



**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
HISTORIC AND CULTURAL PRESERVATION ROUNDTABLE
November 29, 2023**

**STATEMENT FOR THE RECORD FROM
THE AMERICAN CULTURAL RESOURCES ASSOCIATION**

The American Cultural Resources Association (ACRA) commends Ranking Member Grijalva for holding today's Historic and Cultural Preservation Roundtable and is pleased to submit this statement for the record.

ACRA-member firms undertake much of the legally mandated cultural resource management (CRM) studies and investigations in the United States. CRM firms employ thousands of CRM professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly diverse group of other specialists in every region of the country. CRM firms come in all shapes and sizes, but the vast majority of CRM firms are small businesses.

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 dialog where every stakeholder has a voice.

The Importance of Federal Preservation Laws

The preservation of America's cultural and historic assets is how we ensure future generations learn our nation's story. For more than 50 years, the National Historic Preservation Act (NHPA) has enshrined into federal law the principle that building our nation's infrastructure must be balanced with the need to preserve our past.

In particular, Sections 106 and 110 of NHPA enable us to remember our shared history and those who came before us. Section 106 requires all federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) an opportunity to review and comment.

CRM professionals and their clients respect the Section 106 process because it provides a clear, consistent roadmap to enable undertakings to progress while considering the impact of actions on the country's diverse cultural heritage. Communities value the process because Section 106 gives citizens a voice in preservation.

Section 106 does not stop undertakings; rather, it ensures smooth collaboration that addresses conflicts early in the process. In fact, the vast majority of infrastructure undertakings subject to the Section 106 process are approved without delay.

The federal permitting process can be made faster and more efficient, but weakening preservation laws and exempting entire classes of projects from Section 106 reviews fail to address the underlying causes of delay. Excluding projects from Section 106 can lead to more delays and higher costs because preventing public engagement early in the process can lead to more controversy later on. Worse, bypassing the Section 106 process endangers the places that tell our country's history. We simply cannot replace the irreplaceable.

Creating a Better Preservation Permitting Process

ACRA believes that strengthening the preservation review process requires a collaborative effort between the public and private sectors to address recent trends that have impacted the ability of stakeholders to utilize federal historic preservation law effectively and efficiently.

Building a Diverse, Sustainable Workforce. CRM firms find a primary factor that determines the success and timeliness of Section 106 reviews is the capacity of government agencies to handle the sizable number of consultations on which they are asked to engage. State and Tribal historic preservation offices (S/THPO) are understaffed and underfunded. As Section 106 review staff retire or leave the profession, there are insufficient new people with appropriate experience to fill those positions. The COVID-19 pandemic exacerbated the challenge because qualified people left preservation offices.

Another problem is that the CRM industry faces a chronic challenge of recruiting qualified professionals from diverse backgrounds. Addressing the industry's long-term workforce challenges has been a top priority for ACRA and its partners in the CRM field. ACRA has recently launched a University Partnership Program which recognizes colleges, universities, and other institutions of higher learning preparing their students for a career in CRM. Currently, 15 programs have joined ACRA's initiative, with more expected to follow. ACRA continues to work with educational institutions to train future historic preservation practitioners.

Policymakers also have opportunities to ensure a sustainable pipeline of future CRM professionals and support the recruitment of new talent from diverse backgrounds. One such opportunity is an update of the Secretary of the Interior's Professional Qualifications Standards (PQS), which describe, in terms of academic attainment, training, and experience, the minimum professional qualifications for some historic preservation disciplines.

The Standards are of critical importance to the CRM industry, as they define minimum qualifications required for conducting work necessary to undertaking development and may impact hiring decisions CRM firms make.

The PQS have not been updated since 1983. This year, ACRA formed a task force to develop principles for updating the Standards; those recommendations will be released later this year. The industry has changed sufficiently over the last 40 years to demand the Standards be revisited.

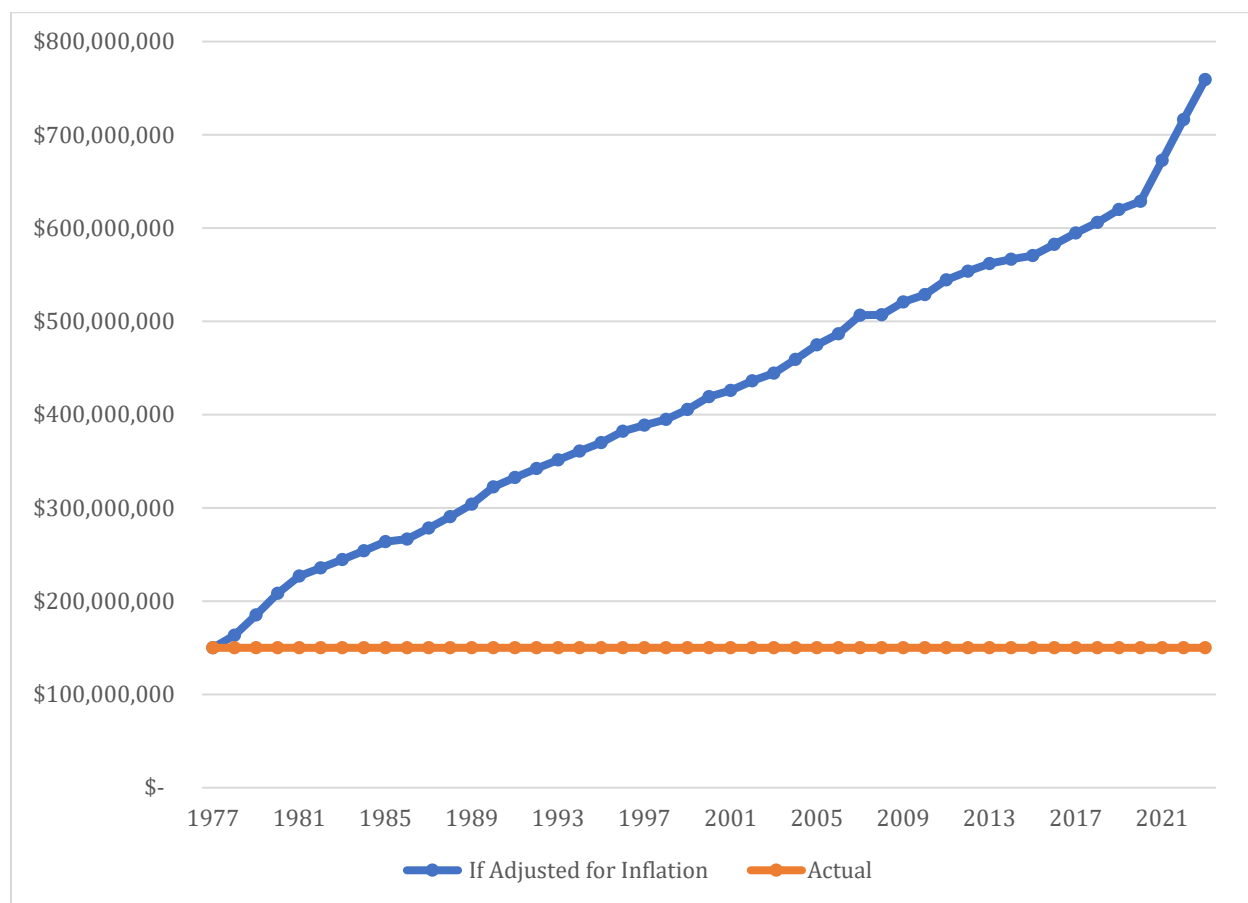
Providing Adequate Resources to State and Tribal Historic Preservation Offices. SHPOs and THPOs play an integral role in compliance with NHPA, working collaboratively with agencies and CRM firms to ensure preservation reviews happen in a timely manner.

At the federal level, the Historic Preservation Fund (HPF) has proven to be an indispensable tool to provide S/THPOs with funding they need to fulfill their responsibilities. Since its inception more than 40 years ago, the HPF has made possible the survey of millions of acres and identification of

numerous cultural resources, resulting in over 95,000 listings in the National Register of Historic Places, provided millions of dollars for the rehabilitation of historic buildings, and leveraged more than \$162 billion in private investment through the Historic Tax Credit. And it has accomplished this without spending a dime of taxpayer money, because all funding for the HPF comes from offshore oil leases.

In recent years, demand for HPF funds has risen exponentially because SHPO responsibilities have increased and new THPO offices are established, while competitive grant programs are created and expanded. Yet the Fund’s annual authorization of \$150 million has remained the same since the 1970s. If the Fund’s authorization had been indexed to inflation from the outset, it currently would stand at more than \$700 million annually. By remaining fixed at \$150 million, the Fund has effectively been deprived of nearly \$13 billion over its lifespan.

Historic Preservation Fund (HPF) Annual Authorization, Actual vs. Indexed to Inflation



Thankfully, Congress has started to recognize the critical importance of the HPF, increasing its annual appropriation beyond the \$150 million authorization in recent years. However, that progress is now threatened by the fact that the Fund’s authorization expired at the end of September. Without revenue flowing into the Fund, its long-term ability to serve as a source of

needed financial support for S/THPOs – as well as other critical competitive preservation grant programs – is in jeopardy.

This expiration comes at a time when S/THPOs are facing an inundation of new projects funded by the 2021 Infrastructure Investment and Jobs Act. These projects, which are critical to modernizing our nation's infrastructure, risk being delayed if S/THPOs lack the resources to support Section 106 reviews.

In the House, Reps. Mike Turner (R-OH) and Earl Blumenauer (D-OR) have introduced H.R. 3350, the Historic Preservation Fund Reauthorization Act, which would extend the HPF for 10 years and raise its annual authorization to \$250 million. We urge Congress to advance this bipartisan legislation as soon as possible to return certainty to preservation programs across the nation.

In addition, ACRA urges Congress to consider providing support to S/THPOs for making digital and geospatial information about historic and cultural assets more widely available, while ensuring that sensitive resource location and Tribal data are protected. This will improve public access to information and allow earlier and more efficient review of federal undertakings.

Ensuring Clarity and Consistency in the Section 106 Process. There is wide variation in how Section 106 is implemented by federal agencies. Even within agencies there is at times an inconsistent application of Section 106. These discrepancies slow project reviews, create added expense and lead to confusion.

The Biden administration has taken some important steps towards providing more consistency in the application of Section 106 reviews. Most notably, last fall the U.S. Army Corps of Engineers (Corps) announced it plans to rescind Appendix C to 33 CFR Part 325 related to agency procedures on NHPA implementation. ACRA noted in its 2022 comments to the Corps that better alignment of the Corps' preservation review process with the existing regulations at 36 CFR 800 "will result in stronger and more meaningful consultation with Tribal governments and descendant communities, better enabling the Corps to fulfill its trust responsibility to Tribal Nations. It also will lessen inconsistencies between how the Corps approaches Section 106 reviews and those of other federal agencies that follow 36 CFR 800 and would improve consistencies among Corps districts on how Appendix C is implemented." We understand the Corps is finalizing a proposal for regulations to replace Appendix C, and we urge the administration to present that proposal as soon as possible.

In addition, CRM firms find a wide variation in the level of understanding of and facility in the Section 106 process at federal agencies. ACRA recommends that Congress explore ways to provide more robust training for federal personnel.

Protecting NEPA as a Companion to NHPA. The National Environmental Protection Act (NEPA) is the nation's primary law ensuring that federal agencies consider the effects of actions on the environment. The NEPA review process often works in tandem with the NHPA Section 106 process for considering the impacts of federally backed projects on cultural resources. With both laws, public engagement is essential to ensure that those who may be affected by federal actions have a voice in them.

ACRA supports efforts to make the NEPA process work effectively. However, revisions made to NEPA in 2020 – in particular, arbitrary deadlines, document length, limitations placed on the review process, and assigning important considerations to the discretion of agencies without public

input – were likely to invite more litigation, delay projects, prevent the public from engaging in the process, and threaten historic and cultural sites without recourse to considering how federal actions impact them. For these reasons, ACRA strongly supports the White House Council on Environmental Quality's (CEQ) efforts to reconsider the 2020 revisions.

Conclusion

Every day, ACRA-member firms work with their public- and private-sector partners and the general public to strike a balance between the need to modernize our infrastructure and the imperative to preserve and protect our historic and cultural assets.

We look forward to working with you and your colleagues in Congress to ensure that our nation continues building a better future while faithfully retaining our past.