Trump administration moves to gut the National Historic Preservation Act

Philip Guelpa
9 August 2026

Revisions to the National Historic Preservation Act (NHPA) being proposed at the instigation of the Trump administration would drastically diminish the effectiveness of the act in protecting historic and cultural resources in the US. The changes under review by the Advisory Council on Historic Preservation (ACHP), which is now packed more than half with Trump appointees, oversees the NHPA. These changes would hobble implementation of the NHPA's Section 106, which mandates that all federal undertakings, including those done directly, funded, permitted or licensed by federal agencies "take into account" the effects of their actions on historic properties and places. It enables public participation and comment in the process, empowers state and local governments and tribal communities to have a voice in the process, often improving the project and enhancing the outcome.

This latest move follows earlier budget cuts to the National Park Service and state and tribal agencies responsible for implementing Section 106.

Since its inception 60 years ago, Section 106 has been the principal mechanism for the identification, evaluation and preservation of historic properties, threatened by development, including architectural, archaeological and historically significant sites to determine whether they are eligible for listing on the National Register of Historic Places (NHPA). If they are found eligible, Section 106 mandates actions to protect them, either by preservation in place or mitigation of adverse effects via investigation and recording. More than a hundred thousand properties, ranging from well-known buildings such as the Empire State Building in New York City to small Native American archaeological sites, have been protected from damage or destruction by this process, preserving a cultural and historical heritage for the people of the United States and the world.

The scope of projects falling under the purview of Section 106 ranges from federal undertakings such as U.S. Army Corps of Engineers flood control, Federal Highway Administration-funded road construction to certain housing developments which require federal permitting or funding. Under the NHPA, each US state and territory was required to establish a State Historic Preservation Office (SHPO) and federally recognized Native American tribes an analogous Tribal Historic Preservation Office (THPO) to directly oversee implementation of Section 106.

Following suit, many state and local governments have enacted additional regulations which encompass undertakings not covered by NHPA, for example the New York City Landmarks Preservation Commission.

Some of the most iconic properties listed on the National Register include Independence Hall in Philadelphia, where the Declaration of Independence and Constitution were debated and adopted; Mount Vernon, the home of George Washington; Monticello, Thomas Jefferson's home; Gettysburg Battlefield, site of the pivotal Civil War battle; the French Quarter in New Orleans; Cahokia Mounds State Historic Site in Illinois, the largest pre-Columbian archaeological site north of Mexico; and Little Bighorn Battlefield National Monument, site of the 1876 battle between US forces and Native American tribes.

Many more well known, not so well known, and yet to be discovered sites of importance are listed or potentially eligible for listing on the National Register. One notable relatively recent example is the discovery in 1991 and investigation of the African Burial Ground in New York City, the largest and earliest known colonial-era African burial ground excavated in North America.

The cost of the requisite investigations, undertaken by a range of consultants, including universities and private firms, is the responsibility of the project sponsor, such as a government agency or private developer.

First enacted in 1966, Section 106 has faced repeated attempts to curtail or abolish it by private entities and government agencies, which complained about the additional cost and time delay, usually relatively small in comparison to the project as a whole. Nevertheless, Section 106 has survived relatively intact, due to the great value of knowledge and history it has protected, until now.

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The impact of the proposed changes would be severe. There has been an outpouring of negative reactions to the effective neutering of Section 106. Here are a couple of examples.

"The ACHP's proposed changes to Section 106 will eviscerate the preservation of our shared civic and cultural heritage in the United States," said Brent Leggs, CEO of the National Trust for Historic Preservation in a statement issued by the Trust. "If implemented, federal agencies will no longer be required to avoid or minimize damage to our nation's historic sites and landscapes, or seek public input on federal projects that would impact historic places. As a voting member of the ACHP, the National Trust vehemently opposes these changes and is working with our partners to encourage the Council to withdraw this dangerous proposal."

The Trust's statement goes on to list a number of adverse effects of the proposed changes.

> Federal agencies will **no longer be required** to try to avoid or minimize damage to America's historic architecture, neighborhoods, and landscapes.
>
> State and local governments will **no longer have the right** to be notified or have the opportunity to comment when federal agencies propose to damage or destroy historic places within their jurisdiction.
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> The public's opportunity to comment on federal historic preservation policies or actions would now be **entirely optional**, at the discretion of the federal agency.
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> The federal government will **no longer be required** to consult with Native American tribes or seek their expertise regarding their own significant cultural resources.
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> Significant cultural landscape features would **no longer be considered historic properties**, so federal agencies would no longer be required to take into account any adverse effects to significant places such as the Grand Canyon.
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> Federal agencies would **no longer be required** to consider the reasonably foreseeable consequences of their actions on historic properties, other than direct actions that physically damage the properties.
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> These regulations are inconsistent with the National Historic Preservation Act and would **violate the Council's own rules and procedures**.
>
> The proposed changes are also internally inconsistent and riddled with errors, likely to cause **enormous regulatory confusion and chaos** (emphasis in the original).

The American Institute of Architects (AIA) also issued a statement opposing the proposed statement.

> At its core, the revisions strip communities of their right to be heard. These revisions place approximately 1.4 million historic sites at greater risk by shifting decisions away from the communities where they are rooted. The revisions make public comment optional rather than mandatory, narrow the definition of historic property, and shift decision-making authority almost entirely to federal agencies—sidelining state historic preservation officers, tribal historic preservation officers, tribes, and local governments. They permit agencies to make unilateral determinations through internal reports rather than negotiated agreements, and weaken the requirements to avoid, minimize, or mitigate harm to historic resources.

Numerous Native American nations have also expressed strong objections.

The proposed changes are of a piece with the Trump administration's wrecking operation against scientific, environmental, cultural and historic programs in order to eliminate all constraints on private businesses' drive to maximize profit and bring the entire government under its ideological control. At the same time, the administration is significantly shrinking federally protected properties such as Bears Ears and Grand Staircase-Escalante National Monuments in Utah, which undoubtedly contain many as yet undiscovered archaeological sites, by nearly 3 million acres. Meanwhile, the president's ego-boosting pet projects, such as the proposed triumphal arch in Washington, would be facilitated.

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