



USET

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Transmitted Electronically
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June 3, 2022

Jaime Loichinger
Assistant Director
Advisory Council on Historic Preservation
401 F St NW, Suite 308
Washington, DC 20001

Dear Assistant Director Loichinger,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Advisory Council on Historic Preservation's (ACHP) request for public comment on a Draft Exemption from Historic Preservation Review for electric vehicle supply equipment (EVSE). Published in the Federal Register on May 5, 2022, the ACHP Draft Exemption proposes to allow all federal agencies to forego the Historic Preservation Review process required under Section 106 of the National Historic Preservation Act (Sec. 106 NHPA) when installing EVSE. This proposal is being pursued to support the Biden Administration's effort to expedite the nationwide installation of EVSE infrastructure for the federal fleet. Although we appreciate ACHP inviting comment on the Draft Exemption before it is finalized and submitted for review, there were no consultations held on the Draft Exemption to inform Tribal Nations and gather feedback on this proposal. While we understand that the Draft Exemption will not apply to Tribal Lands, USET SPF is concerned with the potential harmful effects of federal undertakings for EVSE deployment on properties of historic and cultural significance located on lands outside of our current Tribal Nation jurisdictional boundaries.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Our relationship with the U.S. government has involved a lengthier history of destruction, destabilization, termination, and assimilation than the Tribal Nations of many other regions throughout the country. USET SPF member Tribal Nations were the first to contend with 17th and 18th-century distant European nations and colonial governments at the onset of colonization in North America. Many of the Tribal Nations in our region engaged in treaty-making with European nations and this diplomacy continued with the government of the United States. It is through these diplomatic relationships between sovereigns that the federal government's trust and treaty obligations to Tribal Nations were initially codified in law. These obligations have been further recognized in the U.S. Constitution, federal statutes, and by the federal courts. Therefore, Tribal Nations have a unique legal status with the United States. We have the rights and benefits of sovereign nations as distinct, independent, political communities exercising powers of self-government by virtue of our own inherent sovereignty. The federal government has recognized that these powers include our right to protect our sacred sites and the continued practice of our cultural and spiritual beliefs. In addition, these responsibilities fall within the federal government's trust and treaty obligations as mandated by federal statutes, such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), and by federal court decisions upholding enforcement of these laws to protect our sacred sites and cultural and religious practices.

Our region has served as a 'testing ground' for some of the most horrific and shameful federal policies imposed upon Tribal Nations and Native American people. While all Tribal Nations are working to rebuild in the wake of these destructive federal policies and actions, many USET SPF members are doing so from positions of greater and more extensive loss of population and land, as well as natural and cultural resources. In the wake of these policies, a majority of USET SPF Tribal Nations today hold only a fraction of their homelands and some remain landless. Due to these realities, many Tribal Nations have traditional homelands that hold significant historical, cultural, and spiritual importance and are located on lands outside of our current jurisdictional boundaries. This creates immense challenges for us to protect these lands from disturbance and destruction by human activities, such as infrastructure deployment.

For these reasons, we must rely on the federal government to uphold its solemn trust and treaty obligations to protect these lands from potential activities that could cause irreparable disturbance and destruction to our sacred sites. This can be accomplished by upholding laws that such as NEPA to protect our natural and environmental resources and NHPA to protect our properties and lands holding historical, cultural, and spiritual significance. While ACHP's Draft Exemption to allow federal agencies to forego the Sec. 106 NHPA process for installation of EVSE infrastructure does not apply to Tribal Lands, this action still raises serious concerns regarding the potential impacts it will have on our sacred sites located outside our current jurisdictional boundaries. USET SPF generally supports the goals of efficiency and effectiveness to promote critical infrastructure deployment nationwide, but we assert that this cannot be accomplished at the expense of Tribal sovereignty, health, spirituality, and culture.

ACHP Must Consult with Tribal Nations on EVSE Deployment

USET SPF strongly urges ACHP to consult with Tribal Nations on the Draft Exemption so that we can provide meaningful input on the deployment of EVSE infrastructure while ensuring our sacred and cultural sites located on federal or public lands outside our jurisdictional boundaries are protected from potential disturbance and destruction. This action would adhere to ACHP's November 2000, "[Policy Statement Regarding the Council's Relationships with Indian Tribes](#)", and its April 2021, "[Consultation Procedures Pursuant to E.O. 13175: Consultation and Coordination with Indian Tribal Governments](#)." These documents recognize and acknowledge ACHP's mandates to uphold the Sec. 106 NHPA review process. Furthermore, the April 2021 ACHP document states that, "ACHP's oversight of the Section 106 process and its tribal consultation requirements make it essential for the ACHP to both set an example for other federal agencies and to set forth a process that ensures the ACHP carries out meaningful consultation with Indian tribal

governments pursuant to E.O. 13175 when the ACHP is proposing regulations or policies that might affect tribal governments.” This language affirms ACHP’s responsibility and obligation to consult with Tribal Nations meaningfully and appropriately prior to the adoption of the Draft Exemption for Sec. 106 NHPA review of the nationwide EVSE infrastructure deployment.

As ACHP moves forward in consulting with Tribal Nations to identify areas located outside our jurisdictional boundaries that will require Sec. 106 NHPA reviews, we do not support or encourage the collection, publication, or interagency or public sharing of information or maps detailing the location of our sacred and cultural sites. While this may be viewed as a hindrance or challenge to ACHP and federal agencies to proceed with Sec. 106 NHPA review processes, it is important to recognize that several federal agencies consistently collaborate and consult with Tribal Nations on various infrastructure projects and are already aware of where these sites are located. For instance, the Federal Communications Commission (FCC) maintains the Tower Construction Notification System (TCNS), which is an online tool that allows Tribal Historic Preservation Officers (THPOs) and State Historic Preservation Officers (SHPOs) to designate any lands within the United States as having cultural and/or historical significance. This system informs and notifies THPOs and SHPOs on proposed tower and antenna communication installations and provides them with the ability to respond to these construction proposals under the purview of Sec. 106 NHPA. The TCNS is maintained by the FCC and the information and details on the areas THPOs and SHPOs designate as having cultural significance to our Tribal Nations is protected and kept private from other federal agencies, the public, and industry entities.

This approach should be adopted by ACHP to identify sacred sites and areas of cultural and historical significance to Tribal Nations. This will ensure that we are able to confidentially identify these areas and protect them from any potential harmful disturbance and destruction in the nationwide deployment of EVSE infrastructure. ACHP must proceed in consultation and collaboration with Tribal Nations to determine how this process will be planned, developed, implemented, and updated as EVSE deployment occurs. Additionally, ACHP and federal agencies must explicitly identify how Sec. 106 NHPA review processes will be conducted in collaboration with Tribal Nations on federal and public lands outside of our current jurisdictional boundaries.

Expand Funding for Tribal Historic, Cultural, and Natural Resource Officers and Managers

The costs associated with reviewing permit applications, environmental assessments and impact statements, Sec. 106 NHPA reviews, and other activities associated with federal actions and undertakings can be extremely high. Additionally, not all Tribal Nations have Tribal Historic Preservation Officers (THPOs) due to funding limitations and may rely on a Tribal cultural or natural resource department to review these activities. In the instances that Tribal Nations have a dedicated THPO and/or cultural or natural resource departments, oftentimes these individuals and departments are inundated with multiple project permits, applications, and environmental, historic, and cultural reviews that exceed the capacity and resources needed to examine and address each project proposal and activity. Review of these proposals can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to funding limitations. It is not uncommon that a cultural resource manager may also fulfill the role of a natural resource manager or serve in an emergency management role.

These issues become compounded by the review of infrastructure permits and installations that may affect our cultural properties and sacred sites on lands outside of our jurisdictional boundaries. We can appropriately assume that the nationwide deployment of EVSE infrastructure will further exacerbate the already oversubscribed capacity of our THPOs and/or cultural or natural resource departments. Therefore,

ACHP and federal agencies must actively identify and advocate for upfront funding to support Tribal government staff in the review of EVSE infrastructure deployment proposed to occur within and outside of our jurisdictional boundaries. Federal agencies should provide funding and support for these activities in all as part of its trust and treaty obligations to protect our sacred sites and areas of historical and cultural significance.

Conclusion

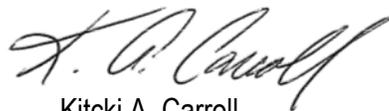
An essential aspect of the federal trust obligation to Tribal Nations is the duty to protect, preserve, and restore our cultural heritage. Native peoples have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode our territories and cultures. The immense land loss experienced by Tribal Nations and our removal from our traditional homelands has created immense challenges to the protection of our sacred sites located on federal and public lands outside of our current jurisdictional boundaries.

For these reasons, ACHP and federal agencies have trust and treaty obligations to protect and safeguard our sacred sites and lands of historical and cultural importance. This is especially important for those sites and areas located on federal and public lands outside of our current jurisdictional boundaries. USET SPF urges ACHP to consult with Tribal Nations to identify processes for ACHP and federal agencies to collaborate and work in good faith and partnership with Tribal Nations to protect our sacred sites from potential disturbance and destruction from the nationwide deployment of EVSE infrastructure. We look forward to continuing this dialogue and working with ACHP as it examines and considers its current Draft Exemption to waive Sec. 106 NHPA reviews for EVSE deployment. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director