

September 02, 2026

Honorable Mike Lee
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Honorable Martin Heinrich
Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Honorable Bruce Westerman
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Honorable Jared Huffman
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Lee, Ranking Member Heinrich, Chairman Westerman, and Ranking Member Huffman:

On behalf of Preservation Action and our thousands of members and supporters, we write to express our serious concerns regarding the Advisory Council on Historic Preservation's (ACHP) proposed rewrite of the 36 C.F.R. Part 800 regulations implementing Section 106 of the National Historic Preservation Act (NHPA). We urge your Committees to exercise their oversight authority and oppose the proposal as currently drafted. We share the goal of making federal permitting more efficient, predictable, and effective. However, the proposed regulations would undermine rather than advance that goal by replacing a collaborative consultation process with greater unilateral federal agency discretion, weakening the roles of states, Tribal Nations, local governments, and the public, and creating substantial new uncertainty about how Section 106 applies.

Preservation Action members and supporters include thousands of preservation advocates, professionals, developers, and community leaders across the country, including members in nearly every state who work directly with federal, state, and local partners to protect and revitalize historic places. Since our founding in 1974, we have served as the national voice for preservation advocacy—mobilizing citizens to engage with Congress and federal agencies on the policies that shape America's preservation system.

The NHPA was enacted by Congress in 1966 in response to the widespread loss of historic buildings, neighborhoods, and cultural resources to urban renewal, highway construction, and other federally supported development, establishing a national policy to preserve America's heritage while responsibly accommodating progress. For sixty years, Section 106 of the NHPA has provided a framework balancing the advancement of federal projects with the responsibility of federal agencies to "take into account the effects of their actions on historic properties" through consultation. By bringing federal agencies, project proponents, states, Tribal Nations, local governments, preservation professionals, and affected communities to the table early, the Section 106 consultation process allows adverse effects to be identified and addressed.

In this respect, consultation is not an obstacle to project delivery; it is a tool for achieving it. Early identification of potential conflicts allows project proponents and federal agencies to resolve issues before they result in costly redesign, litigation, or delay. Importantly, Section 106 provides affected parties a meaningful voice in the process, but does not mandate a particular outcome.

Countless examples demonstrate how the Section 106 process can foster collaboration and lead to better outcomes. A plan to expand rail lines through historic downtown Ashland, Virginia was resolved through Section 106 consultation. Instead of adding tracks downtown, planners routed the extra capacity north and south of the historic district, which ultimately preserved Ashland's historic character, met rail needs, and even reduced project costs.

Preservation Action and the historic preservation community have long supported thoughtful reforms to Section 106 that help ensure a predictable and efficient process, while still maintaining the important protections established by Congress in 1966. Unfortunately, the ACHP's proposed rewrite would fundamentally upend the Section 106 process, goes far beyond congressional intent, and would actually lead to more delays and litigation. Additionally, the manner in which the proposed rule was developed - disregarding ACHP's own established procedures and failing to allow for necessary and legally required consultation - raises serious concerns.

Our principle concerns include:

The proposed rule would eliminate meaningful consultation with State, Tribal, local governments and the public. State and Tribal Historic Preservation Offices have a statutorily defined role in the Section 106 process and provide significant expertise on their communities' historic resources. The proposed regulations would substantially diminish the role of State, Tribal, and local governments and would make their participation dependent on the discretion of the federal agency. Additionally, the public would no longer be considered as consulting parties and public input would become entirely discretionary. This means the federal government would not even have to inform the public of a project that impacts their community.

Federal agencies would no longer be required to avoid, minimize, or mitigate harm. In cases of adverse effects, federal agencies can decide that other considerations outweigh historic preservation on a federal project and are not required to avoid or minimize harm. It also limits what is considered an adverse effect to those that are reasonably foreseeable — cutting out longstanding consideration of setting, visual impacts, and indirect effects. By removing the responsibility of federal agencies to consider and reduce harm to historic resources before proceeding with projects, the proposal *runs counter* to the fundamental purpose of the NHPA: ensuring that the federal government minimizes harm to the nation's historic and cultural heritage while carrying out its programs.

If the objective is certainty, the proposed rule moves in the wrong direction. The proposal would redefine fundamental terms and concepts in ways that could lead to inconsistent application from one federal agency or project to another. Terms such as "minimal" federal involvement, redefining what is considered "historic property", and a requirement for historic property to be "geographically compact" would create new questions about when Section 106 applies and what resources receive consideration. These changes threaten protection of significant cultural landscapes, battlefields, historic districts, National Parks, and more. For project proponents, developers, lenders, federal agencies, and the communities in which projects occur, predictable rules are preferable to a system in which the scope of review depends increasingly on discretionary agency judgments.

ACHP should not rewrite the statute through regulation. The proposed regulation changes also raises serious questions about whether ACHP is exceeding the appropriate role of regulation. Regulations should enhance statute, not rewrite fundamental frameworks. Consequential decisions are being rushed through based primarily on anecdotal evidence and not program data. For committees with jurisdiction

over public lands, national parks, Tribal affairs, and the NHPA, these implications deserve careful Congressional scrutiny.

The breadth of concern surrounding this proposal should give Congress pause. Hundreds of organizations and individuals have spoken up to reject the rewrite. This broad coalition of preservation organizations, architects, cultural resource professionals, state and local governments, Tribal interests, and community organizations represents millions of Americans. In every corner of the nation Americans are speaking up, in places like Moore County, NC “[Column: Proposed Legislation Change Could Shut Out Public Input](#)” published in the Pilot newspaper on 8/22/2026. This growing and diverse opposition demonstrates that the concerns with the proposed rewrite extend well beyond the preservation community and warrant meaningful Congressional oversight before these changes move forward.

We believe there is a better path forward.

We do not believe the choice is between preserving the existing Section 106 process exactly as it is and eliminating meaningful consultation. There are substantial opportunities for modernization that can make review faster and more predictable while preserving the core framework Congress established.

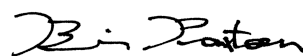
Given the committees jurisdiction over the ACHP and NHPA, we respectfully urge the committees to exercise their oversight role and express their opposition to the ACHP’s proposed overhaul of Section 106 and instead demand that any changes are legally sound, follows a consultative process, adheres to the NHPA’s intent, and is based on demonstrable data. Furthermore we request the committees hold hearings to review the proposed changes and the process in which they were developed. Preservation Action and our members stand ready to work with the Committees on constructive reforms that advance both responsible development and stewardship of America’s historic and cultural resources. We are prepared to meet with you and can connect you with our extensive network of preservation advocates and practitioners.

Thank you for your consideration and for your leadership on this important issue.

Sincerely,



Russ Carnahan
President, Preservation Action



Briana Paxton
Chairwoman, Preservation Action