



October 7th, 2024

Chair Sarah C. Bronin
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

To Advisory Council on Historic Preservation (ACHP) Chair Sara C. Bronin:

This letter is written on behalf of *sduk^walbix^w*, the Snoqualmie Indian Tribe (“Snoqualmie” or “Tribe”), a federally recognized Indian Tribe and sovereign and self-determined government. The Tribe appreciates the opportunity to comment on ACHP’s proposed Program Comment (PC) on “Accessible, Climate Resilient, and Connected Communities” associated with housing-related, climate-smart building-related, and climate-friendly transportation infrastructure-related activities. With this stated appreciation, however, also come numerous concerns the Tribe holds regarding the ACHP’s attempt to provide all federal agencies with an alternative way to supposedly comply with their responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. part 800 (Section 106), as part of undertakings related to these identified activities. The Tribes concerns are as follows:

- ***This proposed PC for Section 106 alternatives—and any and all attempts to provide alternative programs and/or streamline Section 106 processes—without the free, prior, and informed consent of each and every federally recognized Native American tribe and Native Hawaiian Organization (NHO) is an attempt in effect—wittingly or unwittingly—to usurp the role of Congress, homogenize the diversities and densities of Native communities and peoples, erode tribal political and knowledge sovereignty, and erase the vital importance of procedural attention to **place-specificity** as understood, valued, lived, stewarded, and practiced through our own unique systems of Indigenous Knowledge (IK).***
- ***What the PC proposes will functionally deregulate current processes that require attention to the specific and unique environmental, historical, social, economic, and cultural relationships to our places, properties, and landscapes of traditional religious and cultural significance by truncating and short-circuiting the procedures and processes of Section 106. **It is these very processes of Section 106 and their sequential nature that permit us to better negotiate, coordinate, and fulfill our obligations to protect and preserve the integrity of our historic properties/properties of traditional religious and cultural importance (PTRCIs), continue practicing our intimately and indelibly associated traditional relational life/way systems in relationship with and to these historic properties/PTRCIs, and ensure our*****



capacities of and for collective continuance as unique Indigenous tribes and Indigenous peoples in continuity with our pasts and presents into the future.

- Wittingly or unwittingly, ***the proposed PC will both undermine processes and procedures that afford tribes and NHOs rights and opportunities for protection and preservation of historic properties/PTRCIs and negate associated pathways for heightened considerations*** through its attempts to produce “manageable forms of difference that are racially configured through whiteness” (Moreton-Robinson 2015:xvi). Given the content and substance of the proposed PC, the Tribe must make ACHP directly aware that “one does not have to *be* explicitly racist to reproduce white supremacy or its discursive formations” (Beliso-De Jesús and Pierre, 2020:71), and ***assimilative and exclusionary practices, actions, and considerations such as those promoted in the proposed PC need not be intentional nor hostile to still be racist in effect*** (see Pulido 2000).
- In attempting to address select climate change- and affordable housing-oriented activities ***without meaningfully engaging and providing correctives for the structural root causes of these problems and their implications in and for Native American tribe and NHO PTRCIs***, as the proposed PC does, the ACHP is itself contributing to the facilitation and perpetuation of the destruction of Native lands, airs, and waters under a system of settler colonial domination, which must be understood “at [its] base [as] a winner-take-all project whose dominant feature is not exploitation but replacement. The logic of this project, a sustained institutional tendency to eliminate the Indigenous population, informs a range of historical practices that might otherwise appear distinct – invasion is a structure not an [isolated] event” (Wolfe 1999:163).
- ***The proposed PC—wittingly or unwittingly—will assist with the (re)generation and support structures of settler colonial invasion that evacuate effective tribal and NHO input and disappear procedures for effective tribal and NHO coordination and participation.*** Here, it must be stressed that even though the proposed PC states that the Section 106 process would need to be followed if an “undertaking would occur on or have the potential to affect.... Sites of religious and cultural significance to *Indian Tribes and Native Hawaiian Organizations*, including Tribal identified sacred sites and sites identified by Indigenous Knowledge of *Indian Tribes or Native Hawaiian Organizations*,” ***it directly undermines the very processes and procedures afforded under Section 106 that more often than not are required to make such determinations. Moreover, “sites” are only one property type eligible for the National Register of Historic Places (NRHP).***
- In these respects, the content, substance, and structure of this proposed PC are not only misguided in their intents and offerings for alternative programs for Native historic preservation concerns, but negligent in both their passive inattention or active disregard for ***how all lands, airs, and waters of what today is***



commonly called the United States of America are Native lands, airs, and waters—and how undermining and short-circuiting the full Section 106 process will structurally (re)generate and perpetuate social and environmental injustices and acts of cultural genocide, or what Osage Scholar George Tinker has identified and named as “the effective destruction of a people by systematically or systemically (intentionally or unintentionally in order to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life” (Tinker 1993:6). ***This reasonably foreseeable outcome of the proposed PC is supported both by its stipulation that “[u]ndertakings covered by this Program Comment, due to their nature and potential effects, do not require a federal agency to determine whether an involved or affected property is a historic property except where explicitly stated,” and by Chair Bronin’s own characterization of the proposed PC’s very design, function, and purpose.***

- During ACHP’s September 25, 2024, so-called “Tribal Consultation on ACHP Proposed Program Comment on Accessible, Climate-Resilient, Connected Communities” meeting, ***Chair Bronin stated that the proposed PC is focused on outcomes rather than processes.*** The Tribe reiterates to Chair Bronin and the ACHP that the rights and opportunities to both develop heightened considerations and negotiate or coordinate pathways for the better protection and preservation of our historic properties/PTRCIs is directly situated in **Section 106 as a sequential and consultative process.**
- With Chair Bronin’s statement, the Tribe questions how this proposed PC has abided by ACHP’s own consultation obligations to the Tribe, all federally recognized Native American tribes, and all NHOs. It is clear that ***the Tribe must once again inform the ACHP that there are currently 574 federally recognized Indian Tribes and additional NHOs*** throughout the lands and waters of what is today called the territories of the United States who hold government-to-government consultation rights.
- The Tribe uses the term “so-called” above in relation to the September 25, 2024, meeting held by ACHP because this ***general meeting is not and cannot count as good faith, reasonable, or meaningful government-to-government consultation with the Tribe, and no good faith, reasonable, or meaningful consultation on this proposed PC has been conducted by ACHP to date.*** The Tribe reminds ACHP that 36 C.F.R. § 800.14(e)(4) requires that if a “program comment has the *potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization*, the Council shall follow the requirements for the agency official set forth in paragraph f of this section” (emphasis added). 36 C.F.R. § 800.14(f) stipulates that “*the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations*” (emphasis added). 36 C.F.R. § 800.14(f)(1) further states that “[w]hen a proposed program alternative has nationwide



applicability, *the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law*" (emphasis added).

- As this proposed PC will affect all 574 federally recognized Native American tribes as well as NHOs, ***the ACHP has not to date fulfilled even its own self-stated consultation responsibilities as outlined in its Policy Statement Regarding the Council's Relationships with Indian Tribes*** (November 17, 2000; updated July 3, 2007). The Tribe reminds ACHP that this policy in no uncertain terms stipulates that "[t]he basis for the ACHP's policy regarding its role, responsibilities, and relationships with *individual Indian tribes* derives from the Constitution, treaties, statutes, executive orders, regulations, and court decisions" (emphasis added), and "[t]he ACHP acknowledges that Federal-tribal consultation is *a bilateral process of discussion and cooperation between sovereigns*" (emphasis added). ***The development of this proposed PC has neither fulfilled ACHP's responsibilities to individual Indian tribes nor honored any bilateral process of discussion or cooperation with the Tribe as a political and knowledge sovereign*** (and it must be assumed the other 573 federally recognized Indian tribes and NHOs).
- If it is the dubitable position of the ACHP that appropriate good faith and reasonable consultation has occurred on this proposed PC to date, then it appears that the ACHP is attempting to unilaterally change the terms of government-to-government "consultation" and therein promote a program of "American colonial ambivalence," or "the inconsistencies in the application of colonial rule ... [that] stems from the privileged position of the United States, from which it can unilaterally shift the terms of its relationship to indigenous people[s]" (Bruyneel 2007:10). While ACHP may well feel this is within its right, it is a clear violation of its own agency policies and stated principles regarding its responsibilities to Indian tribes and NHOs.
- It is clear that ***Chair Bronin and the ACHP have little to no grasp or care what tribes and NHOs must contend with on a daily basis to just have our basic rights and opportunities afforded under Section 106 and other regulatory review processes, such as the National Environmental Policy Act (NEPA)***. Clearly, the ACHP has done little to no labor to understand how this proposed PC will harm Native American tribes and NHOs by rendering large swaths of our ancestral territories, traditional use areas, and traditional cultural land/waterscapes—that is, ***our historic properties/PTRCIs***—unaccounted for and open to further dispossession, exploitation, and damage for activities that perpetuate settler colonial privileges to the detriment and loss of Indigenous peoples. In identifying a goal of the proposed PC "to promote actions that, consistent with the National Historic Preservation Act, 54 U.S.C. § 300101(1), "foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations," while simultaneously neglecting



tribal and NHO presence, rights, opportunities, concerns, and inclusion, your agency is—intentionally or unintentionally—***excluding Native peoples from this American Nation and necessary considerations of what is required for the viable continuance of our present and future generations.***

- As stated in the Tribe’s September 23, 2024, letter on Executive Order (EO) 14096 to the ACHP, the proposed PC in a multitude of ways ***undermines and contradicts your agency’s charges for environmental justice*** under EOs 12898 and 14096, ***advancements in equity*** for Native communities under EOs 13985 and 14091, and good faith and reasonable consultation obligations, as identified and outlined above.
- The proposed PC also contradicts ACHP’s own stated mission to promote “the preservation, enhancement, and sustainable use of our nation’s diverse historic resources” as well as the ACHP’s 2022 *Strategic Plan* and its “*commitment to both efficiency and inclusion ... to each of the plan’s five ‘pillars’*” (emphasis added). ***There has not only been no good faith, reasonable, or meaningful Tribal inclusion in the development or considerations of this proposed PC and its effects, but there does exist a clearly identifiable attempt to actively elide rights and opportunities afforded under Section 106 for tribal and NHO historic property/PTRCI concerns as well as wholesale exclusions of IK insights and experiences of how Section 106 may or may not work efficiently or effectively to address the challenges of colonial- and industrial-induced climate change and the affordable housing crisis for Native peoples.***
- ***The proposed PC further fails to account for ACHP’s own self-stated trust responsibilities to tribes*** outlined in its *Policy Statement Regarding the Council’s Relationships with Indian Tribes* (November 17, 2000; updated July 3, 2007), and reiterated in its May 21, 2024, *Policy Statement on Indigenous Knowledge and Historic Preservation*. In the ACHP’s own words (emphasis ours):

The ACHP recognizes that it has a trust responsibility to federally recognized Indian tribes and views this trust responsibility as encompassing all aspects of historic resources including intangible values. The ACHP shall be guided by principles of respect for the trust relationship between the Federal Government and federally recognized Indian tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the Act, are consistent with the protection of tribal rights arising from treaties, statutes, and Executive orders.

The proposed PC in its content, substance, and the institutional mindsets of “white possessive logics” (Moreton-Robison 2015) and the structures of settler colonial domination and Indigenous expropriation and exclusion they support are widely inconsistent with the protection of tribal rights arising from



numerous agreements, EOs, and statutes, including those directly guiding the procedures of and implicated in Section 106 as a sequential and consultative process.

To close, the Tribe must state for the record that it adamantly disagrees with the position offered by the Executive Director of the National Association of Tribal Historic Preservation Officers (NATHPO) Dr. Valerie J. Grussing during the ACHP's September 25, 2024, meeting to discuss the proposed PC that its content and substance raise no major red flags. ***The Tribe could not disagree more with this position. The entirety of this proposed PC is a major red flag for tribal concerns.***

What the entire proposed PC is attempting to do is undermine and erode tribal rights and opportunities under white possessive logics to ultimately facilitate a program of "[t]he patriarchal state [that] reinforces the invisibility of a possessive investment in patriarchal whiteness by normalizing it in discussions about economic development and commitments to the nation" (Moreton-Robinson 2015:77). In contradistinction to what has been presented by the ACHP with this proposed PC, ***the Tribe advocates for efforts to improve the Section 106 compliance process through a consultative and inclusive program that is in accordance with the intent and language of the NHPA, including its 1992 amendments and their implications for the affordance of full rights and opportunities for tribes and NHOs under the Section 106 process and the stipulations outlined at 36 C.F.R. § 800.4(c)(1).*** The Tribe urges the ACHP to review and thoughtfully consider its own IK guidance from May 2024 that states:

[a]cknowledgement in this context [of 36 C.F.R. § 800.4(c)(1)] means to recognize and defer to Tribal or NHO interpretation of the property's significance and integrity. Members of the preservation community are not the experts on what constitutes Indigenous Knowledge or how it should be utilized to identify or evaluate the eligibility of a property that may be of religious and cultural significance to an Indian Tribe or NHO, including, but not limited to, ancestral materials recorded and documented as "archaeological."

As the proposed PC stands, it promotes and will facilitate pathways to undermine tribal and NHO rights and opportunities currently afforded under Section 106 for the identified activities, normalizes and perpetuates settler colonial dominance, values, and privileges in addressing environmental and social harms born of its own developmental and economic systems to the harm and destruction of Native lands, airs, waters, and peoples, and embraces and reproduces exclusionary assumptions based in notions of terra nullius and the ideological myth of manifest destiny, the latter of which maintains an "inherent right and morality of expansionism of a particular people group at the expense of other culture-sharing groups, who are perceived to be inferior" (Styres 2017:93) and "continues to be fuelled [sic] by a sense of entitled racial and religious superiority maintained through networks and relations of power and privilege" (Styres 2017:93-94). ***To put it simply, the proposed PC in both what it promotes and what it excludes perpetuates white supremacist narratives and white possessive privilegings to the harm and detriment of Native peoples and the historic properties/PTRCIs vital to our viable and continuing pasts, presents, and futures.***



Based on these numerous concerns, ***it is the firm position of the Tribe that the proposed PC in its entirety must be revised to (1) be attentive to tribal and NHO rights and opportunities inclusive of a process that respects and honors government-to-government consultation obligations and IK sovereignty of each of the 574 federally recognized tribes and NHOs under free, prior, and informed consent and (2) operationalize compliance responsibilities under Section 106 for all federal agencies through a process that acknowledges and accounts for the fact that all lands, airs, and waters of what today is commonly called the United States of America are Native lands, airs, and waters.*** Colonial- and industrial-induced climate change and affordable housing challenges are both crises born of settler colonial systems of domination. Native peoples should not, once again, as this proposed PC tacitly asks and actively promotes, be the ones burdened with sacrificing or being asked to sacrifice the places, properties, and land/waterscapes vital for our collective continuance as unique and healthy peoples in order to address, uphold, or maintain settler colonial systems of exploitation, dominance, and social and environmental imbalance, destruction, and domination. This is an absolute imperative for this proposed PC and the identified activities it is meant to address if the ACHP is to avoid regenerating and reproducing once again the “long and bumbled history of non-Indigenous peoples making moves to alleviate the impacts of colonization” (Tuck and Yang 2012:3).

The Tribe thanks Chair Bronin and the ACHP for attention to these vitally important concerns and to the necessary direct Tribal collaboration on and wholesale revisions to the proposed PC. The Tribe is committed to reasonable, meaningful, and good faith communication and consultation to fulfill our stewardship responsibilities for the lands, airs, and waters and all of the diverse, dynamic, and living resources that help comprise our ancestral territories, traditional use areas, traditional cultural land/waterscapes, and other historic properties/PTRCIs. If you have any questions or need additional information, please contact me at jaime.martin@snoqualmietribe.us.

Sincerely,

DocuSigned by:

55ECFF68F5D44FA...

Jaime Martin
Executive Director
Governmental Affairs & Special Projects

CC:

Dr. Allyson Brooks, Washington State Historical Preservation Officer
Steven Moses, Snoqualmie Tribe Director of Archaeology & Historic Preservation
Senator Patty Murray
Senator Maria Cantwell



Congresswoman Kim Schrier

Jordan E. Tannenbaum, Vice Chair, Advisory Council on Historic Preservation

Erica C. Avrami, Advisory Council on Historic Preservation

Carmen A Jordan-Cox, PhD, Advisory Council on Historic Preservation

Frank G. Matero, Advisory Council on Historic Preservation

Monica Rhodes, Advisory Council on Historic Preservation

Charles "Sonny" L. Ward III, Advisory Council on Historic Preservation

Jane D. Woodfin, Advisory Council on Historic Preservation

Amelia AM Marchand, Advisory Council on Historic Preservation

Jamie Lee Marks, Advisory Council on Historic Preservation

Wm. Dancing Feather, Advisory Council on Historic Preservation

Sources Cited

Beliso-De Jesús, A.M., and J. Pierre. 2020. Anthropology of white supremacy. *American anthropologist* 112:65-75.

Bruyneel, Kevin. 2007. *The Third Space of Sovereignty: The Postcolonial Politics of U.S.- Indigenous Relations*. University of Minnesota Press: Minneapolis.

Moreton-Robinson, Aileen. 2015. *The White Possessive: Property, Power, and Indigenous Sovereignty*. University of Minnesota Press, Minneapolis.

Pulido, Laura. 2000. Rethinking Environmental Racism: White Privilege and Urban Development in Southern California. *Annals of the Association of American Geographers* 90(1):12-40.

Styres, Sandra. 2017. *Pathways for Remembering and Recognizing Indigenous Thought in Education Philosophies of Iethi'nihstenha Ohwentsia'kekha (Land)*. University of Toronto Press, Toronto.

Tinker, George E. 1993. *Missionary Conquest: The Gospel and Native American Cultural Genocide*. Fortress Press, Minneapolis.

Tuck, Eve and K. Wayne Yang. 2012. Decolonization is not a Metaphor. *Decolonization: Indigeneity, Education & Society* 1(1):1-40.

Wolfe, Patrick. 2006. Settler Colonialism and the Elimination of the Native. *Journal of Genocide Research* 8 (4):387-409.