



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

March 5, 2026

Travis Voyles
Vice Chairman
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Vice Chairman Voyles,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write regarding an issue discussed during the February 12, 2026 Business Meeting of the Advisory Council on Historic Preservation (ACHP). USET SPF is aware that ACHP has initiated review of the Section 106 National Historic Preservation Act (Section 106 NHPA) regulations at 36 CFR Part 800. While we agree with ACHP that revisions to the Section 106 NHPA regulations could help to streamline review processes, especially on Tribal lands subject to inherent Tribal jurisdiction, these revisions must not proceed without critical Tribal input. The Section 106 NHPA process is extremely important for protecting Tribal Nations' seat at the federal decision-making table, and it cannot be rolled back in any way that would undermine our ability to protect our sacred sites and cultural and historic resources.

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 Turtle Island.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.

The NHPA Section 106 Regulations Carry Out Important Federal Indian Law Functions. Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of outside forces and, while existing independently from the United States' affirmation by treaty or otherwise, is recognized in the U.S. Constitution and consistently by the U.S. Supreme Court. The United States, in

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 Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

taking our lands and resources, assumed trust and treaty obligations to Tribal Nations and Tribal citizens and communities. In furtherance of these unique relationships and obligations, the United States enacted laws like the NHPA, whereby federal agencies must take into account and mitigate the effects of federal undertakings on historic properties, including properties of traditional religious and cultural importance to Tribal Nations, in consultation with Tribal Nations. Section 106 NHPA reviews remain critical stopgaps that provide Tribal Nations with a seat at the table to weigh in on federal decision-making that affects us. Without the NHPA, Tribal Nations are stripped of a voice in protecting the lands and sacred sites we have stewarded since time immemorial. When the Section 106 NHPA review process is employed fully before action is taken, the United States receives critical advice and wisdom to inform its decision-making and avoid irreversible harm.

Requirement to Engage in Tribal Consultation on Changes to NHPA Section 106 Regulations. While USET SPF remains concerned regarding the review of Section 106 NHPA regulations, we appreciate the statements you made during the Business Meeting recognizing the importance of these regulations to a “broad array of stakeholders,” and that you intend to provide an opportunity for “stakeholders” to inform this review through the regulatory process. However, we remind ACHP that Tribal Nations are distinct from “stakeholders” and the “public,” thereby necessitating separate government-to-government Tribal consultation and engagement sessions to inform this review process. Federal agencies must not treat or define Tribal Nations as mere “stakeholders” or the “public,” including and especially for NHPA Section 106 purposes.

Elements of Meaningful Tribal Consultation. Tribal Nations are owed Tribal consultation and coordination prior to any decision-making on projects that may directly or indirectly affect our rights or cultural and historic resources. Meaningful consultation includes timely notification to Tribal Nations and engagement of Tribal governments beginning in the earliest stages of the review process, including in defining any areas of potential effect and identifying any historic properties. Meaningful consultation also requires acting upon Tribal guidance and input. USET SPF reiterates that inappropriately grouping Tribal Nations with “stakeholders” and the “public” would undermine Tribal consultation requirements, risking irreparable damage to the processes that protect our sacred sites and the public health and well-being of Tribal Nations across the country, and thereby violating the federal government’s trust and treaty obligations.

Looking Forward to a Forthcoming Tribal Consultation Notice. USET SPF appreciates and agrees with ACHP General Counsel Kelly Fanizzo’s statements that ACHP must comply with the Tribal consultation directives of Executive Order (EO) 13175, titled “Consultation and Coordination with Indian Tribal Governments,” as well as with ACHP’s implementation plan for EO 13175. As ACHP moves forward in potentially initiating a rulemaking for the Section 106 NHPA regulations, we anticipate that ACHP will issue early notice of multiple scheduled Tribal consultation sessions, as well as appropriate timelines to receive written Tribal consultation comments.

Protect the NHPA Section 106 Process. While USET SPF agrees that Section 106 NHPA regulations could potentially be improved to streamline review processes, revisions to these critical regulations must not occur at the expense of the federal government’s trust and treaty obligations to Tribal Nations or ample Tribal review time. We continue to assert that the protection of sacred sites and cultural and historic resources on Tribal homelands existing outside our jurisdictional boundaries remains a major concern. And we reiterate that any review of these regulations must ensure that existing federal protections and Tribal consultation requirements are not diminished in any way. Rather, ACHP must ensure that these protections

remain in place so we continue to have a voice in federal decision making that could affect our sacred places.

If Amendments are Made, Focus on Deferring to Tribal Jurisdiction on Tribal Lands. We anticipate that any amendments will incorporate Tribal Nation input on how to improve the effectiveness and efficiency of these regulations on Tribal lands. As part of the forthcoming Tribal consultation and engagement process, we recommend that ACHP be receptive to Tribal Nations' input on how the Section 106 NHPA process can be improved on lands within our jurisdictional boundaries. This must be accomplished by empowering our inherent sovereignty to manage our own territorial jurisdictions and recognizing our inherent authority over these processes on Tribal lands. Again, we remind ACHP that it is critically important that protections for Section 106 NHPA reviews occurring outside our jurisdictional boundaries are maintained, and strengthened where needed, to ensure that our sacred sites and cultural and historic resources are safeguarded from potential and irreversible harmful activities.

USET SPF looks forward to continued engagement and dialogue with ACHP on this important Section 106 NHPA review process. We also anticipate further correspondence and announcement of several consultation sessions with Tribal Nations, alongside appropriate timelines for ACHP to receive written comments from Tribal Nations to inform this review. 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