could be limited in time and still constitute a reasonable effort. Since the threshold for NHPA consideration is only that historic resources be "potentially eligible" for the National Register, the identification of previously unknown resources could be conducted in a more limited timeframe, as a full determination of their eligibility is not required.

## II. Six Questions for ACHP Members

In addition to the four key issues identified in your email to ACHP members on January 30, 2026, you posed six questions to ACHP members in the materials provided to members for the February 12, 2026 ACHP business meeting. The National Trust's responses to those questions are as follows:

### A. "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?"

The National Trust has consistently received feedback from agency officials, federal permit applicants, and SHPOs that the identification of the lead federal agency for multi-jurisdictional projects can be problematic. This issue often impacts large-scale industrial and utility projects, which were of specific concern to the Senate during the October 29, 2025 committee hearing. To solve this problem, the National Trust suggests that 36 C.F.R. § 800.2(a)(2) be amended to *require* federal agencies to designate a lead agency in these circumstances, rather than simply saying that they "may" do so. Ensuring that this determination is made at the outset of consultation, would eliminate confusion and redundant efforts, and would help projects be approved more quickly.

### B. "Is there any portions of the Section 106 regulations that are difficult to interpret or have become unnecessary, ineffective, or ill-advised? If so, please identifying them."

The regulations that provide for National Environmental Policy Act ("NEPA") substitution have become ill-advised and should be eliminated. 36 C.F.R. § 800.8(c). NEPA has undergone substantial changes in the last year. The rescission of the Council on Environmental Quality's implementing regulations, finalized on April 11, 2025 (40 C.F.R.

§§ 1500-1508), fundamentally changed how federal agencies comply with NEPA, and multiple new agency-specific NEPA regulations are currently in development. Additionally, the Supreme Court's ruling in *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025), eliminated the consideration of cumulative effects under NEPA. Given these significant changes, and the uncertainty and lack of uniformity surrounding NEPA, 36 C.F.R. § 800.8(c) is no longer viable and should be eliminated.

The Section 106 regulations concerning program comments, 36 C.F.R. § 800.14(e), have also become ineffective and ill-advised. While program comments can be a useful tool, the regulations as written are vague and have led to the development of program comments that are functionally more akin to exemptions. We suggest that 36 C.F.R. § 800.14(e) be amended to include more limitations and safeguards when describing the categories of undertakings that can be included in program comments, and to ensure that the ACHP has control over the content of the program comments, rather than having the content dictated by other federal agencies, even if the content is deemed by ACHP staff to be inconsistent with the Section 106 regulations. We also suggest that 36 C.F.R. § 800.14(e)(5) be amended to clarify that program comments adopted by the Council cannot supersede existing Section 106 agreements.

Fundamentally, we believe that program comments should be used for unique categories of historic resources with similar and repetitive preservation issues. They should be helpful tools for effective Section 106 compliance rather than backdoors to evade SHPO/THPO reviews. Program comments should also not unreasonably curtail public participation in federal decision making. Since the regulations state that "[T]he views of the public are essential to informed Federal decision making in the section 106 process", 36 C.F.R. § 800.2(d)(1), we believe that 36 C.F.R. § 800.14(e) should also be amended to give SHPOs/THPOs the option to require compliance with §§ 800.3-800.6 for individual undertakings that are of particular public interest.

**C. "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 Secretary of the Interior's professional qualification standards, adopted in 1983, are severely outdated. In 1997, the National Park Service proposed a substantial update to the 1983 professional qualification standards, 62 Fed. Reg. 33,708 (June 20, 1997), but the standards have not yet been finalized. Nonetheless, the 1997 update is often referenced in Section 106 agreement documents because it includes details about special areas of expertise that are not included in the 1983 standards (*see* 48 Fed. Reg. 44,716 (Sept. 29, 1983)). We recommend referencing the updated professional qualification standards in the Section 106 regulations.

We also suggest that 36 C.F.R. § 800.2(a)(1) be amended to require that the applicable professional standards must correspond with the nature of the affected historic resources. Archaeologists should not be considered qualified to make determinations

pertaining to architectural resources, nor should architects be considered qualified to make determinations pertaining to archaeological resources.

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

The most positive action to improve the Section 106 process would be to nationally standardize the data essential to its execution and the submittals required by SHPOs. Achieving this basic level of standardization would have a tremendous impact upon process efficiency and would unlock transformative new technological options. Currently, local knowledge of individual SHPO record keeping practices is required for federal agencies and permit applicants to navigate the Section 106 process. Each SHPO uses a different storage system for archaeological data and records regarding historic structures. While some still rely on paper records, most utilize outdated and difficult database software. This creates a barrier to the efficient identification of historic resources during the Section 106 process. Federal agencies and permit applicants frequently are forced to hire local consultants with specific knowledge of SHPO record keeping systems simply to access records of existing historic properties. Creating a single federal database for our nation's historic resources would permanently and comprehensively solve this problem and dramatically reduce Section 106 compliance times and costs.

Similarly, SHPOs currently have a wide variety of submittal requirements for documents that are required during the Section 106 process. For multi-jurisdictional projects, federal agencies and permit applicants often must develop multiple submittals for each individual SHPO. While the ACHP cannot legally mandate the national standardization of SHPO submittal requirements, it can and should encourage such an effort through guidance documents. This change would immensely benefit large, multi-jurisdictional projects (like transmission lines) and would also help federal agency staff with nationwide responsibilities.

Ultimately, if both data storage and submittal requirements were standardized nationally, the efficiencies gained would be exponentially greater than any that could possibly be achieved through regulatory revisions. With standardized data and submittal requirements, artificial intelligence tools could also be deployed to truly modernize the Section 106 compliance process.

**E. "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 data concerning the average compliance time for undertakings subject to Section 106 review, and the number of reviews processed. Many individual SHPOs collect this data – and it is *very* impressive – but their use of varying

methodologies complicates its value in national policy discussions. The ACHP should develop a standardized methodology for tracking this data and encourage its adoption by SHPOs.

**F. "Are the Section 106 regulations, or any portions thereof, inconsistent with any E.O.s or directives issued by the President? If so, what modifications would ensure consistency with the orders and applicable law?"**

We do not recommend modifying the regulations in response to Executive Orders, since Executive Orders can be revoked or reissued at any time, with no advance notice or public comment. As you know, the ACHP has been named as a defendant in a nationwide lawsuit challenging President Trump's executive order issued on January 20, 2025, declaring a national energy emergency. *State of Washington, et al. v. Trump, et al.,* No. 2:25-cv-00869 (W.D. Wash., filed May 9, 2025). The ACHP was named in part because of the staff's unilateral adoption of emergency procedures short-circuiting the Section 106 review process, without even seeking a vote by ACHP members. That staff action could (and should) be undone.

**Conclusion**

In conclusion, the National Trust again thanks the ACHP for this opportunity to submit initial comments on the ACHP's new initiative to improve the Section 106 regulations. We look forward to working with the ACHP to refine and develop the ideas that we have presented in this letter as well as study other proposals. We are confident that changes can be made to the Section 106 regulations to address the concerns that were raised at the October 29, 2025 Senate committee hearing while still preserving the core protections of Section 106.

Sincerely,

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