



**Testimony of the Society for Historical Archaeology  
Before the Senate Energy and Natural Resources Committee  
Regarding the Section 106 Consultation Process  
Under the National Historic Preservation Act  
October 29, 2025**

On behalf of its members, the Society for Historical Archaeology (SHA) appreciates the opportunity to present testimony for the Senate Committee on Energy and Natural Resources' hearing examining the Section 106 process under the National Historic Preservation Act (NHPA).

The SHA was formed in 1967, and is the largest scholarly group concerned with the archaeology of the modern world (A.D. 1400-present). SHA has 1,230 members representing professionals from academia, governments sectors, and private companies. The main focus of the SHA is the era since the beginning of European exploration. SHA promotes scholarly research and the dissemination of knowledge concerning historical archaeology. The SHA is specifically concerned with the identification, excavation, interpretation, and conservation of sites and materials on land and underwater.

**The Section 106 Process**

The Section 106 regulations at 36 CFR § 800 require federal agencies to consider the effects of federally funded, permitted, or licensed projects (i.e., “undertakings” as defined in the Section 106 regulations) on places listed in or determined eligible for listing in the National Register of Historic Places (i.e., historic properties). These historic places include historic buildings, districts and structure; archaeological sites; and places of religious and cultural significance to Native American Tribes, Native Hawaiian organizations, and other descendent communities.

As stated in 36 CFR § 800.1(a), the purpose of Section 106 is to accommodate historic preservation concerns with the needs of federal undertakings through consultation among federal agencies and other parties with an interest in the effects of the undertaking on historic properties. The steps in the Section 106 process begin with the identification of historic properties within a project area, and if there are historic properties within a project area, the federal agency assesses the effects of the proposed project on these historic properties. If the project will adversely affect historic properties, then the agency resolves the adverse effect through avoidance, minimization, or mitigation of the effects, again in consultation with other parties.

**Consultation is the Core Element of the Section 106 Process**

During each step in the Section 106 process, the federal agency is required to consult with several consulting parties, including State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized Tribes, local governments, and citizens or citizen groups with a vested interest in the project or project area. These consulting parties are best

positioned to know and understand the historic properties in their jurisdictions and their value to their respective communities. The NHPA was written to ensure that these voices were heard during the advancement of federal undertakings. If a project is being proposed by a non-federal entity, such as a state Department of Transportation, then this project proponent is also a required consulting party under the Section 106 process. The federal agency also consults with members of the public. The Advisory Council on Historic Preservation (ACHP) may also be involved in the Section 106 consultation process. The ACHP oversees the Section 106 process and acts as an interpreter for the Section 106 regulations and as an arbiter or facilitator between federal agencies and consulting parties if disagreements arise. The criteria for ACHP participation in the Section 106 process are laid out in the Section 106 regulations, found in Appendix A of 36 CFR § 800. The final decision on the outcome of the Section 106 process, no matter the views of the ACHP or consulting parties, lies with the federal agency.

In summary, Section 106 is a procedural statute that does not establish a required outcome. The Section 106 process does not stop or impede development projects. Instead, through the consultation process, Section 106 of the NHPA provides an important opportunity for all Americans to have a voice in federal activities.

### **The Section 106 Process Results in the Preservation of Our Nation's Historical and Cultural Heritage**

As demonstrated in the Success Stories showcased on the ACHP website<sup>1</sup>, the outcomes of the Section 106 process often result in the preservation of irreplaceable historic properties. The following is just a partial list of examples included in the ACHP website:

- A routine bridge replacement in Chester County, South Carolina saves a Revolutionary War battlefield.
- A creative partnership among the Section 106 parties restores a healing landscape for veterans in Dayton, Ohio.
- A historic hotel complex in Monterey, California is updated to meet National Defense needs.
- Creative mitigation involving a historic bridge in Milton/Madison, Wisconsin is heralded as a success for the local economy.

### **Majority of Federal Undertakings Do Not Affect Historic Properties**

Altschul (2025)<sup>2</sup> provides a summary and expansion on a report commissioned by the National Conference of State Historic Preservation Officers (2023:22)<sup>3</sup> that examined the results of SHPO Section 106 reviews for the period 2001 to 2021. The report shows that during this period:

- More than 4.2 million undertakings took place in the 50 U.S. states, the District of Columbia, the five territories, and three freely associated states.
- The majority of these undertakings were found to have no effect on historic properties.
- Fewer than 500,000, or about 10%, were found to have an adverse effect on historic properties, and most of these undertakings were altered or redesigned by project proponents so historic properties would not be impacted, and the project proponent was then free to proceed without project delays.

Of the millions of Section 106 undertakings, less than 0.5% resulted in an adverse effect on

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<sup>1</sup> <https://www.achp.gov/success-stories>

<sup>2</sup> <https://popular-archaeology.com/article/in-defense-of-section-106-of-the-national-historic-preservation-act/>

<sup>3</sup> [https://www.placeeconomics.com/wp-content/uploads/2023/11/HPF-Cumulative-Report\\_1.19.2024\\_smaller.pdf](https://www.placeeconomics.com/wp-content/uploads/2023/11/HPF-Cumulative-Report_1.19.2024_smaller.pdf)

historic properties that could not be avoided and required the preparation of a Section 106 agreement among the federal agency, relevant SHPO, affected federally recognized Tribes, non-federal project proponent, and local government. These agreements stipulate how all these parties would work together to resolve a project's adverse effects on historic properties. It should be noted that projects requiring the execution of a Section 106 agreement involved properties of significant historical and cultural value to the nation, states, local communities, Tribes, and other descendant communities. These Section 106 agreements protected the values embedded in these significant places while allowing projects to proceed.

The Society for American Archaeology<sup>4</sup> has also compiled Section 106 review data from specific states:

- So far in 2025 in Washington State, the SHPO has reviewed 5,371 undertakings, with just 45 determined to adversely affect historic properties. That is less than 1%.
- In Montana, over the past five years 4,408 undertakings have been reviewed, with just 98 found to have impacted historic properties.
- In Arizona in 2024, the SHPO reviewed 1,451 undertakings. Just 24, less than 2%, required additional measures to resolve adverse effects through the execution of Section 106 agreements.
- From 2020-2024 the Utah SHPO reviewed 8,088 undertakings. Of these, 7,036 were found to have no historic properties impacted or no adverse effect. Only 264, or 3.2%, were determined to adversely impact historic properties.

### **Tools and Approaches to Streamline and Expedite the Section 106 Process**

Federal agencies, the ACHP, SHPOs, THPOs, Tribes, and many state project proponents currently use a number of tools and approaches to streamline and expedite Section 106 reviews, in addition to bringing predictability to the Section 106 process. These tools include state-specific programmatic agreements that exclude a vast number of small-scale projects from Section 106 reviews, projects that have minimal potential to adversely affect National Register listed or eligible properties. The ACHP, in partnership with federal agencies, has also put in place several national program alternatives that streamline Section 106 reviews or exclude entire classes of federal undertakings from Section 106 reviews.<sup>5</sup>

Several SHPOs have in place historic preservation Geographic Information Systems (GIS) and other databases that serve as the foundation for efficient Section 106 review. As a result of these systems and databases, a few states can provide their review comments on federal undertakings to federal agencies within a matter of days. For example, the Washington State SHPO responds to Section 106 project review submittals between 2.7 days and one business week using the state's historic preservation GIS and database technology for analysis and communication with federal agencies. These state systems and databases are also used by federal, state agencies, and some non-federal and state project proponents during early project planning to identify historic property "red flags" that have the potential to impact project delivery schedules and costs and then use this information to design projects that avoid or minimize impacts on these historic property "red flags" prior to or during initiation of Section 106 reviews.

Linked with the use of these GIS and other types of databases, is the consideration of potential impacts on historic properties during early project planning, often prior to the initiation of Section

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<sup>4</sup> Manager, Government Affairs, Society for American Archaeology, personal communication

<sup>5</sup> [https://www.achp.gov/program\\_alternatives](https://www.achp.gov/program_alternatives)

106 reviews. As a result, consideration of Section 106 issues can be fully integrated into the project delivery schedule. This early consideration of historic preservation issues is a hallmark of Federal Highway Administration (FHWA) and state Departments of Transportation (state DOT) approaches to effective project delivery. We direct you to a National Cooperative Highway Research Program (NCHRP) report<sup>6</sup> that details FHWA's and state DOT's effective early consideration of cultural resources as part of project delivery. Though this report was published in 2009, the majority of FHWA and state DOT offices continue to use the tools, approaches, and processes discussed in this report.

### **Project Delivery Delays Result from Inappropriate Application of the Section 106 Process**

When delays to projects occur, it is rarely from inherent issues with the Section 106 process itself but stem from inefficiencies with federal agencies or project proponents. Some of the more common examples of delays include:

1. Project proponents do not conduct early project planning, using available historic preservation records and databases, to determine the potential impacts of their projects on historic properties. As a result, the identification of project impacts on historic properties occurs late in the project development process. As noted above, early consideration of historic preservation issues can avoid this from occurring in majority of cases.
2. Project proponents make late or last-minute design changes during project development, resulting in reopening the Section 106 review process and potentially resulting in newly identified impacts on historic properties. This situation can be avoided by more comprehensive and early project planning.
3. Initiating the Section 106 process late in the project development process rather at the time of project initiation.
4. Not engaging Section 106 consulting parties and the public early in the project development process, only to encounter issues raised by the consulting parties and the public late in project development. This can result in project delays and conflicts with the public and consulting parties.

### **Lack of Resources and Funding Can Delay the Section 106 Process**

The Section 106 review process can also be delayed because of the lack of funding, staffing, and resources within Tribal historic preservation offices:

- As noted by the ACHP<sup>7</sup> many Tribes do not have the financial resources to effectively participate in the Section 106 review processes or to meet Section 106 regulatory deadlines. This is a result of the lack of funding provided to THPOs through Historic Preservation Fund grants as the number of Tribes with THPOs increases but the HPF funding for THPOs has remained more or less static for years.
- Many SHPOs also do not have sufficient funding to maintain staffing and to make technological improvements that would make the Section 106 process more efficient, such as putting in place GIS and other historic preservation databases or improving and expanding existing state GIS and other databases.

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<sup>6</sup> [https://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25\(49\)\\_FR.pdf](https://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25(49)_FR.pdf).

<sup>7</sup> <https://www.achp.gov/sites/default/files/reports/2018-06/ImprovingTribalConsultationinInfrastructureProjectsFinalApril272017.pdf>

SHA, therefore, strongly recommends that Congress increase funding for and promote the tools and approaches used by federal agencies, SHPOs, THPOs, and Tribes to continue streamlining and expediting Section 106 project reviews.

Thank you for considering SHA's testimony for the Senate Committee on Energy and Natural Resources' hearing examining the Section 106 process under the National Historic Preservation Act. Do not hesitate to contact SHA if you have any questions related to our testimony, or if you require additional information on the effectiveness of the Section 106 process to balance the needs of project delivery and the protection of our nation's irreplaceable archaeological, historical, and cultural heritage.