ACRA
American Cultural Resources Association

August 26, 2026

The Honorable Mike Lee
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bruce Westerman
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Jared Huffman
Ranking Member
House Committee on Natural Resources
1332 Longworth House Office Building
Washington, DC 20515

Dear Chairman Lee, Ranking Member Heinrich, Chairman Westerman, and Ranking Member Huffman:

I write to express the American Cultural Resources Association's (ACRA) profound concerns about the Advisory Council on Historic Preservation's (ACHP) proposed overhaul of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA).

ACRA is the national trade association for cultural resource management (CRM) companies. CRM firms ensure that the balance set forth in the NHPA is met, ensuring that economic development moves forward while safeguarding important historic and cultural heritage assets. They utilize specialized research skills and a deep knowledge of Section 106 and the ACHP regulations at 36 CFR 800 to facilitate the design stages of infrastructure projects. Understanding how Section 106 is what CRM firms do every day.

Since its enactment 60 years ago, Section 106 has helped our country strike a balance between building the infrastructure we need while protecting the places that tell our collective story. Section establishes a process to ensure we consider the effect of development on our most irreplaceable resources. It provides states, Tribes, local governments and citizens the chance to be heard on projects that affect the places they call home. And it helps ensure that potential problems are identified and addressed early in the process to avoid delay and litigation down the road.

There is no doubt that the process can be improved, and ACRA appreciates your Committees' efforts to identify ways to foster efficient project delivery without sacrificing our heritage.

The ACHP's proposal would fundamentally change how Section 106 operates, and not for the better. <u>While the stated intent is to improve the permitting process, the changes would do the opposite: risking delays, conflict and litigation that hold up projects while endangering historic properties.</u>

The ACHP's proposal would undermine the intent of Section 106 in several ways, including:

- <u>Replacing consultation with unilateral agency decision-making</u>. The proposal would let a federal agency decide unilaterally how historic properties are identified, what effects are considered, and

whether any mitigation occurs. Consulting parties – who play an important role in surfacing issues and potential problems early on - would be relegated to reacting to an agency's already-completed analysis.

- Allowing the federal government to exclude the public. The proposal would allow federal agencies to decide not to consult with the public on projects in their communities; it even would let agencies decide not to inform the public at all. The proposal suggests that agencies could refuse to include the public as a matter of public interest, suggesting a Washington-knows-best mindset that deny the public a say on what goes on in their own backyard.

- Threatening the protection of battlefields and historic districts. The proposal would exempt broad categories of federally funded, permitted, or delegated undertakings from Section 106 review and draw historic property boundaries so narrowly that battlefields, cultural landscapes, historic districts, and many Traditional Cultural Places would fall outside the process entirely, even where those places are already listed on, or eligible for, the National Register of Historic Places.

- Replacing certainty and predictability with confusion and uncertainty. The proposal would redefine key terms used in the statute and regulations in ways that will invite inconsistency and confusion. For example, the proposal would exclude from the definition of "undertaking" actions with "minimal" federal funding or involvement, but it leaves "minimal" undefined; and it would redefine "historic properties" to include only those are "geographically compact," without any clarity on what that means. The result will be a free-for-all where every project is handled differently, threatening litigation and disarray.

- Violating the letter and the spirit of the NHPA. The proposed rule would make unilateral changes to statutory definitions that would hollow out the law. For example, the proposal would exclude from the definition of "historic properties" any "noncompact, unimproved natural features such as mountains, valleys, bodies of water, or landscapes, including ethnographic landscapes," even though the statute clearly defines historic properties as "any prehistoric or historic district [or] site . . . included on, or eligible for inclusion on, the National Register."

These changes will not achieve the efficiency and certainty that the ACHP has cited as its goal. To the contrary, allowing agencies to ignore consulting parties is far more likely to produce late-stage redesigns, litigation, and delay than the current practice of identifying and resolving conflicts early, when alternatives are still available and the cost of adjusting course is low. A rule that increases legal and reputational risk for the developers, lenders, and agencies it is meant to help serves no one, including the project proponents it purports to assist.

As troubling as the substance of the proposal may be, equally problematic is the process which the ACHP has used to develop it. Despite its earlier pledges to engage in a deliberative process, Council members received a draft rewrite with only a week to vote on sweeping changes to a regulatory framework that governs a substantial share of federal infrastructure, energy, and development activity nationwide. This rushed process denied Council members, federal and state preservation officials, Tribal Nations, businesses, and the public the ability to meaningfully evaluate a proposal of this magnitude.

In addition, the Council has failed to conduct legally required assessments of how their proposed changes will affect small businesses. Let us be clear: if this proposed rule is implemented, CRM firms will face considerable financial burdens. They will need to pay for additional training for staff to re-learn the new Section 106 process. They would incur additional reporting and recordkeeping burdens that would come with the proposed rule's new single agency "Section 106 report." They would face increased overhead costs for needing to complete the same work (at the same rate) under dramatically shortened timelines as

envisioned by the proposed regulations. They also would face increased legal and reputational risk due to the proposed rules' conflicts with federal and many state laws.

These changes pose a threat, therefore, to more than historic properties; they would affect the livelihoods of everyone the CRM industry employs and supports. CRM firms may be forced to lay off staff, and the vendors that their work utilizes in communities across the country, spanning from hotels and car rentals to accountants and legal professionals, will see a loss of revenue.

For these reasons, ACRA respectfully urges the Committees to exercise their oversight jurisdiction over the ACHP by demanding that the ACHP follow a consultative process to develop proposed regulations that adhere to the letter and spirit of the law; holding hearings to examine both the substance of the proposed changes and the process by which they were developed; and making clear to the ACHP that Congress expects any revision of the Section 106 regulations to preserve the consultative, collaborative framework that Congress itself wrote into the statute in 1966.

ACRA and its members stand ready to serve as a resource to the Committees as you consider this matter. Thank you for your attention to this important issue.

Sincerely,

Amanda Stratton
Executive Director