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Joint Statement on Protecting Section 106 Process of NHPA

WASHINGTON, D.C. (August 18, 2026) | The [National Congress of American Indians](#), the [Association on American Indian Affairs](#), the [National Association of Tribal Historic Preservation Officers](#), and the [United South and Eastern Tribes Sovereignty Protection Fund](#) issue this joint statement to record our strong and unified position in support of the protection of the Section 106 process of the [National Historic Preservation Act \(NHPA\)](#) and the fulfillment of the federal government's trust and treaty obligations to Tribal Nations. The Section 106 process provides Tribal Nations with an important seat at the federal decision-making table, helping the federal government avoid harming cultural heritage sites and uphold its legal obligations while streamlining permitting. Doing so would help to avoid costly delays that can arise when these considerations are not taken into account from the beginning.

On July 24, 2026, the Advisory Council on Historic Preservation (ACHP) voted 15-5, with two abstentions, to advance [proposed revisions to the regulations](#) implementing the Section 106 process at [36 C.F.R. Part 800](#). Our organizations strongly oppose this rulemaking and believe it should not move forward in its current form. The proposed revisions are now undergoing executive branch review before being published as a proposed rule. As proposed, the revisions violate the United States' trust and treaty obligations, exceed the boundaries of administrative authority, and attempt to alter responsibilities established by federal statute.

The Section 106 process reflects Congress's recognition that federal agencies should understand the consequences of their decisions before historic and culturally significant places are damaged or lost. For Tribal Nations, the Section 106 process is inseparable from their inherent sovereignty, the unique legal and political relationship between Tribal Nations and the United States, and the trust and treaty obligations owed to Tribal Nations. It is for this reason that Congress included Tribal Nation-specific provisions within the NHPA. Federal decisions affecting sacred places, ancestral lands, burial places, traditional cultural places, cultural heritage, and cultural landscapes implicate these unique trust and treaty obligations and political relationships, which extend far beyond ordinary stakeholder engagement. Government-to-government consultation with Tribal Nations must be understood within that distinct legal and political relationship.

The draft revisions improperly advanced by the ACHP raise significant and, in our view, illegal and disqualifying concerns about the Tribal consultation framework that these obligations and relationships require. The proposed revisions would significantly expand federal agency discretion over whether and how consultation with Tribal Nations occurs, including, for example, by narrowing when the Section 106 process is triggered for a "federal undertaking" and what qualifies as a "historic property." The proposed revisions would also decrease the instances in which impacts on Tribal Nations' cultural heritage are

considered “effected” sufficient to trigger consideration of mitigation measures, and they would limit Tribal Nations’ participation in deciding on and carrying out mitigation measures. Conversely, these revisions would allow project applicants and other non-federal parties to assume a greater role in activities that are inherently federal functions, which are non-delegable. They would further shorten critical stages of the Section 106 process and attempt to limit judicial review.

Taken together, the ACHP’s proposed changes extend well beyond matters of regulatory procedure and raise broader questions about the implementation of responsibilities Congress established under the NHPA, including those of the ACHP, the National Park Service and other federal agencies, State Historic Preservation Officers, Tribal Nations, Tribal Historic Preservation Officers, and other participants responsible for implementing the law. The proposed changes also raise questions about the extent to which administrative revisions may alter authorities established by statute or assigned elsewhere within the federal historic preservation framework.

Additionally, although project applicants and contractors may appropriately assist federal agencies with administrative aspects of inherently federal functions, private parties are not owed trust and treaty obligations and do not share the government-to-government relationship with the United States as sovereign Tribal Nations do. The distinction between providing assistance with and input on the Section 106 process and exercising federal governmental responsibility is therefore critical. Federal obligations to Tribal Nations remain regardless of who is seeking approval for an undertaking.

While efficient and predictable federal decision-making is an important policy objective, meaningful Tribal consultation and the historic preservation review it supports are not sources of delay when implemented correctly. When conducted early, consultation with Tribal experts can identify conflicts before substantial resources are committed, allow projects to avoid culturally sensitive places, inform alternatives, and reduce the potential for disputes, litigation, and subsequent project delays. A process that appears administratively shorter may ultimately create greater uncertainty when concerns are not identified until after significant decisions and investments have been made.

The consequences are particularly significant because damage to historic and cultural heritage is irreversible. Once a sacred place is destroyed, ancestral remains are disturbed, or a cultural landscape is fundamentally altered, consultation after the fact cannot restore what has been lost. The Section 106 process provides a mechanism for considering those consequences *before* federal decisions become irreversible.

We raise these concerns while acknowledging that the Section 106 process, as it exists today, is far from a perfect safeguard. In practice, the process can be unevenly applied and vulnerable to political pressure that too often favors project proponents and federal agencies over the Tribal Nations whose irreplaceable sacred places and cultural heritage are at stake. The Section 106 process does not always protect what it should, and for this reason it must not be weakened in the manner that the proposed revisions would allow. The United States must instead remain steadfast in supporting a clear, affirmative policy of protecting Tribal Nations’ sacred places, ancestral lands, and cultural heritage — protection that a procedural review mechanism like the Section 106 process can help support.

As federal policymakers continue to consider matters involving federal permitting, infrastructure, energy development, federal lands, and historic preservation, the current proposed changes to the Section 106 regulations raise important questions about the relationship between legislative action, administrative reform, and congressional intent. Central among them is whether the proposed changes to 36 C.F.R. Part

800 remain consistent with the United States' trust and treaty obligations and the text, structure, and purposes of the NHPA, as well as preserve the respective responsibilities Congress established within the federal historic preservation system.

The process by which these substantial changes to the Section 106 regulations were developed is also significant. ACHP members were provided roughly one week to review a nearly complete draft before the July 24 vote — without consultation with Tribal Nations — despite a more deliberative process having been contemplated earlier. Changes affecting a longstanding federal statutory framework and the federal government's relationship with sovereign Tribal Nations warrant careful consideration and meaningful participation by, and consultation with, Tribal Nations.

For Tribal Nations, participation in this revision process cannot be reduced to ordinary public participation or stakeholder engagement through the Federal Register. Public comment and government-to-government Tribal consultation serve different purposes and fulfill different legal obligations. Consultation recognizes the sovereign status of Tribal Nations, the unique legal and political relationship between Tribal Nations and the United States, and the trust and treaty obligations owed to them. Any federal consideration of changes affecting that relationship or those obligations should preserve that distinction. Our organizations' position is that the integrity of the Section 106 process rests on meaningful government-to-government consultation with Tribal Nations; federal accountability for carrying out consultation obligations; recognition and protection of sacred places, traditional cultural properties, and cultural landscapes; respect for the statutory responsibilities established under the NHPA; and consideration of harm to historic and cultural heritage before it becomes irreversible.

We call upon members of Congress, federal agencies, preservation organizations, state governments, Tribal Nation leaders, and the American public to recognize that what Tribal Nations work to protect ultimately benefits us all, and that future generations depend upon the choices made today. For generations, Tribal Nations have fulfilled our traditional responsibility to protect the places that define who we are as Peoples. The federal government carries its own responsibility to honor its commitments, uphold its trust and treaty obligations, and engage Tribal Nations as sovereign partners. The Section 106 revisions advanced by the ACHP fail to fulfill that responsibility.

The current debate therefore extends beyond the merits of a single proposed regulation. It concerns the continued implementation of a statutory framework established by Congress in furtherance of the United States' trust and treaty obligations and the balance between administrative efficiency, federal accountability, sovereignty retained by Tribal Nations, and the protection of places that cannot be replaced once they are lost. Our organizations stand united in this position. We will continue to work together, and with Tribal Nations across the country, to ensure that the Section 106 process is strengthened rather than weakened, and to advance a clear federal policy that protects Tribal Nations' sacred places, ancestral lands, and cultural heritage while preserving meaningful government-to-government Tribal consultation and federal accountability.

As this rulemaking proceeds through executive branch review and toward publication in the Federal Register, the Association on American Indian Affairs, the National Congress of American Indians, the National Association of Tribal Historic Preservation Officers, and the United South and Eastern Tribes Sovereignty Protection Fund will continue to make our position known, will mobilize Tribal Nations and allies to participate fully once the formal public comment period opens, and will pursue every avenue available to protect and mitigate harm to our shared cultural heritage. The future of the Section 106

process must be grounded in mutual respect, enforceable accountability, and genuine partnership, not administrative expediency or diminished protections.

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About the National Congress of American Indians:

Founded in 1944, the National Congress of American Indians is the oldest, largest, and most representative American Indian and Alaska Native organization in the country. NCAI advocates on behalf of Tribal governments and communities, promoting strong Tribal-federal government-to-government policies and a better understanding among the general public regarding American Indian and Alaska Native governments, people, and rights. For more information, visit www.ncai.org.

About the Association on American Indian Affairs:

The Association on American Indian Affairs is the oldest national Native non-profit protecting sovereignty, preserving culture, educating youth and building capacity. The Association was formed in 1922 to change the destructive path of federal policy from assimilation, termination and allotment, to sovereignty, self-determination and self-sufficiency. Throughout its more than 100-year history, the Association has provided national advocacy on watershed issues that support sovereignty and culture, while working at a grassroots level with Native Nations to support the implementation of programs that support Native Peoples.

About the National Association of Tribal Historic Preservation Officers: *NATHPO is a national non-profit 501(c)(3) membership organization, founded in 1998, of Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples. We provide guidance to preservation officials, elected representatives, and the public about national historic preservation legislation, policies, and regulations. We promote Tribal sovereignty, develop partnerships, and advocate for Tribes in governmental activities on preservation issues. For more information visit our website at www.nathpo.org.*

About United South and Eastern Tribes (USET):

Established in 1969, the United South and Eastern Tribes, Inc. (USET) is a non-profit, inter-Tribal organization serving 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services.