



**National Trust *for*
Historic Preservation**
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**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
366 DIRKSEN, SENATE OFFICE BUILDING**

**FULL COMMITTEE HEARING TO EXAMINE THE SECTION 106 CONSULTATION
PROCESS UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**COMMENTS FROM CAROL QUILLEN, PRESIDENT AND CEO OF THE
NATIONAL TRUST FOR HISTORIC PRESERVATION**

October 27, 2025

Chairman Lee, Ranking Member Heinrich, and Members of the Senate Energy and Natural Resources Committee:

Thank you for the opportunity to provide testimony from the National Trust for Historic Preservation for this hearing to examine the Section 106 consultation process under the National Historic Preservation Act (NHPA), one of our nation’s landmark laws enacted in 1966. While the NHPA contemplates several integrated and complementary components of the policy approach to preserving our nation’s heritage, our comments address the specific requirement in Section 106 of the NHPA that federal agencies must “take into account” the impact of their actions on historic properties.¹ The implementing regulations for Section 106 provide agencies with guidance to assist them in satisfying this requirement through a unique consultation process.²

Interests of the National Trust for Historic Preservation

The National Trust for Historic Preservation in the United States (“National Trust”) is a privately-funded charitable, educational, non-profit organization chartered by Congress in 1949 to further the purposes of historic preservation policy in the United States.³ The intent of Congress was for the National Trust “to mobilize and coordinate public interest, participation, and resources in the preservation and interpretation of sites and buildings.” With headquarters in Washington, D.C., 28 historic sites, and more than one million members and supporters around the country, the National Trust works to protect significant historic places and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government.

As the National Trust reflects on 75 years of our long-standing involvement in supporting preservation initiatives and looks ahead to our nation’s semi-quincentennial celebration, we deeply appreciate our collaboration with Congress—and particularly this Committee—to advocate on behalf of irreplaceable historic and cultural resources. Our testimony for this hearing highlights background on the NHPA and Section 106 consultation process in advance of the Committee proceedings and for what we hope will be further collaboration with Congress on these issues.

¹ 54 U.S.C. § 306108.

² 36 C.F.R. Part 800.

³ 54 U.S.C. §§ 320101, 312102.

NHPA and Section 106 Process

The policy origins of the National Historic Preservation Act provide important context for any examination of the Section 106 consultation process. Congress passed the NHPA in response to public outcry over the widespread demolition of our nation's historic resources by large-scale federal projects. Prior to enactment of the NHPA, federal agencies did not consider impacts to historic resources in their decision making, and there were no opportunities for stakeholder input to help avoid and minimize harm to our nation's shared heritage. This lack of consideration led to nationally painful losses, including the notable demolition of the architectural achievement and iconic Pennsylvania Station in New York City, which helped galvanize public concern about the loss of America's architectural heritage. In 1965, the U.S. Conference of Mayors produced a report highlighting the alarming rate of historic resource loss and advocated for a unified, national approach to preservation. In 1966, the NHPA was enacted—in part—to ensure that federal agencies balance historic preservation concerns with the needs of federal projects.

Section 106 Consultation Process

Section 106 review is a “stop, look, and listen” process, which is designed to assist federal agencies with their compliance with the NHPA and to help avoid and minimize the destruction of our nation's historic resources. The Section 106 process is triggered when there is a federal undertaking that has the potential to affect historic resources.⁴ Section 106 compliance is governed by regulations issued by the Advisory Council on Historic Preservation (ACHP),⁵ which guide federal agencies in identifying historic properties, assessing adverse effects of their actions, and resolving those adverse effects through a distinctive process of consultation that is designed to achieve consensus.

Section 106 consultations always include the federal agency responsible for the undertaking and the relevant State and/or Tribal Historic Preservation Officers (SHPOs and THPOs). The ACHP is also afforded the opportunity to comment on all Section 106 consultations that involve adverse effects to historic resources. Typically, additional consulting parties include local governments, federal permit applicants, and other stakeholders with a demonstrated interest in the undertaking. The National Trust frequently participates as a consulting party in Section 106 consultations to assist federal agencies in finding ways to avoid, minimize, and mitigate harm to historic properties, while allowing undertakings to move forward.

Role of the Advisory Council on Historic Preservation (ACHP)

ACHP administers Section 106 by issuing regulations that define the process, overseeing federal agency compliance, and being available for advice and dispute resolution. Its role includes providing guidance, developing programmatic agreements to tailor review processes, and participating as a formal consulting party in cases involving potential adverse effects on National Historic Landmarks (NHLs) or other significant disputes. The ACHP's involvement helps to ensure consistency in the assessment and resolution of adverse effects to historic properties, but it is the federal agency's responsibility to conduct the primary Section 106 consultation with parties like SHPOs and the public. Unfortunately, the ACHP's capacity has been severely reduced in recent months because of dramatic budget cuts. Restoring and expanding the ACHP staff would substantially assist all parties in achieving efficient and effective compliance with Section 106.

⁴ An “undertaking” is a project, activity, or program that is carried out, funded, licensed, or approved by a federal agency. 54 U.S.C. § 300320. “Historic properties” are sites, buildings, structures, districts, or objects that are listed or eligible for listing in the National Register of Historic Places. *Id.* § 300308.

⁵ 36 C.F.R. Part 800.

Public Participation

The views of the public are essential to informed federal decision-making in the Section 106 process:

“The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.”⁶

Public participation is vital to implementation for Section 106 of the NHPA because it provides valuable community knowledge, fosters democratic engagement, and offers the public an opportunity to influence projects that could affect historic properties in their communities. This input helps federal agencies identify potential issues early, build relationships with the public, and achieve project outcomes that genuinely serve the American people.

Policy Considerations

As the Committee examines the NHPA and Section 106 consultation process, we welcome the opportunity to work with you to share our experience with a range of Section 106 cases and its implementation nationwide. We offer the following brief policy issues for your consideration.

Minimal Regulatory Burden

The vast majority of federal undertakings reviewed each year by SHPOs and THPOs result in findings of “no historic properties affected” or “no adverse effect,” and these reviews are completed efficiently when offices have adequate funding and staff. The ACHP reports that approximately 120,000 projects undergo Section 106 review each year,⁷ and of those, approximately 2,000 result in a finding of adverse effect— or less than 2 percent of all federal undertakings. SHPOs are generally required to respond to Section 106 requests within 30 days, and for the over 98 percent of undertakings that do not result in a finding of “adverse effect,” the review process is typically quick and straightforward. The small number of outliers that require more extensive consultation are projects that will result in significant and irreparable harm to our nation’s historic resources. The goal of those consultations is to help those projects avoid, minimize, or mitigate harm, not to stop or prevent the proposed projects.

High Degree of Flexibility

The ACHP’s regulations offer several alternative approaches for satisfying Section 106 requirements that create efficiencies that save time and resources. Programmatic Agreements (PAs) provide flexibility by establishing alternative, tailored review procedures for both complex and routine projects. PAs streamline compliance by addressing an entire program or category of undertakings, rather than requiring the standard, case-by-case review for every project—an approach that saves time and resources while still protecting our nation’s historic properties.

A federal agency may negotiate a PA for a specific program, for multiple undertakings within a particular area, or for a single complex project. The available options include:

- **Agency-specific Program PAs:** A federal agency can develop a process tailored to its programs, which may involve similar or repetitive effects on historic properties. This allows for streamlined review without the need for individual consultations for every project. For example, the U.S. Coast Guard has a PA for the outleasing of historic lighthouses.

⁶ 36 C.F.R. § 800(d)(1).

⁷ Advisory Council on Historic Preservation, “[About the ACHP Fact Sheet](#),” 2025.

- **Nationwide Programmatic Agreements:** A federal agency, working with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), can establish a nationwide process for a specific type of undertaking. For example, both the National Park Service (NPS) and the Bureau of Land Management (BLM) have Nationwide PAs for Section 106 compliance tailored to their specific needs.
- **Prototype Programmatic Agreements:** These provide a template for agreements covering projects in multiple jurisdictions. While the ACHP and other parties help develop the template, the final agreement is signed by the federal agency and the respective state. For example, the Federal Emergency Management Administration (FEMA) has adopted a Prototype PA that can be adopted to expedite Section 106 review for disaster recovery.
- **Project PAs:** Used for single, complex projects where the full effects on historic properties cannot be fully determined in advance. For example, a PA was adopted for the adaptive reuse of St. Elizabeths Hospital National Historic Landmark to serve as the new headquarters for the Department of Homeland Security.

The ACHP is also empowered to grant exemptions to Section 106. For example, the General Services Administration (GSA) was granted an exemption from Section 106 in 2023 for routine maintenance of its historic properties because of its excellent track record and expertise.

Nine Mile Canyon Case Study: Section 106 Process

Through the Section 106 process, stakeholders involved in the Nine Mile Canyon project in Utah successfully protected prehistoric artifacts while allowing for valuable energy development. The Nine Mile Canyon case, involving energy development on the West Tavaputs Plateau, serves as an illustrative example of the value of Section 106 consultation. The consultation process demonstrates how stakeholders can create sustainable solutions benefiting all parties.

In the early 2000's, Nine Mile Canyon faced a significant threat. This area—internationally recognized for its extensive collection of Native American rock art and other cultural sites—was also the site of planned oil and gas exploration. The potential conflict was clear: the expansion of drilling and industrial vehicles with the potential project posed a direct risk to the fragile and irreplaceable historic properties in the canyon. Without proper mediation, this situation could have led to protracted disputes and potential damage to the canyon's invaluable heritage.

To navigate this complex challenge, all parties entered into a Section 106 consultation process, overseen by the ACHP. The key participants included the Bureau of Land Management (BLM), preservation advocates, local communities, Native American tribes, and the energy industry. This process was not an exercise to produce obstacles or delays, but a structured negotiation aimed at finding a mutually acceptable solution. It resulted in a historic Programmatic Agreement (PA) that laid out a path forward for both energy extraction and resource protection.

The resulting PA delivered tangible benefits for all parties, proving that development and preservation are not mutually exclusive. The agreement established a protective buffer around Nine Mile Canyon, moving some drilling locations to shield the most concentrated and significant rock art and cultural sites from harm. The agreement provided the energy companies, including Bill Barrett Corporation, with a clear and legally sound pathway to proceed with development on the West Tavaputs Plateau. The outcome demonstrated how agencies like the BLM, in collaboration with the ACHP and the Utah State Historic Preservation Office, can effectively balance multiple-use mandates with preservation responsibilities.

Milwaukee Soldiers Home Case Study: Section 106 Process

The rehabilitation of the Milwaukee Soldiers Home in Milwaukee, Wisconsin stands as a model of successful Section 106 consultation under the National Historic Preservation Act. This collaborative process brought together the U.S. Department of Veterans Affairs (VA), the Wisconsin State Historic Preservation Office, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation, local veterans' and preservation organizations, and private development partners to ensure the long-term preservation and reuse of one of the nation's most significant historic campuses for veterans.

Through constructive dialogue and creative problem-solving, consulting parties developed an agreement that balanced the VA's mission to serve veterans with the need to protect and revitalize the site's nationally significant historic buildings—many of which date to the post–Civil War era.

The resulting Section 106 Memorandum of Agreement paved the way for an innovative public-private partnership that leveraged federal historic tax credits and private investment to rehabilitate the six most at-risk historic buildings for use as supportive housing for veterans and their families. Completed in 2021, the Milwaukee Soldiers Home rehabilitation project has restored the historic core of the campus, provided nearly 100 units of affordable housing, and ensured that these irreplaceable landmarks continue to serve those for whom they were originally built—America's veterans. The project exemplifies how the Section 106 process can produce outcomes that honor history, meet federal agency goals, and deliver enduring community benefits.

The ACHP documents⁸ success stories for Section 106 consultations that demonstrate the wide variety of examples where the process has produced successful project outcomes as a result of consultations. These projects and Section 106 success stories also include establishing NPS designations such as the multi-state Manhattan Project National Historical Park in New Mexico, Washington, and Tennessee and non-federal sites such as the New Fork River Crossing Historical Park⁹ in Wyoming. Extensive documentation of these successful Section 106 consultations in all 50 states, the District of Columbia, and Puerto Rico demonstrates the flexibility of the process for federal projects and preservation.

Opportunities for Improvement

- Optimize Predictability of the Consultation Process
 - Policymakers can optimize the predictability of the Section 106 consultation process by expanding the use of programmatic agreements, integrating Section 106 more effectively with other reviews like NEPA, and enhancing transparency and tribal consultation. These strategies create more standardized and efficient pathways for common undertakings, reducing the risk of project delays caused by unexpected findings.
- Strengthen Coordination Among Consulting Parties
 - To improve efficiencies around assembling Section 106 consulting parties, policymakers can implement measures that centralize information, streamline communication protocols, and standardize the invitation process. Specifically, improvements could be made in identifying Indian Tribes, leveraging technology, and establishing clear roles and responsibilities. Using technology for online virtual meetings can substantially reduce the time and budget for the consultation process.
- Cross-border Consultations Benefit from Enhanced Communication and Planning

⁸ ACHP; Section 106 Success Stories; <https://www.achp.gov/success-stories>.

⁹ ACHP; Section 106 Success Story: New Fork River Crossing Historical Park; https://www.achp.gov/sites/default/files/2017-02/Section106SuccessStory_ForkRiverPark.pdf.

- When a federal project with potential adverse impacts crosses multiple states, policymakers can improve the Section 106 process by implementing measures that enhance interstate and inter-agency coordination, streamline multi-jurisdictional agreements, and clarify lead agency responsibilities. Clear, standardized protocols are key to managing the complexities of multiple State Historic Preservation Offices, Tribal Historic Preservation Offices, and public constituencies.
- Improve Coordination and Communication
 - Appoint a Clear Lead Agency: As soon as a multi-state project is identified, the involved federal agencies should designate a single lead agency responsible for coordinating the Section 106 consultation on behalf of all federal entities. This prevents duplicative efforts and provides a consistent point of contact for consulting parties. A Memorandum of Understanding (MOU) can formally document this arrangement.
 - Create a Unified Consultation Plan: The lead federal agency should develop a comprehensive plan at the outset to synchronize communication among all parties, including all relevant SHPOs, THPOs, and other consulting parties across state lines. This plan should include a timeline and an agreement on how information will be shared and public input will be handled consistently across different jurisdictions.
 - Establish a Single Administrative Record: To manage the volume of documentation, the lead agency should create and maintain a single administrative record. This centralizes all project documents, findings, and correspondence, providing a transparent and consistent record for all stakeholders.
- Streamline Multi-Jurisdictional Agreements
 - Expand the Use of Programmatic Agreements (PAs): Policymakers should expand the use of multi-state or regional PAs for federal projects that frequently span multiple jurisdictions, such as transportation, energy transmission, and broadband infrastructure. These agreements can establish standardized procedures for common project types, thereby eliminating the need for individual project-by-project Memoranda of Agreement (MOAs) with every state. For example, NASA recently executed a nationwide PA that covers all of its installations and activities.

Further Discussion

The Section 106 process provides a critical tool to preserve our nation's historic resources and helps guide federal agencies in identifying historic properties and resolving any adverse effects of federal undertakings through a unique consultation process designed to achieve consensus. The National Trust appreciates the committee devoting time to discussing the Section 106 process at this hearing, and we look forward to submitting additional comments in response to issues raised during committee deliberations. We welcome continued collaboration with you to address any comments or questions and be a resource to the committee for this and other preservation issues.

Sincerely,



Carol Quillen
President and CEO
National Trust for Historic Preservation