



NATHPO Votes “No” On Proposed Section 106 Regulations

July 24, 2026

The National Association of Tribal Historic Preservation Officers (NATHPO) has voted “no” on advancing the Advisory Council on Historic Preservation’s (ACHP) proposed revisions to the regulations implementing Section 106 of the National Historic Preservation Act (NHPA). Many of you have seen our initial statement and formal “no” vote. This update explains what led to that decision, why NATHPO could not support the proposal, and what we believe should happen next.

How We Got Here

As a member of the ACHP, NATHPO sought from the beginning to engage constructively in the review of 36 C.F.R. Part 800. Our position has never been that the regulations are beyond improvement. Tribal Nations and Tribal Historic Preservation Officers (THPOs) regularly experience late consultation, inconsistent implementation, weak documentation, inadequate identification efforts, insufficient protection of sensitive information, and attempts to shift federal responsibilities to applicants or Tribal governments.

Those are real problems, and NATHPO has consistently supported practical reforms to address them. In February 2026, NATHPO submitted detailed recommendations intended to modernize Section 106 in a practical and responsible way. We called for earlier government-to-government engagement; meaningful recognition of Indigenous Knowledge and Tribal expertise throughout identification, evaluation, effects analysis, and resolution; stronger and more transparent documentation standards; clearer agency and applicant accountability; better protection of sensitive Tribal information; and continued federal responsibility for the work and records required by Section 106.

Those recommendations were designed to achieve many of the same goals now being advanced in the name of reform. Earlier consultation, clearer records, better communication, consistent agency practices, and defined accountability would reduce rework, prevent avoidable disputes, improve project planning, and support more timely federal decisions. They would do so without diminishing Tribal participation, narrowing the places entitled to consideration, or transferring greater unilateral authority to federal agencies.

NATHPO was not alone in offering that constructive path forward. Tribal Nations, Council members, State Historic Preservation Officers (SHPOs), preservation organizations, and other partners invested considerable time and expertise in identifying ways to improve Section 106 while preserving its essential legal and collaborative framework.

At its June 4 business meeting, the Council agreed that ACHP staff should develop a schedule, including milestones and deliverables, and provided members with additional time to submit substantive comments. NATHPO also proposed early coordination with Indian Tribes and Native Hawaiian organizations (NHOs) so they could understand the proposed changes and help inform the process before a regulatory proposal was developed. That proposal did not receive sufficient support from the Council.

The process that followed did not reflect the deliberate and collaborative approach NATHPO believed had been established by an overwhelming vote in the Council. The promised schedule was not provided, the additional member comment period had not concluded, and Council members received a redline draft of Part 800 on July 17. They were then asked to decide within approximately one week whether it should advance as a Notice of Proposed Rulemaking (NPRM).



Why NATHPO Voted “No”

More important than the faulty process by which it was conceived, the draft does not appear to reflect the recommendations submitted by NATHPO, Tribal Nations, other Council members, and preservation partners. Instead of addressing the federal practices that most often cause delay and conflict, the proposal would fundamentally restructure Section 106 by concentrating greater authority in the federal agencies responsible for carrying out, funding, licensing, permitting, or approving the undertaking.

After reviewing both the process and the substance of the proposal, the NATHPO Board agreed that NATHPO had no choice but to vote against it.

From NATHPO’s perspective, the proposed revisions are an affront to Tribal sovereignty. They would diminish government-to-government consultation, marginalize Tribal Nations and THPOs, remove recognition of Tribal expertise, narrow the places and effects federal agencies must consider, and give agencies substantially greater control over decisions affecting sacred places, gathering areas, ceremonial and spiritual sites, waterways, burial places, and properties of traditional religious and cultural importance.

That concern extends far beyond the mechanics of an administrative review. Tribal Nations are sovereign governments with a distinct political and legal relationship with the United States. Their participation in Section 106 is not equivalent to public involvement or stakeholder outreach. Government-to-government consultation helps ensure that federal agencies understand Tribal rights, knowledge, values, and continuing responsibilities before making decisions that may cause permanent harm.

Section 106 does not prevent development or require preservation at all costs. It requires agencies to identify historic properties, consider the consequences of their actions, consult with those who possess relevant rights and expertise, and make informed decisions before harm occurs.

Tribal Nations and THPOs use this process every day while working with agencies and project proponents to advance housing, transportation, energy, broadband, infrastructure, conservation, emergency response, and other public priorities. When consultation begins early and agencies provide adequate information, staffing, and documentation, Section 106 helps identify risk, improve project design, avoid preventable harm, and resolve concerns before changes become costly. That is what effective modernization should strengthen.

Many delays attributed to Section 106 instead result from poor planning, incomplete identification, inadequate federal staffing, weak documentation, and late engagement, and project decisions made before consultation begins. Weakening Tribal participation does not correct those failures. It allows unresolved legal, cultural, and project risks to remain unaddressed until they become more costly, contentious, or irreversible.

The current proposal would solve none of these issues. It would place Tribal Nations and other consulting parties in an increasingly reactive position while giving agencies greater control over deadlines, identification, findings, effects analysis, and the resolution of harm. Taken together, the changes would move Section 106 away from an informed and collaborative planning process and toward an agency-directed review followed by notification and comment. That is not meaningful consultation, and it is unlikely to produce the efficiency its proponents claim.

The proposal is also deeply troubling in its treatment of places important to Tribal Nations. Tribal history, religion, identity, and responsibility are not confined to buildings, archaeological deposits, or bounded parcels containing visible human improvements. They may be carried through mountains, rivers, springs,



forests, gathering areas, migration routes, burial places, ceremonial locations, and enduring relationships among Tribal people, ancestors, lands, waters, plants, and animals.

A place does not lose its historical, religious, or cultural importance because its significance is not expressed through a structure or readily understood through a non-Tribal discipline. A framework that privileges the built environment while discounting other places central to Tribal life risks excluding the resources Congress intended federal agencies to consider.

The Most Productive Path Forward

NATHPO supports modernization. We support clearer procedures, more consistent implementation, improved communication, stronger documentation, meaningful accountability, and a process that allows concerns to be identified and resolved efficiently. But modernization does not require abandoning the collaborative structure of Section 106.

Many of the objectives cited in support of the current proposal could have been achieved by acting on the recommendations already submitted: begin consultation earlier, provide complete and usable information, clarify federal and applicant responsibilities, recognize Indigenous Knowledge and Tribal expertise, protect sensitive information, and require agencies to explain how consultation informed their decisions.

Those reforms would improve efficiency while helping agencies make better, more predictable, and more defensible decisions. The current proposal instead seeks efficiency by reducing participation, narrowing review, and concentrating authority in the agencies whose actions are under consideration. That is not a path NATHPO can support.

The ACHP should not advance the current proposal. It should return to a transparent and deliberative process that meaningfully accounts for the comments already submitted and begins with direct engagement with Indian Tribes and NHOs.

NATHPO remains committed to working with the ACHP, Tribal Nations, NHOs, THPOs, SHPOs, federal agencies, applicants, preservation organizations, and the public to develop a stronger and more workable approach. Any future revisions should strengthen consultation, preserve federal accountability, recognize Indigenous Knowledge and Tribal expertise, protect sensitive information, and improve Section 106 without diminishing the rights or roles of Tribal Nations and THPOs.

Additional information, including NATHPO's letter accompanying its no vote, a summary of the proposed revisions, and links to the proposed NPRM and redline regulations, is available [here](#).

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