BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In re. MODERNIZING THE COMMISSION'S NATIONAL ENVIRONMENTAL POLICY ACT RULES	WT Docket No. 25-217 FCC 25-47

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS AND THE NATIONAL CONGRESS OF AMERICAN INDIANS

DATE: October 3, 2025

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I. Introduction

The National Association of Tribal Historic Preservation Officers ("NATHPO") and the National Congress of American Indians ("NCAI") submit these reply comments on the Federal Communications Commission's ("FCC") notice of proposed rulemaking, *Modernizing the Commission's National Environmental Policy Act Rules*, published in the Federal Register on August 19, 2025 ("the NPRM").[1] Both NATHPO and NCIA submitted comments on the NPRM on September 18, 2025,[2] as well as comments and reply comments on CTIA—The Wireless Association's ("CTIA") March 27, 2025, petition for rulemaking on April 30, 2025, and May 15, 2025, respectively.[3] In submitting these reply comments, NATHPO and NCAI incorporate by reference their previously submitted comments.

NATHPO is the only national organization devoted to supporting Tribal Historic Preservation Officers ("THPO") and Tribal Historic Preservation Programs.[4] Founded in 1998, NATHPO is a national, non-profit membership organization comprised of Tribal governmental officials, primarily THPOs, who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate

[1] 90 Fed. Reg. 40,295 (Aug. 19, 2025).
[2] *See* Letter from Valerie J. Grussing, Exec. Dir., Nat'l Ass'n of Tribal Hist. Pres. Officers., to Joel Taubenblatt, Acting Bureau Chief, Fed. Commc'ns Comm'n, *National Association of Tribal Historic Preservation Officers' Comments on the Federal Communications Commission's Proposed Rule,* Modernizing the Commission's National Environmental Policy Act Rules*: WT Docket No. 25-217; FCC 25-47* (Sept. 18, 2025), https://www.fcc.gov/ecfs/document/109180794528778/1; Letter from Larry Wright, Exec. Dir., Nat'l Congress of Am. Indians, to Jennifer Flynn, Fed. Commc'ns Comm'n, *Comment on FCC WT Docket No. 25-217, Modernizing the Commission's National Environmental Policy Act Rules* (Sept. 18, 2025), https://www.fcc.gov/ecfs/document/10918989524453/1.
[3] Letter from Valerie J. Grussing, Exec. Dir., Nat'l Ass'n of Tribal Hist. Pres. Officers., to Joel Taubenblatt, Acting Bureau Chief, Fed. Commc'ns Comm'n (Apr. 30, 2025), https://www.fcc.gov/ecfs/document/104302333500052/1; Letter from Coal. for Tribal Sovereignty, to Fed. Commc'ns Comm'n, *Comment on CTIA Petition for Rulemaking on the Commission's National Environmental Policy Act Rules, RM-12003* (Apr. 30, 2025), https://www.fcc.gov/ecfs/document/10430619203211/1; Letter from Larry Wright, Exec. Dir, Nat'l Congress of Am. Indians, & Valerie J. Grussing, Exec. Dir., Nat'l Ass'n of Tribal Hist. Pres. Officers, to Fed. Commc'ns Comm'n, *Reply of the National Congress of American Indians and the National Association of Tribal Historic Preservation Officers* (May 15, 2025), https://www.fcc.gov/ecfs/document/10516050694716/1.
[4] *See* 54 U.S.C. §§ 320701–320706.

Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples. NATHPO is a voting member of the Advisory Council on Historic Preservation ("ACHP").[5]

NCAI, founded in 1944 and based in Washington, D.C., is the oldest and largest national organization comprised of American Indian and Alaska Native Tribal governments and their citizens. NCAI advises and educates the public, state governments, and the federal government on a broad range of issues involving Tribal sovereignty, self-government, treaty rights, and policies affecting Tribal Nations. NCAI's primary focus is protecting the inherent sovereign legal rights of Tribal Nations through positions directed by consensus-based resolutions. These resolutions are promulgated at NCAI national conventions by the organization's entire membership, which is annually renewed at approximately 300 Tribal Nations.

In their comments on the NPRM, a number of commentators suggest that exempting the deployment of wireless infrastructure from review under Section 106 of the National Historic Preservation Act ("NHPA") and the National Environmental Policy Act ("NEPA") and is in the public interest. Nothing could be further from the truth. The public interest *will not* be served by the FCC purporting to unilaterally exempt the deployment of wireless infrastructure from NHPA and NEPA review. In enacting these statutes, Congress expressed its judgment that the consideration of effects on historic properties and impacts to the human environment is in the public interest. Consulting with Tribal Nations in these reviews, and specifically in the Section 106 process, is in the public interest and upholds the federal government's—inclusive of the FCC's—trust responsibility to Tribal Nations.

[5] *Id*. § 304101(a)(8).

II. Native religions and cultures are land based.

Tribal Nations and Indigenous communities across the United States have their "own unique history, culture, and religious traditions."[6] While it is inappropriate to generalize across all Native religious, cultures, practices, and beliefs, common elements exist.[7] One such element is the central importance of actual physical places to Native religions and cultures. "Sacred places are the foundation of all other beliefs and practices because they represent the presence of the sacred in [Native peoples'] lives."[8]

In his seminal work on Native religions, *God is Red*, Vine Deloria, Jr., observed that Tribal Nations' traditional homelands are associated with "a multitude of stories that recount migrations, revelations, and particular historical incidences that cumulatively produced the tribe in its current condition."[9] For many Tribal Nations, these places form a "sacred geography" within which their religions and cultures are practiced.[10] These places are holy and irreplaceable, and without them, "many tribal religions cannot exist."[11]

Sacred places may be specific sites associated with teachings and creations stories; pilgrimage routes and sites; locations for gathering medicines, sacraments, and other plants; shrines, alters, and ruins; burial grounds and massacre sites; vision questing sites and places of prayer, meditation, and communication with the Creator and spirit world; as well as "the great

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[6] Joel West Williams & Emily deLisle, *An "Unfulfilled, Hollow Promise":* Lyng*,* Navajo Nation*, and the Substantial Burden on Native American Religious Practices*, 48 ECOLOGY L.Q. 809, 814 (2021).
[7] *See* Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294, 1304 (2021).
[8] VINE DELORIA, GOD IS RED: A NATIVE VIEW OF RELIGION 110 (4th ed. 2023).
[9] *Id*.
[10] *Id*.; Kiristen A. Carpenter, *Living the Sacred: Indigenous Peoples and Religious Freedom*, 134 HARV. L. REV. 2103, 2113 (2021) [hereinafter Carpenter, *Living the Sacred*] ("[I]n many Indigenous religions, plants, animals, and features or the natural landscape are critical to religious belief and practice. Sacred sites[] . . . are unique places marking sites of creation, homes of deities, or habitats for sacramental plants and waters.").
[11] Kristen A. Carpenter, *A Property Rights Approach to Sacred Sites Cases: Asserting A Place for Indians as Nonowners*, 52 UCLA L. REV. 1061, 1068–69 (2005) [hereinafter Carpenter, *Property Rights*].

American sacred centers where many spirits and divine beings live. . . . These are special places of profound power that combine many of the qualities that form the other categories all in one."[12] These places, and the plants and animals in them, are imbued with spiritual power.[13]

The sacredness and centrality of place is not unique to Native religions and cultures.[14] Many of the predominant religions practiced in the United States all recognize sacred, or holy, lands.[15] Yet, for many Native religions and cultures, certain religions and cultural practices can only be performed at specific places and cannot be performed or observed elsewhere.[16] As Justice Brennan observed in *Lyng v. Northwest Indian Cemetery Protective Association*, "[t]he site-specific nature of Indian religious practices derives from the Native American perceptions that the land is itself a sacred, living being."[17]

III. Colonial and post-Colonial era policies dispossessed Native Americans of their homelands, leaving the federal government, states, and private landowners as gatekeepers to their sacred places.

From the earliest days of the Nation, the United States has instituted policies designed to dispossess Tribal Nations of their homelands in various ways. These policies have included violence and forced removal, claiming land in treaties, and seizing land through executive orders and legislation. While the means to effectuate land dispossession evolved over the years, the results remained the same: Tribal Nations' loss of control over and access to their homelands and sacred places.

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[12] WALTER R. ECHO-HAWK, IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED 332 (2010).
[13] DELORIA, *supra* note 8, at 139.
[14] ECHO-HAWK, *supra* note 12, at 849–50 ("[A]ll world religions have holy places.").
[15] Carpenter, *Living the Sacred*, *supra* note 10, at 2113.
[16] *Id*. ("It is certainly the case that many world religions have sacred places outside of the United States—Jerusalem, Mecca, and the Vatican all come to mind. Yet, the tradition of ritual worship at a sacred site is a feature that sometimes distinguishes certain Indigenous religious rituals from others that can be practices equally well in any church, temple, or mosque." (footnote omitted)); Barclay & Steele, *supra* note 7, at 1305; DELORIA, *supra* note 8, at 141.
[17] *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 461 (1988) (Brennan, J., dissenting).

The United States's early acquisitions of Tribal lands were typically effectuated through war and cessions contained in treaties.[18] To justify these takings, the United States relied on the so-called "doctrine of discovery."[19] From its founding until 1924, the United States "seized hundreds of millions of acres of land from Native nations in more than three hundred treaties."[20] While treaties between Tribal Nations and the United States are considered essentially contracts between two sovereign nations,[21] the United States often exercised unequal and coercive bargaining power in their negotiations and drafting.[22]

For example, during the Treaty Era,[23] Tribal Nations in what is today California signed eighteen treaties with the United States that removed them from their traditional homelands.[24] By the terms of these treaties, the Tribal Nations believed that they would be moved onto eight million acres of reservation lands in exchange for ceding the rest of their homelands to the United States.[25] But these treaties were a bait-and-switch; Congress refused to ratify the treaties, seized the ceded lands, and failed to provide the Tribal Nations with their bargained for reservations.[26]

Recognizing the threat removal posed to their traditions, some Tribal Nations bargained in their treaties to ensure access to their most sacred places. For example, the Navajo Nation negotiated for the inclusion of Canyon de Chelly, a place of immense religious importance, to be

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[18] *See* NED BLACKHAWK, THE REDISCOVERY OF AMERICA 230 (2023).
[19] *See Johnson v. M'Intosh*, 21 U.S. 543 (1983); *see also* Barclay & Steele, *supra* note 7, at 1310 ("Under the doctrine of discovery, the Christian nation-states were entitled to tribal lands based on the fiction of voluntary cession.").
[20] BLACKHAWK, *supra* note 18, at 2–3.
[21] *See Washington v. Wash. State Comm. Passinger Fishing Vessel Ass'n*, 443 U.S. 658, 675 (1979).
[22] *See Wash. State Dep't of Licensing v. Cougar Den, Inc.*, 586 U.S. 347, 368 (2019) (Gorsuch, J., concurring).
[23] The Treaty Ear began before the formation of the Union and ended in 1871, when Congress enacted legislation prohibiting the negotiation of new treaties. *See* 25 U.S.C. § 71.
[24] Carole Goldberg, *Acknowledging the Repatriation Claims of Unacknowledged California Tribes*, 21 AM. INDIAN CULTURE & RES. J. 183, 184 (1997).
[25] *Id*.
[26] *Id*. at 184–85.

included within its reservation.[27] Likewise, the Blackfeet Nation retained the right to access the Badger-Two Medicine, the place of creation and vision question, in an agreement ceded a portion of its reservation.[28] Too often, however, the United States failed or refused to honor the promises it made in these treaties. For example, in the 1861 Fort Laramie Treaty, the Sioux Nation reserved the Black Hills for its exclusive use as part of the Great Sioux Reservation.[29] Bowing to pressure to exploit gold discovered in this territory, the United States reneged on its promises and took the Black Hills from the Sioux Nation, breaching the treaty.[30]

The United States also used legislation to dispossess Tribal Nations. The Indian Removal Act of 1830, for example, authorized the forced removal of Tribal Nations from the east coast to west of the Mississippi River.[31] The United States also adopted the allotment policy to further strip Tribal Nations of the little land they retained.[32] Under the Allotment Act, reservations were broken up and "surplus lands" were conveyed to non-Indians.[33] This resulted in the reduction of Tribal landholdings "from 138 million acres of land in 1887" to just "48 million acres in 1934.[34] Allotment, one part of the United States's forced assimilation policies, sought to change Tribal Nations' relationship to their lands by shifting land from collective to private ownership.[35]

In the 1950s, termination policies further reduced Tribal landholdings. Termination rescinded federal recognition of Tribal Nations and ended the federal government's trusteeship

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[27] *See* Treaty with the Navajos, June 1, 1868, 15 Stat. 667; Emma Blake, *Tribal Co-Management: A Monumental Undertaking?*, 48 ECOLOGY L.Q. 249, 249 (2021) (Canyon de Chelly features in Navajo creation stories, which maintain that spiritual figures and deities like Spider Woman still reside there).
[28] *See* Agreement with the Indians of the Blackfeet Indian Reservation in Montana, Act of June 10, 1896, 29 Stat. 353; *Solenex LLC v. Bernhardt*, 962 F.3d 520, 522 (D.C. Cir. 2020) ("The [Badger-]Two Medicine Area has long held a special place in the cultural history and religious life of the Blackfeet Tribe.").
[29] *See* Fort Laramie Treaty of April 29, 1868, 15 Stat. 636.
[30] *See United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).
[31] *See* 4 Stat. 411 (1830).
[32] *See* 24 Stat. 388 (1887).
[33] BLACKHAWK, *supra* note 18, at 334.
[34] *Id*.
[35] *Id*.; *see also* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.08, at 77–103 (Nell Jessup Newton & Kevin K. Washburn eds., 2024).

over Tribal lands.[36] As a result, "[t]ermination laws resulted in the loss of 1.3 million acres of Indian lands."[37] For example, after the United States allotted the Klamath Tribes' reservation, Congress passed the Klamath Termination Act.[38] Under that Act, "70% of the former reservation land ended up in federal ownership."[39]

"American Indian cultures are not expressed only on reservations . . . . The ancestral homelands of the Indian tribes cover the entire nation."[40] Due to federal policies of systematic dispossession, today, "[s]acred and historic places critical to the continuation of cultural traditions are often not under tribal control, but rather are owner or managed by Federal, State, [and] local governments, and other non-Indians."[41] Despite this history of dispossession, Tribal Nations remain committed to "preserving ancestral sites and traditional use areas on lands that they no longer control[.]"[42]

IV. Access to and protection of sacred places is essential to Native religions and cultures and the health of Native people.

For Tribal Nations across the County, removal from and loss of their homelands and sacred places has directly impacted Tribal identity; religious, cultural, and spiritual practices; and subsistence. For example, in litigation involving a sacred place, Cherokee claimants explained that "'[w]hen this place is destroyed, the Cherokee people cease to exist as a people.' They may not have meant that each individual tribal member would literally die, but rather that the loss of such sacred sites would make it difficult or impossible to maintain Cherokee worldviews and

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[36] *Bureau of Indian Affairs Records: Termination*, NAT'L ARCHIVES, https://www.archives.gov/research/native-americans/bia/termination.
[37] COHEN'S HANDBOOK, *supra* note 35, § 1.10[5], at 123.
[38] *See* Pub. L. No. 83-587, 68 Stat. 718 (1954).
[39] Monte Mills & Martin Nie, *Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands*, 44 PUB. LAND & RESOURCES L. REV. 49, 73 (2021).
[40] NAT'L PARK SERV., KEEPERS OF THE TREASURES: PROTECTING HISTORIC PROPERTIES AND CULTURAL TRADITIONS ON INDIAN LANDS 1 (1990).
[41] *Id*.
[42] *Id*. at 67.

lifeways."[43] Protecting these sacred places is intrinsic to Native religions and cultural, and is tied to the political, social, and cultural survival of Tribal Nations.[44]

Many Native religions and cultures are rooted in the concept of reciprocity—that is, the Earth, the plants, and the animals will care for humans so long as humans care for them.[45] In testimony to Congress, former First Chief of Arctic Village Council Galen Gilbert summarized this belief: "Our way of life is based on our relationship to the land. We must care for and respect the land and the animals given to us by the Creator."[46]

The dispossession of Tribal Nations' homelands, and the consequential loss of sacred places, has had a demonstrated effect on the health of Indigenous people and communities.[47] Sacred places play a critical role in overcoming these negative effects and historical polices. They are a foundation of Tribal Nations' current religious practices as well as those of the next generations. Tribal identify is "expressed as knowledge and participation with tribal heritage, history, traditions, activities and ceremonies."[48] These practices help communities heal from centuries of federal policies designed to erase Native religious, cultures, and identities. The

[43] Kristen A. Carpenter et al., *In Defense of Property*, 118 YALE L.J. 1022, 1051–52 (2009).
[44] *See* Carpenter, *Property Rights*, *supra* note 11, at 1068.
[45] *See* HILLARRY HOFFMAN & MONTE MILLS, A THIRD WAY: DECOLONIZING THE LAWS OF INDIGENOUS CULTURAL PROTECTION 41 (2020)
[46] *Arctic Cultural and Coastal Plain Protection Act: Hearing on H.R. 1146 Before the Subcomm. on Energy & Mineral Res. of the H. Comm. on Nat. Res.*, 116th Cong. 11 (2019).
[47] *See* Melody E. Morton Ninomiya et al., *Indigenous Communities and the Mental Health Impacts of Land Dispossession Related to Industrial Resource Development: A Systematic Review*, 7 LANCET PLANETARY HEALTH e501, e501 (2023), https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(23)00079-7/fulltext.
[48] Claudia (We-La-La) Long et al., *Assessing Cultural Life Skills of American Indian Youth*, 35 CHILD YOUTH CARE F. 289, 299–300 (2006), https://www.researchgate.net/publication/226568233_Assessing_Cultural_Life_Skills_of_American_Indian_Youth.

protection of sacred places and continuation of religious and cultural practices not only serve as a repudiation of assimilation,[49] but make Indigenous communities healthier.[50]

The protection of and access to sacred places is essential to the survival of Tribal Nations and Native religious and cultural practices and beliefs. Without the existence of and access to sacred places, it is impossible to maintain Native worldviews and lifeways. This history, the importance of sacred places to Tribal Nations, and the United States's trust relationship with Tribal Nations, emphasizes the importance of federal agencies engaging in meaningful, early, and good faith consultation with Tribal Nations about and fully assessing the potential impacts of actions and activities that may affect Tribal sacred places, especially when those activities or actions occur on lands no longer controlled by Tribal Nations.[51]

V. Exempting the deployment of wireless infrastructure from review under Section 106 of the National Historic Preservation Act is not in the public interest.

Exempting the deployment of wireless infrastructure from Section 106 review is not in the public interest. Instead, it undermines the public policy Congress expressed in establishing the NHPA and requiring Tribal consultation and contravenes the FCC's and the federal government's trust responsibility to Tribal Nations. Through enacting the NHPA and Section 106 and then later amending the statute to codify its Tribal consultation requirement, Congress expressed its judgment that the public interest is served by federal agencies—inclusive of the FCC—taking into account the effects of their undertakings on historic properties and consulting

[49] *See* Gerald Vizenor, *Aesthetics of Survivance: Literary Theory and Practice*, *in* SURVIVANCE: NARRATIVES OF NATIVE PRESENCE 1 (Gerald Vizenor ed., 2008)
[50] Moneca Sinclaire et al., *Promoting Health and Wellness Through Indigenous Sacred Sites, Ceremony Grounds, and Land-Based Learning; A Scoping Review*, 20 ALTERNATIVE: AN INT'L J. INDIGENOUS PEOPLES 560, 562 (2024), https://journals.sagepub.com/doi/10.1177/11771801241251411.
[51] Carpenter, *Living the Sacred*, *supra* note 10, at 2113 ("The inextricable connection among place, belief, and practice that characterizes many Indigenous Peoples' religions is all the more poignant when federal, state, and private parties have come to own many Indigenous sacred sites, and where these parties wish to use them for purposes not consistent with religious worship or practice.").

with Tribal Nation in that process. The public interest is similarly served by the federal government—inclusive, again, of the FCC—upholding its trust responsibility to Tribal Nations.

The NHPA is considered "the most far-reaching preservation legislation ever enacted in the United States."[52] Following World War II, the United States experienced a massive constructure boom aimed at modernizing American cities and infrastructure.[53] This intensive construction and development resulted in the unchecked destruction and demolition of countless historic sites.[54] This destruction galvanized historic preservationists to lobby for comprehensive legislation that would enshrine historic preservation principles in federal law and balance the values of historic preservation with the need for development.[55] The result was the NHPA, enacted in 1966.

The NHPA seeks to "foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations."[56] When Congress enacted the NHPA, it found and declared "that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."[57] Accordingly, the NHPA is "designed to encourage preservation of sites and structures of historic, architectural, or cultural significance."[58]

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[52] Diane Lea, *America's Preservation Ethos: A Tribute to Enduring Ideals*, *in* A RICHER HERITAGE: HISTORIC PRESERVATION IN THE TWENTY-FIRST CENTURY 1, 11 (Robert E. Stipe ed., 2003).
[53] Marion F. Werkheiser et al., *The National Historic Preservation Act and 36 CFR 800*, *in* THE NATIONAL HISTORIC PRESERVATION ACT; PAST, PRESENT, AND FUTURE 18, 19 (Kimball M. Banks & Ann M. Scott eds., 2016).
[54] *Id*.
[55] *Id*.
[56] 54 U.S.C. § 300101(1).
[57] Pub. L. No. 89-665, § 1, 80 Stat. 915, 915 (1966).
[58] *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006) (quoting *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1093–94 (9th Cir. 2005)) (quotation marks omitted).

To achieve this "productive harmony," Congress enacted Section 106. Section 106 requires federal agencies to "take into account the effect[s] of the[ir] undertaking[s] on any historic property."[59] Section 106 was "intended to ensure that Federal agencies will not work at cross purposes with the goals of historic preservation[.]"[60] At the time, Congress described Section 106 as striking "a meaningful balance . . . between preservation of these important elements of our heritage and new construction to meet the needs of our ever-growing communities and cities."[61] In 1992, Congress reaffirmed the significance of Section 106, describing it as "[o]ne of the most important provisions of the National Historic Preservation Act[.]"[62]

Despite its lofty goals, for decades after its enactment, the NHPA largely excluded and overlooked "the historical and cultural foundations of" Tribal Nations.[63] Instead, the NHPA mostly focused on the preservation of post-colonial American history, especially architectural, aesthetic, and archaeological resources.[64] To the extent the NHPA, and other federal preservation laws, addressed Tribal historic resources, they largely attempted to erase or exploit these resources and histories.[65] Tribal Nations' position within the national preservation system established by the NHPA began to change in the 1980s.

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[59] 54 U.S.C. § 306108.
[60] S. REP. NO. 1363, at 8 (1966),
[61] H.R. REP. NO. 1916, at 6 (1966); S. REP. NO. 1363, at 6 ("The need for a national program to preserve the significant physical evidence of our rich historic and cultural heritage is manifest when we view the construction that has been sweeping the Nation[.]").
[62] S. REP. NO. 102-336, at 12 (1992).
[63] *See* HOFFMAN & MILLS, *supra* note 45, at 89 ("As initially adopted in 1966, the NHPA was silent as to indigenous concerns or cultural values relating to historic properties and their protection.").
[64] *See* Michael D. McNally, *The Sacred and the Profaned: Protection of Native American Sacred Places that have been Desecrated*, 111 CAL. LAW REV. 395, 439 (2023).
[65] *See* Wesley James Furlong, *"Subsistence is Cultural Survival": Examining the Legal Framework for the Recognition and Incorporation of Traditional Cultural Landscapes within the National Historic Preservation Act*, 22 TRIBAL L.J. 51, 56 (2023).

In 1980, Congress amended the NHPA, authorizing the Secretary of the Interior, in consultation with the "appropriate" State Historic Preservation Officers ("SHPO"), to make grants and loans to Tribal Nations "for the preservation of their cultural heritage."[66] Later, in 1986, the ACHP revised its Section 106 implementing regulations "to create[e] a more prominent role for affected Native Americans" in the Section 106 process "and inserted specific references to promote notification and consultation."[67] These revised regulations provided:

> When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. . . . When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons.[68]

And then in 1989, Congress directed the National Park Service ("NPS") "to determine and report . . . on the funding needs for the management, research, interpretation, protection, and development of sites of historical significance on Indian lands throughout the Nation."[69] The NPS's subsequent report, submitted to Congress in 1990, galvanized profound changes to Tribal Nations' (and Native Hawaiian organizations') roles and rights in the national historic preservation program.

The NPS reported that Tribal Nations "seek to preserve their cultural heritage as a living part of contemporary life. This means preserving not only historic properties but languages, traditions, and lifeways."[70] The NPS reported that

> American Indian cultures are not expressed only on reservations . . . . The ancestral homelands of the Indian tribes cover the entire nation. Sacred and historic places critical to the continuation of cultural traditions are often not under tribal control, but rather are owned or managed by Federal, State, [and] local governments, and other non-Indians. The cultural commitments and concerns of

[66] Pub. L. No. 96-515, § 201, 94 Stat. 2987, 2993 (1980).
[67] 51 Fed. Reg. 31,115, 31,117 (Sept. 2, 1986).
[68] 36 C.F.R. § 800.1(c)(2)(iii) (1987).
[69] S. REP. NO. 101-85, at 21–22 (1989).
[70] NAT'L PARK SERV., *supra* note 40, at i.

> Indian people with ancestral places on non-Indian lands bring them . . . into the national historic preservation program, particularly in connection with the reviews of proposed actions by Federal agencies under Sections 106 and 110 of the [NHPA].[71]

The NPS further reported what "[w]hile tribes are certainly concerned about preserving historic properties and other cultural resources on reservation lands, they are often equally or even more concerned about preserving ancestral sites and traditional use areas on lands that they no longer control[.]"[72] The NPS found that these "concern[s] indicate[] a need for tribes to be more involved in the management and planning activities of Federal agencies and State and local governments. These activities include, but are not limited to, those carried out by federal agencies and [SHPOs] under sections106 and 110 of the [NHPA]."[73]

The NPS made thirteen recommendations for protecting Tribal cultural heritage. Among them, the NPS recommended that "Federal policy should require Federal agencies . . . to ensure that Indian tribes are involved to the maximum extent feasible in decisions that affect properties of cultural importance to them."[74] The NPS concluded that "much could be gained through more systematic tribal participation in Federal agency planning under Sections 106 and 110 of the [NHPA]."[75]

In response to the NPS's report and recommendations, Congress enacted the most sweeping amendments to the NHPA in 1992.[76] As Congress stated at the time, these amendments, "for the first time, specifically include[d] Indian tribes and Native Hawaiian organizations in the historic preservation partnership."[77] These amendments created a series of

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[71] *Id*. at 1–2.
[72] *Id*. at 67.
[73] *Id*.
[74] *Id*. at iv.
[75] *Id*. at iii.
[76] *See* Pub. L. No. 102-575, 106 Stat. 4600 (1992).
[77] S. REP. NO. 102-336, at 13.

programs that would help "establish and define the role of tribal and Native Hawaiian organization preservation programs."[78] Three provisions within these amendments are particularly important.

First, the amendments established Tribal Historic Preservation Programs and authorized THPOs to assume the role of SHPOs for undertakings that occur on Tribal lands.[79] Second, the amendments explicitly recognize that historic "[p]ropert[ies] of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register [of Historic Places ('National Register')]."[80] Third, and most important, the amendments require that "[i]n carrying out [their] responsibilities under section [106 of the NHPA], Federal agencies shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties" of traditional religious and cultural importance potentially affected by the undertaking.[81] Over the past thirty-three years, these amendments have empowered Tribal Nations to engage in and influence federal decisionmaking to protect their places of traditional religious and cultural importance in a way not previously possible under federal law.[82]

Following the enactment of these amendments, the ACHP engaged in a prolonged rulemaking process to incorporate them into its Section 106 implementing regulations.[83] Today, the ACHP's regulations codify a robust Tribal consultation process. The regulations require federal agencies to provide Indian Tribes "a reasonable opportunity to identify [their] concerns about historic properties, advise on the identification and evaluation of historic properties, . . .

[78] *Id*. at 15; *see* Pub. L. No. 102-575, § 4600, 106 Stat. 4755–57
[79] *See* 54 U.S.C. §§ 302303(b)(9), 302702.
[80] *Id*. § 302706(a).
[81] *Id*. § 302706(b); *see* 36 C.F.R. § 800.2(c)(2)(ii).
[82] *See* Furlong, *supra* note 65, at 66–68.
[83] *See* 59 Fed. Reg. 50,396 (Oct. 3, 1995); 61 Fed. Reg. 48,580 (Sept. 13, 1996); 64 Fed. Reg. 27,044 (May 18, 1999); 68 Fed. Reg. 55,354 (Sept. 25, 2003); 69 Fed. Reg. 40,544 (July 6, 2004).

articulate [their] views on the undertaking's effects on such properties, and participate in the resolution of adverse effects."[84] The ACHP's regulations explicitly codify federal agencies' obligations to consult with Tribal Nations at each step in the Section 106 process: in identifying historic properties;[85] in evaluating the National Register eligibility of historic properties;[86] in assessing potential effects;[87] and in resolving adverse effects.[88]

Federal agencies must consult with "*any* Indian tribes . . . that *might* attach religious and cultural significance to historic properties[,]"[89] "that *may* be affected by an undertaking."[90] The requirement to consult with Indian Tribes "applies regardless of the location of the historic property."[91] Federal agencies should initiate this consultation "early in the planning process."[92] Section 106's Tribal "consultation requirement is not an empty formality[.]"[93] Instead, "Indian tribes are entitled to *special consideration* in the course of an agency's fulfillment of its consultation obligations."[94]

The "special consideration" Tribal Nations are owed in the Section 106 process reflects the federal government's trust responsibility to Tribal Nations. "The trust responsibility is one of the cornerstones of federal Indian law[]"[95] and undergirds the United States' relationships with

[84] 36 C.F.R. § 800.2(c)(2)(ii)(A).
[85] *Id*. § 800.4(b).
[86] *Id*. § 800.4(c)(1).
[87] *Id*. § 800.5(a).
[88] *Id*. § 800.6(a).
[89] *Id*. § 800.3(f)(2) (emphasis added)
[90] *Id*. § 800.2(c)(2)(ii) (emphasis added).
[91] *Id*.
[92] *Id*. § 800.2(c)(2)(ii)(A).
[93] *Quechan Tribe of Fort Yuma Indian Rsrv. v. U.S. Dep't of Interior,* 755 F. Supp. 2d 1104, 1108 (S.D. Cal. 2010).
[94] *Id*. at 1109; *see Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1044 (D.C. Cir. 2021) ("The Tribes' unique role and their government-to-government relationship with the United States demand that their criticisms be treated with appropriate solicitude.").
[95] COHEN'S HANDBOOK, *supra* note 35, § 6.04[3][a], at 393.

Tribal Nations.[96] The NHPA, along with other federal statutes, "demonstrate[s] the government's comprehensive responsibility to protect [Indian cultural] resources and[] thereby establishes a fiduciary relationship."[97] When federal agencies violate the NHPA, they "violate[] their minimum fiduciary duty to [Tribal Nations]."[98] The ACHP's Section 106 regulations remind federal agencies that Tribal consultation in the Section 106 process must be conducted in a manner consistent with the trust responsibility, Tribal Nations' sovereignty, and the government-to-government relationship between the United States and Tribal Nations.[99]

The NHPA reflects Congress's judgment that the public interest is served by federal agencies—inclusive of the FCC—taking into account the effects of their undertakings on historic properties and doing so in consultation with Tribal Nations. The FCC's attempt to exempt itself from these statutory obligations is not in the public interest and contrary to the law and Congress's declared public policy. The NHPA, and Section 106 specifically, was enacted to balance the interests between historic preservation on one hand, and development on the other. As a result, Section 106 does not dictate specific outcomes; instead, it simply requires federal agencies to assess the potential effects of their undertakings on historic properties and consider preservation in the decisionmaking process.[100] The Section 106 process is designed to be flexible and designed to accommodate the specific demands of agencies and their programs.[101] Indeed, the FCC is well aware of this fact, as it has negotiated and executed *two* nationwide

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[96] *See Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) ("Under a humane and self imposed policy . . . [the United States] has charged itself with moral obligations of the highest responsibility and trust. Its conduct[] . . . should therefore be judged by the most exacting fiduciary standards.").
[97] *Quechan Indian Tribe v. United States*, 535 F. Supp. 2d 1072, 1109 (S.D. Cal. 2008).
[98] *Pit River Tribe*, 469 F.3d at 788.
[99] *See* 36 C.F.R. § 800.2(c)(2)(ii)(B)–(C).
[100] *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999) (quoting *Apache Survival Coal. v. United States*, 21 F.3d 895, 906 (9th Cir. 1994)) (Section 106 "is a 'stop, look, and listen' provision that requires each federal agency to consider the effects of its program.").
[101] *See* THOMAS F. KING, CULTURAL RESOURCES LAW & PRACTICE 112 (4th ed. 2013) ("This stepwise process is not supposed to be rigid; on the other hand, it's [sic] not supposed to be spineless."); *see generally* 36 C.F.R. § 800.14.

programmatic agreements that specifically tailor the Section 106 process for specific FCC programs.[102]

Compliance with Section 106 is not incompatible with the FCC's—and many of the commentors' and CTIA's—goal of accelerating the buildout of wireless infrastructure. Section 106 was enacted in the context of rapid industrialization and infrastructure development and was designed to accommodate both development and the national interest in historic preservation. To the extent that there is any credibility to the criticisms raised by the FCC and some commentators that the Section 106 process hinders the deployment of wireless infrastructure, the solution is to engage in meaningful and good faith consultation with stakeholders, including Tribal Nations, to identify and address any concerns with the FCC's Section 106 process. The solution *is not* for the FCC to simply exempt wireless buildout from Section 106. This is not only unlawful but contravenes the express public interest and public policy declared by Congress when it enacted the NHPA in 1966.

The FCC's proposed rulemaking is likewise not in the public interest because it would terminate the FCC's statutory obligation to consult with Tribal Nations over the effects and locations of wireless buildout. Congress expressed a clear public policy in amending the NHPA in 1992 to include Tribal Nations in the national historic preservation partnership and requiring federal agencies—inclusive of the FCC—to consult with them over potential effects to their places of traditional religious and cultural significance. The FCC's attempt to unilaterally exempt the deployment of wireless infrastructure from Section 106 is unlawful, contravenes the express

[102] *See* Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (Sept. 2004), https://www.achp.gov/sites/default/files/programmatic_agreements/2019-04/nw.fcc_.undertakings%20approved%20by%20fcc.pa_.04oct04.pdf; Second Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (July 2020), https://www.achp.gov/sites/default/files/programmatic_agreements/2020-07/FCC%20SecondAmendmentNPAforCollocationofWirelessAntennas.pdf; *see generally* 36 C.F.R. § 800.14(b).

public policy of Congress in requiring such consultation, and undermines the federal government's—and the FCC's, specifically—trust responsibility to Tribal Nations.

The harm to Tribal Nations and their historic and cultural resources threatened by the FCC's proposed rulemaking is not theoretical. In *United Keetoowah Band of Cherokee Indians in Oklahoma v. Federal Communications Commission*, the FCC defended its previous (and unlawful) attempt to exempt the deployment of 5G wireless infrastructure from Section 106 review by asserting that of the roughly 800,000 deployments, "only 0.3% to 0.4% requests for Tribal review result[ed] in findings of adverse effects or possible adverse effects."[103] The United States Court of Appeals for the District of Columbia Circuit concluded that even such a small percentage would result in roughly 3,200 sites (potentially) adversely affected by 5G deployments alone.[104] While the FCC dismissively referred to these impacts as "*de minimis* both individually and in the aggregate[,]" the court acknowledged the profound importance of these places and the significance of impacts to them to Tribal Nations.[105] Importantly, the court recognized that the general lack of adverse effects meant that the Section 106 review process works and that infrastructure that would otherwise adversely affect sites was being relocated to avoid the effects or the effects were being resolved.[106] These results, and the FCC's obligation to consult with Tribal Nations in the Section 106 process, are reflective of the federal government's overarching trust responsibility to Tribal Nations and to protecting Tribal cultural and historic resources.[107]

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[103] *United Keetoowah Band of Cherokee Indians in Okla. v. Fed. Commc'ns Comm'n*, 933 F.3d 728, 744 (D.C. Cir. 2019) (citation omitted).
[104] *Id*.
[105] *Id*. (citation omitted).
[106] *Id*. (citation omitted); *see* 36 C.F.R. § 800.6(a).
[107] *See Quechan Indian Tribe*, 535 F. Supp. 2d at 1109; *O Centro Espirita Beneficiente Church of God v. Thornburgh*, 922 F.2d 1210, 1216 (5th Cir. 1991) (recognizing "the legitimate governmental objective of preserving Native American culture. Such preservation is fundamental to the federal government's trust relationship with tribal Native Americans.").

The FCC and certain commenters express skepticism in the value of the NHPA, Tribal consultation, and historic preservation more generally.[108] In their mind, it appears, these values are subservient to the desire to deploy wireless infrastructure as rapidly as possible, without consideration for its impact or effects. But this is not what Congress has provided for. The FCC is not exempt from the NHPA; thus, it is bound by the statute, its requirements, and the public policy and interests Congress expressed in enacting an amending it. The FCC is therefore obligated to balance its agency mission with the requirements imposed on it by Congress through the NHPA and its amendments. The public interest is served by the FCC complying in full faith with the law, not by attempting to unilaterally exempt itself from the NHPA, Section 106, and its Tribal consultation obligations.

VI. Exempting the deployment of wireless infrastructure from review under the National Environmental Policy Act is not in the public interest.

NEPA directs federal agencies to evaluate the environmental impacts of "major Federal actions significantly affecting the quality of the human environment[.]"[109] In enacting NEPA, Congress declared a national policy "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements

[108] It is not lost on NATHPO and NCAI that this NPRM is the result of a petition for rulemaking submitted by CTIA. CTIA was one of only two organizations that sued the ACHP over its rulemaking codifying the 1992 amendments to the NHPA, arguing, in part, that the ACHP "exceeded the scope of its authority under the [NHPA] by promulgating regulations addressing the role of Indian tribes." *Nat'l Minig Ass'n v. Slater*, 167 F. Supp. 2d 265, 292–93 (D.D.C. 2001), *aff'd in part sub nom. Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003). In short, CTIA—along with its co-litigant, the National Mining Association—sought to exclude Tribal Nations and Native Hawaiian organizations from the NHPA and deny them the rights and privileges Congress codified in 1992. CTIA failed in that effort. CTIA also sued the FCC over its adoption of its 2004 nationwide programmatic agreement and its previous determination that the construction of wireless communications towers are undertakings that trigger Section 106 review. *See CTIA-Wireless Ass'n v. Fed. Commc'ns Comm'n*, 466 F.3d 105 (D.C. Cir. 2004). CTIA failed in that effort as well. Undetterred, the CTIA renews its efforts to strip Tribal Nations and Native Hawaiian organizations from the FCC's Section 106 process and to more generally exempt the FCC from the NHPA altogether. Like the United States District Court of the District of Columbia and the D.C. Circuit before, the FCC must reject CTIA's efforts.

[109] 42 U.S.C. § 4332(C).

of present a future generations of Americans."[110] Congress declared it "the continuing responsibility of the Federal Government to[,]" among other things, "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;"[111] "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;"[112] "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;"[113] and "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities[.]"[114]

In its NPRM, the FCC references President Trump's prioritization of "efficiency and certainty over any other objectives, including those of activist groups, that do not align with" the Administration's goals.[115] Tribal Nations are not activist groups; they are recognized sovereigns who hold the benefit of the United States's trust obligations, pursuant to hundreds of treaties and centuries of legal precedent.[116] Those treaties were entered into in exchange for peace and for the land that is now the United States, and "efficiency and certainty" in agency environmental actions do not outrank the obligations assumed by the United States to act in the best interests and for the benefit of Tribal Nations.

One of the purposes of NEPA is to inform agency decisionmaking.[117] The FCC currently gathers data to inform its decisionmaking, in part, through its environmental notification process.[118] The process provides advance notice to the public about Antenna Structure

[110] *Id*. § 4331(a).
[111] *Id*. § 4331(b)(1).
[112] *Id*. § 4331(b)(2).
[113] *Id*. § 4331(b)(4).
[114] *Id*. § 4331(b)(5).
[115] Exec. Order. No 14,154, § 5(c), 90 Fed. Reg. 8,353, 8,355 (Jan. 20, 2025).
[116] *See* COHEN'S HANDBOOK, *supra* note 35, § 6.04[3][a], at 393–96.
[117] *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1507 (2025).
[118] 47 C.F.R. § 17.4(c).

Registration ("ASR") applications and affords an opportunity for public comment by interested persons.[119] The FCC's NPRM questions whether this process is remains legally required and, if it is not, if it should nevertheless continue.

It is squarely in the public interest that the FCC's environmental notification system remains intact. Without such a system, the opportunity for the public to comment would be rendered meaningless because notice of such applications would not be provided to the public.[120] It is especially in the interest of Tribal Nations and their communities to have advance notice of applications for facilities, including towers—of any height—that may be built on land that is sacred or culturally significant to a Tribal Nation. Indeed, the FCC's currently environmental regulations require environmental assessments for facilities that *may* affect Indian religious sites.[121]

Tribal Nations are the keepers of knowledge about their own religious sites. It is insufficient for the FCC to require applicants to check a box attesting that an ASR facility is not on an "Indian religious site" and to fail to notify the public—including Tribal Nations—in advance. It is this opportunity for response from a Tribal Nation that reveals whether a site is of religious importance; dismantling the environmental notification system would render the protective regulations toothless. Applicants are not able to opine on whether a facility will affect a sacred place without consultation with the Tribal Nations.

It is deeply disappointing that the FCC would consider deleting 47 C.F.R. § 1.1307(a)(5), the provision that specifically requires environmental assessments of potential sacred sites. This flies in the face of the FCC's previous commitments to recognize Tribal sovereignty and the legal

[119] *Id*. § 17.4(c)(5).
[120] *See* 90 Fed. Reg. at 40,302 (citing *Am. Bird Conservancy v. Fed. Commc'ns Comm'n*, 516 F.3d 1027, 1035 (D.C. Cir. 2008)).
[121] 47 C.F.R. § 1.1307(b)(5).

obligation and trust responsibility the FCC has to protect these places and act in the best interest of Tribal Nations.[122] The FCC's inquiry as to whether it should cease to require any environmental assessment at all for facilities potentially located on sacred sites is a stark indicator of its dismissive view of the impact of its rulemaking to Indian Country. The NPRM dedicates more material to removing wetlands protections than it does to removing protections for sacred sites.

It is strongly in the public interest to maintain environmental assessments for facilities that may impact sacred sites. It is not a matter of "activism" for Tribal Nations to ask that they be consulted with, and even be accommodated, in working to devise ways to support growing infrastructure while also maintaining religious and cultural practices in traditional places. The trust and treaty obligation incumbent on the FCC cannot be outweighed by "efficiency" and "certainty" now requested to expedite infrastructure growth. CTIA's petition and other industry support to do away with environmental analysis may pertain to Indian religious sites today, but may set precedent for other sites of significance in the future—places that have become sacred to American history, like Arlington or Gettysburg—might all be subject to hosting towers just under 200 feet in the name of infrastructure and growth, with no regard to the sacredness that the public has been conferred to them.

The FCC must engage in appropriate consultation with Tribal Nations, done with all due respect and professionalism.[123] The public interest is not served by the FCC abandoning its

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[122] *See FCC 00-207: Establishing a Government-to-Government Relationship with Indian Tribes*, 65 Fed. Reg. 41,668 (July 6, 2000); *Quechan Indian Tribe*, 535 F. Supp. 2d at 1109; *O Centro Espirita Beneficiente*, 922 F.2d at 1216.

[123] *See* Letter from Lakota Hobia, Chair, & Valerie J. Grussing, Exec. Dir., Nat'l Ass'n of Tribal Hist. Pres. Officers, to Bambi Krauss, Chief, Off. of Native Affs. & Pol.y, Fed. Commc'ns Comm'n, *Objections to the FCC's consultation approach on the Notice of Proposed Rulemaking "Modernizing the Commission's National Environmental Policy Act Rules" and the scheduling of inperson consultation during NATHPO's Annual Conference* (Sept. 5, 2025), https://www.fcc.gov/ecfs/document/109180794528778/4; Letter from Larry Wright, Exec. Dir., Nat'l Congress of Am. Indians, to Bambi Krauss, Chief, Off. of Native Affs. & Pol'y, Fed. Commc'ns Comm'n,

statutory and trust responsibilities to protect Tribal sacred sites by all means available, including through environmental notification, regulation, and, of course, robust Tribal consultation and involvement.

VII. The FCC is aware of the impacts of tower construction on Tribal Nations and why NHPA and NEPA reviews are in the public interest.

In its irrationally rushed docket, which is accompanied by questionable efforts, at best, to engage nominal—but certainly not genuine or meaningful—consultations with Tribal Nations, it is important to note that the FCC understands not only the legal requirements at issue, but also the human aspect of the public interest that will be impacted by the proposed rulemaking. The FCC proposes to remove the lawfully required involvement of Tribal Nations from the siting review processes of the vast majority of communications towers nationwide in a way that the FCC itself knows will predictably result in harm to Tribal traditions, cultures, and religions. The FCC knows this because it has learned over the course of its large body of prior work undertaken directly with Tribal Nations on the analysis of, and efforts to address, potential and actual infrastructure impacts on Tribal traditional cultural properties or sacred sites.

It is important that the term sacred sites be understood to reflect the depth and breadth of that term, considering the importance of public interest involved. That public interest is served by retaining, not diminishing, the histories, cultures, and religions of Tribal Nations.[124] Tribal traditional, cultural, and religious practices are not theoretical, inauthentic, ephemeral, or trivial.[125] They are both historic and a contemporary and important part of our modern society.

FCC's Notice of Consultation at NCAI's 82nd Annual Convention and Marketplace (Sept. 9, 2025), https://www.fcc.gov/ecfs/document/10918989524453/1.

[124] *See O Centro Espirita Beneficiente*, 922 F.2d at 1216 ("the legitimate governmental objective of preserving Native American culture[] . . . is fundamental to the federal government's trust relationship with tribal Native Americans[]").

[125] *See* DELORIA, *supra* note 8.

But implicit in the FCC's proposal is a resounding characterization of them as irrelevant and expendable. The FCC's prejudice and ethnocentrism are shocking; and the FCC knows better.

The FCC knows the history and reasoning for the laws that it is endeavoring to avoid, as it includes the actions of other federal agencies efforts diminish and eradicate Tribal cultures and religions. Within the FCC's own records, there is evidence of this in the form of many tower constructions that were sited without NHPA or NEPA reviews. The FCC knows breadth of Tribal sites of religious and cultural significance, from deeply holy places to sites of historical significance for their cultural resources, as it has dealt with many projects that affect these various places. The FCC would do well to remind itself of its own knowledge and understanding of the reality of Tribal interests in this matter.

The FCC is also well aware of the damages done to Tribal Nations when they are excluded from these processes and towers are constructed without any review. Emblematic of the risks involved to Tribal Nations, and to all those involved that would benefit from the deployment of modern technologies, is a case that began the FCC's understanding of horrible negative Tribal impacts: the Gianna Tower near Taos Pueblo, New Mexico. The Gianna tower was constructed on speculation without prior planned collocations in 2001 to 2002. Taos Pueblo was designated a World Heritage Site in 1992. Nevertheless, the constructor of this tower ignored this fact and all the obvious reasons that led to that designation. The tower remains standing and inflicts daily adverse effects on the Taos Pueblo.

The Gianna Tower is below 200 feet in height and is located on the land of a Taos County government public safety provider. It was constructed before the FCC or anyone else learned of its existence. The Taos Pueblo reported the tower and engaged with the FCC over the course of

multiple years to address the violation.[126] The tower became a topic of national attention, garnering attention from across Indian Country, Capitol Hill, and the tower industry. In the years following, Taos Pueblo included in its World Heritage Site report a section on the effects of the Gianna Tower and its efforts to work with the FCC, carriers, and local government to provide opportunities for infrastructure sites that would not harm their cultural heritage and practices.[127] In 2003, the Governor of Taos Pueblo explained the situation, and the nature of the impact to the FCC in the docket adopting the FCC's 2024 the nationwide programmatic agreement.

> Currently, regarding Taos Pueblo, a cell/telecommunications tower has been the subject of much discussion with the FCC and tribal attorneys. This tower which is located on now non-Indian lands; what was once pueblo lands (part of an aboriginal land claim) and adjacent to existing pueblo lands, the tower has a direct impact on current and future cultural and traditional practices. This particular tower was erected without Section 106 tribal consultation. The National Historic Preservation Act requires the FCC to take into account the effects of such approvals on historic properties, including traditional cultural properties, and to consult with affected tribes. The Taos Pueblo and tribal attorneys have been involved in meetings and teleconferences with FCC officials on the extent to which the FCC might be able to protect sensitive cultural information the Taos Pueblo might share in the consultation. The company, county and others who may wish to locate cellular equipment and radio transmitters on the Gianna tower need FCC approval.[128]

The Taos Pueblo has repeatedly documented the nature of the adverse effects of the Gianna Tower to the FCC.[129] Thankfully, the FCC acted to preclude attachments to the illegally sited tower and to this day no collocations occur on it.

The Gianna Tower is emblematic of what will occur if the FCC abdicates its responsibilities to Tribal Nations. This situation does not represent an outlier or the extreme.

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[126] Testimony of K. Dane Snowden, Chief, Consumer & Governmental Affs. Bureau, Fed. Commc'ns Comm'n, before the S. Select Comm. on Indian Affs. (May 22, 2003) (attached).
[127] *See World Heritage Site Periodic Report: Taos Pueblo* 19 (n.d.) (attached).
[128] Letter from Mark T. Lujan, Governor's Secretary, Taos Pueblo, to Michael Powell, Chairman, Fed. Commc'ns Comm'n, *WT Docket No. 03-128; FCC 03-125*, at 1 –2 (Aug. 6, 2003) (attached).
[129] *See, e.g.*, Letter from Susan G. Jordan & Noelle Graney, Nordhaus Law Firm, LLP, to Jeffery S. Steinberg, Deputy Chief, Fed. Commc'ns Comm'n, *Gianna Tower/Comment Fourt Coners Petition to Collocate – March 31, 2006, Letter from John F. Clark, Counsel for Vertical Real Estate* (Apr. 7, 2006) (attached).

There is little doubt that the FCC's own records detail hundreds, if not thousands, of such potential or actual cases of its regulated infrastructures impacting Tribal Nations. It is easy to imagine how Tribal religious and cultural sites, especially those without any formal designations, will be even more ignored. Indeed, this situation represents the reality of what will occur if the FCC shirks its legal duty, trust responsibility, and moral obligation by turning its back on a legal process that is based in valuable public interest—to see that the cultural heritages of Tribal Nations are sustained.[130]

VIII. Conclusion

Exempting the deployment of wireless infrastructure from NHPA and NEPA review is not in the public interest. In enacting the NHPA and NEPA, Congress expressed its judgment that the consideration of effects on historic properties and impacts to the human environment is in the public interest. Moreover, in amending the NHPA, Congress expressed its judgment that consulting with Tribal Nations in the Section 106 process is not only in the public interest but consistent with and mandated by the federal government's trust responsibility to Tribal Nations. NATHPO and NCAI both acknowledge that there are shortcomings with the FCC's NHPA and NEPA review processes. The solution is to engage in meaningful and good faith consultation with stakeholders, including Tribal Nations, to address these issues in a way that upholds the FCC's legal, trust, public interest, and moral obligations. The solution is not to unilaterally exempt all wireless deployments from environmental, historic, and cultural reviews and Tribal consultation. NATHPO and NCAI stand ready to engage in good faith with the FCC on this matter, provided that the FCC is ready to engage with Indian County good faith as well.

[130] *See O Centro Espirita Beneficiente*, 922 F.2d at 1216.

RESPECTFULLY SUBMITTED this 3rd day of October 2025,

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