Name

Title

Agency or Company

Street Address

State, City Zip Code

Date

Dear Name,

Thank you for contacting the Tribal Historic Preservation Office for the XXXX Tribe. While we appreciate the effort to engage the XXXX Tribe regarding this project, we have deep concerns about the use of the National Historic Preservation Act’s (NHPA) emergency procedures (36 CFR 800.12) for this undertaking: [or add name of project as ID’d by agency]. We believe it is inappropriate and inconsistent with the law for your agency to use the NHPA’s emergency Section 106 process for this specific undertaking.

The United States is not in the midst of an “energy emergency” as described in the [Executive Order that was signed on January 20th](https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/)[[1]](#footnote-1). According to the U.S. Energy Information Administration, in 2024 [the United States broke records for crude oil production](https://www.eia.gov/todayinenergy/detail.php?id=63824) and [overall energy production in the United States hit all-time highs[[2]](#footnote-2)](https://www.eia.gov/todayinenergy/detail.php?id=64586). Additionally, any claim that there is an “energy emergency” is undercut by the Administration’s severe restrictions on renewable energy projects, such as offshore wind. If there was a legitimate emergency, the Administration would support policies availing itself of all possible sources of energy, not just fossil fuels.

Furthermore, even if the claim of an energy emergency were factual, use of the NHPA’s emergency procedures for this undertaking are inappropriate. This undertaking is not part of "an essential and immediate response to" the purported energy emergency. In actuality, this project will take years to complete, meaning that replacing well-established Tribal “consultation” process with a seven day “notification” will do nothing to rapidly create more energy for the United States. The purpose of the NHPA’s emergency procedures (36 CFR 800.12) is to quickly authorize undertakings that respond to an immediate threat to life or property. In this specific instance, even if we concurred that an energy emergency exists, a truncated Tribal consultation process would not positively contribute to addressing that situation.

Considering this, we counter that the underlying intent of the Executive Order is a means to inappropriately and needlessly “streamline” lawful processes and limit statutorily required government-to-government consultation with Tribal Nations (54 USC 302706(b)), which is an abrogation of Tribal sovereignty and violation of the federal government’s trust responsibility to Tribal Nations. The unnecessary invocation of 36 CRF 800.12 and its abbreviated notification period is a violation of the letter and spirit of the NHPA.

Regardless of the validity of the “energy emergency” Executive Order and the relevance of this project to it, [your agency’s] invocation of 36 CFR 800.12 requires the following additional steps: 1) use of existing Section 106 agreements’ emergency provisions where they exist, and 2) notification of the Advisory Council on Historic Preservation (ACHP). Please confirm whether [your agency] has an existing Section 106 agreement with emergency procedures (and if so, why it is not being used), and kindly ensure that we have a copy of the agreement. Also, please verify when [your agency] notified the ACHP regarding use of the NHPA’s emergency procedures.

Thank you in advance for your prompt response to these requests. We look forward to engaging in good faith consultation on the potential impacts of this undertaking on our historic properties, cultural resources, and sacred places.

Sincerely,

Cc: National Association of Tribal Historic Preservation Officers

1. The White House. Executive Order Declaring a National Energy Emergency (20 January 2025): <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/>. [↑](#footnote-ref-1)
2. U.S. Energy Information Administration. “U.S. Crude Oil Production Established a New Record in August 2024” (26 November 2024): <https://www.eia.gov/todayinenergy/detail.php?id=63824>. See also: U.S. EIA. “Solar, Battery Storage to Lead New U.S. Generating Capacity Additions in 2025” (24 February 2025): <https://www.eia.gov/todayinenergy/detail.php?id=64586>. [↑](#footnote-ref-2)