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Tribes, Groups Say Historic Council's Plan Imperils Sacred Sites

By **Crystal Owens**

Law360 (July 27, 2026, 6:30 PM EDT) -- Indigenous, environmental and preservation groups say a decision by the Advisory Council on Historic Preservation to advance a proposed rulemaking notice for revisions to Section 106 of the National Historic Preservation Act will weaken tribal nations' roles in ensuring that their sacred burial sites and ancestral lands are protected.

Section 106 of the federal law, they say, is one of the primary federal processes that tribal nations and tribal historic preservation officers use for those protections before federal agencies make decisions that could affect cultural landscapes, historic properties and associated traditions and practices.

The Advisory Council on Historic Preservation on Friday voted 16-5 to advance the proposed rulemaking notice despite opposition from the National Association of Tribal Historic Preservation Officers, which is a voting member on the council.

"NATHPO's vote reflects serious concerns about the process used to develop the proposal and provisions that would weaken tribal consultation, narrow consideration of places of religious and cultural significance, and expand unilateral federal agency decision-making under Section 106," the tribal officers said in a Thursday statement ahead of the vote.

The National Conference of State Historic Preservation Officers also voted no, according to legislative records. There were two abstentions, legislative records say.

According to Earthjustice, the new proposed rules would make tribal consultation and public participation "largely optional" and would severely limit the National Historic Preservation Act's scope to geographically compact historic properties, excluding rivers, mountains and other traditional cultural landscapes that "are core to the history and identity of many Indigenous people."

The proposed changes, Earthjustice said in a Monday statement, require further review and a 30-day public comment period before becoming final. Congress is also considering significant rollbacks to Section 106 as part of a planned "permitting reform" push, it said.

"For 60 years, the federal government has had a legal responsibility under the NHPA to listen to tribal nations before disturbing burial grounds and other sacred places. Good consultation has not slowed the pace of new roads and power plants in this country, but it has given tribes a seat at the table and preserved irreplaceable Indigenous sites from destruction," Gussie Lord, managing attorney for tribal partnerships at Earthjustice, said in a Monday statement. "What happens when entire landscapes are bulldozed without a thought to their cultural and historic importance? No one should support cutting tribes out of the decision-making process for projects that impact their rights and sacred places."

According to the nonprofit, government-to-government consultation under Section 106 helps proposed projects, such as mining operations, avoid or mitigate harm to historically important places. Early and meaningful engagement with tribes and states also reduces risk, cost and unnecessary delays to projects, Earthjustice says.

Travis Voyles, the vice chair of the Advisory Council on Historic Preservation, announced his intentions in January to revisit Section 106 as a way to speed up project developments. In June, the council formally adopted a resolution that directs staff to build a regulatory revision timeline for the law

within 30 days, according to legislative records.

On July 17, in what tribal and historic property advocates called a "surprise move," the council skipped the planned timeline and instead circulated an almost full draft overhaul of the regulations.

According to the American Cultural Resources Association, the overhaul shifts authority to federal agencies and narrows the definition of protected historic properties. Other key changes, the association says, include replacing consultation with a single reporting process, excluding natural and sacred landscapes and expanding exemptions for projects.

The American Institute of Architects, in a Monday statement, also decried the vote, saying the "hasty proposal" represents a significant step back.

"Public participation is a founding principle of this democracy, and today's vote treats it as an obstacle to be removed. When communities lose their voice in decisions about the places that shape their lives, we all lose something that cannot easily be recovered," AIA President Illya Azaroff said. "For architects, Section 106 consultation has always been about listening, learning, and building trust with the people we serve. The current proposal undermines the congressional intent of the National Historic Preservation Act of 1966, and its consequences will be felt across our profession, our neighborhoods, and our communities."

A representative of the Advisory Council on Historic Preservation could not immediately be reached for comment Monday.

--Editing by Rich Mills.

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