



July 22, 2026

Travis Voyles, Vice Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: NATHPO Vote on Proposed Revisions to 36 C.F.R. Part 800

Dear Vice Chairman Voyles:

The National Association of Tribal Historic Preservation Officers (NATHPO), acting as a member of the Advisory Council on Historic Preservation (ACHP), **votes no on advancing the proposed revisions to 36 C.F.R. Part 800 as a Notice of Proposed Rulemaking.**

NATHPO supports thoughtful efforts to improve the clarity, consistency, and effectiveness of the Section 106 process. The current proposal, however, would substantially restructure the regulations implementing the National Historic Preservation Act (NHPA), diminish the role of Indian Tribes and Tribal Historic Preservation Officers, narrow the places and effects considered, and concentrate greater authority within the federal agency responsible for advancing an undertaking. NATHPO's vote is based, in part, on the following procedural, legal, and substantive concerns.

The proposal was developed through an unclear and nontransparent process. At the June 4 business meeting, the Council agreed that ACHP staff would develop a schedule for considering revisions and that members would have 60 days to submit comments. Instead, members received a substantially completed rewrite on July 17 and were given one week to vote. Council members have received little information about who prepared the proposal, what informed it, or why the approved process was not followed. Indian Tribes, Native Hawaiian organizations, Council members, ACHP staff, and practitioners appear to have had little meaningful role in its development.

The proposal weakens Tribal consultation and removes recognition of Tribal expertise and legal context. The draft removes provisions providing Indian Tribes and Native Hawaiian organizations a reasonable opportunity to identify concerns, advise on the identification and evaluation of historic properties, explain effects, and participate in resolving adverse effects. It also deletes language recognizing Tribal expertise, the government-to-government relationship, Tribal sovereignty, treaty rights, and the fact that culturally significant properties are often located on ancestral lands.

General references to consultation do not substitute for clear procedures governing when consultation begins, what information agencies must seek, and how that information is to inform federal decisions. No agency official, applicant, consultant, or industry representative can speak for an Indian Tribe or Native Hawaiian organization regarding its histories, religious beliefs, cultural practices, or continuing relationships with place.

Several provisions appear inconsistent with the NHPA. Under 54 U.S.C. § 302706(a), property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization may be eligible for inclusion in the National Register of Historic Places. In carrying out its Section 106 responsibilities under 54 U.S.C. § 306108, a federal agency "shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance" to such property.



By removing provisions that explain how Indian Tribes and Native Hawaiian organizations participate in identification, evaluation, effects analysis, and resolution, the proposal weakens the framework used to carry out that mandate. These properties may be unknown to agencies and undocumented, so consultation should occur before identification strategies and fieldwork are finalized. Early consultation helps agencies identify appropriate methods, areas of concern, important features, traditional practices, and confidentiality needs while reducing incomplete surveys, overlooked properties, repeated fieldwork, and late disputes.

The proposed treatment of Tribal cultural places is untenable. The draft would generally require a place to be geographically compact and connected to tangible human improvements or specific human activities. It further states that “noncompact, unimproved natural features such as mountains, valleys, bodies of water, or landscapes, including ethnographic landscapes, do not qualify as property.”

That position bears little relationship to Tribal histories, religions, cultural practices, lifeways, and continuing responsibilities. A place does not cease to be sacred or culturally significant because it lacks a building, archaeological deposit, or visible physical remnant, nor can every Tribal cultural place be confined to a compact parcel.

The proposal would expand unilateral agency decision-making. Agencies would have greater control over deadlines, identification, findings, the area of potential effects, and consulting-party comments. The draft would also move away from negotiated memoranda of agreement and allow an agency to issue its own memorandum of decision, including a determination that other considerations outweigh historic preservation concerns.

Taken together, these provisions would move Section 106 away from an informed and collaborative planning process and toward an agency-directed review followed by notification to interested parties.

Before comprehensive revisions move forward, the ACHP should establish a clear process and schedule, conduct meaningful outreach to Indian Tribes and the Native Hawaiian community, and strengthen the regulations governing consultation. NATHPO’s February 2026 comments, together with submissions from other Council members and preservation partners, provide practical guidance for improving Section 106 without weakening consultation or informed federal decision-making.

NATHPO therefore votes no and urges the Council to withdraw the current draft and begin a transparent, deliberative process.

Sincerely,

Lakota Hobia
Chair, National Association of Tribal Historic Preservation Officers

cc: ACHP Members
Reid Nelson, Executive Director
Kelly Fanizzo, General Counsel