



August 29, 2022

Steven Feldgus
Deputy Assistant Secretary
Land and Minerals Management
Bureau of Land Management
Division of Solid Minerals
1849 C Street NW, Room 5645
Washington, DC 20240.

Via <https://www.regulations.gov>

Re: Request for Information To Inform Interagency Working Group on Mining Regulations, Laws, and Permitting (Docket No. DOI-2022-0003)

Dear Deputy Assistant Secretary Feldgus:

The American Cultural Resources Association (ACRA), the trade association for firms that specialize in cultural resource management (CRM), appreciates this opportunity to provide comments to the Interagency Working Group on Mining Regulations, Laws, and Permitting.

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, anthropologists, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialogue where every stakeholder has a voice.

Section 106 of the National Historic Preservation Act (NHPA) is the cornerstone of the federal historic preservation policy, balancing the need to advance our nation's economic and social progress with the need to preserve our past. Sec. 106 requires federal agencies, to consider the effects of undertakings on historic properties and allow the Advisory Council on Historic Preservation (ACHP) and the public, including Tribes, the opportunity to review and comment on the effects.

CRM professionals and their clients respect the Sec. 106 process because it provides a clear, consistent roadmap to ensure undertakings move forward while considering their effects on the country's diverse cultural heritage. Communities value the process because Sec. 106 gives citizens a voice in preservation in their communities, preservation being a major aspect of maintaining community identity. The public in every state has benefitted from the Sec. 106 process, from preserving a vibrant Main Street to leveraging the economic benefits of history and heritage.

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The National Environmental Policy Act (NEPA) works in tandem with the NHPA to ensure that infrastructure projects consider the impacts on people and the environment at the outset. Recognizing the fragility of our natural environment, NEPA is a vital tool to make sure that we undertake projects in ways that do not threaten our ecosystem.

The Department's Request for Information asks pertinent questions regarding the permitting process for mine proposals, including:

- How can Tribes and local communities be effectively engaged early in the process to ensure that they have meaningful input into the development of mine proposals?
- How could updates to the Mining Law of 1872, or other relevant statutes, help provide more certainty and timeliness in the permitting process?
- What improvements can be made to the mine permitting process without reducing opportunities for public input or limiting the comprehensiveness of environmental reviews?

ACRA believes that a permitting process that provides consistency, clarity, and certainty to all parties is the most effective way to ensure a fair process, one that balances the need for exploration and development of critical domestic minerals with the protection of our most treasured natural and cultural resources. Only through early involvement of cultural resource professionals in planning process, coupled with effective Tribal and local engagement, can this balance be maintained.

To those ends, we believe that any efforts to improve the mine permitting process should include these elements:

- Increased funding and capacity for state and Tribal historic preservation offices (SHPOs/THPOs). SHPOs/THPOs are a critical component of the Section 106 process for ensuring effective consultation with Tribal and local stakeholders. However, many such offices face funding and staffing shortfalls that prevent thorough and timely Sec. 106 reviews.

Although congressional appropriations for SHPOs/THPOs via the Historic Preservation Fund have increased in recent years, the amounts have not kept up with the greater demands placed on these offices, nor have they fully taken into account the substantial increase in the number of Tribal historic preservation offices. With passage of the Infrastructure Investment and Jobs Act in 2021 and the Inflation Reduction Act in 2022, there will be an upsurge number of infrastructure projects, including mining for rare earth minerals, to be reviewed by SHPOs/THPOs. Any effort to improve the timeliness of mine permitting reviews, without compromising protection of cultural resources, must address this funding shortfall.

- Ensuring early engagement of, and coordination with, cultural resource management professionals. Bringing cultural resource management professionals early into the planning process for a proposed project saves time and money because these professionals can identify potential preservation issues that, if ignored, can cause project delays. In addition, early engagement with CRM professionals also ensures that impacts to viewsheds, the geographical area within the line-of-sight of a project are considered as part of the review process. While such impacts may be less direct than those to cultural resources on site, potential effects of projects on historic or sacred landscapes are no less important to consider.

It also is important for stakeholders, particularly mining companies, to coordinate efforts with CRM professionals to avoid unnecessary complications which can delay permitting. One such example is encouraging mining companies to work with CRM professionals to identify and avoid sensitive resources located in the area to be mined.

- Development of historic contexts for regional mining. Historic contexts are an essential component of historic property analysis and aid in the description and evaluation of resources of historical significance. A historic mining context in a region enables CRM professionals to analyze and assess the significance of resources more efficiently. These contexts also provide project planners with an indication of potential historic preservation issues that they may encounter as the project progresses. ACRA encourages the Working Group to explore ways to support context development in areas where new mines are likely to be proposed.
- Ensuring early and effective consultation with Tribes and descendant communities. Although community engagement is critical in any context, it is particularly important with respect to Tribal and descendant communities. The historic neglect of sacred sites or lands that have historic importance to Tribes and descendant communities and the lack of appropriate agency consultation have caused enormous suffering to these communities, especially those of our continent's first inhabitants. Even so, much of future mining, especially in the West, may be within or adjacent to Tribal lands or on or adjacent to lands that are sacred or of historic importance to Tribes or descendant communities. ACRA strongly supports efforts to ensure holistic, comprehensive, and open communication with Tribal and descendant communities that engages them in a meaningful way as part of any reforms to mining regulations and permitting processes.

We appreciate the Interagency Working Group's consideration of ACRA's views.

Sincerely,



Amanda Stratton
Executive Director