



SOCIETY FOR AMERICAN ARCHAEOLOGY

March 11, 2026

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

Dear Vice-Chairman Voyles,

As outlined during its recent winter business meeting, the Advisory Council on Historic Preservation (ACHP) is preparing to embark on a revision of the National Historic Preservation Act's (NHPA) Section 106 implementing regulations. The Society for American Archaeology (SAA) and its expert members have debated this subject for some time and would like to take this opportunity to relay our suggestions in advance of the ACHP's deliberations and publication of the proposed rule.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Through the NHPA the federal government has a leading role to play in ensuring that the physical reminders of our nation's history are preserved, managed, and protected. Archaeologists—especially those in the private sector—prove every day that it is possible to do this while also expanding economic opportunity. They work with federal agencies under the NHPA's Section 106 process to locate, identify, and conserve historic and archaeological resources impacted by projects on federal land and for any federally defined undertaking. This work preserves our history and accelerates project delivery. As such, the SAA and its members would welcome the following constructive regulatory changes to make the NHPA and the Section 106 process work more efficiently:

1. One federal agency—36 C.F.R. § 800.2 should be updated to mandate the designation of a lead federal agency for all undertakings involving more than one federal department or office, and the entire Section 106 review process should take place using that lead

agency's procedures. This will ensure that project participants will not have to address multiple sets of Section 106 policies and procedures in carrying out their compliance responsibilities. This would be particularly useful for infrastructure projects that cross multiple jurisdictions.

2. Technology—archaeologists use increasingly advanced technology to streamline management practices and compliance. The ACHP data platform or a network of State Historic Preservation Offices and Tribal Historic Preservation Offices platforms, as advocated by the SAA, would facilitate streamlined regulations while minimizing risks to the archaeological record and tribal heritage. Mandating the use of this technology could significantly reduce the amount of time needed to carry out Section 106 activities. In addition, the Federal Communication Commission's (FCC) Tower Construction Notifications (TCNS) is another system that has been held up as a good software program allowing projects to be uploaded and distributed to federally recognized tribes, who can upload areas of interest and contact information to review projects and upload their findings. By creating a system like this, agencies and tribes can reduce review times and provide a streamlined approach to reviews.
3. Areas of Potential Effect (APE)—the current Section 106 regulations (36 C.F.R. § 800.16(d)) do not specify how to establish APE for undertakings, nor has the ACHP issued guidance on how to determine different APEs for different undertakings. Revised regulations—and new guidance on this issue by the ACHP—should be a top priority for this project and would go a long way toward streamlining the Section 106 process.
4. Front-load work before applications are submitted—stakeholders could be required to prepare as many Section 106 documents as possible in advance of filing a permit application and including those forms in the application itself. SHPOs and THPOs should be brought in before—not after—shovels have been put into the ground, so that we are developing correct levels of methodology to identify historic properties. Upfront preparations, coordinated between applicants, agencies, and SHPOs/THPOs, will better ensure project-readiness for permit processing and approval, rather than negotiating the required extent of information collection during the course of permit processing, as often happens now. This front-loading will help limit the duration of federal involvement and permitting timelines. Examples of this that already exist and that could be greatly improved upon include the US Army Corps of Engineers (USACE) optional use of pre-application meetings under Nationwide Permitting (Clean Water Act), Department of the Interior (DOI) construction and operation plan filing requirements for certain energy development applications (onshore and offshore), and certain USACE and DOI projects requiring complete ready-to-go applications under the National Energy Emergency Executive Order.
5. Effort—the ACHP needs to provide guidance on the level of effort required to identify historic properties and complete compliance activities. Federal agencies, state historic preservation officers, tribal historic preservation officers and consultants all have very different ideas on what constitutes an acceptable level of effort in carrying out Section 106 reviews. Currently, the standard is "reasonable and good faith effort" to identify historic properties. To achieve better predictability on project timeliness, the level of effort should be better defined and standardized throughout the process.
6. Phasing—existing Section 106 regulations allow for deferred and phased identification for projects that consist of long land corridors and extensive land areas, precisely the

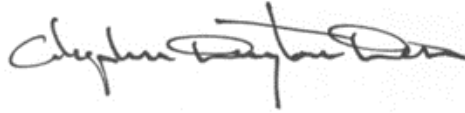
kinds of undertakings that involve large-scale infrastructure development. This means that identification and evaluation of historic properties can take place over time. Revised regulations could encourage greater use of and clarity on the phasing alternative.

7. Visual and audio impacts—the Supreme Court’s Seven County Infrastructure decision reduced or eliminated the need to consider indirect and cumulative effects under the National Environmental Policy Act. Historic properties affected by undertakings are reviewed for inclusion on the National Register of Historic Places based on the seven aspects of integrity through 36 C.F.R. § 60. These aspects include setting, design, location, materials, workmanship, feeling, and association. If an undertaking diminishes the integrity of a historic property, it can become ineligible for inclusion in the National Register. Understanding the importance of setting, feeling, and association to cultural places is critical to identifying the project’s effect to an eligible or listed National Register property. The revised regulations should continue to reference effects that diminish the aspects of integrity as opposed to referencing indirect effects, to stay consistent with where Section 106 intersects with other sections of the NHPA as at 54 USC 3021 (see 36 C.F.R. § 60.2[a]).
8. Substantive consultation—it was encouraging to hear ACHP panel members mention during the meeting that any Section 106 regulatory revision must comply with certain Executive Orders, including EO 13175, which requires “federal departments and agencies to consult with Indian tribal governments when considering policies that would impact tribal communities.” EO 13007—which requires agencies to “provide access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid affecting the physical integrity of those sites in any adverse way”—should also be taken into account. In fact, the NHPA itself requires the recognition of Traditional Cultural Places and for agencies “to consider the effects of undertakings they propose to carry out, license, permit, or fund on historic properties—which can include properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations—and to consult with Indian tribes and NHOs and other consulting parties, as eligible for the National Register under the law.” The only way to accomplish this is for the revised regulations to prioritize substantive consultation with federally recognized tribes and to mandate they take place early in the planning process.
9. Mitigation cap—36 C.F.R. § 800 could be amended to incorporate the salvage provision of the Archeological and Historic Preservation Act of 1974, which authorizes federal agencies to transfer up to 1% of the total amount authorized for an undertaking to the Secretary of the Interior for archeological salvage. Agencies can obtain a waiver of the 1% limit with the concurrence of the Secretary of the Interior and the notification of Congress. It addresses the preservation of historical and archeological data that might otherwise be lost or destroyed through federally funded or licensed activities or programs. This is further consistent with carrying out the NHPA at 54 USC 306109, which states that the “the costs of preservation activities” can be included in the “project costs in all undertakings of the agency or assisted by the agency” and that the agency may charge reasonable costs to “licensees and permittees as a condition to the issuance of the license or permit.”

As the United States approaches its 250th anniversary, the federal government must ensure its commitment to preserve, enhance, and promote the history of our great nation. That objective can only be reached with effective Section 106 implementing regulations. Saving the country’s

past means our shared cultural identity will continue into the future. We welcome the opportunity to work with the ACHP in the weeks ahead on this critically important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher D. Dore". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Christopher D. Dore, Ph.D., RPA
President