



**NATIONAL ASSOCIATION  
OF TRIBAL HISTORIC  
PRESERVATION OFFICERS**

PO BOX 75064  
WASHINGTON, D.C. 20013-0064  
202.628.8476  
INFO@NATHPO.ORG  
WWW.NATHPO.ORG

February 27, 2026

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

RE: ACHP's Proposed Review of the Section 106 Regulations (36 CFR Part 800)

Dear Vice-Chairman Voyles,

On behalf of the National Association of Tribal Historic Preservation Officers (NATHPO), we submit the following thematic recommendations in response to the Council-led review of the Section 106 regulations at 36 CFR Part 800. These recommendations reflect NATHPO's initial set of comments, and as this process continues, NATHPO will provide additional, more specific recommendations and illustrative examples to support the Council's work.

As the Council considers potential revisions, it should recognize that the ACHP already maintains an extensive library of policy statements and guidance intended to inform federal practice under Section 106. NATHPO views operationalizing and reinforcing this policy foundation as the most appropriate path toward a more effective Section 106 process, particularly regarding consultation with Indian Tribes, the treatment of Indigenous Knowledge and Tribal special expertise, and safeguards for burial sites, human remains, and funerary objects.

We have presented these recommendations thematically, rather than question-by-question, because the issues most consistently raised by Indian Tribes and THPOs are cross-cutting. Late initiation of Tribal engagement, weak documentation, and inconsistent treatment of Tribal expertise are not discrete problems tied to a single step. They drive adverse outcomes and inefficiency from initiation and identification through evaluation, effects analysis, and resolution.

Any changes to Part 800 must produce real change in federal behavior. References to "streamlining" should be understood as improving efficiency through clarity, accountability, and early engagement that prevents rework and litigation, not as reduced consultation, narrowed protection, or using time pressure to justify adverse effects.

ACHP should conduct government-to-government consultation with Indian Tribes regarding this proposed regulatory review and any potential revisions to Part 800 in a manner that is thorough and transparent. Amendments will have compounding effects that Tribes must consider, both in how Tribes participate as consulting parties for undertakings that occur off Tribal lands and may affect Tribal interests, and in how the regulations shape day-to-day governmental operations and cultural resource decision making on Tribal lands. For that reason, ACHP's consultation strategy for any rulemaking should include sustained awareness-building and tiered opportunities for input at national and regional levels, consistent with Executive Order 13175, so Tribal governments can coordinate internally and provide informed input that can shape the Council's approach and final outcome.

***PROTECTING NATIVE PLACES***

Finally, NATHPO's experience is that the most common sources of delay and dispute in Section 106 are late initiation of Tribal engagement, inconsistent implementation, and documentation practices that do not support the sequential nature of the process. When consultation occurs after initial identification and documentation decisions, the process becomes bifurcated and Tribes are placed in a reactive posture. The most direct opportunity to improve predictability and efficacy is to strengthen documentation standards and decision transparency throughout the sequential process, including improvements to the documentation framework at 800.11, while ensuring confidentiality protections and appropriate handling of sensitive information.

## **Purpose**

This document organizes NATHPO's recommendations by the high-level issues that most consistently drive harm to Indian Tribes and inefficiency for federal agencies in the Section 106 process. Each section describes the problem, why it matters, and resolutions that would materially improve outcomes.

1. **Late Tribal engagement produces avoidable conflict and delay.** Federal agencies frequently seek Tribal perspectives after initial identification and documentation efforts have been completed, after project designs are advancing, or after decision pathways are effectively committed. This creates a bifurcated process that places Tribes in a reactive posture and then frames Tribal participation as a "delay," while agencies are often unwilling to revisit earlier steps or correct the record.

*Why it matters.* Late engagement produces avoidable disputes, weakens decision quality, and increases the likelihood of protracted consultation, appeals, and litigation. It also undermines trust and encourages agencies and applicants to treat consultation as a procedural formality rather than an input that shapes decisions.

### *Resolutions:*

- Clarify and strengthen initiation and early engagement expectations under 800.3(c) and 800.2(c)(2), so Tribal engagement occurs early enough to shape decisions, before alternatives are narrowed, designs are locked, and agencies become committed to outcomes.
- Further inform the "reasonable and good faith effort" standard under 800.4(b)(1) and 800.4(b)(3) by establishing minimum expectations for identifying Indian Tribes that may attach religious and cultural significance to properties in the APE, and by making clear that agencies should seek and consider that input before concluding or advancing identification efforts.
- Clarify under 800.2(c)(2)(ii) and 800.2(c)(4) that applicant-led outreach does not satisfy government-to-government consultation obligations and cannot substitute for federal agency responsibilities.
- Clarify expectations under 800.4(a)(1) that agencies should communicate the proposed APE to Tribes early and document how Tribal input informed boundaries and any subsequent changes.
- Clarify, consistent with the sequential structure of 800.4 through 800.6 and the documentation framework at 800.11, that when Tribal information demonstrates identification, evaluation, or effects determinations were incomplete or incorrect, agencies should revisit and correct the relevant step and supporting record before proceeding.

2. **Weak documentation undermines the sequential and compounding nature of the Section 106 process.** Documentation practices are inconsistent and often insufficient to support the procedural, sequential, and compounding nature of Part 800. Records frequently do not show when and how Tribes were engaged, what information was considered, how Tribal concerns were addressed, or how decisions were reached. This forces late-stage reconstruction and drives disputes and litigation.

*Why it matters.* A weak administrative record is a primary driver of delay. It undermines predictability for federal agencies and applicants, weakens defensibility, and erodes confidence for Tribes that the process is being conducted in good faith.

*Resolutions:*

- Strengthen documentation expectations under 800.11 so the record clearly reflects, without disclosing protected information, when and how Tribes were engaged at each step, what decision points engagement informed, and how Tribal expertise and Indigenous Knowledge informed identification, evaluation, effects, and resolution.
- Clarify that any determination, finding, or agreement that relates to the identification of or assessment of effects to properties that may be of religious and cultural significance to an Indian Tribe should include sufficient documentation to enable any reviewing party to identify when and how consultation efforts facilitated opportunities for Indigenous Knowledge to inform decision making. These records should reflect if Indigenous Knowledge was incorporated into final decisions, or include detailed justifications as to why not, while protecting or withholding information deemed sensitive by the Indian Tribe in accordance with applicable law, regulation, and agency policy.
- Clarify, through Part 800 and associated guidance, that when timelines slip agencies should document the primary drivers of delay in the administrative record, including late initiation, late changes, inadequate information, weak documentation, or unresolved consultation issues.

3. **Federal agencies must remain responsible for identification and documentation, and responsibilities must not be shifted onto Tribal governments.** Agencies and applicants sometimes pressure Tribes to provide site-specific documentation as a precondition for considering properties of religious and cultural importance, or they use “gather information” concepts to shift identification and documentation burdens onto Tribal governments. This creates an unfunded mandate and can result in agencies disregarding Tribal concerns when a Tribe chooses not to disclose sensitive details.

*Why it matters.* The NHPA and Part 800 place responsibility for identification, evaluation, and the sufficiency of the administrative record on federal agencies. Tribes provide consultation and special expertise, but they should not be positioned as substitutes for agency responsibility.

*Resolutions:*

- Reinforce, consistent with 800.4(b) and 800.11, that identification, evaluation, and documentation remain federal agency responsibilities, and that Tribal consultation and special expertise inform, but do not replace, agency duties.
- Clarify, consistent with 800.4(a)(4) and 800.2(c)(2), that “gather information from an Indian Tribe” means engaging Tribes about what may be present, what characteristics matter, what

actions may affect those resources, and how information should be handled, not requiring Tribes to generate site-specific documentation as a condition of consideration.

- Specify, consistent with 800.11(c) and confidentiality protections referenced in Part 800, that confidentiality constraints do not relieve the federal agency of its responsibility to identify and evaluate properties in good faith, and that agencies should document how confidentiality constraints were addressed while still meeting identification and evaluation responsibilities.
- Improve the “reasonable and good faith effort” standard in 800.4(b)(1) and 800.4(b)(3) by establishing minimum expectations for demonstrating that identification efforts reflect information and perspectives gathered from Tribes, and by making clear that agencies should seek and consider that information before concluding or advancing identification efforts.

4. **Indigenous Knowledge must be treated as evidence and integrated throughout the Section 106 process.** Indigenous Knowledge is frequently treated as optional context rather than as evidence, while archaeology and other technical disciplines are treated as the primary lines of evidence.

*Why it matters.* Indian Tribes frequently rely upon their Indigenous Knowledge to identify and interact with sacred sites, historic properties, and properties of religious and cultural importance. These locations are often imbued with both tangible and intangible values and resources that are not readily known outside of the community, clan, family, or individual who ascribe significance to them. Therefore, it is critical that federal agencies respect the value of and actively seek to incorporate Indigenous Knowledge into their historic preservation programs and decision making. When Indigenous Knowledge is discounted or treated as non-evidence, federal agencies risk missing properties, mischaracterizing significance, underestimating effects, and adopting resolutions that fail to address actual harm to Tribal lifeways, practices, and responsibilities.

*Resolutions:*

- Add the characterization of Indigenous Knowledge adopted under ACHP’s Policy Statement on Indigenous Knowledge and Historic Preservation to the Part 800 definitions so agencies have a clear baseline.
- Make explicit that Indigenous Knowledge held by an Indian Tribe is a valid, sound, and self-supporting source of information and an aspect of the best available science, and it does not require verification by any other knowledge system to inform decision making.
- Reinforce that the “special expertise” referenced in 800.4(c)(1) includes Indigenous Knowledge and require federal agencies to recognize and defer, where appropriate, to the interpretation of designated Tribal representatives regarding significance, integrity, and how effects are experienced.
- Require federal agencies, consistent with 800.2(c)(2)(ii)(A), to consider Indigenous Knowledge in a successive and cumulative manner throughout the Section 106 process, and to document how it informed decisions while protecting sensitive content, including:
  - Identification and Documentation: Identification efforts, including background research and field surveys, should be guided and informed by Indigenous Knowledge where Tribes consent to share it, and documentation should reflect characteristics identified as relevant by the associated Tribe or NHO to inform subsequent decision making.

- Evaluation: Eligibility determinations for properties of religious and cultural importance must reflect Tribal or NHO interpretation of significance and integrity, and agencies should not default to non-Tribal professional judgment where Indigenous Knowledge is the controlling line of evidence for cultural significance.
- Assessment of Adverse Effects: Effects analysis must take into account Indigenous Knowledge and comments provided by the associated Tribe(s) or NHO(s) to understand if and how the undertaking affects the property and the values for which it is significant.
- Resolution of Adverse Effects: Avoidance and minimization measures should reflect Indigenous Knowledge and the preferences of the associated Tribe or NHO, and agencies should not constrain appropriate resolution options by labeling them as “creative,” “alternative,” or “compensatory” in ways that limit outcomes for Tribal cultural harm.
- Require Part 800 to provide clearer direction on managing sensitive information, including minimum expectations that agencies inform Tribes or NHOs of limitations on confidentiality before discussing Indigenous Knowledge, and that agencies use all available mechanisms to prevent inappropriate disclosure of confidential, sensitive, sacred, or internal information to the fullest extent of the law.
- Strengthen documentation standards under 800.11, that enable a reviewing party to identify when and how consultation efforts facilitated opportunities for Indigenous Knowledge to inform decision making, while protecting or withholding sensitive information in accordance with applicable law, regulation, and agency policy.

**5. Protecting Sensitive Tribal Information and Indigenous Knowledge in the Section 106 Process.**

Indigenous Knowledge and Tribal consultation frequently involve information that is confidential, sensitive, sacred, and internal to an Indian Tribe or Native Hawaiian Organization. Federal agencies and applicants do not consistently explain confidentiality limits up front, and documentation practices sometimes pressure disclosure or create records that risk inappropriate release of sensitive information. This can result in Tribes withholding information that would otherwise improve identification and decision making, and it can undermine trust in the Section 106 process.

*Why it matters.* If sensitive information is not protected, the harm is not abstract. Inappropriate disclosure can increase risks to sacred sites and culturally sensitive places, violate Tribal cultural and governmental protocols, and reduce Tribal willingness to share information needed for accurate identification, evaluation, and effects analysis. This directly undermines the NHPA’s objectives and the integrity of the Section 106 process, and it increases the likelihood of dispute when Tribes reasonably decline to provide details that could be exposed.

*Resolutions:*

- Strengthen Part 800 and associated guidance to make explicit, consistent with 800.11(c), that Indigenous Knowledge and Tribal consultation frequently involve confidential, sensitive, sacred, or internal information, and that agencies should treat this as a standard condition of Tribal engagement rather than an exception.

- Specify, consistent with 800.11(c), that agencies should, to the maximum extent practicable, inform Tribes at the outset of consultation about any limitations on the agency’s ability to maintain confidentiality before requesting or discussing Indigenous Knowledge.
- Reinforce, consistent with Part 800 confidentiality protections and applicable law, that agencies should use all available legal and procedural mechanisms, to the fullest extent of the law, to prevent inappropriate disclosure of sensitive information, including in consultation records, agreement documents, and public-facing materials.
- Strengthen documentation expectations under 800.11 so the administrative record can show, at a high level, when and how Tribal engagement occurred and how Indigenous Knowledge informed decisions, without disclosing sensitive content.
- Add a requirement in Part 800 and associated guidance that agencies document, at a high level, how sensitive information was managed, including whether confidentiality was requested, what protections were applied, and how the agency ensured decision-making remained informed without exposing protected details.
- Add direction, consistent with the “reasonable and good faith effort” framework in 800.4(b) and the confidentiality provisions in 800.11(c), that an agency may not treat a Tribe’s decision to withhold sensitive details as a failure to participate or as a basis to discount Tribal concerns, and that the agency remains responsible for good faith identification and evaluation while protecting sensitive information.

**6. Compensation for Tribal and NHO Expertise When Agencies Request Agency-Responsibility Work.**

Federal agencies and applicants often rely on Indian Tribes and NHOs to provide Indigenous Knowledge that is necessary to identify, evaluate, assess, or resolve effects to properties of religious and cultural importance, but they do so without a clear regulatory expectation for reimbursement when Tribes or NHOs are asked to perform research, survey, monitoring, documentation, or other substantive work that is the agency’s responsibility under the NHPA.

*Why it matters.* Identifying, vetting, and deciding whether and how to share Indigenous Knowledge frequently requires time, research, and additional action by Tribes and NHOs. Without clear expectations of compensation, agencies risk shifting core federal responsibilities onto Tribal governments as an unfunded obligation, which undermines equity, reduces participation, delays outcomes, and incentivizes agencies to hire outside intermediaries who are not the appropriate knowledge holders. In contrast, agencies routinely contract archaeologists, architectural historians, cultural anthropologists, and other professionals to generate the information needed for Section 106 decision making, and designated Tribal and NHO representatives should be treated as subject matter experts in a comparable manner when they are asked to generate or provide evidence.

*Resolutions:*

- Add explicit direction in Part 800 and associated guidance, consistent with federal agency responsibility for identification and documentation under 800.4 and record sufficiency under 800.11, that when a federal agency requests or relies on an Indian Tribe or NHO to provide Indigenous Knowledge via research, survey, monitoring, documentation, or other efforts that are the responsibility of the federal agency under the NHPA, the Indian Tribe or NHO should be reimbursed or compensated.

- Recognize throughout Part 800 that designated Tribal representatives providing Special Expertise/Indigenous Knowledge in this context are subject matter experts, and that agencies should treat them in a manner consistent with other professionals who are routinely contracted to support identification, evaluation, effects analysis, and resolution.
- This change will improve efficiency and decision quality by reducing reliance on outside intermediaries and additional procurement steps, and by obtaining higher-quality, place-based information directly from the appropriate source.

7. **Government-to-government consultation must be distinct from generic “consultation,” and delegation must not substitute for federal responsibility.** Agencies often conflate government-to-government consultation with generic outreach and may treat applicant-led engagement as consultation. Delegation and applicant-driven engagement can overwhelm Tribes, create inconsistent communications, and allow agencies to avoid accountability for the consultation record.

*Why it matters.* Government-to-government consultation is fundamental to respecting Tribal sovereignty and producing legitimate, defensible outcomes. When the agency is absent or passive, consultation quality declines, disputes increase, and the record becomes harder to defend.

*Resolutions:*

- Add a definition of government-to-government consultation to Part 800’s definitions, explicitly referencing Executive Order 13175, and distinguish it from consultation with other parties.
- Specify minimum expectations for government-to-government consultation under 800.2(c)(2) and require agencies to document what form of engagement occurred, with whom, and for which step in the sequential process, consistent with 800.11.
- Reinforce the limits on delegation under 800.2(c)(4) and reaffirm that federal agencies remain accountable for government-to-government consultation and the consultation record.
- Require agencies to document, consistent with 800.11, when applicant coordination is used under 800.2(c)(4), and to state that applicant-led engagement does not satisfy government-to-government consultation obligations.
- Consider adding or reinforcing a requirement in Part 800 or associated guidance that agencies maintain clear communication protocols, including identifying a single federal point of contact for Tribal consultation, so Tribes are not overwhelmed by duplicative or conflicting applicant communications.

8. **Consultation requirements must not be bypassed through program alternatives, agreement documents, or expedited pathways.** Program comments, programmatic agreements, standard treatments, exemptions, and expedited consultation procedures can be structured or applied as shortcuts that compress or bypass Tribal engagement.

*Why it matters.* Alternative mechanisms are intended to improve efficiency while preserving NHPA protections. When used to bypass Tribes, they create illegitimate outcomes, increase dispute risk, and can result in severe harms to sacred sites and culturally sensitive resources.

*Resolutions:*

- Reinforce, consistent with 800.2(c)(2), that the federal agency shall consult with Indian Tribes when an undertaking may affect historic properties, including properties that may be of traditional religious and cultural importance to Tribes.
- Strengthen Part 800.14 (program alternatives) and associated templates and guidance to ensure mandatory Tribal consultation provisions are embedded across program alternatives and agreement documents, including program comments, programmatic agreements, standard treatments, exemptions, and any expedited consultation procedures, so consultation is built into the mechanism and cannot be treated as optional or satisfied through a substitute process.
- Require documentation, consistent with 800.11, showing when and how consultation occurred and how Tribal concerns and Indigenous Knowledge informed the development and application of the program alternative or agreement document, while protecting sensitive information under 800.11(c).
- Clarify that public involvement or “public opportunity” is not a substitute for government-to-government consultation with Tribes, and ensure Part 800 and associated guidance do not allow public participation steps to be used to compress or bypass Tribal engagement.

**9. APE and effects analysis must be transparent, defensible, and responsive to Tribal concerns.**

Federal agencies’ descriptions of and the information provided to support APE determinations vary widely in quality and adequacy. In many cases, the APE is described in a manner that is too vague to support efficient Tribal review or to allow Tribes to compare proposed project areas against known cultural resources in GIS. For larger or linear undertakings, agencies do not consistently provide usable geospatial data to consulting parties, which slows review and increases the risk that identification efforts will be incomplete or misdirected.

*Why it matters.* When the APE is poorly described or unsupported, agencies risk under-identifying effects to properties of religious and cultural importance and the Section 106 process becomes less defensible when challenged. This also drives inefficiency.

*Resolutions:*

- Develop and publish ACHP guidance and standardized expectations under Part 800, linked to 800.4(a)(1) and 800.4(b), for APE descriptions and APE determinations that are matched to the level of effort needed to support identification and documentation. The guidance should make clear that an APE determination is not complete unless the agency provides enough information for consulting parties to conduct an informed review and advise on identification strategies.
- ACHP should work with federal agencies to develop a standardized template (guidance-level) for project descriptions and APE determinations to reduce variability and improve predictability. At a minimum, each APE determination should include a clear project description and basic geospatial information adequate for Tribal review.
- For relatively small projects, agencies should provide a centerpoint for the project location as latitude and longitude in decimal degrees, along with a clear description of the proposed APE, to support efficient Tribal review and GIS comparison.
- For larger projects, and especially long linear projects, agencies should provide GIS data to consulting parties on a regular basis in usable formats, so review parties can evaluate the

undertaking efficiently and provide informed input on identification priorities and potential areas of concern.

- Clarify, consistent with 800.11 and the sequential structure of 800.4, that agencies should document the basis for the proposed APE, identify the information sources used to support it, and document how Tribal concerns about the APE were considered and addressed. Where Tribes identify that an APE description or associated information is inadequate to support meaningful review, agencies should correct the deficiency before advancing identification efforts in their entirety.

**10. Burial sites, human remains, and funerary objects require heightened safeguards, avoidance-first discipline, and culturally appropriate handling.** Agencies may default to mitigation or treat “data recovery” as sufficient even where harms are spiritual, cultural, or place-based. In burial-related contexts, mishandling can cause acute harm and irreversible loss.

*Why it matters.* These are among the highest-stakes contexts for Indian Tribes. Failures here create lasting harm, increase dispute risk, and undermine confidence in the Section 106 process.

*Resolutions:*

- Require agencies to prioritize avoidance and minimization, to document how those options were evaluated, and to develop resolution measures that reflect Tribal protocols and priorities.
- Strengthen early engagement expectations under 800.2(c)(2) and 800.3(c) for burial-related contexts, including sensitive-information handling and deference to associated communities’ protocols to the maximum extent practicable.
- Clarify, consistent with 800.14 and 800.2(c)(2), that program alternatives and any expedited pathways cannot be used to bypass Tribal consultation or reduce safeguards where burial sites, human remains, or funerary objects may be affected.
- Strengthen documentation expectations under 800.11, including 800.11(c), so the record reflects, at a high level, how culturally appropriate handling and confidentiality were addressed, without disclosing sensitive information.

**11. ACHP Participation Trigger and the 15-Day Waiting Period After a Finding of Adverse Effect.** The current 15-day period in 800.6(a)(1)(iii), intended to provide ACHP an opportunity to decide whether to participate in consultations to resolve adverse effects, is frequently not followed in practice. Federal agencies routinely begin resolution discussions with consulting parties before ACHP has been invited or has had an opportunity to respond. In addition, changes in ACHP staffing capacity have affected the agency’s ability to participate in resolution consultations at the scale implied by the current regulatory framework, which further increases uncertainty.

*Why it matters.* This provision is creating a process step that often does not function as written and can result in confusion about when and how ACHP is expected to engage. It also contributes to inefficiency and predictability problems in the resolution phase. When agencies proceed as if the 15-day period does not exist, the rule becomes a paper requirement that can be ignored without consequence, undermining regulatory credibility. Where agencies do pause, the time can function as an unnecessary delay if ACHP is not realistically positioned to participate in most cases. Either

way, the current structure does not reliably achieve its intended purpose and can slow the resolution of adverse effects without improving outcomes.

*Resolutions:*

- Consider revising 800.6(a)(1)(iii) to eliminate the 15-day waiting period and replace it with clearer, criteria-based triggers for ACHP participation that reflect current practice and capacity.
- Establish specific criteria for when ACHP participation is expected or presumed, such as undertakings with national policy implications, nationwide programmatic agreements, certain categories of complex undertakings, or other clearly defined thresholds.
- Provide that ACHP participation may also be triggered upon request by an Indian Tribe or Native Hawaiian Organization, and/or as part of dispute resolution where ACHP involvement is needed to facilitate resolution.
- Strengthen procedural expectations under 800.6 so agencies do not begin resolution discussions without documenting that ACHP has been notified, and so consulting parties have a clear understanding of when ACHP will participate and when resolution may proceed without a waiting period.

12. **Technology, AI, and data collection must not substitute for consultation or compromise sensitive information.** Technology initiatives can be used to centralize data, apply predictive modeling, or create “efficiency” narratives that undermine Tribal control of sensitive information.

*Why it matters.* If sensitive cultural information is exposed or misused, it can create irreparable harm and permanently reduce Tribal willingness to share information necessary for good decision-making.

*Resolutions:*

- Use technology to improve secure documentation and accountability, such as role-based portals, version-controlled consultation logs, and standardized templates that strengthen documentation under 800.11, without replacing government-to-government consultation.
- Establish clear guardrails, through Part 800 guidance and data governance requirements, prohibiting AI-driven inference, predictive modeling, or automated determinations that ingest or operationalize sensitive Tribal cultural information absent explicit Tribal consent and agreed data governance.
- Require that any technology platform used to support Section 106 include role-based access controls and confidentiality safeguards, and that agencies document, at a high level, how those safeguards were applied when sharing information with consulting parties.

## **Conclusion**

NATHPO appreciates the opportunity to provide these thematic recommendations to inform the Council’s review of 36 CFR Part 800. The changes most likely to improve efficiency are not shortcuts that compress consultation, but practical measures that correct recurring federal behavior and strengthen the integrity of the sequential Section 106 process. Early government-to-government engagement with Tribes must be treated as a decision-shaping requirement, not a late-stage formality. Documentation under 800.11 must be strengthened to function as a step-by-step administrative record that supports

the sequential and compounding nature of Section 106 and clearly reflects when and how Tribes were engaged and how Tribal input informed determinations, consistent with confidentiality protections.

Federal agencies must remain accountable for identification, evaluation, and documentation responsibilities, and those duties should not be shifted onto Tribal governments through “gather information” practices or applicant-driven engagement. Consultation requirements must also be essential across all Part 800 mechanisms, including program alternatives and expedited pathways, so that efficiency is achieved through predictability and defensible decision making rather than procedural avoidance. Indigenous Knowledge and Tribal special expertise must be treated as valid, self-supporting evidence throughout identification, evaluation, effects analysis, and resolution, and the regulations and guidance must provide clearer direction for managing sensitive information to the fullest extent of the law.

In short, improving outcomes for Indian Tribes and improving efficiency for federal agencies are aligned goals when engagement occurs early, documentation supports the sequential process, agencies remain accountable for the core responsibilities of Section 106, consultation cannot be bypassed through alternative mechanisms, and Tribal expertise is respected as essential evidence in identifying and considering historic properties, including sacred sites and properties of religious and cultural importance to Tribes. NATHPO stands ready to continue supporting the Council’s efforts and to assist in developing clear, workable improvements that strengthen compliance and improve outcomes for all parties.

Sincerely,

A handwritten signature in blue ink that reads "Ira L. Matt". The signature is written in a cursive style with a horizontal line underlining the first name.

Ira L. Matt  
Executive Director  
Indigenous Diplomacy and Federal Relations  
National Association of Tribal Historic Preservation Officers

Cc:  
Lakota Hobia, NATHPO Chair  
Buffy McQuillen, NATHPO Vice-Chair  
Valerie Grussing, NATHPO  
Wesley Furlong, Native American Rights Fund  
Anne Raines, NCSHPO  
Erik Hein, NCSHPO  
Betsey Merritt, NTHP  
John Fowler, ACHP Foundation  
Reid Nelson, ACHP  
Kelly Fanizzo, ACHP