



June 23, 2011

The Honorable M. Wayne Donaldson  
Chairman  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW Suite 803  
Washington, D.C. 20004

Via Email: [regreview@achp.gov](mailto:regreview@achp.gov)

Dear Chairman Donaldson:

The Society for American Archaeology (SAA) greatly appreciates this opportunity to provide the Advisory Council on Historic Preservation (ACHP) with the following input regarding the retrospective review of regulations implementing Section 106 of the National Historic Preservation Act, as called for by the President's Executive Order 13563. This is a very important process that will have a substantial impact upon the historic and cultural resources of the nation.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

In its announcement of June 1, the ACHP asked commenters to provide their opinions on possible revisions to the Section 106 regulations by answering eight questions. SAA's responses to those queries are listed below.

*1. How should the ACHP periodically review its regulations to ensure they are serving their stated purpose efficiently and effectively? Please provide specific recommendations on appropriate outreach and timing.*

The ACHP should review its regulations once per decade to streamline the regulations and ensure they serve their stated purpose. In conducting this review, the ACHP should critically examine misunderstandings evident in case studies, and analyze failures to adequately consider the effects of federal undertakings on historic properties. The review should entail a year-long process of consultation with state, local, tribal, and federal governmental agencies, as well as with the general public. The review should incorporate regional meetings and workshops, and two open-to-all call-in teleconferences.

*2. How can the ACHP reduce burdens and maintain flexibility for participants in the Section 106 regulatory process in a way that will promote the protection of historic properties?*

The ACHP should focus its efforts on writing simple, straight-forward regulatory language, providing effective training for practitioners and lay persons, and monitoring the implementation of Section 106 by federal agencies, SHPOs, and THPOs. The ACHP should encourage early frequent and meaningful agency consultation with SHPOs and THPOs, and additional tribal governments and local communities, and provide training in the best practices of effective consultation.

*3. How can the process set forth in the Section 106 regulations better achieve positive preservation outcomes?*

Positive preservation outcomes are contingent on specific places, projects and communities, so the evaluation of the significance of historic properties and their eligibility for the National Register of Historic Places, and the resolution of the adverse effects of specific undertakings, need to be undertaken in consultation with local communities and tribal governments.

*4. How can the regulations be better harmonized with other federal environmental review procedures, such as the National Environmental Policy Act?*

Implementation of the NHPA and NEPA should be concurrent. The regulations should encourage completion of Section 106 identification and assessment of historic properties prior to the finalization of cultural resource sections in NEPA documents such as Environmental Assessments and Environmental Impact Statements. When an inventory of historic properties for each alternative is not available, NEPA documents should identify what work will be required for each alternative to achieve compliance with Section 106.

*5. How can the ACHP ensure that the Section 106 regulations are consistent with and coordinated effectively with other regulations promulgated by the National Park Service pursuant to the National Historic Preservation Act?*

The ACHP should commission a study prepared by an independent contractor to assess the degree to which Section 106 regulations are consistent with the regulations and guidance promulgated for the National Register of Historic Places and Section 110 of the NHPA. This study should include specific suggestions for effective coordination of Section 106 and NPS

*6. How can the ACHP ensure that information developed to support findings under the regulations is guided by objective scientific evidence?*

The ACHP should require that information collected for implementation of Section 106 be provided by professional archaeologists, anthropologists, and historians who meet the qualifications set out in the Secretary of Interior Standards and Guidelines for Archeology and Historic Preservation. Concurrently, the ACHP should encourage the NPS to evaluate and revise these professional qualifications to reflect contemporary developments within the disciplines represented. We note that in addition to scientific evidence, the ACHP should endeavor to ensure that the information developed to support findings include cultural values and historic perspectives of Indian tribes and traditionally associated peoples that may not be “scientific” but which nonetheless provide critical information for the identification and evaluation of historic properties, and the effects of projects on those historic properties.

*7. Should performance metrics that demonstrate agency compliance and document Section 106 outcomes be developed? Please cite specific areas where metrics are needed.*

Performance metrics provide the means to assess agency compliance and document the effectiveness of Section 106 outcomes. These metrics should quantify the number, size, and results of historic property surveys, the number of documents establishing agreements and understandings; and the number and size of undertakings reviewed for compliance with Section 106. In addition, the metrics should qualitatively assess the successes and failures of Section 106 consultation processes and document the degree to which compliance was met with mutual agreement of all consulting parties. The metrics should also document the timeliness and efficiency of consultation and compliance with Section 106.

*8. Are there better ways to encourage public participation and an open exchange of views as part of Section 106 review? Please cite specific areas where improvements could be made and indicate what tools or mechanisms might be made available to achieve this goal.*

Where applicable, the definition of the Area of Potential Effect should be defined in consultation with Indian tribes and local communities. The ACHP should provide training on how to determine the effects of federal undertakings, including reasonably foreseeable, cumulative, and adverse effects. The ACHP should rigorously defend and monitor the implementation of the regulations which call for early, frequent, open, and democratic consultation and public participation throughout the course of an undertaking's review under Section 106, including resource identification, determinations of eligibility and effect, and, when applicable, the creation and implementation of agreement documents.

In the experience of SAA members, the problem with public involvement and consultation with Section 106 consulting parties is that the people in agencies who are most often charged with conducting the public involvement and consultation are not trained in the skills needed to effectively accomplish the task. They are trained as engineers, project managers, cultural resource managers or other specialists, and frequently have no background or experience or guidance in communications and consultation. It is often the case that a decision is made, formalized in a document which is then circulated for a 30 day review and this is seen as a consultation via "comment period." Effective consultation involves early and ongoing interactions with the parties. A good ACHP training course on effective Section 106 consultation and public involvement would be very desirable.

*9. How else might the ACHP modify, clarify, or improve the regulations to reduce burdens and increase efficiency?*

The members of the SAA think that by and large the regulations are fine – the problems lie in how they are implemented. We do think that the ACHP should use its prestige and expertise to convince agencies to use best practices in implementing the Section 106 regulations.

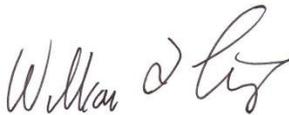
There are two places in the regulations where tweaking or clarification could be useful. One is in 800.4 regarding the concept of "reasonable and good faith effort" to identify historic properties. SAA members are concerned about wind farm projects, for one example, where an agency pays (generally at the insistence of the SHPO) for full-bore, HBI form, detailed evaluation of 1000 historic buildings within the visual APE of the wind farm. We know at the outset of a project that ANY historic buildings that might exist within that APE will experience a visual effect from the turbines, and we can project that the effect will be adverse for any historic buildings that may exist

within a certain proximity to the turbines. After we identify the first historic property within that proximity zone, we already know that the project will have an adverse effect on historic properties owing to diminished integrity of setting. We question whether it is reasonable to spend hundreds of thousands of dollars to identify 999 more historic properties that will experience exactly the same adverse effect, especially because any mitigation measures adopted will benefit (or not) all 1000 properties, whether they are individually identified or not. The number of historic buildings in the APE need to be identified but their documentation to HABS standards may not be necessary.

The other area that needs clarification is in the finding of effect sections of 800.5(c). The SAA notes that agencies and SHPOs handle this in different ways. With respect to the language: "If the SHPO/THPO has agreed with the finding or has not provided a response," some agencies and SHPOs view this as a formal concurrence like eligibility, others notify and wait. Regulatory clarification of this issue is needed.

Again, SAA appreciates the opportunity to participate in this important review, and looks forward to working with the ACHP in the weeks ahead.

Sincerely,

A handwritten signature in cursive script, appearing to read "William F. Limp".

William F. Limp, Ph.D., RPA  
President