



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

August 21, 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 the National Trust for Historic Preservation and our over one million supporters across the country, I write to express our grave concerns about the Advisory Council on Historic Preservation's (ACHP) proposed elimination of all meaningful Section 106 regulations at 36 C.F.R. Part 800.

The National Trust is a private, charitable nonprofit corporation, chartered by Congress in 1949 to safeguard America's historically significant places and advocate for historic preservation as a core public value. Congress has expressly recognized the National Trust as a partner in the federal historic preservation program, directing the ACHP to "encourage, in cooperation with the National Trust," public interest and participation in historic preservation, 54 U.S.C. § 304102(a)(2), and establishing as federal policy that the government should work "in partnership" with the National Trust to expand and accelerate historic preservation programs and activities, 54 U.S.C. § 300101(6).

For nearly 60 years, Section 106 of the National Historic Preservation Act has required federal agencies to "take into account" the effects of their projects on historic properties and to consult with the public, Tribal Nations, and state and local governments before acting. This process has protected battlefields, downtowns, sacred sites, and neighborhoods in every state and nearly every congressional district – not by blocking federal projects, but by ensuring communities have a voice before irreversible decisions are made.

Section 106 has served the nation remarkably well because it is not merely a compliance exercise; it is a collaborative planning framework. It has enabled federal agencies, states, Tribes,

local governments, project applicants, preservation organizations, and communities to work together to identify practical solutions that both advance infrastructure and development projects and protect the places that define our shared history. It has improved project outcomes by identifying concerns early, avoiding costly conflicts later in the permitting process, and fostering collaboration rather than litigation.

Ensuring the efficiency, predictability, and transparency of Section 106 is an important and worthwhile objective. Historic preservation stakeholders have long supported thoughtful reforms that strengthen coordination among agencies, reduce unnecessary delays, encourage early planning, and provide greater certainty for applicants and consulting parties. We believe there are meaningful opportunities to improve the process without compromising the fundamental protections Congress established six decades ago.

Despite our role and representation on the ACHP, we were neither contacted about nor consulted on the changes proposed by the ACHP, and we have serious concerns about whether these proposed regulations fulfill the purposes Congress established for the National Historic Preservation Act. The National Trust was one of five Council members who voted against ACHP's proposal, in addition to two Council members who abstained.

Among our main concerns, the proposal would:

End the requirement that federal agencies seek to avoid or minimize harm to historic resources. The draft rule would eliminate the most fundamental purpose of the National Historic Preservation Act: the federal government should avoid the destruction of our nation's historic resources when it can be easily prevented, or when damage can be easily minimized. The draft rule would eliminate these common-sense considerations, which are broadly supported by the American public.

Shift greater discretion over public participation to federal agencies. The draft rule would replace a legal requirement to consult the public with a mere option to *notify* communities, at the agency's own discretion, after key decisions are effectively already made. It would also let agencies unilaterally certify that "other considerations outweigh" preservation without considering the views of the public.

Narrow the statutory role of state and local governments in Section 106 consultation. State Historic Preservation Officers currently have a statutorily defined role in Section 106 consultation. Local governments also have a special seat at the table in the current review process. The draft rule would make these roles subject to agency discretion, allowing federal agencies to sideline elected state and local governments in decisions that affect their own jurisdictions — a significant, one-directional shift of authority from the people to the Federal Government.

Substantially weaken the consultation role of Tribal Nations. The draft regulations would also remove the guaranteed consultation role of Tribal Nations in the Section 106 process.

Completely eliminate protection for historic landscapes such as battlefields and national parks. In addition, the regulations would redefine "historic property" to effectively write many Tribal sacred sites and traditional cultural landscapes out of the law's protection. The proposal

would end consideration of impacts to historic places that are large and undeveloped, such as battlefields and national parks.

Completely eliminate consideration of visual and audible effects, as well as indirect effects.

The proposed regulations would foreclose consideration of all visual and audible impacts, regardless of their scale and massive adverse effect. For example, a large-scale new structure built right next to the US Capitol Building would not be considered adverse under the proposed regulations.

Create costs for communities without demonstrated permitting benefits. Section 106 reviews rarely cause major project delays – most reviews are finished in weeks or months. These changes would not meaningfully accelerate infrastructure permitting but would strip away protections that currently underpin heritage tourism, Main Street revitalization, and historic rehabilitation tax credit investment in communities in every state.

The ACHP's proposed changes do not represent a good-faith effort to improve the process. The ACHP has not shown that the current regulations are responsible for permitting delays or that the sweeping revisions now proposed would improve project delivery while maintaining the balance Congress intended. Indeed, many stakeholders believe the proposed regulations would instead create greater uncertainty, invite additional disputes and delays, and reduce public confidence in federal decision-making. Of particular concern, the ACHP is rushing these significant changes through the regulatory process without conducting many of the legally required analyses that measure the impact of regulations on the country.

Given your Committees' longstanding jurisdiction over the National Historic Preservation Act, we ask the Committees to weigh in during the public comment period. Congressional oversight is particularly important when proposed regulatory changes have the potential to substantially alter how an Act of Congress is implemented in practice.

Furthermore, we respectfully urge the Committees to call on the ACHP to pursue targeted, consensus-based improvements that enhance efficiency while preserving the core principles that have made Section 106 one of our nation's most successful collaborative planning tools. Any revisions should strengthen – not weaken – consultation, transparency, public participation, and the role of states, Tribes, local governments, and affected communities.

Thank you for your leadership and your continued commitment to balancing responsible infrastructure development with the stewardship of America's historic and cultural resources. We stand ready to work with your Committees on constructive approaches to improving the Section 106 process while preserving its integrity.

Sincerely,



Brent Leggs

President and CEO

National Trust for Historic Preservation