



USET

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*Transmitted Electronically
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February 27, 2024

Tracey Watkins
Deputy Chief Readiness Support Officer
Acting Executive Director
Sustainability and Environmental Programs
Office of the Chief Readiness Support Officer
U.S. Department of Homeland Security
300 7th St SW
Washington, DC 20024

Dear Deputy Chief Readiness Support Officer Watkins,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of Homeland Security's (DHS) revised draft Sec. 106 of the National Historic Preservation Act (Sec. 106 NHPA) Nationwide Programmatic Agreement (NPA) for climate resiliency and sustainability (CRS) projects at DHS-owned facilities. We appreciate DHS's efforts to consult on the revised draft Sec. 106 NHPA NPA and incorporating input received from Tribal Nations during the initial comment period that concluded in October 2023. Further, we are pleased that DHS has also incorporated edits into its draft Sec. 106 NHPA NPA that were proposed by USET SPF. The addition of further clarity regarding CRS undertakings at DHS-owned facilities will ensure that Tribal Nations are appropriately notified and consulted prior to any construction or renovation of DHS facilities that may impact our cultural and historic resources. Our comments reinforce those submitted on October 20, 2023, as well as recommendations to protect our sacred plants and seeds from disturbance and the necessary funding and technical assistance resources for Tribal Nations and Tribal Historic Preservation Officers (THPOs) to participate in Sec. 106 NHPA reviews.

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

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

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

General Support for Revisions of DHS's Sec. 106 NHPA NPA

USET SPF is pleased that DHS has incorporated edits into its revised draft Sec. 106 NHPA NPA in response to our [comments](#) submitted on October 20, 2023. This includes affirmation of engaging in consultation with Tribal Nations to identify any resources that may have traditional religious and cultural significance proper to commencing any ground disturbance for CRS projects at DHS-owned facilities. USET SPF also supports the addition of language in the revised draft Sec. 106 NHPA NPA that states DHS shall notify the relevant Tribal Nations no later than 30 days prior to commencing CRS projects at DHS-owned facilities. We also commend DHS for including language in Sec. V(d) of the revised draft Sec. 106 NHPA NPA regarding Freedom of Information Act (FOIA) requests and that DHS, "will provide written and/or verbal notification to the Tribe(s)...whose information is subject to the request to determine what information should be redacted." USET SPF has long been stressing our concerns regarding FOIA, especially as this Administration has been seeking Tribal input on how to integrate Indigenous Knowledge into federal decision-making. We are pleased that DHS has included language in its revised draft Sec. 106 NHPA NPA that explicitly states it will notify Tribal Nations when in receipt of a FOIA request and that it will work with Tribal Nations to determine what information should be redacted in the request.

Recommend Expansion of the Draft Sec. 106 NHPA NPA to Include Protections of Plants and Seeds with Sacred and Cultural Significance

During the Tribal consultations held by DHS on the revised draft Sec. 106 NHPA NPA on February 15, and 16, 2024, it was noted by a Tribal commenter that the Sec. 106 NHPA NPA should also include language regarding the protection of plants with sacred and cultural significance. USET SPF supports inclusion of this language and also recommends including the protection of seeds that a Tribal Nation may claim would be affected by any CRS undertakings at DHS-owned facilities. DHS must make good faith efforts to protect sacred plants and seeds that have been grown for subsistence and medicinal uses in our communities since time immemorial. This includes the cultivation of wild plants and seeds that may naturally grow in areas where DHS-owned facilities are located. USET SPF recommends that language requiring Tribal consultation prior to the removal of any plants or seeds that have sacred and cultural significance to Tribal Nations be included in the revised draft Sec. 106 NHPA NPA. This language should be referenced in Sec. V, Sec. VIII, Appendix A. Category 1.1, and in Appendix B, which is the, "DHS [NPA] for Climate Resiliency and Sustainability Undertakings Review Form."

Identify Funding and Technical Assistance Resources for Tribal Nations and THPOS

In reviewing the comment matrix provided by DHS summarizing the comments received on the previous draft Sec. 106 NHPA NPA, we agree with the National Association of Tribal Historic Preservation Officers' (NATHPO) comments regarding concern on streamlining the Sec. 106 process absent additional resources for THPOs. DHS must prioritize all necessary resources and technical assistance funding to Tribal Nations when a CRS undertaking is proposed and directly or indirectly affects our sacred sites and historic, cultural, and natural resources. Many Tribal Nations operate with limited resources and few dedicated personnel to actively participate in consultations on proposed federal actions that may include or be relevant to Tribal sacred sites and historic, cultural, and natural resources. This includes having limited access to federal resources to hire historic preservation experts, which hinders the ability of Tribal Nations to adequately participate in consultations and the review processes under Sec. 106 of NHPA. These limitations are the direct result of the federal government's failure to uphold its trust and treaty obligations to fully fund the necessary programs and services for Tribal Nations to meaningfully participate in these activities. USET SPF strongly recommends that DHS utilize direct and contract funding to Tribal Nations for consultation-related costs, staff training, and the hiring of Tribal Nation personnel to participate in and conduct Sec. 106

NHPA responsibilities. This can be accomplished by adopting the contracting and compacting mechanisms through the Indian Self Determination and Education Assistance Act (P.L. 93-638). Further, in lieu of dedicated appropriations, DHS should identify additional agency resources to provide technical assistance and staffing support to Tribal Nations for environmental, cultural, and historic preservation reviews of CRS undertakings at DHS-owned facilities. It is also important to note that not all Tribal Nations have THPOs dedicated to these review processes due to funding limitations and shortfalls. In the instances that Tribal Nations have a THPO and/or cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation reviews, oftentimes these individuals and departments are inundated with multiple projects that exceed their available capacity and resources. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to historic and persistent funding shortfalls for these positions. It is not uncommon for a cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role. In executing the Sec. 106 NHPA NPA, we remind DHS to make concerted efforts to fund and support Tribal Nation personnel to appropriately participate in the Sec. 106 NHPA review process of CRS undertakings at DHS-owned facilities.

Conclusion

USET SPF supports DHS's efforts to upgrade its facilities and grounds to implement CRS infrastructure to address the harmful effects of climate change, which has led to increased destructive weather occurrences, wildfires, and loss of human life and sacred, cultural resources. However, we remind DHS that any physical upgrades to DHS grounds that may contain or inherently have significant cultural and historical value to Tribal Nations and our citizens must not be subjected to disturbance, destruction, or removal. This includes the removal of wild plants and seeds that have inherent sacred and cultural significance for Tribal Nations. DHS must recognize and acknowledge its legal and moral obligations to protect our cultural resources, sacred sites, and Indigenous Knowledge as it pursues CRS undertakings at its facilities. We look forward to continued dialogue on these important issues and anticipate the finalization of the revised draft Sec. 106 NHPA NPA as well as the necessary funding and technical assistance resources from DHS for Tribal Nations to appropriately participate in Sec. 106 NHPA review processes. 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director