



Preserving America's Heritage

March 10, 2017

Ms. Elizabeth Hughes, President
National Conference of State Historic Preservation Officers
Suite 342
Hall of the States
444 N. Capitol Street NW
Washington, DC 20001

Dear Ms. Hughes:

The National Conference of State Historic Preservation Officers (NCSHPO) has asked that the Advisory Council on Historic Preservation (ACHP) provide its views on the appropriateness of federal agencies providing financial support for the development and maintenance of electronic cultural resource information systems as a measure to resolve adverse effects to historic properties in the context of a Section 106 review. Specifically, the financial support would be provided to a SHPO and used to increase or improve technological capacity to maintain and make electronically available vital information regarding cultural resources, including historic properties, necessary to inform federal decision making in Section 106 reviews. The development of such tools would also increase the efficiency and effectiveness of information exchange between federal agencies, SHPOs and others. Examples where agencies have already provided such support to SHPOs include making contributions to develop digital site forms, improve GIS information sharing, and add additional layers and technologies to existing systems. For the reasons stated below, we believe that such financial support could be appropriate.

As you know, when a federal agency finds that an undertaking it will carry out, financially assist, or permit may adversely affect historic properties, the Section 106 regulations ("Protection of Historic Properties," 36 CFR Part 800) call for the agency to consult with the SHPO and others to "seek ways to avoid, minimize or mitigate any adverse effects on historic properties." Mitigation is a way to remedy, offset, or compensate for an adverse effect. The regulations do not prescribe specific mitigation measures. Rather, they allow the federal agency and consulting parties to negotiate appropriate measures on a case-by-case basis. This flexibility is necessary given the wide range of historic properties that may be affected, the broad variety of effects that might occur as a result of a federal undertaking, and the differing views, interests and needs within each State that constitute the public interest.

In order to be appropriate, the negotiated and agreed-to mitigation measures should bear a reasonable relationship to the undertaking's adverse effects or, more generally, the types of adverse effects or types of historic properties at issue. Funding to support cultural resource electronic information systems should therefore be appropriate mitigation for most, if not all, adverse effects so long as its database contains some of the types of historic properties affected by the particular undertaking. So, for example, such mitigation would be appropriate for an undertaking that may affect a particular archaeological site in

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Washington State if similar archaeological sites in Washington State are part of the systems' database. There is a reasonable likelihood that such a well-supported system would better ensure consideration of such types of sites in the future.

While we anticipate that in many circumstances an agency will be successful in identifying more targeted, and therefore more closely related measures to resolve adverse effects to such properties, we acknowledge that in some circumstances such measures may not be in the best public interest and that measures such as investments in technological capacity at the SHPO may be more appropriate. For example, where the properties to be affected or the nature of effects may not be as definitively known, or the effectiveness of targeted measures may not be as assured, or where targeted measures may provide too wide a disparity between costs and expected benefits, measures that are less directly related to the undertaking's adverse effects on the specific historic properties at issue will be particularly appropriate. Of course, the parties should seek to develop measures that can reasonably be considered appropriate redress, in terms of cost and other practical factors, for potential adverse effects to the affected historic properties.

We are aware that some Section 106 participants may be concerned that supporting such general mitigation measures, if not carefully managed, could lead to "checkbook mitigation" whereby a federal agency (or its applicant) does not meaningfully consult to determine appropriate measures to redress adverse effects, but simply provides financial remuneration to a SHPO and moves forward with the undertaking. This would not be in keeping with the spirit of our regulations and could be misinterpreted as a fee or fine. From the ACHP's perspective, consistent with our explanation above, the best way to avoid that problem is to ensure an investment in such technologies could reasonably be tied to improving the capacity of the agency and others to better identify and assess effects to historic properties of the same type or within the same geographic area, or resulting from undertakings of a similar nature in the future.

If a question about this position should arise in interactions between your members and federal agency officials, please urge them to share this letter and refer questions to the ACHP. If we can be of any further assistance, feel free to contact Reid Nelson, Director, Office of Federal Agency Programs, at rmelson@achp.gov or 202-517-0206.

Sincerely,



John M. Fowler
Executive Director