April 30, 2019

Acting Associate Director Joy Beasley  
Cultural Resources, Partnerships, and Science  
Keeper of the National Register of Historic Places  
National Park Service  
1849 C Street NW  
Washington, DC 20240

RE: Proposed Revision of Regulations Governing Nominations to the National Register of Historic Places  
RIN 1024-AE49; Docket: NPS-2019-0001  
84 Fed. Reg. 6,996 (Mar. 1, 2019)

Dear Acting Associate Director Beasley:

On behalf of the National Trust for Historic Preservation, I am writing to express the National Trust’s deep concern over the proposed revisions to regulations promulgated by the National Park Service (NPS) governing the listing of properties in the National Register of Historic Places. Our view is that the revisions as proposed are not only incompatible with the legal requirements of the National Historic Preservation Act (NHPA), but would undermine the National Register as an essential tool used to protect and preserve the Nation’s historic places, as envisioned in the NHPA. We strongly oppose the revisions and respectfully urge that the proposal be withdrawn.

The National Register of Historic Places constitutes the official list of places that are significant in the shared history of the people of the United States. Although established by federal law, the National Register is the fundamental tool used by people around the country at the federal, state, and local levels to connect communities with the places where history happened. The continued effectiveness of the National Register is vital to document our history, help preserve historic sites, promote economic development, and to serve its regulatory function under Section 106 of the NHPA.

In our view, the proposed revisions to the National Register regulations violate both the letter and the spirit of the NHPA. The Proposed Rule would provide federal agencies with exclusive authority over nominating federally-owned property to the National Register and would give large property owners more control over historic district nominations, even when they do not represent the opinion of a majority of the owners. Moreover, the Proposed Rule was issued without adequate stakeholder consultation, including legally required tribal and inter-agency consultation, and without compliance with the National Environmental Policy Act (NEPA). The proposed revisions, as well as the process by
which they have been promulgated, are seriously flawed from a legal and policy perspective and should not be permitted to go into effect.

Statement of Interest

The National Trust is a private nonprofit organization chartered by Congress in 1949 to “facilitate public participation” in the preservation of our nation’s heritage, and to further the historic preservation policy of the United States. See 54 U.S.C. § 312102(a). Congress intended the National Trust “to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings.” S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation (ACHP), which is responsible for working with federal agencies to implement compliance with Section 106 of the NHPA. 54 U.S.C. §§ 304101(8), 304108(a).

The Stated Purpose of this Proposed Rulemaking

The NHPA established a national policy to preserve historic places for “the inspiration and benefit of present and future generations.” 54 U.S.C. § 300101(3). To meet this goal, and as required by the NHPA, the National Park Service maintains a National Register of Historic Places that includes historic properties “significant in American history, architecture, archeology, engineering, and culture.” Id. § 302101. The National Register is an important repository of information about the nation’s historic places and it also serves a regulatory purpose. Consultation under Section 106 of the NHPA is required for all federal undertakings that could affect properties listed or eligible for listing on the National Register. This ensures that impacts to historic properties are taken into account in the federal decision-making process.

The NPS states in the Notice of Proposed Rulemaking that the purposes of the proposed revisions to the regulations are to implement the 2016 amendment to the NHPA regarding federal agency nominations to the National Register, and to increase the authority of large land owners in proposed historic districts when evaluating owner objections to nominations. The 2016 Amendments were minor changes intended by Congress to ensure that State Historic Preservation Officers (SHPOs) and local governments would have the opportunity to comment on nominations of historic properties owned by federal agencies to the National Register. 54 U.S.C. § 302104(c). The proposed regulations go far beyond simply ensuring that SHPOs have a voice in the nominating process, as Congress intended. In fact, the Proposed Rule would diminish the ability of SHPOs to participate in nominating decisions by restricting their authority to nominate federal properties. Moreover, the 2016 Amendments do not instruct the NPS to change the process for counting owner objections to listing historic districts to favor large
land owners. The changes included in the Proposed Rule far exceed any that were authorized by Congress, and if implemented, would violate the NHPA.

**Specific Comments and Objections**

The National Trust’s specific comments and objections to the Proposed Rule are set out below.

**I. The Proposed Revisions to the National Register Regulations Violate the NHPA and the APA.**

The specific proposals in the rule that allow only federal agencies to nominate properties in their ownership to the National Register essentially create a federal pocket veto, and is inconsistent with the NHPA. Similarly, the changes to the owner objection rules are inconsistent with the language of the NHPA. The NPS lacks the authority to avoid the NHPA’s requirements through construction or application of new rules. Consequently, the Proposed Rule also violates the Administrative Procedure Act (APA) in several key respects: it is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, because it exceeds the statutory jurisdiction and authority of the NPS. 5 U.S.C. § 706(2)(A).

**A. The Proposed Rule Unlawfully Establishes Federal Agencies as the Exclusive Channel for National Register Nominations of Federal Property.**

The proposed regulations are a sharp departure from the current process used by federal agencies to nominate federally owned properties for listing, will have detrimental impacts to preservation activities, and are inconsistent with the NHPA. Section 110(a)(2) of the NHPA requires each Federal agency to “ensure that—(1) historic property under the jurisdiction or control of the agency is identified, evaluated, and nominated to the National Register.” 54 U.S.C. § 306102(a)-(b)(1). The proposed regulations would undermine, rather than implement, this statutory mandate.

The 2016 NHPA Amendments added a process for federal agencies to use when nominating federally owned properties to the National Register that clarified the role of the Federal Preservation Officer (FPO) and required SHPOs and local governments to have a specific opportunity to comment on federal nominations. Id. § 302104(c). 1 The new Proposed Rule takes these procedural amendments far beyond what the 2016 NHPA

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Amendments require. The Proposed Rule would designate the FPO as the exclusive channel for any National Register nomination of federal property. This means that, if an agency is not supportive of a designation, then an FPO can simply choose not to act. This inaction would effectively prevent National Register nominations by any other party from moving forward, effectively creating a federal pocket veto.²

The impacts of these changes would be widespread. The Proposed Rule has no time limit or other action-forcing mechanism, so federal agencies could hold a nomination for a federal property indefinitely for any reason, or even for no reason at all. On public lands targeted for resource extraction that would impact cultural resources, landscape listings could be halted. Inappropriate political influence may intrude into decisions that should be based on considerations of historic merit alone. The proposed changes would also interfere with the ability of SHPOs to nominate historic districts that include federal properties. The outcome could be gerrymandered historic districts that carve out federal properties owned by unsupportive agencies (such as the U.S. Postal Service), even where the federal properties are part of the historic core of the district. Failure of the federal agency to nominate a district could substantially interfere with the availability of Historic Tax Credits within urban areas and Main Street communities, because use of the tax credits requires National Register listing. Such changes cannot be reconciled with NHPA’s purpose.

Nowhere—either in the NHPA or the 2016 Amendments—did Congress require that federal agencies be the exclusive channel for National Register nominations of federal property as proposed in this rule. Instead, Congress intended precisely the opposite: a process whereby SHPOs and local governments both have a specific opportunity to comment on National Register nominations involving federally owned historic properties. The proposed rule change would harm the ability of the public, including local residents, SHPOs and preservation-minded real estate developers, to influence National Register listing decisions in their own communities. This outcome would be in direct opposition to the intent of Congress in passing the NHPA and the 2016 Amendments.

B. The Proposed Regulations Regarding Owner Objections to National Register Nominations Are Inconsistent with the Statutory Language of the NHPA, and are Therefore Unlawful.

The NHPA allows a majority of private property owners within a proposed National Register historic district to prevent a nomination by filing notarized objections. The NPS’s Proposed Rule would change this process to allow the private owner or owners of “a majority of the land area” within a proposed historic district to defeat a National Register listing, even if a majority of the private property owners do not object. 84 Fed. Reg. at

² As discussed in more detail below, the proposed regulations would also create a federal pocket veto of National Register eligibility determinations, which could substantially delay and interfere with the Section 106 review process.
6,998. This is in direct contravention of the statutory language of the NHPA, and inconsistent with the fundamental principle of one person, one vote.

The NHPA specifically provides that a National Register listing may be prevented if objections are raised by “a majority of the owners of privately owned properties within ... a historic district,” 54 U.S.C. § 302105(a)-(b) (emphasis added). The statutory language provides no authority to measure the “majority” based on “land area.” The NHPA does not allow citizens who own more property to veto a National Register nomination when they do not represent a majority of the owners. These proposed revisions to the regulations would be arbitrary, capricious, an abuse of discretion, and contrary to law. Moreover, the NPS has provided no rationale for making this change to the owner objection process. As a result, the proposal is unsupported by substantial evidence and is a violation of the APA.

We should also note that, like the proposed changes to the federal property nomination process, the proposed changes to owner consent requirements may interfere with the use of Historic Tax Credits, since Historic Tax Credits require National Register listing, as opposed to eligibility. Allowing a minority of property owners within a historic district to block National Register listing would prevent all property owners within the historic district from using the Historic Tax Credit. This would block an important incentive for private investment in historic preservation and revitalization within communities throughout the nation.

C. Congress Intended Public Participation in the National Register Nomination Process.

Congress specifically required that the NPS ensure “adequate public participation in . . . the process of recommending properties for nomination to the National Register.” 54 U.S.C. § 302301(3). By contrast, this Proposed Rule would frustrate public participation—both by allowing the will of the majority to be overruled by large landowners who object to a historic district nomination, and by establishing federal agencies as the exclusive gatekeeper for nominating federally owned historic properties. Certainly, given the public purpose and public participation goals of the NHPA, these proposed regulations contradict congressional intent.

II. The Proposed Rule Exceeds the NPS’s Limited Authority to Interpret and Implement the NHPA, and Would Unlawfully Subvert Section 106.

A. The NPS Lacks Authority to Regulate the Implementation of Section 106.

The Proposed Rule exceeds the NPS’s limited grant of authority to implement and interpret the NHPA. While the NHPA instructs the NPS to formulate regulations to establish the National Register, 54 U.S.C. § 302103(2), the agency does not have discretion to unilaterally change the implementation of Section 106 of the NHPA. This is
because the NHPA establishes the ACHP as the federal agency with sole responsibility for regulations that “govern the implementation of section [106] in its entirety.” Id. § 304108(a) (emphasis added). Failure to consult with the ACHP about the impacts of the proposed rulemaking prior to its promulgation is a violation of the NHPA and the APA.

The proposed changes to the nomination process for federally owned properties purport to be limited to the process for nominating and listing properties on the National Register, rather than changes to the process used under Section 106 to make determinations of eligibility for the National Register. However, the proposed NPS regulations would actually interfere with eligibility determinations for federally owned properties, and thus would unlawfully thwart the Section 106 review process overseen by the ACHP.

**B. The Proposed Regulations Would Effectively Give Federal Agencies the Ability to Block National Register Eligibility Determinations for Federally Owned Properties.**

The Section 106 process is triggered when federal activities could adversely affect historic properties that are listed on or eligible for listing in the National Register. There are often disagreements among parties as to whether a site is eligible for the National Register, and referral to the Keeper is needed to resolve those disagreements. 36 C.F.R. § 800.4(c)(2). This referral process keeps the Section 106 consultation process moving forward by allowing the NPS to resolve these eligibility disputes.

The Proposed Rule would change the process for appealing federal agency decisions not to nominate a property. Although the proposed regulations state that “Any person or local government may appeal to the Keeper the failure of [an FPO] to nominate a property,” the Keeper would only have jurisdiction to review such an appeal if the FPO has already submitted the nomination to the Keeper. 84 Fed. Reg. at 7,004 (proposed amendment to 36 C.F.R. § 60.12(b)(iv)). As a result of this circular requirement, if the FPO does not submit the nomination, the Keeper would be precluded from reviewing any appeal challenging the FPO’s failure to nominate.

In addition, the proposed revision to 36 C.F.R. § 63.4(c) would prohibit the Keeper from making eligibility determinations unless in response to “consultation with and request from the [SHPO] and concerned Federal agency.” 84 Fed. Reg. at 7,005 (emphasis added). It would also prohibit the Keeper from making eligibility determinations in response to nominations from federal agencies that may still need to satisfy technical or procedural requirements. Id. This means that federal agencies can effectively block National Register eligibility determinations in addition to National Register listing decisions, by simply refraining from making a “request” for an eligibility determination, under § 63.4(c), and refraining from submitting a formal nomination under § 63.4(a). This would have severe consequences for the integrity and effectiveness of the Section 106 consultation process, which is intended to encourage agencies to make decisions that avoid and minimize harm to historic properties.
The proposed federal agency veto over eligibility determinations is also reflected in language that would be deleted from the current regulations. The existing regulations explicitly state that the Keeper is authorized to make National Register eligibility determinations even “without a specific request from the Federal agency,” and even if the Keeper’s determination “may reverse findings on eligibility made by a Federal agency and [SHPO].” 36 C.F.R. § 63.4(c). This language would be deleted under the proposed regulations, thus confirming the clear intent by the NPS to enable federal agencies to block eligibility determinations. This new procedure created by the Proposed Rule constitutes a major departure from current regulatory processes and is unsupported by the NHPA or the 2016 Amendments.

The changes in the Proposed Rule would significantly impact the Section 106 consultation process, which exceeds the authority designated by Congress to the NPS. In a situation where Section 106 is triggered and the only property that would be adversely affected is federally owned, this rule change could allow a federal agency to preclude Section 106 review entirely by failing to nominate such federal property.

C. The Proposed Regulations Would Interfere with Tribal Participation and Consultation Under Section 106.

The Proposed Rule also has serious implications for considering impacts to tribal historic resources required under Section 106. Revisions in the Proposed Rule would impact tribes’ ability to participate in required consultations, and how or whether a property’s tribal significance is considered. Agencies that are unreceptive to tribal perspectives would be able to circumvent established policies and processes for consultation to identify sites by simply failing to move forward nominations of tribally significant properties on federal land.

III. The NPS Unlawfully Failed to Engage in Tribal Consultation.

The NPS stated in the Notice of Proposed Rulemaking that the agency determined that the Proposed Rule “will not have a substantial direct effect on federally recognized Indian tribes,” and therefore tribal consultation is not required. 84 Fed. Reg. at 7,000. This determination is simply wrong. It ignores the fundamental historical fact that Native American presence and cultural relationships to what are now federal lands predated federal ownership by thousands of years. There are vast numbers of highly significant tribal cultural resources on federal lands around the country. The Proposed Rule would adversely affect tribes’ ability to nominate these cultural sites to the National Register without permission from federal agencies.

Specifically, the changes would grant federal agencies the exclusive authority to control the nomination and eligibility determination processes, even allowing agencies to block listings or eligibility determinations entirely. This could dramatically impact the ability of tribes to successfully secure National Register status for tribal cultural resources on
federal lands. Similarly, allowing the owner(s) of a majority of the land area to stop a district from being listed on the National Register could harm the ability of tribes to nominate traditional cultural properties (TCPs) to the National Register, because TCPs are often landscapes that are nominated as districts. Nominating archaeological or other historic districts would also become more challenging.

The DOI’s Policy on Consultation with Indian Tribes (implementing E.O. 13175) requires the agency to conduct government-to-government consultation for departmental actions with tribal implications. This obligation includes rulemakings that may have a substantial direct effect on an Indian Tribe on matters including tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands. This action falls squarely within these terms.

IV. The NPS Did Not Consult with Other Federal Agencies in Violation of Executive Orders 12866 and 13563.

A. This Rulemaking is Significant Under Executive Order 12866.

The NPS’s Notice of Rulemaking states that the Office of Information and Regulatory Affairs (OIRA) determined that this rule is not significant under Executive Order 12866. This decision did not accurately apply the significance factors included in E.O. 12866, which defines significant regulatory actions as those that “adversely affect in a material way ... the environment, ... or State, local, or tribal governments or communities;” “create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;” or that “Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.” Exec. Order 12866, Sec. 3(f), 58 Fed. Reg. 51,735 (Oct. 3, 1993). Because of the determination that the proposed regulation is not significant, it was not subject to interagency review prior to being issued for public comment.

In addition, Executive Order 13563 specifically requires that, “Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.” Exec. Order 13563, Sec. 2(c), 76 Fed. Reg. 3,821 (Jan. 21, 2011). The NPS also failed to comply with this requirement.

B. Federal Agencies Have Objected to the Lack of Consultation.

This proposed regulation would not only directly affect all federal land-owning agencies, but all other federal agencies as well, because of the risk that the revised regulations would thwart and delay Section 106 review.

At the recent business meeting of the ACHP, on April 4, 2019, the federal agencies who are members of the ACHP expressed strong objections to this lack of inter-agency review through the OIRA at the Office of Management and Budget. For example, the Department
of Defense representative characterized the process as “woefully inadequate.” The Council on Environmental Quality representative agreed, as did many other federal representatives. This level of criticism by other federal agencies in a public meeting on the record is unusual, and should be taken very seriously as a signal that the regulations should be withdrawn as a result of the lack of inter-agency review.

V. SHPO Consultation is Also Required for this Rulemaking.

As noted above, the proposed changes are likely to create additional work for SHPOs around the country, particularly in determining how to count objections based on “majority of land area.” Executive Order 12866 requires federal agencies to seek the views of state officials, as well as tribal and local governments, before taking steps that would impose new burdens on those entities. It states that before imposing regulatory requirements, agencies should assess the effects that the regulations would have on state governments, “including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities,...” Exec. Order 12866, Sec. 1(b)(9), 58 Fed. Reg. 51,735. The failure of the NPS to consult with SHPOs in the development of this rule is inconsistent with Executive Order 12866, as well as the underlying principles of cooperation between state and federal government agencies that prompted Congress to pass the 2016 Amendments.

VI. National Environmental Policy Act Compliance is Required.

As described above, this Proposed Rule would make broad-reaching changes to the National Register, which would harm cultural resource protection efforts and undermine the effectiveness of the NHPA. The impacts of the Proposed Rule to the human environment are likely to be major. As a result, the National Environmental Policy Act (NEPA) requires that an Environmental Impact Statement (EIS) be prepared to evaluate the impacts of this proposed rulemaking.

NEPA is our nation’s “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s purpose is to “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment,” and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” Id. § 1500.1(b), (c). To comply with NEPA, federal agencies must prepare an EIS for “all major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). “Major federal actions” include, among other things, “new or revised agency rules, regulations, plans, policies, or procedures.” 40 C.F.R. § 1508.18(a). If it is unclear whether a proposed action will have a significant effect on the environment, the agency must prepare an EA to determine whether an EIS is required. See id. § 1508.9. “Effects” are defined broadly to include ecological, aesthetic, historic, cultural, economic, social, or

3 See Transcript of ACHP Business meeting, at pp. 29-40 (Apr. 4, 2019), enclosed.
health, whether direct, indirect, or cumulative, and encompass both beneficial and detrimental effects. Id. § 1508.8. This rulemaking is a major federal action that will cause significant effects to the human environment, and thus preparation of an EIS is required.

The March 1, 2019 Federal Register rulemaking notice states that the draft rule “does not constitute a major Federal action significantly affecting the quality of the human environment,” and does not warrant preparation of an EIS. The notice states that this decision is in reliance on the NPS’s NEPA Handbook Section 3.2.H, which establishes a categorical exclusion for: “policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature.” 84 Fed. Reg. at 7,001. The notice further states, without explanation, that the rule does not include any of the “extraordinary circumstances” identified in 43 C.F.R. § 46.215 that require further NEPA analysis.

The NPS’s reliance on this categorical exclusion is misplaced. First, the draft rule is not purely procedural in nature. Instead, as more fully explained above, it will fundamentally change the ability of parties, other than the federal government, to nominate federally owned properties to the National Register, will frustrate application of Section 106 of the NHPA and will give greater decision-making authority on National Register nominations to the largest landowners. As a direct and inevitable result of these changes, the physical environment and historic resources will suffer.

Moreover, even if the Proposed Rule did satisfy the threshold criteria for a categorical exclusion, extraordinary circumstances apply. See 40 C.F.R. § 1508.4 (categorical exclusions do not apply where there are “extraordinary circumstances in which a normally excluded action may have a significant environmental effect” (emphasis added)).

Several extraordinary circumstances apply to the Proposed Rule, making application of a categorical exclusion inappropriate, including the following:

- **Significant impacts on unique geographic characteristics (43 C.F.R. § 46.215(b)).** There can be no reasonable doubt that making changes to the National Register of Historic Places will have significant impacts on unique geographic characteristics, which include historic and cultural resources.

- **Highly controversial environmental effects (43 C.F.R. § 46.215(c)).**

Public controversy around the attempt to change the National Register

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regulations—and the lack of consultation about developing this rulemaking—is extremely high. This is demonstrated by the high number of public comments, comments and objections from other federal agencies, differences of opinion between the NPS and the ACHP about the implications of many of these purportedly minor regulatory changes, and objections and concerns from SHPOs around the country, all of whom have extensive knowledge and expertise in this area. All of these factors point to a determination that this rulemaking is highly controversial.

- **Direct relationship to other actions with individually insignificant but cumulatively significant environmental effects (43 C.F.R. § 46.215(f)).** An EIS is also required when cumulatively significant impacts are reasonably foreseeable. 40 C.F.R. § 1508.27(b)(7). Significant cumulative impacts may occur even if individual actions are "minor." *Id.* Here, the NPS’s rulemaking is explicitly designed to create obstacles to listing federally owned properties on the National Register and to increase the power of large property owners to block nominations. Therefore, it is “reasonable to anticipate a cumulatively significant impact on the environment.” *Id.* The Proposed Rule can also be expected to further restrict the ability of interested tribes, states and the public, to ensure that impacts to historic and cultural resources are identified, considered and balanced in the context of energy and mineral development. As such, the full range of environmental impacts of increased oil and gas, and other mineral development, should be subject to review under NEPA.

- **Cause significant impacts on properties listed, or eligible for listing on the National Register. (43 C.F.R. § 46.215 (g)).** As described above, the Proposed Rule will directly impact decisions about whether federally owned historic resources can be listed on the National Register, as well as whether historic districts can be listed over the objections of large property owners. There can be no reasonable dispute that these changes will cause significant adverse impacts to resources that are unique, irreplaceable, and of the highest national importance.

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*Foundation for North American Wild Sheep v. U.S. Dep’t of Agriculture, 681 F.2d 1172, 1182 (9th Cir. 1982) (criticism from conservationists, biologists, two state agencies, and “other knowledgeable individuals” represented “precisely the type of ‘controversial’ action for which an EIS must be prepared”).

5 As the D.C. Circuit recently concluded in *NPCA, et al. v. Semonite*, No. 18-5179 (D.C. Cir. Mar. 1, 2019), “[t]he [ACHP], tasked as it is with preserving America’s historic resources, merits special attention when it opines, as it did here,” on an issue of national significance. And “repeated criticism from many agencies” was also cited by the court as a basis for concluding that the issue was highly controversial under NEPA.
• **Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment (43 C.F.R. § 46.215(i)).**

As discussed above, the Proposed Rule does not conform with the statutory text of, and thus violates, the NHPA, which was passed by Congress to help protect America’s historic places.

In sum, the NPS has not justified its use of a categorical exclusion to avoid review of its rulemaking under NEPA. Instead, the Proposed Rule raises “substantial questions about whether [the rulemaking] may have a significant effect on the environment,” which requires the preparation of an EIS. *See Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004) (quotation omitted). The NPS is required to comply with the requirements of NEPA and to prepare an EIS to consider the impacts of the Proposed Rule.

**VII. Responses to Specific Questions Raised by the NPS in the Notice of Proposed Rulemaking**

The National Trust offers responses to the following questions included in the Notice of Proposed Rulemaking:

**A. Should the Keeper be barred from making an eligibility determination if a nomination is returned to the federal agency for a technical or procedural correction?**

Absolutely not. This aspect of the proposed regulations is likely to create substantial interference in the Section 106 consultation process when federal properties are involved. This provision would essentially allow federal agencies to block eligibility determinations in addition to nominations, and would thus thwart the ability of the Keeper to resolve disagreements about National Register eligibility, pursuant to 36 C.F.R. § 800.4(c)(2). This could result in significant delays, uncertainty, and a risk of litigation. It is important for purposes of efficient Section 106 consultation that the Keeper needs to be able to review eligibility issues without requiring the agency to invest the additional time and money of preparing a full-blown National Register nomination.

**B. Should the requirement that objections be submitted on notarized statements be altered to some other method that is less burdensome?**

No. Requiring notarized statements is not overly burdensome and helps to ensure the integrity of the process. Notary services are widely available, and are generally low-cost or even free. Requiring objections to be notarized guards against manipulation of the process. Moreover, the National Trust is unaware of any situation where the notary requirement has created any undue burden to a property owner in preparing an objection.

**C. Are Paragraph (i) of Section 60.9 and Paragraph (t) of Section 60.6 redundant given that Section 60.13 requires the NPS to solicit**
public comments via the Federal Register for properties nominated for listing in the National Register?

No. Paragraphs 60.9(i) and 60.6(t) allow the public to petition the Keeper during the nomination process regarding whether to accept or reject a property nomination at all. Section 60.13 requests public comment on a nomination that the Keeper has accepted and that is under consideration. People or organizations exercising their right to comment could be attempting to influence the Keeper's decision in favor of or against listing; however, comments may also be focused solely on providing additional information about a resource. In contrast, people exercising their right to petition the Keeper are attempting to influence the decision of whether a nomination should be accepted at all. These provisions are not redundant and are attempting to elicit different types of information from the public at a different step in the nomination review process.

Conclusion

While the National Trust understands that some minor changes to the National Register rules may be needed to implement the 2016 Amendments, the Proposed Rule clearly exceeds the changes authorized by Congress. We urge the National Park Service to withdraw the rulemaking, and instead develop a revised rule that is narrowly focused on providing practical solutions to real problems and that is informed by consultation with federal agencies, tribes, THPOs and SHPOs, and following the process mandated by NEPA.

The violations of procedural requirements discussed above are not merely check-the-box exercises. On the contrary, the consultation and comment process required by tribal and inter-agency reviews would likely lead to substantial modifications to the proposal, given the broad opposition already being voiced by these numerous governmental entities. Thus, the procedural deficiencies cannot be trivialized as harmless error.

Our members and supporters, and communities across the country, deserve nothing less than an effective National Register that continues to serve the interests of the American people. The National Trust stands ready to consult with the NPS and the DOI to update the National Register rules and ensure that the nation’s historic preservation program remains effective and consistent with applicable law.

Sincerely,

Paul W. Edmondson
Interim President and CEO
Enclosure: Advisory Council on Historic Preservation Quarterly Meeting Transcript (April 4, 2019)

cc: Ryan Hambleton, Deputy Ass’t Secretary for Fish, Wildlife & Parks, U.S. Department of the Interior
Sara Porsia, Office of the Solicitor, U.S. Department of the Interior
John M. Fowler, Advisory Council on Historic Preservation
Erik Hein, National Conference of State Historic Preservation Officers
Valerie Grussing, National Association of Tribal Historic Preservation Officers

Male Participant: Chairman for life.

Wayne: I'd like to call the meeting to order and ask Vice-Chair Leonard Forsman to lead the Pledge of Allegiance.

Participants: I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible with liberty and justice for all.

Wayne: I'd like to refer the members to the provisional agenda and at this time invite any additions or amendments to the agenda.

All right then. I'd like to get somebody to make a motion. Reno? In a second. OK. Seconded by Jordan. I'm appointing Shayla Shrieves for recording the meeting. I welcome you all to the spring business meeting. I'm like a bad penny, I keep coming back, but we'll give you an update on where Amy Jovani is in the process today.

I'd like to welcome Ryan Hambleton, our Deputy Assistant's Secretary of Fish and Wildlife, representing Secretary Interior. If you'd like to say a few words.

Ryan Hambleton: Only that it's great to be here and I appreciate the opportunity to speak.

[microphone feedback]

Wayne: By the way, on the mics, you turn it on, you'll see a little red light. Then when you're finished speaking, turn it off. OK, great, thanks. Christine Merdon, acting architect of the capital. Christine, as we talked about earlier, if you could say a few words about the uniqueness of this room for members and guests that perhaps have not been here before.

Christine Merdon: Thank you very much. This is my first meeting, but I'd like to welcome everybody to the capital campus. You are in the Kennedy caucus room. This building was designed by Carrere and Hastings.

If many of you have been in the Cannon office building, that's the building very similar to it. That's a sister building, also designed by Carrere and Hastings undergoing a large renovation.

What's unique about this room? People always ask, "What happened here?" The Iran Contra hearings were held here. I'm sure everybody remembers Ali North. This is where he testified.

The room name came from the Kennedy brothers. All three of them, John Kennedy, Robert Kennedy and Ted Kennedy served in the Senate and they brought humanity and compassion to the Senate and it's reflected in being honored in this room, having this room named after them.
Under the carpet -- the carpet was not original to this room. Both in the Cannon office building and in this office building -- they had marble. They designed it based on some designs in a hotel in Valetas, hopefully I pronounced that correctly. It's in Paris. It's a unique design but they found after a few hearings that the acoustics were not so good so that's why they placed the carpet.

I welcome you here. I am the acting architect. I was chief operating officer, still am chief operating officer for about eight-and-a-half years. I worked at the White House, did historic restoration preservation Lincoln and Jefferson at the White House. Worked on some wonderful projects including the Martin Luther King Memorial Project.

Also, if anybody here is a Nat's fan, worked on the baseball stadium, now 11 years old. Thank you and welcome.

Wayne: Thank you, Christine. Do you have an update as where you're at in looking for a new architect for the state capitol?

Christine: I know the Senate Rules Committee is leading the search and they engaged a recruiting firm and I know they are very heavily involved in it. I'm an applicant that's why I know. I think they're anticipating to get the selection done by the end of the year at least.

Wayne: Thank you very much. I'd also like to note that Ann [inaudible 4:52] is here somewhere out there with her students, a past member of ACHP. Also Michael Tolman, if you didn't see all the kids marching in, he's back there with his students which he attended some of our committee meetings yesterday.

Do we have any proxies? I don't think we do.

Male Participant: Here.

Wayne: OK, very good. I'd like to go around the table and ask the members to introduce themselves. We'll start with Leonard Forsman, Vice Chair.

Leonard Forsman: Just introductions?

Wayne: Yeah, introductions.

Leonard: Thank you. Leonard Forsman, I'm chairman of the Suquamish tribe and ACHP Vice Chair.

Christine: Christine Merdon.

Luis Hoyos: Luis Hoyos, expert member.


Robert Stanton: Bobby Stanton, expert member.

Teresa Pohlman: Teresa Pohlman, Executive Director of Sustainability and Environmental Programs, Department of Homeland Security.
Jordan Tannenbaum: Jordan Tannenbaum, general public member.

Beth Savage: Beth Savage, Federal Preservation Officer, US general services administration.

Male Participant: [inaudible 6:04] Reno Keoni Franklin.

Reno Keoni Franklin: Kashia Pomo Tribe, Native American member, Native Hawaiian member and all-around Wayne Donaldson fan.

[laughter]

Mark Wolfe: Mark Wolfe, Texas State Historic Preservation Officer representing the National Conference of State Historic Preservation Officers.

Stephanie Paul: Stephanie Paul, the National Alliance of Preservation Commissions.

Katherine Slick: Katherine Slick, the ACHP foundation president.

Shasta Gaughen: Shasta Gaughen, Pala Band of Mission Indians, Tribal Historic Preservation Officer and Chair of the National Association of TPOs.

Barbara McCann: Barbara McCann, Department of Transportation.

Brad White: Brad White, general public member.

Danielle Schopp: Danielle Schopp, Department of Housing and Urban Development.

Terry Guen: Terry Guen, expert member, landscape architect.

Dan Jiron: Good morning. Dan Jiron, USDA.

Dorothy Lippert: Good morning. I'm Dorothy Lippert. I'm an expert member. I'm an archaeologist and a citizen of the Choctaw Nation.

Ryan: Ryan Hambleton, Department of Interior.

John Fowler: John Fowler, Executive Director, ACHP.

Wayne: Thank you very much. By the way, for you folks that are sitting to my left and to my right, you're out of my architectural cone of vision, which is only 60 degrees so if you want my attention, hit the person next to you or throw something at me, OK?

Let's adapt the meetings. The meetings from October 4th were circulated to everyone. I want to know if there's any additions or corrections to the minutes. If not, I'd like to invite a motion to adapt the minutes. Ryan, second?

Beth: Seconded.

Wayne: Who did second?

Ryan: Give it to Beth.
Wayne: Beth? OK. [sigh] I have to give her something now and then. I know.

[laughter]

Wayne: All right. All those in favor, say aye. Those opposed? And any recusals? OK. Yeah.

Male Participant: Haven't you done this before?

Wayne: I have. Too many times. OK. I'd like to thank Kath Slick and ACHP Foundation for organizing the last dinner -- not the last dinner, what's my last dinner -- the dinner last evening, let me put it that way. Thank you so much and also, I just received this from the Mikey group - Protecting languages, cultures and places.

This is part of Kat's initiative, if you'd like to say a few words about that.

Katherine: Mister chairman emeritus, is that what we're supposed to start calling you?

Wayne: Call me anything you want.

Katherine: [laughter] Thanks, Wayne. It's my pleasure to give you a report on the work that happened under the Cultural Resource Fund which if you recall we made a presentation about a year ago, I think. About the funds that came from the positive train control resolution. This is styled in a way that it basically gives you the information about what we did.

Out of 470 grants, we have highlighted nine, but if you go online you can find the rest of them. What I think is fascinating about that is 196 tribal nations participated in this grant and 41 states. There are some wonderful stories out there beyond the ones that we've highlighted here.

They are a marvelous compendium of what, if there's money available, what can cultural resource work be about. Thank you.

Wayne: Thank you, Kat. John, you want to give us an update on staff changes, ACHP?

John: Thank you, Mr. Chairman. As you know, Charlene Vaughn retired last summer as assistant director of the Federal Agency Programs for Federal Permitting, Licensing, and Assistance Section, popularly known as FPLAS.

We had a recruitment for her successor, and are happy to report that Jaime launching or Jaime Loichinger -- Jaime, stand up -- has been selected to fill the position. Jaime came to us nine years ago from EPA. She has demonstrated her abilities to fill Charlene's ample shoes by acting in the position for seven months. We're delighted to have her in the position. Thank you.

[applause]

John: Many of you knew and worked with Nancy Brown, who was our BLM liaison. Nancy contributed to an absolutely fabulous partnership with the Bureau of Land Management to our mutual benefit. Working up the nationwide programmatic agreement that governs how BLM handles section 106 cases.
She retired after 20 years. We have recently hired Bill Marzella -- Bill, there you are -- to take her position. Bill comes to us most immediately from Traceries, and previously worked for FEMA. He's an architectural historian. He's done a great job hitting the ground running. Welcome.

[applause]

**John:** Finally, in a testament to the quality of the interns that we get each year, Alexis Smith has joined the staff. Where are you?

**Female Participant:** Clarke. Alexis Clarke.

**John:** What?

**Male Participant:** You missed her last name.

**Female Participant:** Clarke.

**John:** Clarke. Never mind. Sorry about that.

**Wayne:** You're fired.

[laughter]

**John:** Listen, the first time I introduced her or acknowledged her at a staff meeting, I called her Alexa.

[laughter]

**Wayne:** You're doubly fired. [laughs]

**John:** At least that's a step up. I’ve got her first name right. Anyway, she was an intern with us last summer. Did a great job. We took her on as a temporary assistant, historic preservation specialist. She earned her spurs. She is now a permanent employee. She is at the bottom rung of the career ladder. She has a great future ahead of her at the ACHP.

[laughter]

**John:** Thank you.

[applause]

**Wayne:** I also initiated Bill this morning, since he's representing BLM. I always used to bring back from the desert, since Nancy Brown was so involved in many of the very, very large renewable energy projects there, one of these suckers that has a baby scorpion in it.

[laughter]

**Wayne:** There it is right there. He has to eat that.

[laughter]
Wayne: Transition of full-time ACHP Chairman as most of you participated in. Thank you so much for all of your hard work on this. The act was amended in December 2016 to convert the ACHP Chairman from part-time to full-time, which will really change the dynamics, I believe, of this.

It's been a long-term goal. Most of you, if you were fortunate like I was to be at the 2006 Preserve America Summit for the 40th year celebration of the NHPA, this was introduced that time.

The full-time chairman, again besides being a presidential appointee, has to be confirmed by the US Senate. As we talked about before, Aimee Jovani had a confirmation hearing last year, but the nomination came out of the committee favorably in May.

Due to all the politics that you're all aware of and her nomination along with about 270 nominations were not acted upon in the last Congress. She's actually in her 184th day of trying to get into this job.

She was renominated by the President on January 16th, and she's back before the Senate Committee on Energy and Natural Resources I think at nine o'clock this morning. It seems as though she will go through that favorably on that.

Then after that, of course, we're hoping that she gets hotline through the Senate confirmation process, but we'll see how that goes. I believe she has until the end of this month to go through that hotline process. John, do you want to add anything to that?

John: No.

Wayne: In order for her to come on board...By the way, we've had really nice discussions with her. She's come to some of the social events that we've had, but she feels that she needs to fly away from any of the meetings and things right now. I guess she wants to be pure on this, but I don't know. She's not John, so that won't last too long.

[laughter]

Wayne: Last summer, we decided to establish a transition working group to coordinate these transition efforts and everything. We had several issues from your response as council members and discussions on how we'd want to do in terms of formalizing this executive committee.

We've had an executive committee for years, but we're looking at perhaps boosting that up. I'd like perhaps to go over this as a working group.

John: Thank you, Mr. Chair. Before we start the discussion, I want to emphasize that we'll have a discussion today. They will be merely recommendations that will be on the table when our new full-time chair arrives in the position.

Just to step back a little, as Wayne did indicate, we do have informal executive committee that he has worked with over the past eight years. The current practice is that it's an informal advisory body to the chair in the absence of the full membership.
It provides input from small but diverse group of members in the preparation of meetings. It includes the chairs of the standing committees, including CEO, OFAP, Preservation Initiatives, and the Native American Affairs Committee.

It's always hoped that...I know Wayne had tried to get federal agency participation. That is somewhat more difficult. As I recall, over the past seven, eight years, most of our meetings were just preparatory meetings for this meeting and they occur at the hour of 7:30 or 7:45 in the morning.

I do recall, but I can't even think of the topics, that there were less than a handful of other times that Wayne sought our counsel as a informal executive committee.

One of the things that, as Wayne and I think, John may have alluded to before -- there was a process that we started last year with the thought that we would soon be having a new full-time chair on board -- was to get ahead of her appointment and look at some of the issues that we have to deal with, on a daily basis, in terms of how we operate.

As you may recall, the members were surveyed and results of those surveys came back. I think we've gone over a lot of that stuff. One of the things that I think there was overwhelming consensus on is that the executive committee be more formalized. In other words, that we make some recommendations about the formality of the executive committee and then at the appropriate time.

This would be after the new chair arrives. It would likely require some changes to our operating procedures. What I wanted to do today, and the information is in your meeting book...I don't remember what page it's on. I don't have...

Female Participant: Five.

Male Participant: On page five. What I'd like to do is have any further discussion, that might have not been reflected in the meeting notes, to advance the idea of the executive committee by making a recommendation to the new chair and ultimately, the full council to consider. Some of the elements in there include having identification of members.

It would not necessarily just be standing committee chairs, but there would be a real effort to also rotate the executive committee so that there's participation throughout their terms of their office.

It would act as a committee that would not obviously replace the full membership, but there are actions that it may be able to take during interim periods, time between business meetings and some things.

I open it up now...I would even be interested to know how other commissions or councils that you're involved with in your agencies, how they operate and whether they have executive committees. That would be maybe helpful in our deliberations.

Thank you.

Wayne: Who wants to start first, or does anybody want to jump in? Terry?
Terry: I support this idea, but I'm looking at, as a primary purpose of the committee, to provide guidance to the chairman and also the executive director during periods when the membership is not adjourned.

What I'm looking at, is there an example of an issue that came up? That's a really hard straw to pull out. To say, pull, but just to give an example for the group here, the purpose and how it might proceed.

Wayne: Terry, I would envision much how we act already today, where there's an examination of an issue at the full membership level. There are times where we've made recommendations to the chair to write a letter to take some action. Sometimes, these things then occur in between meetings.

The executive committee could act as a further source or sieve of the action that the full membership has already taken. I don't think anyone envisions it. Wayne and John, you can chime in. I don't think anyone envisions it acting in place of the full membership. Brad?

Brad: I could see, and I think you all can recall, instances where the council takes an action and as Brad notes, directs the chairman to convey the views of the council to somebody. It could be that the vetting process for the letter or something might be a quick review by the executive committee.

There may be occasions that come up where the council knows that we would need to act in a short time period and quite frequently, for example, we get legislative referrals from the office of management and budget and they have maybe a three-day turnaround or something.

Having a full-time chair will certainly make it more expeditious for us to respond, but the executive committee might weigh in to bring broader views to the membership to the issue.

Then there could be times where the membership directs the chairman, in consultation with the executive committee or delegates some authority in the specific case to the executive committee, if you created a formal sense and the recommendation regarding authorities is not to have a standing authority to act on behalf of the membership but to act when delegated on a particular issue.

As it evolves, it could become a way that the membership can express more opinions and direction on actions that might otherwise be taken by the chairman, the executive director, or the staff by themselves.

Male Participant: Mr. Chairman, if I might.

Wayne: Yes, Jordan.

Jordan: For comparative data at the Holocaust Museum, it's my day job. We have an executive committee. They meet bi-monthly and effectively. Of course, they're chosen on different criteria than they would be here, but it's a very effective way to get business done quickly and efficiently.
Then, of course, their findings, their decisions are presented to the full council and the full council meets twice a year. I think that that makes a lot of sense. I don't know what you're considering, in terms of meeting times, but a bi-monthly works very well for us.

I did have a question. It's this. In the material, they talk about a rotating member at large. Would that be a term that that individual would have or how would that be?

**Male Participant:** It could be whatever the membership... [laughs]

**Male Participant:** Whatever the membership wants it to be.

**Male Participant:** If you handed me this and said, "How is it going to work?" then I'd say, "Well, yeah. Maybe on an annual or bi-annual term that just brings..." If it's worked very well to have the committee chairs involved as a de facto executive committee.

Personally, I think it's useful to continue to have the committee chairs engaged, but then to bring in somebody else as a fresh voice every now and then, I think could be useful.

**Wayne:** We're going to get some insight. You're going to get some insight from the new chair as she comes in as well. By the way, any more discussion on that? [inaudible 26:45]?

**Female Participant:** One point that I'd want to make, because there are no federal agencies that are on our committee chairs at this point, I would insist that no decision be made unless there is a federal agency rep as part of the executive committee.

It's only fair, given the preponderance of federal agencies that are members of the full council, that the federal agency views be part of that decision-making.

**Wayne:** That's why I have to put a panel together for a clause out of 106, that we have two federal agencies represented in three appointees, so you are absolutely right.

**Brad:** Even note in the recommendation for the composition that there be a federal agency head or a designee as part of the executive committee.

**Female Participant:** I understand, Brad, but I know there has been a challenge of having a federal agency rep at the executive committee, so even though you're saying you want one, I would say you couldn't take a vote unless there was a federal agency rep.

**Wayne:** That's fair, and to make sure that John...

**Male Participant:** I am hoping. I'm hoping, with a more formal executive committee, that we would be able to find that federal agency head as well.

**Male Participant:** I would just note that there was a time when we had a regular federal member on the executive committee. It fell into disuse because we couldn't get policy-level representation. My thinking is that if the rest of your executive committee is presidential appointees, that the federal agency representative should also be somebody that is at policy level.

Personally, I think it should be a political appointee. No offense.
Female Participant: I am going to take offense. Terry is a deputy assistant secretary. I have a certain policy responsibility at a very high level. I'm sure my counterpart in Interior would say the same thing. Just I think you're a political appointee, though. [laughs] I would caution that.

Male Participant: That, again, I think is a decision for the membership to make, but I will certainly accept it.

Female Participant: I would agree with my colleague. As her counterpart in the Department of Homeland Security, I am also at the policy-making level. You don't have to be a political appointee to make policy.

Wayne: Leonard?

Leonard: I think there's an advantage.

[laughter]

Leonard: Of all people, I think there might be an advantage.

Male Participant: I don't know when you shut up, anymore.

[laughter]

Leonard: There might be an advantage to have. Obviously, there would be an advantage to having a federal employee on the executive committee because they have information, so it can be helpful to us.

Wayne: That is the recommendation...

[crosstalk]

Male Participant: The other thing I had, the question before that, was that we should probably define more and give some examples of the types of things this executive committee would do, because I feel that if it's vague, then it leaves an opening for more action that maybe they should come here.

That there's a pathway, like you might drive a truck through it. I was a little concerned about that.

Wayne: Councilor Beth?

Beth: I would triple what my colleague said to my left.

[laughter]

Beth: I believe that it's imperative that there'll be a federal agency representative and the appropriate federal agency representative to the executive committee. What John refers to, we all
remember that time, and that was many years ago that you had people who couldn't make decisions and couldn't really represent the federal viewpoint.

I know that this is going to receive a lot more consideration for all the other points that have been brought up, and we welcome that discussion, but a federal agency needs to be on the executive committee.

Wayne: Again, that was one of the strong recommendations from everybody coming in. Sometimes my executive directors...Any more comments?

[laughter]

John: I guess not.

Wayne: All right. Thanks, John. Of course, as Amy comes on board, all these will be summarized with her, and then it will lead for formal action when she's on board, so you still have ways to go on this. By the way, Ted and Betsy, would you like to introduce yourself?

Betsy Merritt: Betsy Merritt, Deputy General Counsel at the National Trust for Historic Preservation.

Ted Boling: And Ted Boling, Associate Director for NEPA at the Council on Environmental Quality.

[off-mic comments]

Wayne: Betsy, say something.

Male Participant: I distracted you.

Wayne: The strategic plan development, we're required to prepare a multiyear plan under the Government Performance and Results Modernization Act. Of course, it needs to be done with the chairman, but we have been discussing the general directions for a new plan.

At this time, briefly, I would like to ask each of the committee chairs to report on the discussions that we had yesterday. By the way, before I forget, I thought that the progressive committee meetings that we had yesterday, even though we started a little bit early, we were able to meet for 2 hours to 1.5 hours so that everybody could attend each of the meetings.

It really helped at least myself, because I'm not as close to what is happening that John is, but instead of just attending the meeting for half the time and then walking out and all that, I thought it was good, and I know that many of the members here attended all four of them. I think that would be a good model for the future if you're all willing to do that.

We didn't have a big turnout towards the end of the day, so we rotate. I think would be a good recommendation is to rotate who meets at what time and stuff so that we have them when you're fresh in the morning. Let's start with Brad, and just briefly how some of the discussion went yesterday.
Brad: Sure. I will give a brief summary. The PI Committee met like the other committees. I attended all the meetings, so I saw the activities of all the committees.

We talked about the accomplishments over the past six or seven years of the strategic plan. A strategic plan that, by the way, was that in principle I've helped draft as an outgoing member of the advisory council.

Based on our discussion, the committee recommends exploring the following priorities as the advisory council moves forward with strategic planning. These include identifying new sources and expanding existing sources of financial support, continuing to expand our legislative activities seeking more proactive engagement with Congress.

I think there was significant discussion about now that we will have a full-time chair having more access to Congress and to the federal agencies and the administration in general. Continuing to expand our focus on climate resilience and adaptation, expand our involvement in some international preservation efforts.

Continuing to expand the internship program and maximize its organizational efficiency and seek involvement in planning for the 250th Anniversary of the United States. That's a summary of our...The 250th Anniversary's coming up in 2026. Then, there's a word for it here that I'm not going to try to pronounce.

John: [inaudible 35:31].

[laughter]

Brad: Here it's written as semi, and I decided that was not probably right.

Wayne: The reason why John can pronounce that is he was there when it was first coined.

[laughter]

Brad: Thank you, thank you very much. If anyone has any questions?

Wayne: Let's get each of the reviews from the chairs, and then we'll open up for discussion. Reno?

Reno: Took a couple of seconds for that light to come on. Sorry.

Wayne: By the way, when you start, you should probably say what's your chair, like preservation initiatives was Brad's. Why don't we do that, because we...

Reno: Right. I'm Reno Franklin. I'm Chair of the Native American Affairs Committee, otherwise known as the best committee in the ACHP.

[laughter]

Reno: I'll just take a second to thank our staff and the committee members yesterday for a really good meeting.
Some of the recommendations that we had, we did have tribal leadership in the room as well. We had the governor of Santa Ana Pueblo, who blessed us with his presence and with words of encouragement and advice, and we have taken that into account as I go through our recommendations.

The first one was to revise the regulations. That was a recommendation that was offered by numerous people. That was for a revision of the regulations to allow a more strategic approach to tribal and native Hawaiian participation in the process.

Governor Menchego also said that nothing will change until tribal and religious leaders have the ability to make recommendations and not just participate in consultation.

Next, we had to make the success of our ACHP and Salish Kootenai Tribal College partnership a priority. It has been a very fruitful relationship thus far, and we'd like to expand on it, continue to make it something that all of us focus on.

The goal of that is to train Tribal Historic Preservation Officers at a tribal college. As a part of that, also, we had a recommendation to include a Native youth in our committee, and I really want to second on that as well.

We did have a presentation from a young man who has recently been a part of a book that is offering perspectives from Native youth or Indigenous youth from across the world, and one book that was the catalyst, I believe, for wanting to include youth on our committee. We're hoping to explore that option.

One of our priorities was to train tribal citizens, youth, and administrators, and thank you, Terry, for bringing that up.

We wanted to also make sure that as we talk about including Tribal youth that we not only include American Indian youth, but that we also focus on our youth from all of our Indigenous peoples within the States that include Native Hawaiians, Alaskan Natives, American Indians. And let's not forget Guam and Puerto Rico and American Samoa as well.

We want expand the ACHPs and trainings to also include CRM firms and practitioners. That's something that has come up numerous times when we have agencies that are including the CRM firms and practitioners that sometimes the way that they consult with tribes could be more effective. We would like to participate to make sure that it is.

The final thing here. Really, as a part of this strategic plan, as we want to get more in front of Indian country and into Indian country. I hear this often that people say, "We went to Indian country and then left," and remind everybody in the room that no matter where you're at in the United States, you are an Indian country and you are on Indian lands.

That includes where we're at right now. The Governor of Santa Ana Pueblo invited us out to the Land of Enchantment, to New Mexico, to sit down with his people and the other 19 or so Pueblo Tribes and actually talk to them on their lands. That was something that we should make a priority to get out more often and visit our tribal partners.

Wayne: Jordan?
Jordan: Thank you, Mr. Chairman. The Federal Agency Programs Committee had a tremendous and extremely productive meeting and a huge attendance, it was standing room only.

[off-mic comments]

[laughter]

John: Our members acknowledged that the ACHP has accomplished a great deal under the current plan and particularly under long range goals two and three. To remind you what they are, long range goal two is improved federal preservation programs and long range goal three is to foster the protection and enhancement of historic properties.

These are the goals that are most squarely under the oversight of our committee. These accomplishments are impressive, but too numerous to detail at the moment.

We had a set of recommendations on initiatives that should probably continue to play a prominent role in our next strategic plan.

Including fairly routine but important tasks related to participating in section 106 consultations, the development of section 106 guidance and program alternatives, but also important policy and program issues, like maintaining our active participation in the permitting council and broadband workgroup as well as the One Federal Decision MOU and the Unified Federal Review Process.

There was also support for continuing to carry out our role under the Preserve America Executive Order. Committee members had a lot to say and urged us to include a number of key issues and topics in the next strategic plan. They included further work on the historic preservation implications of climate change. That was a theme that really permeated all of the groups.

The development of program alternatives for important forest management needs and issues, continued guidance and assistance to agencies on complying with the One Federal Decision, the recognition of the importance of traditional knowledge and effective tribal consultation, more work on integrating NIPA and 106 reviews.

Further advice on complying with section 110 requirements, perhaps in coordination with the NPS, further support for communication between FPOs, federal preservation officers, and SHPOs, as well as better communication among all section 106 stakeholders.

A plan to utilize the presence of a full-time chair to tackle long-standing section 106 policy issues, and leveraging partnerships to expand the influence of the ACHP and teach the public more about what we do and what we've accomplished.

Mr. Chairman, I think we have the basis for beginning to form a new plan that includes these and other important initiatives.

Thank you.

Wayne: Thank you, John. I thought you were writing a plan as you were going down through all those recommendations.
Wayne: Bob?

Robert: Thank you, Mr. Chairman. Bob Stanton, Chairman of the Communication and Patient Outreach Committee. Let me just hasten to commend the staff for the diligent leadership and work. We, too, had a very uplifting, very robust evening yesterday.

Thank you very much, Susan. We dealt primarily with the importance of utilizing the wide array of our news media, electronic media, to convey to the widest spectrum of the American public possible, the importance of citizen engagement in this noble endeavor that we call historic preservation.

We recognize, through a number of surveys, special studies, and what have you, that there still is not a full appreciation throughout the breadth of the American population relative to the importance of respecting and preserving our collective heritage.

We're committing ourselves for the strategic plan to continue to utilize all resources available to get the word out, if you will. Also, there was a dual endorsement by those who participated in the discussion, that we should recommit ourselves and follow through on the goal of diversifying the preservation movement.

One recognize that that is not only responsibility that falls to the council, but certainly the members from the various federal agencies, that they too are joined with us in carrying forth that responsibility of broadening diversity within the preservation movement.

A very important element of that whole effort of engagement of the full spectrum of the American public in preservation is to emphasize the importance of engaging our youth. To that point, I just want to applaud, Mr. Chairman, and recognize the youth that are with us this morning as a member of the audience. You honor us with your presence and welcome to this meeting.

We discussed a program that was inaugurated last year and which, in my way of expressing, was poetry in motion.

It was a major partnership between the National Park Service, the National Trust for Historic Preservation, Morgan State University which is the largest historically black university in Baltimore, and the Advisory Council, in which we introduced six outstanding students to a program that we call "Touching History, Historic Preservation in Action."

It really influenced some of those young people to take another look at their career goals and I foresee that some of them will be sitting around this table within the next five, six years demonstrating that they had made a commitment to pursuing a career in historic preservation.

We will be continuing that program for the strategic plan that say that youth involvement is one of the key component of diversifying the preservation movement, so we'll be continuing the program with Morgan State, but there was joint consensus and there's already support from the National Park Service and National Trust that we expand the program.
Tuskegee University in Tuskegee, Alabama, which is really a well-known historically black university, want to be the next one to step up. We're having productive discussions with Tuskegee and they will be coming on board to involve their students in preserving historic preservation and will be participating this summer in hands-on training.

Then return to Tuskegee to actually carry out some of the theories and principles and practices that they would have learned through being associated with the council, the National Park Service, and the National Trust for Historic Preservation.

One of the major consideration that came out of our discussion is whether or not we should continue to develop this program.

If I read what was the response correctly, there was endorsement. It's "let's continue, but also develop the program to the extent that it could become replicated," if you will, in terms of involving other colleges and universities that have significant enrollment of minority students, if you will.

Many colleges and universities have a large population of Asian Americans, Latinos. Certainly, I believe there is 40+ tribal colleges and universities, that they, too, may want to engage in a partnership with the council, with the National Trust, the Park Service, certainly other federal agencies represented around this table.

Lastly, with respect to the discussions on yesterday, as I mentioned earlier, is that we want to maximize the use of today's technology, particularly communications end part of our outreach. I am not one to be able to speak definitively about the use of today's technology, but certainly there are those on this path, those around the table here, can share with us how best to get the word out.

Certainly, we need to listen to our youth in terms of whether or not we as a major agency are communicating effectively with them, and be open to constructive input from our youth in terms of how their federal government is or is not serving them in terms of sharing what the opportunities are about their engagement.

Lastly, Mr. Chairman, Matthew Arnold, the philosopher and literature critic, reminded us that education is not a "get it and have it," but rather a "growing and becoming." I would hope that through our efforts that our young people will become the preservationists and the leaders of tomorrow.

Thank you, Mr. Chairman.

Wayne: Thank you, Bob. Between you and Jordan, I think you just gave your committee reports.

[laughter]

Wayne: But we'll revisit that. By the way, I would like to recognize Victor Lopez, which was mentioned before. He is actually Guy Lopez's son. Guy, you're in the back. I see you standing back there.
He was the editor for this great book that's coming out on April, 22nd, which was a "Global Indigenous Youth Through Their Eyes." This was a worldwide research that he did, interviewing and going to many different countries to get where youth is coming from at this point.

I'd also like Michael to at least stand up along with the students that have come here, just for recognition. If you would, please?

Excellent.

**Male Participant:** Mention they're Cornell.

**Wayne:** Yeah, they're from Cornell, which is OK.

[laughter]

**Wayne:** Welcome. I actually asked them a question yesterday, to put in one sentence what they got out of the meeting. We got some really nice responses. I'm always leery about asking that question, because I was teaching a preservation class at the University of Southern California and asked the same question. One guy said, "Not a damn thing."

[laughter]

**Wayne:** I'm glad that you guys have some really great insights. Thank you, so much, for coming.

Any other discussion on strategic plan? Obviously when Amy comes onboard, that'll be provided for her as a guidance. Reno?

**Reno:** There we go. I quickly wanted to point out that there was only one tribal priority in the previous strategic plan and the need and the importance of having more than one in this upcoming one. It seems like we're right on track with that, but I wanted to put a plug in for tribal priorities. Thank you.

**Wayne:** It's good that we have three members that represent tribal nations on this council, which is great, besides just yourself, with Dorothy and Leonard, of course.

**Male Participant:** Terry.

**Wayne:** And Terry.

**Male Participant:** Terry.

**Wayne:** Oh, Terry.

**Male Participant:** I think she wants to say something.

**Wayne:** Yes, go ahead, Terry.

[rumbling sound]
**Terry**: You know, my button's worse than yours. I just wanted to say that I was very impressed by the format of having the four meetings. Even though it was pretty rigorous and some of us were petering out in that hot room, it was really productive.

I've been trying to go to this tribal meeting for my whole time while I've been at the advisory council, which is going on a term and a half. I'm not going to follow John, but it's a lot of work to do this, and so to finally be gratified, to hear what I've always been hearing coming into the fat meeting, they had all these discussions, so thank you for that and staff that helped make that happen.

As such, I just want to repeat one of the things that I did hear at the Native American meeting, which really made a lot of sense to me. Although for many people on preservation it would be very controversial. The governor from -- I think you said Santa Ana Pueblo -- not to put this out of context too far -- the discussion is about traditional knowledge or traditional ecological knowledge.

There will be much more conversation about this as well as all the strategic plan elements, but his opinion was that the Section 106 was formulated to protect the past but not so much the future. For his needs, it's a space where you go and you do things. You need a live space.

Once you get in the way of those locations, he's not able to proceed with his life as it goes. I think for pretty much everybody here in this room, it holds the same wisdom. As we're looking at resilience and all these other issues, that will be an ongoing issue.

So that when you asked a couple years ago about the 50th anniversary of the National Preservation Act, we're supposed to make these profound thoughts, but at this point I think...Maybe it took me a couple years from getting it.

I think this is one of those things where it's a seminal moment because of the demands of our nation protecting our own health and safety, that we will open up the camera lens a little wider as to what are the priorities that are attached to preservation.

I just wanted to thank everybody who made the meetings happen. I don't know if staff have the time to do this, but I almost think if once a year they were allowed to sit and hear all the things in one day and tough it out, that may be something that would be useful to those who are serving us as the staff. Thanks for that.

**Wayne**: All right. Any other discussion?

**Male Participant**: Can I make a comment? First of all, I want to commend all the members that did do 8:30 to 5:00 of straight committee meetings. I was very impressed to see how many people did that, and I think the staff really appreciated that everybody came. Not only came, but participated in all the meetings. It was rewarding to put the system together that way and see how well it worked.

I would mention that the committees did not exist before one particular chairman came in. We used to have two-day business meetings. The chairman created a committee system and then had shorter business meetings.
This is all stuff that can change. I think when the chairman comes in, the opportunity exists for the membership to roll up their sleeves and talk with the chairman about, "What's the best way to structure the operations of the council?"

This was an experiment that worked pretty well, but there may be other models and it's something to think about. The other thing I would mention is a challenge. So much of the work gets done in committees, but the agency reps at the committees are not the agency reps that are sitting at the table.

I understand the reasoning for that, I mean just the practicalities of it, but that's something that -- to echo Maureen's comments earlier -- in order to get the federal agency input from the policy level, it's a challenge that I think needs to be considered.

One thing on process, on the strategic plan, Amy is very well versed in the strategic planning process from her prior service in the deputy secretary's office at the Interior Department. I'm sure she will have some pretty good ideas about how to move forward with strategic planning.

We had talked about doing something at the July meeting that might include a day, a half day, or whatever, set aside for strategic planning. It's a heads up for what might be a time commitment in July and it's also between now and then, there will be a lot more interaction about how we proceed with the strategic planning process.

**Male Participant:** Again, thanks to our staff for putting together the all-day meeting. It also helps John sleep a little bit more so I think it's really a good deal.

[laughter]

**Male Participant:** It's your turn.

**Male Participant:** [laughs] John, if I could just add one point. You might want to consider as you're talking about this particular...I agree. I think it was a terrific idea. I think it should be continued. In fact, the discussion in the groups was so intense that there was very little time for lunch. You may want to think about serving lunch there.

Maybe that would be a great opportunity, a simple lunch, sandwiches and whatever, but then to invite someone in to speak at that point. That might be another opportunity to get an agency rep or someone, a subject matter expert, to come in and talk. Just a thought.

**Wayne:** If you were folks were around, I actually did that in the early days when we had [inaudible 59:11] post offices we had an intermediate lunch on that. We got pushback from certain staff members, so we need to maybe introduce it again.

[laughter]

**Wayne:** I'm not John. OK, I'd like to move on to a digital information task force. As most of you around last meeting, we went ahead and created the task force with Jordan being the committee chair of that.
It includes the Department of Interior, Transportation, the National Alliance, the Preservation Commissions, the National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, the Council on Environment Quality, and the National Trust, and a member Dorothy [inaudible 60:05] . Jordan, would you like to give a little overview of that?

**Jordan:** Yes, Mr. Chairman. Thank you. As the chairman reported, we were authorized, and in fact, we have now been established and we've met twice, notwithstanding the government shutdown.

The members have spent some time assessing the broad body of work already out there on digitization of information, about historic properties, and have given some further thought to a proper role for the advisory council in this broad endeavor.

Recognizing the council's oversight role for a Section 106 process, we've agreed that our central focus ought to address the need to ensure that consistent information about historic properties is electronically available to agencies and other planners to inform that Section 106 review process.

The task force intends to call upon the expertise of a number of other stakeholders who have been working on different parts of this broader puzzle by inviting them to serve on a workgroup that advises us on these efforts and is hoping to convene them in person in a meeting in May.

These are the subject matter experts that we will work closely with, and that will offer a lot of important information to the body that's already been assembled.

Once we hear from them, the task force will further refine its goals and establish more specific expectations and deliverables that we might use to convey our findings and advice on the issue.

The committee reminded us of a number of important points as we go forward, namely that -- and we've talked about this when we talked about the Native American Affairs Committee comments -- the tribal information needs to be protected, as does any sensitive information about historic properties.

Information made electronically available to federal agencies and project planners should not be used as a substitute for consultation with tribes, or anyone else, for that matter. The task force needs to remain cognizant of the work already done by the National Park Service and the federal data standards work groups, and not repeat those efforts.

One Goal ought to be ensuring that information about historic properties is made available to and utilized by planners at the earliest possible stages of planning and decision-making. We need to consider how the advisory council might make the case, whether to the administration, the hill, industry, or whomever that investments in the further development of such systems would be wise.

In other words, how will this be funded? This is not inexpensive. We intend to look at a number of different opportunities to provide that funding. Mr. Chairman, we're off to a really good start. As always, we look to the broader council for any advice, comments on our efforts. That is my report.
Wayne: All right. Any input from the members? Thank you, Jordan. We're going to move on to the next item, which is the reflections on development of the chairman's comment letter on the Growler case.

I think everybody sitting here at the table is aware of this, because it went through quite a quick and development on this. It's regarding the Secretary of the Navy, in terms of the proposed expansion of the aircraft operations at Whidbey Island Air Station, Naval Air Station.

For you that have not seen the Growler in action, I recommend that you go on to YouTube, or any of the places there, and watch this incredible aircraft. It's extremely heavy, because it carries some armament on it. It's, of course, launched from a carrier. It has a lot of thrust in getting off the ground, needless to say.

We were complicated trying to get this letter out, besides the amount of time that we had it out. It would also happened during the 35-day of the federal government shut down on it. We developed a system where we had sent staff. I was in a not good health at that time. I was recommended not to go anywhere on aircraft or any other large meetings on that, because of exposure.

Staff went up and held a meeting up in Washington. We proceeded to put together a chairman's letter, which is one of the ways that we're operating under the operating procedures to fulfill the formal commanding responsibilities.

As you know, most of the time, when we've had a closure on 106 -- in this case, by the Navy -- we'd usually put together a group of people. We actually go up and have a public hearing in that panel.

It normally consists of two federal agency members and three members that are appointed by the President. The case is very controversial. It's been going on for some time, but we came out with the letter, which I felt in the long run was a fairly good letter on that.

There's lots of details. We're not going to get into that, but I'd like to ask Jordan. We had some thoughts yesterday on how future cases of this, which doesn't happen very often by the way.

I think in my tenure since 2010, we've had probably five of these cases that headed to have immediate stuff. I think I've only had two letters or maybe wrong -- correct me, John -- that came as chairman's letters.

Most of the time, we're able within our 45-day response to get these comments out. Jordan, would you like to...?

[crosstalk]

Jordan: Yeah. This is an area where I and the group that was talking about this really encourage your input, because this is important. This is in the part of the council's regulations where there's a termination of the 106 process of consultation.
I want to say at the outset, thanks to the staff for great preparation for this, and thanks to the members who commented there. Also, that process worked very well. This is a model as to how we might proceed in situations where there is a termination of consultation.

What I'd like to do for this part -- it's a bit detailed -- is turn to Reid. Reid, if you'll come up and report on the process, the recommendations, and why such a process could be utilized for future situations like this.

[background conversations]

**Reid Nelson:** Thank you, Mr. Chairman. Thank you, Jordan. Sure, I would be happy to just review for you in quick summary fashion.

[background sounds only]

[laughter]

**Reid:** Any questions?

[laughter]

**Reid:** We'll try that again. Let me also just echo Jordan's comments and say that staff very much appreciated the active engagement of the members in the development of that letter.

I think it was a very good letter, and it was much improved because of your input. Thank you again. Let me just reiterate the process of developing council comments. Is by our own regulation confined within a 45-day.

That means that we've got a relatively short amount of time to pull together advisory comments to the head of a federal agency that try to capture the collective wisdom of this council about cases that for sometimes have been going on for years and have been tremendously complicated throughout their life cycle.

It's a challenge for us to develop these comments, and we thought that the process that we used here worked fairly well. What we're proposing is a sort of a protocol, if you will, on how we might use essentially the same process going forward in the future to develop these letters. If you're interested in reading along with me, I'm speaking from the meeting book paper on this topic.
The very last page of that meeting book paper, called page 11 in my meeting book, lists a protocol, if you will, for how we hope to engage you in the development of such letters, so I'm going to try to summarize that protocol. It's got eight points, but I just want to hit the key points.

First, one of the things we would like to do is pledge to notify the broader membership that we have received a notice from an agency that is terminating consultation, and that we would do that within two days of receiving that notice.

The next important step that occurs in the process is the chairman sitting down with staff to determine how to develop the counsel's comments and which mechanism to use. Real quickly, the operating procedures have three mechanisms.

One is to develop them for formal vote and adoption by all of the members -- that's rarely, if ever, used. The more common process, the one that Chairman Donaldson referred to was designating a panel, typically of five members, that guides and oversees staff pretty directly and closely.

The last is the process we used in this case. You might remember also with the Providence Viaduct just a couple of years ago, where we conveyed comments via a chairman's letter, and that's again what happened here. These protocols are really about that chairman's letter process.

Getting back to that protocol, what we're proposing is that within five days of receiving that termination, we will have consulted the chairman and notified the members of the approach that's being used. In the case of a chairman's letter, we would notify the members within five days.

That would also be an opportunity for members to then respond about whether there are any potential conflicts they might have in being involved in or reviewing or commenting on the action. In this case, and it's often the case, we had a couple of members that were recused, so that's always an issue.

Then, within seven calendar days, we would open the opportunity to the public to comment. We typically do that through emails, through the website, through press releases.

We would then pledge within 14 calendar days to get you all of the necessary background material to help you understand the context of the case, its history, and perhaps what the key issues are or the key issues were just prior determination.

We would also inform you of our efforts and intentions to carry out a site visit and hold a public meeting. As I think you're aware, as Chairman Donaldson mentioned, while staff hosted that meeting for the Growler comment for a variety of fairly complicated reasons, timing, and others, our intention would be to always have the chairman, and if not the chairman, at least a member host that public meeting.

We would then pledge to, within 30 days of the receipt of that termination, provide the members with a draft of the comment as well as a schedule for convening a teleconference, typically just a few days after that draft so that the members can then get on the phone if they'd like.

If not, they can certainly convey comments on that draft to us by email or calling us up directly. We've found that hosting a teleconference and inviting the broader membership to participate is
often a good way for the members to not only convey their views but hear other members' views and understand what the broader sentiments are of the membership.

After we have received that input and the advice of the members, we would then work to finalize the comment working closely with the chairman and convey it to the federal agency by day 45. That's a quick run-through of the protocol.

It's not unlike the protocol we've used for other past chairman's letters, and it gets in some ways not dissimilar to the protocol we use in developing program comments as well. That's just a quick run-through. Thank you, Mr. Chairman.

Wayne: Comments on the process? This is a development, just a brief trip down memory lane. As a former staff member, we used to spend two days coming up with these comments. This is certainly a streamlined approach. Yes, Reno.

Reno: I was going to get too nervous now when I press this button, if it's going to do the whole Reed Nelson thing and start squeaking.

[laughter]

Reno: I wanted to compliment you on that process. I thought that it was effective, it gave us an opportunity to include things in the chairman's comments and chairman's letter, and so I really appreciated that opportunity for comment.

In some situations, this doesn't need to take 10 years. [laughs] You can do it in the expedited process, and still be able to include some effective comments and outreach to the board members, so I give you a little ups on that one. Thank you.

Wayne: Brad?

Brad: I will echo the cool guy over there, Reno's comments. I did think the process went very well. We were under some strict time guidelines, as we always are.

I think what we do need to reflect on -- and I would urge staff to reflect on this -- is the substitutive comments themselves, how we determine what's in and what's out. As members, we're not involved in the day-to-day of the 106 consultation.

We do not know what took place from the beginning of a consultation until the termination. I will be honest, I didn't read all the material that was forwarded to us. I think there were what, 400 pages or more of material?

I think that for our education as well as for your development of the letter, because staff beyond us, staff is the one who develops the format of the letter, and much of what's in it we review it. I think that there needs to be some reflection on what's in and out, or what are topics that we can address and topics we can't address.

Obviously, that's not for a protocol here. This protocol is excellent, and I think you largely followed it with the Growler case. The other things are a little more difficult to deal with, but we
should reflect on that, and figure out on a more standardized basis how to deal with some of those issues.

Wayne: Any other comments?

Male Participant: I'll make one observation in part in response to what you said, Brad. With the advent of a full-time chair, we're going to have our policy-level leadership in the office on a daily basis, and so the chairman is going to be more intimately involved in the development of staff positions on controversial cases.

I think that's something that could be a fairly dramatic change, and it also gets back to thinking about the role of the executive committee, and the whole question of communication between the Chairman and the membership.

Brad: I definitely agree. I think it'll change a lot, and it will also -- for good and bad -- change the role of the members as well. That's why the communication with the members will be very important in developing these policy-level positions.

Wayne: Let me just finish that when somebody does close consultation, there's a reason for it. When we go out and either have a panel, or when you went ahead and went up to Washington for the conference up there, and you have such a large consentience questioning on item, in this case happened to be the APE.

I'm thinking that maybe we should revisit that. Maybe something was missed in the process on how that was determined. We also have controversial comments as well from several people saying one thing in one way and then changing their mind and saying maybe it was the sign of times or they're under pressure with all of their friends around them or whatever.

It can get very complicated, but I'm thinking that maybe sometimes we should take a step back, like you guys normally do when you're going through your consultation before we get involved in such thing as determines or a comment later on and really question whether or not a particular agency or a Schiphol or whoever else has done diligence in terms of looking at these.

[off-mic comments]

Male Participant: Mr. Chairman, I want a question, if I may, with respect to the Growler letter. If my memory serves me correctly, perhaps on the same date that the letter was signed by you on behalf of the council, sent to the Secretary of the Navy that the letter of the thrust thereof was covered by the media.

How did it happen, and then what is our response to the public when our letter is disclosed in terms of the consultation which we're giving to the proponent of an action?

Wayne: As you know, the press that came out was very favorable in our letter, not real favorable towards the Secretary of the Navy, and we had favorable comments from the Schiphol up in Washington as well.

Male Participant: The question is what are the mechanics of our disclosing the consultation letter to the media or to the public in general. Is that a practice that we follow? I have no problem
with it, but I just want to know what is our public exposure when we do that, and whether that's in keeping with our practice.

**Wayne:** I believe it also goes on our website as well. It's public information at that time.

**John:** With that going into the weeds on it, as soon as the letter is delivered to the agency head... Your comments whether it's a chairman's letter or a panel comment or whatever goes to the head of the agency, so in this case it was the Secretary of the Navy.

As soon as it goes to the agency head, we share it with the council membership, and then we use all of our media outlets to make the comment public. We send it to the consulting parties, and we... Is there anything else we do? Is there anything else we could do? We make it as public as we can.

**Wayne:** Very good, John. I appreciate it really. First Terry and then Betsy.

**Terry:** I was participant on two of these determination cases where we actually went to the site and met with the public. I just thought I'd make a couple of comments about that. One was Pawtucket Dam, and one was at Badger-Two Medicine, Browning Montana, different circumstances.

Teresa, across the way here, she was also on the visit to the Blackfeet Indian ancestral lands. Just to say that it was a room not unlike this, except you're probably a little closer to the public. The testimony from the community would probably give you the other information if it were a situation, such as determining that you had to take a break and review the APE.

I think hearing different sides of the concerns and that in one case, the person who wanted to do the drilling, they actually didn't testify, but they were in the room. I think that whole context allows you the added amount of information if you needed to take a harder stand.

In fact, we were pressed to take that harder stand, whether or not it was a situation where we were kind of running in between two federal agencies and having to help them determine what the next step forward was.

We understand that it was not the perfect storm of things happen that we couldn't have the public meeting for this determination case, but with that, I think the public loses out. I know that we're not going to extend the period to allow for that, and there was a government shutdown, etc.

I think there was a lot of benefit to the community when the advisory council showed up. They could see that we were present and that this process included them as a backup, as a face to face. Not that the issuing of this letter wasn't all solid, but I think that there was some benefit.

For the Browning case, we actually had to read the 400 pages because we're going to show up. So many of the hundreds of pages was testimony that came in advance. Those people are really wanting to be heard. Just to say, I think that the process is really great, but to hopefully be able to include the public meeting.

**Wayne:** I think that Kate and Reid did a really great job up in Marchand. You guys handled the crowd very well, and especially Kate in her normal fashion, so it went very, very well.
Male Participant: Mr. Chairman, I just want to point out that Tom McCulloch was there with Kate, and I think they were a great team. They had tremendous feedback from the public there. I also just want to acknowledge that we received a large body of feedback electronically as well.

Our efforts through the media informed people of the opportunity to comment, resulted in a lot of things coming to us via email as well.

Wayne: Thanks. Betsy? Somebody have their hand up over here.

Beth: I do.

Wayne: Beth?

Beth: I just wanted to clarify. There was a public meeting.

Wayne: Yeah, there was a public meeting.

Beth: It didn't seem like in Terry's comment, unless I misunderstood, that she was saying the benefit of the public meeting and that there wasn't one in this case.

Wayne: No, there was one in the Growler. In fact, it was very, very well attended.

Brad: We, customarily, within this 45-day regulatory limit, we have a public meeting. The previous issue that we had, the Providence Viaduct, that you may recall getting the letter on was not something where there was a lot of broad public interest and was a fairly technical issue, a procedural issue.

The one thing that I would mention, which I welcome in this protocol, is having a council member, if not the chair or the vice chair, a member be in the chair of the public meeting so that it shows to the community that we've made the commitment of involving our policy level leadership in hearing what the public has to say.

Frankly, it gives the staff some cover, too, by having somebody that's there who sits around the table, who says, "This is what I heard. This is where I think we should go with things."

Wayne: Betsy.

Betsy: The National Trust would like to echo the gratitude and appreciation described by Brad and by Reno for the process of incorporating our comments. We especially appreciate the Chairman's responsiveness to the comments that were submitted.

I also wanted to mention an issue that was discussed in the Federal Agency Programs Committee yesterday relating to the public hearing, and that is that you could often have a situation.

I think to some extent, here, this was the case, where you may have a consensus before the public meeting, between the SHPO and the agency, and the Advisory Council about issues like is the area of potential effects OK? Then you may get pushback from the public who says, "It is not OK."
I feel like it's important for the council to be sure the agency is aware going into this. That some of those previous handshake deals might need to be called into question. As a result of, being responsive to the public feedback.

Also, I'd like to say that over the years, the council's comments in these rare determination cases have often made an enormous difference and been extremely influential. I'm thinking of cases like Cape Wind in the 710 Freeway, Badger-Two Medicine, the California gold mine. The council's comments are often very influential.

Here, however, it is my understanding that the council has essentially received a letter back from the Secretary of Defense saying, "Thank you for your comments. We're going to go ahead and do what we were planning to do, anyway." I think it would be useful to think about how we want to handle situations like that.

Wayne: Yeah, that was my earlier comment as well, Betsy. That's the reason why we go out and meet with the public on these items. By the way, for the students, we talk a lot about acronyms and stuff.

The AP or the Area of Potential Effect is determined by the agency, to analyze those potential historic properties and how their action will have an impact on them. In the case of the Growler case, they wanted to actually amend it for a third, fourth, or fifth time and make the area much larger because of the noise consideration from this very noisy fighter. That was the reason why.

Male Participant: If I could make an observation going back to what Brad initially said, "What's on the table, and what's off the table for members for comment?" Frankly, the membership can comment basically anything it wants to. This is an advisory comment. Sometimes, it might be specifics about the impact and alternatives and so on on historic properties. You might have comments about the process. You may have comments that say, "This case shows that the Secretary of X needs to address this systemic issue." It's a tool that can be wielded for a variety of purposes.

It all comes back to the APE issue with the Growler. The reality in this was that, there had been a lengthy, arduous debate in the consultation process about what was the APE. The agency is entitled under the regulations to make the final determination on APE.

The SHPO conceded, as did we. What the agency determined, the SHPO then, in public comments, at the hearing took a slightly different position. The council could have said, "We think there should have been a different APE." Then you roll the staff. That happens.

There's no legal constraint. It really gets down to what does the council want to say and how does that comport with what the ACHP, because the world is not distinguishing between the membership and the staff. They may see that the ACHP has reversed its position.

It's just something to consider. There may well be circumstances where that deserves to be reversed.

Male Participant: I would like to say that your characterization of the council and the State Historic Preservation officer conceding to the position of the Navy is a different characterization
than I have received in the past. I would have had a different opinion on what the ultimate letter would have said.

I also think staff made it quite clear that the APE was not on the table. I accept your characterization now of what we could have done, but that was not what took place at the time.

**Wayne:** I think I'd like to get any more comments from members because I'd really like to move on. All right, very good. I'd like to thank Jordan and Reid, and Kate and Blythe for all their hard work on this case. I think we all learned a lot.

I'd like to move on to the National Park Service proposed rule on national registered nominations. If you think I'm trying to hurry, I'm not really trying to get out myself early on this, but we have two members that have to leave early. I want to make sure they get their input on the subject matter that's coming down.

The National Park Service recently issued a proposed rule that would implement provisions in legislation enacted in 2016 and set that process for the Federal Agency nominations of their historic properties to the National Register.

As you know, under the Section 106, we only look at properties that are either listed or determined to be eligible on the National Register of Historic Places. The proposed rule may also affect the determination of eligibility process. It's raised a variety of concerns in the preservation community.

At this time, I'd like to ask Ryan who's a deputy assistant secretary for Fish, Wildlife and Parks to brief the members.

**Ryan:** Thank You, Wayne. I'll be brief and refer to the proposed rule generally, but I will say that the reason for taking this action stems primarily from the 2016 Amendments to NHPA, which required the National Park Service to make implementing regulations, and that hinges entirely on that law.

I'm going to read a portion of that here. This requires that the Secretary may accept the nomination directly by a Federal Agency for inclusion of property on the National Register only if, and there are six different conditions laid out here.

I think the one that folks are paying most attention to is number four. That reads, "The federal preservation officer forwards it to the keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs one through three above."

"The nomination is adequately documented. The nomination is technically and professionally correct and sufficient. It may include an opinion as to whether the property meets the National Register criteria for evaluation."

Without getting into too many details, I will say that that's essentially what these regulations interpret. We'd like to hear thoughts on that interpretation and preferably in the form of comments, but here's fine too. I will note that this rule published on March 1st. Comment period ends on April 30th.
We've got about four more weeks for comments on that. The second part deals with the desire of the National Park Service and Department to attempt to protect private property rights, by ensuring that if an entity or person owns a majority of a historic district, that's up for nomination.

They have a say in whether their property is listed there. Better details are provided in the proposed rules. I will turn it back over to the council to hear your thoughts.

Wayne: Comments? Mark?

Mark: Thank you, Mr. Chairman. I recognize this isn't the venue for debate, and I appreciate very much that you're here today to explain the rules. I do need to say, for the record, that the National Conference of State Historic Preservation officers has very serious concerns about the proposed language, which we feel goes far beyond the statutory language that you just cited.

Actually, it deprives citizens and the SHPO's from participation. We think it's a very important segment of the National Preservation program. It creates a system that favors now the opinions of people who owned more lands.

In other words, people of comparative wealth and government entities that are land-holding entities, whose votes on the creation of National Register districts are now going to be worth more than the votes of other property owners and residents in that district.

I think that's ironic, given the fact that, finally, after all these years, the National Preservation program is making the effort to make sure that we have a National Register that really represents all of the people of our nation. I think this works in the opposite direction.

I would add that I think the process that's proposed is really unworkable from the SHPO's perspective. It differs from state to state in terms of our resources and our capacity to do something, like determine the square footage of every lot in a proposed National Register Historic District.

In a state like mine, where we're dealing primarily in rural areas, in communities that simply don't have the technology that is necessary to make determinations like that, I just don't know how we would do it. I think you'll be getting comments from a number of states individually and, certainly next poll, will be submitting our comments as well.

Wayne: I've heard that and look forward to seeing those comments.

Mark: Thank you.

Wayne: Reno.

Reno: That was scary. Well, let me just first thank you for coming in here, taking the time, and then I applaud you for making this effort to confirm to those 2016 Amendments. I just want to speak on behalf of American Indian tribes and Native Hawaiians.

I think I would have to respectfully disagree with the decision to make a determination that this doesn't have an effect on American Indian tribes and tribal governments and in Native Hawaiians as well. I would respectfully ask you to revisit that decision.
There are thousands of sacred sites, cultural sites, archaeological sites throughout US lands, state parks, national parks. Any one of those would be affected by your decision here. I think that Executive Order 13175, back in 2000, clearly states that federal agencies will consult Indian tribes on decisions that affect them.

I think in the spirit of that, we would respectfully ask you to reconsider that, reach out to Indian country, and give us an opportunity to comment please. Thank you.

**Wayne:** Luis.

**Luis:** Mr. Chairman, I also thank you for coming here and spending the time with us. I'll speak from the perspective of the state commissions. I sit on the Commission in California, and this is my second term. From my perspective, the National Register rules have been robust, very reliable, and are reasonably understood by the public.

Every time we get into a conflicted situation with a property owner, once they're reminded of the rules, or once we explain the rules to them in a public setting in our Commission meetings, most of them walk away satisfied that the rules give them a chance to deny a listing if they disagree and so the determination stands.

Most of them walk away satisfied. Some don't, of course, because that's the nature of humans. I look forward to a spirited discussion with the members and perhaps more, as importantly, a consultation with staff, to truly understand the implications of the rule changes.

I am really concerned and alarmed at the nature of the changes, the exceptions and big legal parenthesis that these rule changes bring. I cannot prevent myself from feeling that these rules are aggressive and that they erode the...not the power, the authority of state commissions.

Their determinations and their decisions might be summarily set aside by people that did not participate necessarily in the process. As a member of a Commission, I want to register my disagreement and ask you to reconsider. The rules work more than reasonably well their fair.

I think property rights are amply protected. I can't help but think that this is just unnecessary. Thank you.

**Wayne:** Terry, and I'm going to have Ryan a chance to talk to all the issues. Terry, is there [inaudible 102:35]?

**Terry:** I could see your name's Ryan, so I'm going to address you as Ryan. Thank you very much for being here and allowing us to bring some comments back to your agency. My association with the Advisory Council when I arrived here, I would hear about initiatives by various other underrepresented groups.

Through the Building a More Inclusive Preservation Program initiative here, I was able to interact with staff. It was very encouraging. We had listening sessions on the West Coast, and then they encouraged a listening session on the East Coast to engage with Asian American/Pacific Islander communities.
The result of this, a little of my probably sturdy support towards this Chinatown community in Boston where I am from. They were able to put the first building attributed to Asian American immigration on the National Register. This is the first building north of the Chinatown gate here in DC, the whole Eastern Seaboard.

Thinking that, "Well, there's a lot of work to be done," the National Register still serves as a gateway of very high distinction. The community was not in favor of it actually initially because they had so little, let's say, experience with historic preservation despite the fact that Downtown is almost completely a historical park.

My comment is that the Register is still the bar even for new communities. To have the bar pushed further away in some appearances, I think, is not what our nation is going to benefit from.

There could be some potential of that by adding rules. Once the rules certainly seem to be functioning and some community is just starting to engage, there's a potential to exclude some that are already struggling just to make the meter.

By the appearances of this discussion, which should be further explored, it seems as though, let's say, within a community you have ownership. Therefore, probably financially entitled will have more votes than those who are less represented.

From the Boston experience, very little resources to make it on to the register and the only reason they could apply is because they received the underrepresented grant that was supported by the Massachusetts shipper when they couldn't come in with the other half. I mean, this is what we're seeing on the streets.

I can gladly report that within the two years following, the community has received almost a half a million dollars in grants. From the city of Boston, they have this tax preservation credit that just came up. Otherwise, we would not be entitled to even apply for these credits, to help them stabilize the buildings that need great repairs. [inaudible 106:00] school building.

This community, it has been a very good steward but never had the resources so just want to bring back that I think the program's pretty sturdy. Personally, I don't know if the extra rule changes are needed. But thank you for coming.

**Wayne:** [inaudible 106:20]?

**Maureen Sullivan:** I have more of a process question though I do want to echo Reno's comments. I think his points are on the mark. I am actually concerned about the Interior's determination.

I think I speak for many of the federal agencies around the table that you did not go through the Office of Information and Regulatory Affairs process for an inter-agency review. I think the woefully inadequate estimate that this would not have significant impact on federal agencies is off the mark.
I wholly encourage Interior to revisit that decision when they go to the final rule and respect the 12866 process that has been established for a very long time. I will commit to you that I will also raise this issue with OMB-OIRA.

**Wayne:** Dorothy?

**Dorothy:** Thank you. Thank you for being here and for listening to all of the comments. I'm kind of echoing what Reno had said earlier.

We talked about the 250th anniversary of the United States and what to do to celebrate that. [laughs] I was thinking when I heard that, "How come we don't have celebrations of the 10,000th, 15,000th anniversary of Native Americans in the United States."

The Native Americans, we say we've been here since time immemorial. Going from time immemorial to the last 250 years -- 500, I guess -- has been a process of transference of land away from native communities. We talked earlier about how we're on native land.

I'm always in the United States. We're on native land right now. The Piscataway people were ones here in this location. Over these hundreds of years, land has been taken away from Indian tribes. It's become public land. It's become private land.

There are some lands that are reserved to the tribes now. I'm just very concerned that by waiting the process towards landowners, this is going to be one more thing that is a detriment to tribal nations into tribal sovereignty. Thank you.

**Wayne:** Thank you. Betsy?

**Betsy:** Thank you. The National Trust also has serious concerns about these proposed regulations. We appreciated, Ryan, your invitation to meet with you and we would welcome the chance to discuss our concerns in more detail.

In this forum, I wanted to raise a couple of questions and ambiguities that we've been hearing discussed a lot that we don't know the answers to.

One is that if you have historic districts that include federal and non-federal ownership, such as checkerboard lands, federal checkerboard ownership in the west, or main street historic districts, where you've got a post office and courthouse, and then a lot of other private property.

A, can the federal agency block those nominations? Can they block eligibility determinations? How does the State Historic Preservation Office calculate the denominator of ownership in order to determine whether a majority of landowner acreage objects when you've got that kind of mixed ownership?

Those are some of the questions we're hearing a lot of. There's also a lot of concern that in the Section 106 consultation process, if you have a disagreement between the federal agency, the SHPO, and other consulting parties about whether a property or a district is eligible for the national register.
There are concerns that the federal agency could essentially block that disagreement from getting resolved. Thus, thwart the Section 106 consultation process.

We're also concerned that these regulations could interfere with the use of the historic tax credits by blocking, for example, main street historic districts from being listed on the national register if a federal agency owning a property in the district objects.

Those are just a smattering of some of the questions and ambiguities that we've been hearing a lot of discussion about. We'd welcome the opportunity to discuss it more. Thanks.

**Wayne:** Thank you. Shasta, and then Kath.

**Shasta:** Thank you. I want to echo the comments of many of my colleagues around the table in terms of the concerns for the amount of power that this gives to federal agencies and to property owners within these potentially eligible sites.

Rather than continue with saying the same thing that's already been said, I want to, from the tribal perspective, talk about the concerns not only of the TPOS that NATHPO represents. The sovereign tribal governments who are not being consulted in an appropriate fashion on this proposed rule, there was a brief conference call with National Park Service staff that was arranged by NATHPO a few weeks ago.

Somebody on that call asked, "How come you're not engaging in consultation with the tribes?" The response was, "Well, we determined that this rule change was not going to have an effect on tribal historic properties." I had to wipe off my keyboard after all the coffee came out of my nose [laughs] upon hearing that.

I was speechless, which is an unusual state of being for me. As Reno already mentioned, and Dorothy also acknowledged, all of this land is tribal land. Piscataway, Pamunkey, Anacostins, we're on their land as we speak. The same is true throughout the continent, not just the country.

The idea that this rule change is not going to have an effect on tribal historic properties, its twilight zone. I would encourage you to reconsider the level of consultation that you're undertaking, not just to do public comment. Tribes and tribal governments, they are not the public. They are sovereigns.

Government to government consultation is necessary for us to fully be able to engage with the Park Service on the implications of this rule on tribal sovereignty, on tribal cultural properties, on the responsibilities of TPOS, and also, for the tribes that may not have TPOS, but have the same level of concern and the same right to be consulted.

Please reconsider having a longer process, so that the tribes can have an appropriate venue to voice these concerns. Every other historic preservation organization is more easily able to define their area of concern, like Luis mentioned, being in California, or Terry in Boston. For tribes, it's the entire country. Thank you.

**Wayne:** Brad, and then Ted. Is that right? Give me a little bit more than just a finger.

[crosstalk]
Female Participant: [laughs]

Wayne: I'm sorry, and [inaudible 115:11], Brad, and Ted.

Female Participant: Actually, I was going to give my time over to Jordan, who's been waving over there valiantly, and then I'll come back.

Wayne: I'll throw something at the dude.

[laughter]

Jordan: Yeah. Thank you, again, for coming. I've been involved with the 106 process for almost now going on 50 years, and the regs that have changed a bit over time. Basically, I'd like to comment on the conflict between the council's regs, Betsy mentioned it, about the eligibility determination, and this proposed change.

I have been involved in many cases where things have hit a wall early in the process, and the ability to have either the SHPO or the agency, but not both, go to the keeper in a determination of eligibility is very important.

Having that objective review has been able to push these 106 cases through the process and arrive at decisions that are very beneficial to both parties. I think I'd urge you to carefully consider that. Currently, I serve on a local commission, Fairfax County, as their vice chair.

We are dealing with a case where if this were the rule in effect, we would not have the status of a particular potential nationalist register eligible district determined. That would cause this whole process to go off the rails. I do believe that we're going to end with a good decision.

That's an example I also teach for the Department of Defense courses in section 106. Many, many times, I can certainly give you a list of cases where the ability to trigger this section 804(c)2 has been very important in keeping things moving. I do hope that you'll reconsider that particular section. Thank you, again, for coming.

Wayne: Kath.

Katherine: Thank you, Mr. Chairman. I'd just like to make an observation about, not just the process, but the sense of what this has in it. For those of us that have been involved in historic preservation, consultation, and listing for years, that first threshold of eligibility or listing is really key to what tears off a number of other activities.

Those activities have been in spirit to be consultative. It seems to me that this approach sets up something that becomes adversarial. I don't think we need nor want that in preserving our nation's history.

Male Participant: No, we don't.

Wayne: Ted or Brad.

Male Participant: Ryan.
Ryan: Ryan. Thank you very much for coming today. I would echo many of the comments that have already been stated. I'd like to just build off of what Kath just last said. Essentially, the determination of eligibility process and the National Register listing is a foundation of the section 106 consultation process.

As you know, the National Historic Preservation Act has been around for 50 plus years. Obviously, the regulations associated with them and associated with the section 106 consultation process, as well as the determination of eligibility and National Register listing have evolved over time.

The evolution, usually, is done to address challenges that we found in the process. What I'm trying to understand is, what consistent challenges are you trying to address with these proposed regulations? We would be happy to help you address those consistent challenges in a way that we believe is consistent with the spirit of the act, and the regulations as they have evolved thus far.

I'm reaching out a hand in. I don't think the comment process is a really good way to do that, though I hope that with the comments that you receive, not just here, but through April 30th, that you reassess your approach, come to us, and tell us what the challenges are. I think there are many people on this table as elsewhere who would like to help you address those challenges.

Wayne: Ted.

Ted: All right. Thank you, Ryan, for being here and getting all this input. I just wanted to associate myself with Maureen's comments about the importance of the Executive Order 12866 process. It's an opportunity for you to get candid input from your fellow federal agencies.

CEQ obviously has a vital interest in NEPA and 106 processes working well together and federal agencies working well together. Also, commended to you from the standpoint of obviously you've gotten significant input here.

It presents that threshold point of when you're ready to finalize it, you send it to [inaudible 121:01] and you have that opportunity to get input from the public that oftentimes represents a distillation of the comments. It's an essential part of the way we do rule-making, so I look forward to working with you on that.

Male Participant: Thanks.

Wayne: I'd like to clean up with what I'm going to say to you, Ryan, as well and then I'd appreciate if we could hear from you after that. For a lot of us that, like John and I, that have lived a long and fruitful life in the preservation movement here...

[laughter]

Wayne: ...I think it's important to understand how we got here in the first place.

If it hadn't had been for the large infrastructure programs under the Eisenhower era, especially with a lot of the freeway interchanges and a lot of the pipelines and other things and transmission lines that was so important after the war, we wouldn't probably be here.
As we went through cities, a lot of the mayors were greatly impacted by this action. They took the initiative then to look at a lot of stuff and through that created the National Historic Preservation Act.

Which put the onerous on federal agencies if you're going to take action, you're going to spend the money or whatever is to take into consideration these particular properties that are unique to not only the history of the Americans but also to take a look at it as what this meant that goes well beyond property ownership.

Over all these years, we have fought things like property rights and everything else to understand that these properties that are on the National Register, and as Terry said, it sets the bar, and from that has been an incredible trickle-down system from state registers to local registers, city registers, all of them which exemplify the National Register.

They tweak them somehow. Perhaps they don't have a 50-year rule and that sort of stuff, but they tweak them. The essence is there so that when these review boards as Mark or Jordan was saying, they use how the state register has been developed over the time in looking at these particular properties.

As you know, the National Historic Preservation Act was changed along the way to not only include properties that are currently on the National Register but also those that have been determined eligible for the listing.

Once that was done, that opened then things for historic districts to where perhaps certain properties would not be individually eligible for listing on the National Register but they're contributors to the historic districts and therefore became just as important to not only consider under Section 106, but as we heard, the historic tax credits which myself as a practicing architect, I was fortunate enough.

I was in the gold mining fields in San Diego for the Gaslamp Historic District where we had 120 contributing buildings and myself and one other architect. The only reason why I moved down there is because I lived so long in Europe, I wanted to go to a place that was seedy and underdeveloped and everything else. It felt good. It was the oldest part of San Diego.

In doing that, without those historic tax credits that have been modified over the years, and we have another bill going through now, I think that most of these would have ended up as being demolished as new cities and towns were built, especially in the '60s and '70s as we were looking at building a new America at that time.

I think it's important to understand that if we're going to save buildings and we're going to save properties and everything else, is that when we get things like that East Moreland in Oregon, where an owner subdivides his property into 1,000 trust units and self-trustees for each of those units so he has 1,000 votes in terms of determination of whether it's going to be a historic district, it's just wrong.

It's wrong for a lot of different reasons. I remember a council member that came back from Paris that said, "I don't know why you guys are worrying about these properties. They're only 50 to 100 years old. I've been in places where they're 600 and 800 years old."
My comment to him was, "How do you expect these properties to last 800 years if you don't look at them in terms of it?" I think we're the only country that has a hard time in respecting our history for all Americans.

This is a big change. Terry and others have mentioned it, and Reno and Shasta and Dorothy and stuff, that this new realization by the Millennium folks that are looking at this liked their places. They liked their neighborhoods. They liked the history that they're involved in at this point. I think to make these major changes into what is the high bar of the National Register is a total mistake.

Like Brad, I'm here, the rest of us are here to help you work through it from our experience that we've gained over all these years.

Besides the National Register, the [inaudible 126:44] was created, historic tax credits, this Council, and other things. It's important to go back to those real grassroots on why the act was done, why we were celebrating in its 50 year and how we got this far. We have lots of experience. Thank you, Ryan. I'm off my soapbox, thanks.

[laughter]

Ryan: Thanks, everyone. I appreciate the comments. I understand and I admire the passion that everyone here has for historic preservation and understand that you feel very strongly about this composed rule. I've learned a lot and heard a lot since this rule was first proposed about a month ago. I look forward to seeing what everyone submits.

On the issue of consultation in the meantime I'll take those comments back to the Parks Services department and think about those some more. I appreciate the offers of assistance in resolving some of the issues here. I have a few business cards in my pocket. I'll be here for a while longer.

If you want to come up, I'm happy to give you one and we can chat more in greater detail. Thank you for the opportunity to talk about this today.

Wayne: Thank you, Ryan. We're really not a hostile group, so we [laughs] welcome you. You are a member, of course, of the Council. Maureen?

Maureen: Wayne, Mr. Chairman, sir, Mr. Emeritus Chairman or whatever you prefer, I want to talk a process point for the Council itself. I would imagine that your staff is going to be preparing their own set of comments, but I would ask that there be an effort to reach out to the Council members before they get officially submitted.

If you're speaking on behalf of the Council, then the Council should have the opportunity to review the final comment from your staff.

Wayne: You may repeat what you said earlier. It was part of the process that you had a problem as a federal agency? I'm trying to understand what you said.

Maureen: Under Executive Order 12866, and I may phone a friend over to Ted, that it requires if there's a significant rule that it go to the Office of Management and Budget to the Office of Information and Regulatory Affairs to have that review shared among the federal agencies and
reviewed by OMB for analysis in consistency to ensure that all the federal agencies are speaking with one voice prior to it going out to a public release.

These conversations are usually very fruitful. It allows the ability to bring across all the experts in the federal government and their thoughts and expertise. I'd be glad to have Ted, if he has any additional thoughts to add about the 12866 process.

Wayne: I'm assuming this did not happen?

Maureen: That is correct.

Male Participant: I'd note, there's some thresholds for bringing in a rule as to whether it's significant. I know OIRA reviews and consults with agencies as to whether to bring in a rule.

It's applied to things like the Navy tinkering with their categorical exclusions. It doesn't necessarily be limited to rules that have an impact of $100 million or more on the national economy. That's one of the thresholds, but also rules that are of policy significance or more open-ended basis for bringing in a rule.

John: Let me, could I?


John: Number one, certainly for the development of the ACHP's comments, this discussion has been incredibly valuable to get a sense of what your concerns are, which we will put into the comments.

If you look at the issue paper that's in the book, you can see what our initial thinking was, which was to focus on the intersection between the Section 106 regulations and how the DOE process might be changed. We too had raised concerns about tribal consultation and the interagency coordination.

Just so you know, this regulation was identified as being under consideration, I think, almost a year ago and actually, there's a process where proposed regulations are put in a database that you can access that OIRA, the Office of Information and Regulatory Affairs at OMB, maintains.

We reached out early on to the Parks Service and to the department expressing our desire to coordinate with them, first to get an understanding of what the scope of what the rule might be. We saw that if this went to DOE's, there needed to be some serious consideration of how these things fit together with the Section 106 process.

We didn't get a response. Let's put it that way. We went to our folks at OMB that, in our budget examiner branch chief and so on, and said, "Can we get some insight into what this regulation might cover? Is this something that has some impact on the ACHP?"

Frankly, they couldn't get information on what was going on. In the end, not long before it was issued, I got a verbal summary from our budget examiner on what the scope of it was going to be, but not much in the way of content.
I say that to you just so that you understand that when we caught wind of this, we made every effort we could at the staff level to encourage early coordination on this. Based on what Maureen just said, we will be developing our comments and what we can do is share a draft comment later with you, maybe in the next week-and-a-half to two weeks so you have an opportunity to get a response from us, so we could file by the comment date.

Wayne: We're going to move on to the White House Opportunity and Revitalization Council and ACHP. As some of you know, in December, 2018, the President issued Executive Order 13853 which established the White House Opportunity and Revitalization Council.

The mandate of this newly-created council was to promote the revitalization of urban and economically distressed communities, particularly opportunity zones that are eligible for new opportunity zone tax benefits created in last year's overhaul.

The council, as far as I think, could provide a wonderful and excellent venue for ACHP to advocate for historic preservation as a strategy and to promote our own revitalization roles. As you know, the federal tax credits has had in promoting community revitalization, affordable housing, and creating jobs.

We also engaged, several years ago -- actually five years ago now, in 2014 -- a report on the preservation and rightsizing of American communities to make sure that we have insurance policy and statements to be adopted in the 2016 on the historical preservation and community revitalization.

Given our history and how we would like to be interested in this issue, I sent a letter to the secretary of HUD asking that ACHP become a member of the opportunity council. We haven't really received [laughs] anything back yet, Danielle.

I thought, since you're here, you could speak to the council about the possible role and really what your new council and the schools are doing.

Danielle: Thank you for that opportunity. HUD is considering allowing or bringing the ACHP to the [inaudible 136:16] and we certainly appreciate the engagement that we've had so far and will continue. I hope to bring forward a positive message soon.

In your folder is a slide deck of opportunity zones at a high level. I just thought I would provide a brief overview of this, since you're going to see more public notices and engagement around this.

As you mentioned, this was created by an executive order and it was part of the tax cuts in Jobs Act of 2017. The idea is to encourage public-private investment in distressed communities for economic development and offer capital gains tax relief to investors.

The way it does this is it creates these qualified opportunity zones. A qualified opportunity zone is a geographic area that's been designated by the Treasury Secretary. It also creates a qualified opportunity fund. This is a fund that invests assets within these zones. Those are the two key terms. There's the zones and the funds.
The opportunity fund zones, these areas around the country where the property rate is 20 percent or higher or a median income of less than 80 percent of the surrounding area. It includes both urban and rural areas.

Governors can nominate up to 25 percent of eligible low-income communities' census tracks as opportunity zones. Then the Treasury Department qualify these. Again, they're geographically mapped and they're eligible for this private investment that gets investors capital gains tax relief.

On your slide deck, there is -- I think it's page four -- a map with some URLs for two different mapping services. You can look in and see all the opportunity zones. There's over 8,000. There's 8,761 zones. This is in all 50 states, territories, and the District of Columbia.

California has the most, followed by Puerto Rico, where 90 percent of the Commonwealth is in an opportunity zone. HUD has been collecting a lot of statistics and understanding about, "Who lives in these opportunity zones?" The average poverty rate is 37 percent. 2.4 million persons, served by HUD rental assistance, live in opportunity zones.

Our secretary is the chairman of the council, the Opportunity Zone Council, which was created through the executive order. Both of these URLs, you can zoom in and clearly identify where these are. I may talk a little bit about the opportunity funds [laughs] and just from the basic high level.

As you know, when a taxpayer sells an asset and realizes his capital gains, they're subject to capital gains tax. The opportunity fund and the opportunity zone allows investors to put these in an opportunity fund, their domestic partnerships, or corporations, and they self-certify with the IRS.

They have to put this capital gain in a qualifying fund within 180 days of the day the gain is received. Treasury Department is estimating that over the course of opportunity zones, there'll be $100 billion. The concept here is to unleash people's capital gains and focus them to lift up these depressed areas.

You get, importantly, deferment of capital gains until 2026, and then there are these two step-up bases where you're excluded from income of up to 10 percent of capital gains if it's held for five years and an exclusion of 15 percent if it's held for seven. If you can hold it for 10 or more, your appreciation is tax-free.

These opportunity funds can be paired with low-income housing tax credits, new market tax credits, and historic tax credits for additional benefits.

Moving on to the White House Opportunity and Revitalization Council, you have a full copy of the executive order in the folder. An executive order is very specific about what the council...the purpose of it and what its responsibilities are. You can definitely drill down there and see who the members are.

As you mentioned, the ACHP has requested membership. The White House Council will be issuing an initial report in mid-April, very soon, and in the near future, you will see HUD issuing a call for public comment on how best to achieve the laid-out goals in the executive order.
There'll be more opportunity to engage then, but the executive order, again, is very detailed, including bringing together agencies to prioritize and focus federal investments, to recommend policies to reduce burden, help community-based organizations to realize these investments and to align resources as well as to evaluate the effectiveness of it.

Some important things to know about the opportunity zone. It's not subject to NEPA or section 106 processes. Where we see that coming into play is through aligning federal resources and in layering in other federal programs.

That's certainly what HUD is engaged in and we'll be asking other agencies to do within this, is to figure out how to prioritize our resources into these opportunity zones.

HUD will be hosting a central website for information. We will be collecting data to assess the effectiveness of it. The last slide page is resources. You can Google these two to find out more information. The National Trust did a great webinar. It's a great introduction to opportunities zones and historic preservation.

I'd like to thank Nancy Boon [laughs] for all of your work on preparing this presentation, and others.

**Male Participant:** Can I just get a clarification?

**Danielle:** Mm-hmm.

**Wayne:** What, Brad?

**Male Participant:** Thank you, Danielle.

**Male Participant:** First of all, thank you for the presentation. On the issue of section 106, I just want clarification. Are you saying that all properties within an opportunity zone are exempted from 106 consultation, or that the opportunity zone itself doesn't trigger 106?

**Danielle:** The latter. It does not trigger. It's not a federal action triggering or undertaking for [inaudible 144:26] .

**Wayne:** Thanks for that clarification. I heard what Brad heard. Comments, questions? I have a question. When will we be on board?

[laughter]

**Danielle:** Hopefully, very soon.

**Wayne:** It looks good, in other words.

**Danielle:** Yes. HUD was very encouraged and welcoming of having the Advisory Council at the table.

**Male Participant:** I want to thank Danielle and the folks at HUD, that when we made the request, there seemed to be a great deal of receptivity. The National Trust had an excellent meeting with the HUD deputy chief of staff.
They presented how the Historic Tax Credit program could support the goals of the opportunity zone, and the council, so on and so forth. The other thing I would mention we've been doing in the past few meetings, is recognizing that we're transitioning to an organizational structure with a full time chairman.

We, the ACHP, did not get a shot at the EO when it was being developed. Customarily, something like this will go around at least agencies that the administration or OMBCs has an interest in the subject matter. Having a full time chair will provide the voice within the EOP and OMB.

When these kinds of issues come up in the future, instead of playing catch up, and say, "Can we join the party?" We ought to be in the group right at the outset. From a staff perspective, that's one of the things that I look forward to in having a full time chair.

Apropos that, I just got an email that the Senate Energy and Natural Resources Committee, by unanimous vote, favorably reported out Amy's nomination for confirmation by the full Senate.

[applause]

**Male Participant:** Here, here. What that means is to when the full Senate will act on it is another question altogether. This was an important step to move forward.

**Wayne:** Any other comments, and we'll move on? Very good. We're going to talk about traditional knowledge in the National Historic Preservation Program. We've been requested by Reno Franklin that we do not videotape this particular session, Lynn. OK. It's off.

Traditional knowledge can be thought of knowledge and practices of indigenous peoples, and often is employed in the programs conducted under the National Historic Preservation Act. As most of you know, ACHP has a long recognized traditional knowledge as an important factor in evaluating and understanding the significance of our traditional cultural properties important to indigenous people.

We've been practicing for quite a long time. As you know, as new members come into different agencies, different organizations, and stuff, they probably don't have the same level as the people that are going out, in terms of the understanding and appreciation for traditional knowledge.

What we would like to do is address this. It has been more in agreement with the views of indigenous people in the process and also making the process more efficient. We had a wonderful discussion yesterday from the Governor of the Santa Ana Pueblo and where he was focusing.

One of the most impressive things -- and Reno mentioned this -- is that he told us all in his native language why this is so important before then going over to English on that. You could see the passion. You heard the Americana pop in now and then, so you know what he was talking about although, of course, I didn't know the details on it.

This time, I'd like to ask Vice Chairman Leonard Forsman and members Dorothy, Reno, and Shasta to introduce to the members the concept of traditional knowledge on that.
Leonard: Just briefly and I'll leave it up to the rest of our experts. Just the importance of the beliefs, oral histories, and traditions that are connected to the landscape of our American Indian people in this nation is so crucial to the preservation of our country.

I consider true patriotism to respect the traditions of our American Indian tribes and their elders. It's a very important part of the cultural landscapes. Sometimes, we try to disconnect the people from the properties.

When we were in that committee meeting yesterday, it was very important for me to understand how important the language. Unfortunately, most of our language wasn't passed on to me, but we had a lot of young people that are resurrected in it.

Those words in that language is so crucially a part of the landscape that each of the tribes, the that Santa Ana Pueblo that were there yesterday and across the nation is so important that it's all intertwined.

It's important that the traditional knowledge be treated as just as important as the archaeological sites or the natural formations that are part of our creation stories and other things that we just remember to preserve and protect those as treasures also of this country. Thank you.

Wayne: Reno.

Reno: I was raised in a traditional Kashia Pomo Indian. The first steps that I took were inside of our roundhouse, just like my son Clayton is the same thing. He's at home sick at the moment.

Those of you that don't know what it is to be a single parent, if you've got a son that's at home sick, you're checking your phone every two seconds. I'm ready to throw mine out the door. He's a tough kid, but you always stress out when your kid's away and you're in the other side of the world.

Being raised that way, yesterday was very conflicting for me in understanding Pueblo culture and Pueblo rules and then asking a Pueblo governor to speak on a very sacred subject in a room full of people who may or may not be privy to hearing the information that he shared.

I understood the weight of that decision and I'm fortunate that Valarie also understood that. There's protocols for me to ask him that and things that I have to follow.

When we talk about traditional knowledge, I'm bringing this up to bring the point to you that it's not just the archaeological site, but it's how we gain information in itself. I know that because my uncle was [inaudible 152:53]. He passed away this year.

[inaudible 152:55] in our way is roundhouse leader. That roundhouse leader is responsible to everybody in our community with teaching us protocols like the ones that I followed and observed yesterday.

So that when I'm speaking on behalf of Kashia things and asking a Pueblo leader to speak on behalf of Pueblo things, that that individual sees that clearly I understand and recognize the protocols that I have to follow.
Those protocols in themselves are a piece of the overall traditional knowledge that we follow and we hand down and that we ask others to observe. You all that are non-Indian have it, too. You've got one of your practitioners sitting at the end of the table. Without your discussion, this is just the carpet.

We're fortunate in our committee to have had an individual come and speak to us and define what traditional knowledge is to his tribe. If you'd imagine doing that with every small tribe in the country, that could take a long time, and a lot of people aren't to be willing to share that.

What we're tasked with doing both at the Office of Native American Affairs and the Native American Affairs Committee -- is to find a medium that allows agencies and CRM practitioners to gain insight and knowledge into how to gain access to that traditional knowledge from our tribal leaders and our tribal cultural authorities. That is not a simple task.

We heard it loud and clear yesterday in our committee that yeah, this needs to happen but it should not be guidance because to provide that kind of guidance in itself would be inappropriate, but more informative at the onset, and teaching from the perspective of, "ACHP is going to help you with this process and partner with you through informative papers, through some opportunities to learn."

You heard it loud and clear yesterday during our committee meeting that, yeah, this is a path that we need to follow to move forward.

I could ask every one of you at this table what your idea of traditional knowledge is, unless you're at our committee yesterday, which makes you one, a good person, and two, very fortunate, because yesterday, your opinion would have changed dramatically based on what the governor explained to us.

What we're looking to do is to merge that gap, to fill that gap between what the Environmental Protection Agency is calling traditional ecological knowledge, which many tribes have signed on for, and what the historic preservation community is calling traditional knowledge, and helping to explain to you all that in that space, one does not exist without the other. They are indeed very similar, if not, the same thing.

We will provide for you in the coming meetings an informative paper that explains this and then also, hopefully, some more testimony, because while you've heard the explanation from the Southwest and the Land of Enchantment in New Mexico, our brother and sisters in Seattle will see it one way. The People of the Forest and the Great Lakes will see it another way, and so on and so forth.

The goal of the presentation of traditional knowledge is to teach, to inform, to bridge gaps, and to provide opportunities to expedite processes that are duplicative of each other. I think that we're definitely on that process now with you all.

If you thought yesterday's speaker was great, Valerie's got a bunch of stuff planned even though she doesn't know it, but...

[laughter]
Reno: ...we'll have it in the coming meetings. Thank you, Mr. Chairman.

Wayne: Dorothy, then Shasta.

Dorothy: Thank you, Mr. Chairman.

One of the things that was very important to me to speak about in the meeting yesterday is the importance of acknowledging tribal experts. I think Reno said it, [inaudible 157:20] and their elders, and they're not always the same person. [laughs]

Tribes acknowledge people that have traditional knowledge, and respect those people and defer to them because they've gained this wisdom over the years, and they know how to do things in the correct way.

In my day job in the Repatriation Office at the National Museum of Natural History, we have practices where we defer to the tribes on things like sacred objects, because the museum cannot identify sacred objects. The objects are not sacred to the museum.

Most of the people in our office are not tribal members, so people don't have expertise on what the meaning of objects are and how they relate to a tribal community.

Tribal members come in and explain to us, "This object is sacred. We need it back for ceremonies." We are required to respect that expertise when that happens.

In my own experience, I've had [laughs] situations where my own tribal expertise and knowledge has been questioned because I was speaking about our tribe's origin stories, and I was told that I needed to have a citation for this. [laughs]

I thought about putting it down as a personal communication from the Choctaw elder who had told me our tribe's origin story, but the museum wanted a written citation. I worked to find a Choctaw PhD who had written this story and this dissertation, and I cited that. [laughs]

It's important to respect the people who hold this knowledge into say that those are the experts. It's not just as big as something that has been written down by a Western scientist. That doesn't make it traditional knowledge that something written in a book is not necessarily the thing that we need to be relying on.

We need to be listening to people in the communities. Thank you.

Wayne: Shasta?

Shasta: Dorothy's experience resonates with me because I am the non-tribal expert. I'm not tribal but I represent a tribe. Through my position with NAPO, I'm representing the Tipos. I'm finding that, even still today, when somebody is looking for an expert in California, I'll get these requests.

A few weeks ago, I got an email from the president of the San Diego County Archaeological Society. She said, "Shasta, we need somebody to come and give a talk on ethnobotany," which is what I did my master's thesis on. "Can you come and talk to our members about ethnobotany?"
I responded, and I said, "Here's the contact information for one of our tribal members who knows the native plant use, and I'd recommend that you have him come in and give your presentation."

I thought, "Really?" After all this time, they're still asking me. They're not asking me to find them a tribal member who's willing to share that knowledge. We have a long way to go.

In this attempt to define traditional knowledge, we have a long way to go just in figuring out what we mean when we say define traditional knowledge. I think the governor of the Republic of Santa Ana made this clear yesterday. It's not something that you can define.

Western science and Western ways of knowledge-making tend to focus on categories and taxonomies. That's not really a traditional way of defining what things are. If you're going to define this, then let's define what we mean by defining. [laughs]

I know I'm making this very philosophical, and that makes things hard. As was raised at the meeting yesterday, the committee meeting, if we put these things into words and we define them in ways that don't have flexibility, that actually makes things harder for tribes.

When it comes to sharing the knowledge that they often don't want to share but have to share in the service of saving what's most important because the West and our ways of knowing in the West don't acknowledge that these tribal definitions are as significant as they are.

I'm struggling with this a little bit. I see the need for it to happen, but I also understand the fact that these are confidential types of ideas. There's sacred ideas, and that there's currently 567 federally recognized tribes, and thus 567 potentially different ways of defining traditional knowledge.

Even more than that, because you're going to find different definitions within the same tribe. We need to, I think, tread very carefully on this and try to split the difference between having hundreds and hundreds of individual definitions.

Also, not doing what in anthropology we call "under differentiation" and assuming that a single definition is going to apply to every single circumstance.

As we proceed on this attempt to define traditional knowledge, we have to keep these different ways of knowing in mind and privilege the native ways of knowing, and do what we can to listen more to those practitioners with that firsthand experience.

For me, I am the mouthpiece of the tribe that I represent. I would never dream to speak on those things without their permission. We need to keep that respect moving forward as we make these attempts to codify something that is not really subject to codification.

**Wayne:** Katherine and Bob.

**Katherine:** Reno and the staff for the Native American Affairs Office, I think it's really important to bring the awareness of tribal knowledge forward, and create an opportunity for that information to be shared.
For those of us that have worked in Indian country for a long time, what we know though is it's going to take a lot of time and a really major commitment on the agency's part to building relationship, because that information doesn't come to you easily. As you pointed out, it's not always shared easily. The relationship building becomes a foundation for how it will be presented and how you can accept it.

Wayne:  Bob.

Robert:  This is more of a comment, Mr. Chairman, as opposed to a question.

I want to applaud Reno and others who were involved in arranging for the governor to be with us yesterday.

I found it to be a very moving experience, a learning experience, an uplifting experience, but it caused me to re-examine my own humanity. I think that the most noble characteristics that defines one's humanity is to establish respect for others. The other one is to accept our differences. From that experience, I hope that I grew from what we were exposed to yesterday.

We have talked a great deal about really re-examining what we call preservation. When we started out over 15 years ago, driven by the Conference of Mayors report, With Heritage So Rich, perhaps there's nothing more rich than this knowledge that we speak about.

I just hope that as we proceed in advancing the preservation of our rich and diverse natural and cultural heritage that our respect for one another, our respect for our differences will continue to grow as well.

Maybe there will be other opportunities for us to have more interaction with other governors, other mayors, other tribal leaders, other leaders from the Latino community, the African American, Asian communities.

There in my judgment is no substitute of personal interaction. You can communicate all the messages we wish from the various satellites and what have you, but until I see you interact with me, there's no substitute for that.

I think that in terms of our preserving our rich and tangible heritage, that we'll continue to open up the forum to interactive one-on-one or in group dynamics. Again, I want to thank Reno and all who have made it possible for me to experience the government yesterday.

Thank you.

Male Participant:  Following on Bob's comments, I just want to remind everyone that in this country, native Americans, through the boarding school process, were forbidden to speak their traditional languages.

That was a government policy, so the fact that the governor was able to join us and speak to us in his own language, finish the entire speech in his own language, the significance was not lost on me.
We need to remember how important language is, that this country had a policy of forbidding native youth to speak their own language.

**Wayne:** Not only speaking, but the clothes, the hairstyle, the mannerisms and everything else. I've often been told by tribes, "If you lose a language, you lose a culture."

Dorothy? Terry?

**Terry:** I have a sister. I have to say, I appreciate. I feel all the troubled members of this community here have been always very forgiving. I'll say I'm not a member of a tribe, but Reno said, "But you are."

I'd first of all like to reiterate that the live spoken language embodies a culture. I learned that again yesterday as well. Having grown up in a bilingual community, but barely being bilingual, I can state that fact, that I understand it going into my own home and half the literature is in Chinese and I am not capable of reading fluently half of it.

It's really stunning, but the separation as the generations go forward and to push to continue with their language and teach the children, is core to the identity. Not native here, immigrant person here. We probably have a different trajectory, but for the native people, it's really so important.

I'd like to speak to the concept or the attribute of the word "landscape," commonly used to describe everything from economy to academics to marketing landscape, but here we have the traditional cultural landscapes to consider, with the now called traditional ecological knowledge.

I would point out that my background is also in field ecology. We learn following people around in the field who point things out to us that we may understand and we're forced to hear it's insane. In fact, we were taught by the guys at the Yale Forestry School.

That's key to what Reno was talking about. Having someone teaching him is how we are also taught, but we don't have the language attribute or the traditional knowledge attributes of what we're seeing. On the other hand, it isn't entirely scientific.

When you look at a site or a place, you're looking at the whole system and its health. You can see by the patterns, how things are interacting. As a designer, I look at it and say, "Well, if you had this intervention, would it destroy it or it would be compatible with what's needed?" It's taught and it's about interpretation. It's not about regulation, so to speak.

As I am an appointee to this esteemed body and I will be replaced at some point in time, I would urge part of the strategic plan for the Advisory Council to consider always having on staff somebody who has an ecological training, whether it be landscape architecture or other types of land management interpretation.

Nancy Brown had that prior to me, and she's now retired. That might be a way for the Advisory Council to have within your staff conversation someone who has some pre-knowledge as a resource.

The last thing I'd like to say, it's interesting hearing this idea about defining what knowledge is. I think it's like a schism where that means are we defining what isn't knowledge? The concept of
traditional knowledge, I am imagining, at least in my own experiences, that we're barely scratching the surface of things that can be known.

By eliminating some of it, we're cutting ourselves by the legs for something that we're going to need later on that we just don't understand yet.

That being said, I appreciate having this conversation and look forward to more of it in coming years.

Wayne: I think, Terry, the new hire bill has a lot of these attributes as well that you speak about, correct? Yes. It was a good hire. Reno?

Reno: I think I would close it out by, again, in reiterating that we are definitely not trying to define what traditional knowledge is, because speaking as a Kashia man, that would be a sin in my culture to ever try and define for another tribe what sacred is.

If you've ever gotten an email from me, you see that front and center in every single email, because our purpose as Kashia is to educate, educate, educate, which is part of the reason why I accepted the nomination and the appointment by President Obama to serve here.

Again, we are trying to bridge that gap to help agencies and practitioners to understand, "How do I go about getting that traditional knowledge from this tribe? Where do I incorporate that into the process as I'm going through not just 106 but the many other portions, whether even in [inaudible 174:25] in the State of California?"

ACHP should lead that way. ACHP will lead that way. When we talk about the governor showing up and his position, we also have to look at our staff at ACHP, Valerie's sitting here, and Guy is here who brought his son, and be thankful that we have a staff that has a depth of knowledge and understanding to recognize these opportunities, present them to us in the leadership positions, and ask for permission to include this on our agendas.

That's exactly what happened. You can see how much dialogue that this generated. Valerie, good job. Thank you very much.

Wayne: Very good. Yes, Valerie, thank you and staff for putting this together. I think we were at Standing Rock Sioux when Valerie was given a blanket of appreciation. You could see the love that the tribe had for her. I don't know, are you in the audience, Valerie? There you are. You guys always hide in the back. I can't see you through the crowd here.

Male Participant: That's intentional.

Wayne: It's intentional, I know. Anyway, thank you so much.

I'd like to move onto the Section 106 success stories and the future directions. First of all, I'd love to thank Shayla for doing all this editing and putting this together and Kath for coming up with the original concept of this. We now have 106 success stories, yahoo.

We finally made it, and we're going to continue with that, too. As yesterday, I also suggested that we have 110 Section 110 stories. Then, maybe we could follow with 213 Section 213 as well.
Wayne: If you don't know what those sections are, look them up.

Wayne: I'd like to call on Bob briefly to share on our committee's thoughts of this.

Robert: I want to ditto your comments about where we are in the 106, Mr. Chairman. That's pretty much it in a nutshell, to salute Reid and Shayla and others who have produced 106. 106 equates to the 106 Section of the Historic Preservation Act.

These statements have been widely used at conferences, Congressional visits. I've used them extensively in a wide range of speaking engagement to diverse audience. These are extremely effective tools of conveying in a succinct way the good work on the part of the Advisory Council in the interest of the American public in preserving our heritage.

There was general agreement in the meeting on yesterday that we'll continue to produce these success stories. I want to commend all involved. I would encourage members of the Advisory Council or members of your respective staff, if you'd like to get hard copies or any kind of a background relative to an individual success story, don't hesitate to call on our staff. They are very responsive.

These are very effective tools of communicating the thrust of the council in carrying it out the letter and spirit of the Historic Preservation Act. Good work, Mr. Chairman.

Wayne: By the way, these are also on our website?

Male Participant: They are.

Wayne: Wonderful presentation we were shown yesterday. I like the format, the two-page format. As Bob was saying, when we go to meet with our legislators on the Hill and stuff or their home offices, it's really great to bring those in. They really love to see that.

Kath, did you want to say anything?

Katherine: Mr. Chairman, I'm not sure I'll sign up for the 110 success stories. Actually, you bring up an interesting point though. That is, that this project really focused on the 106 process and its successes.

From time to time, it has been frustrating because we come across a great case, a great opportunity working with the federal agency where they've stepped forward and done their 110 responsibility.

They're stepping up to do things differently. We made a decision that that wouldn't be included in this category. I think there is an ongoing need to talk about the successes that we do writ large,
and to capture those as they become both educational, but also celebratory about the work that's going on.

As I said, I don't think I want to sign up for the next group of stories necessarily, but it would be good to work with the staff on where are those next group of ideas that come forward that highlight the successes that agencies and communities commit to together.

One of the things that I was thinking about as we were talking about traditional knowledge, too, is that there are three stories in the group that you have now where the tribes are surrounded by federal land.

Their traditional knowledge really became a pivotal point in the success of what happened with the engagement on that. As we start to look forward in talking about traditional knowledge, sometimes just the example is a way to get you past what did happen there and how do you talk about this stuff.

**Male Participant:** Building on what Kath said, and as someone who, next week, will be in Norfolk teaching a course on historic preservation, I'd like to suggest as I suggested yesterday that we look at 110 and looking for success stories there and examples that we look for success stories for the NIPPA 106 substitution or [laughs] whatever.

Integration, that would be very helpful. I get a lot of questions from students about 110 and also about that area. That would be very, very helpful.

**Male Participant:** Maybe, we can get ZEQ to write that one.

[laughter]

**Wayne:** Oh yeah, with our ample staff and budget.

[laughter]

**Male Participant:** That's only 102 so that wouldn't mean anything.

**Male Participant:** First, I want to really emphasize Shayla's role in this. She was more than an editor, she was the enforcer that got us to turn in stories on time. She was just adamant about having one from every state.

We got to 106, and we were missing Mississippi. Shayla, through due diligence and grit, now has story 107 from Mississippi that's in the mill. We're delighted to have that. [laughs]

[applause]

**Male Participant:** I'd also like to thank all the staff members that contributed to drafting these things and acknowledged that in me that they had the editor from hell.

[laughter]

**Male Participant:** I had great joy rewriting stories right and left. One thing that I would appreciate, particularly the federal members, to think about and send us any ideas, is how you
might be able to use these within your agency to educate people on the 106 process and why it doesn't have to be a painful exercise and how it can come out with good solutions.

One of the things that we discussed in the CEO committee meeting was what do we do with them now? We've got a proposal for a really nice compendium that we'd have online. How could we package or distribute these things to take advantage of the information and sales pitch that is in these?

Like I say, we would welcome any suggestions.

Then, my last thought is that under the NHPA, it's the Secretary of the Interior that has the authority for issuing the guidelines on section 110. I think the National Park Service can do the 110 success stories.

[laughter]

**Wayne:** I'd also like to bring up a point that was raised in the meeting when we were talking about this yesterday is if you just take one out of your packet, the long-term project alliance highway construction with historic preservation, and you flip that over you'll notice that it's not just a federal action or ACHP action, it's state, it's local preservation groups and everything else.

You got Federal Highway Administration, our group, the State Historic Preservation Office, USDA, Department of Transportation from West Virginia, the Virginia State preservation officer.

Palm Springs and farms, [inaudible 184:38] alternatives, Association for Preservation of Civil Wars Sites, and the Hampshire County Planning Commission in West Virginia. These go, and they stretch across great areas. That's probably why it is so successful, is that it's really and always has been, in 106, a partnership relationship.

Even though the title is 106, it's really more of a partnership that we have. I don't know which of these success stories, perhaps Shayla could tell me who had the most, in terms of the groups that were here. I heard that one had 12 in them at one time.

In any case, that is of a great value, that just not only rests with the federal agencies, but also with all of the other people that were involved in this.

Yes. Barbara.

**Barbara:** I was pleased that this this particular set here has four related to transportation, and there certainly have been quite a number related to transportation issues. We were thinking about what we could do in DOTDUs. All of those.

There's a tendency of people in agencies to look at these processes as a hassle, and to really show how the dispute process results in positive outcomes is just so valuable. Using it to send that message, and say we can have good outcomes from these processes is helpful.
Wayne: One thing you could do, I know when John and I were there at DOTE years ago, when Bob was there, that you could get them printed on fabric and hang them in spanners down the hallways.

[laughter]

Wayne: Spruce up those hallways a little bit.

Barbara: We have a lot of wall space.

Wayne: You sure do.

Barbara: [laughs]

Wayne: Beth, yes.

Beth: As the federal agency that is coming to the rescue to fill out the state representation in Mississippi, and having several other success stories published as part of the series, I do find it a really valuable thing. We have used it in-house at GSA in various ways.

Not only highlighting the work and preservation month with all the partnerships that you mentioned, Wayne, that are represented in these. It's terrific that they're all online. You could look at your website and figure out potential ways to make them more accessible.

Wayne: One thing that we saw yesterday, which I thought was a good thing, is that besides just looking at them through numbers and names, a lot of people don't we, we did it per...What's the word I'm looking for? Before the issue.

There's one on transportation. There's one on Native Americans, there's. You could get those and all of those within follow up. We gave staff yesterday some other good criteria, in terms of looking at those. A lot of people, they don't know what the name of it is, or even the agencies that were involved.

Beth: Even if you were to index them or have a table of contents by states, or by agency, or by some other way.

Wayne: Alphabetical, the whole thing.

Barbara: It would be much more efficient to try to find them online. It's terrific that they're all there. It takes quite an effort to go through and look at them as...

[crosstalk]

Wayne: We can do the keywords, which really helped a lot, too, in terms of putting [inaudible 188:19].

Male Participant: We're working on that. Apropos what Beth just said, and Barbara said, it would be useful for us to hear how agencies or other members are using these things to share. If GSA comes up with a really novel way of getting it to your folks, and then let us pass it around to other members and other agencies.
I'd be really interested to work with NAPC to see how we can use these to raise the level of understanding the local preservation commissions and local preservationists to do that.

**Barbara:** We have shared them quite a bit. That's something we like. Our members do enjoy reading them. They have worked on some. We do. Absolutely.

**Male Participant:** John, just real quick. As we talked about briefly, perhaps we want to have a link in the GAD -- and I can't remember the agreement document -- but have a link to there, so that they might be able to use it in that fashion as well.

**Male Participant:** One of the things that we've talked about is adding links within the stories that take you to deeper understanding of a particular issue or program.

The other thing, picking up on what Wayne said about consulting parties, I think that if one sat down and went through the consulting parties for all these 106 cases, we might find some very interesting constituencies to reach out to.

The Fort Leonard Wood 106 success story that's in this current packet has two local chapters of the NAACP, were consulting parties in the section 106 process.

I think as you go through, you'll see those same kinds of community groups and groups that have interests that you don't think of as being historic preservation, but this is where there's been an intersection with what we do and what they do.

**Wayne:** Very good. Thank you, staff. It's been great. I'd like to move on to committee reports, but not the full report, guys. OK? He's been giving that in bits and pieces. I'd like Bob to say something about the Historic Black Colleges project.

Jordan an update on Veterans Administration, Department of Transportation, Railroad Right-of-Way program comments. Brad, something about the legislative agenda. By the way, students, I keep apologizing for our staff and stuff when they use these acronyms on it. Hopefully, guys at the table, spell out what you do when you talk about it.

**Male Participant:** I'll start, Mr. Chairman.

**Wayne:** Turn it on.

**Male Participant:** It's on. Thank you very much, Mr. Chairman. I touched upon the Historically Black College and University initiative early on as we talked about the strategic plan. Just a little bit of background, every president, starting with the President Carter, has issued his own executive order in support of Historically Black College and Universities.

Today, there are 105 fully accredited colleges and universities. Most prominently recognized college and universities in that category here in the United States, obviously, is Howard University, in Washington. Hampton University, in Hampton, Virginia. Tuskegee, and Morehouse College.
If I may, Mr. Chairman, with respect to Morehouse College, this evening at 7:00 PM at a candlelight vigil, we will pay homage, pay our respect, and pay our gratitude to one of the most distinguished alumnus of Morehouse College, who left us all too soon at the age of 39.

His legacy continues to endure us. That's Dr. Martin Luther King Jr. Today, 51 years ago, on the balcony at Lorraine hotel, he transitioned to heaven. On behalf of the National Park Service and the Memorial Foundation, which was authorized by Congress to construct the memorial through their fraternity, they have a fire fraternity.

I invite all of you to join us if your schedule permit. Seven o'clock at the memorial, at the 1964 Independence Avenue. That number, 1964, has very significance, too. That was the year that President Johnson, my homeboy, signed the Civil Rights Act of 1964.

We will be continuing this program working with the White House Initiative for Historically Black Colleges with Morgan State University, the National Trust, and certainly, my old agency, the National Park Service. This year will be including Tuskegee University, in Tuskegee, Alabama.

We hope to continue to involve other college here that have significant minority population, again, broadening the circle of the face of America in this noble endeavor we call historic preservation.

I want to thank the leadership as exhibited by Wayne and by John, and the members of the council, of supporting this effort. We'll continue to give it our very best.

Male Participant:  I just want to recognize the partners that have made this possible. First of all, kudos to Susan Glimcher and the CEO staff, for coming up with this in the first place, and then carrying it through. The National Park Service has provided the funding and the experiential opportunity at the Western Training Center at Grand Teton.

I'm sorry, Joy has left. Joy Beasley has just been a fantastic partner. We're really looking forward to continue to working with her. The HOPE Crew program at the National Trust has been an integral part of this. The ACHP Foundation has provided its assistance in building the partnership, getting the resources out to the participants, and providing wise counsel on how to go forward with it.

It's a great interagency public-private partnership that we really look forward to continuing.

Male Participant:  Mr. Chairman, for the federal agency program's committee. Very briefly, last year, we all approved two program comments. You might recall the Department of transportation's program comment on rail rights of way, and the Veterans' administration comment on vacant and underutilized properties.

I'd like to turn to Reid to report briefly on the status of implementing those program comments. Reid.

Reid:  Thank you, Mr. Chairman. I will be brief. I'm pleased to report that there has been significant progress in implementing both of those program comments. Program comments that were very important to this membership, and the subject of a great deal of discussion last year.
Regarding the program comment to the Department of Veterans Affairs, which we issued on October 19th of last year, we have just, a few days ago, received a list of properties that they have determined should be subject to the program comment 391 properties and all.

We will be working expeditiously to inform preservation and veterans organizations about that list, and put it on our website, so that the appropriate stakeholders will have the opportunity to weigh in on that. That was an important part of the process that we built into that program comment.

Turning to the Department of Transportation program comment, which this body issued last August 17th, there were two parts of that program comment. One was an exemptions part, which we learned from the Department of Transportation yesterday has been used about 106 times -- I love that number -- about 106 times.

[laughter]

Reid: Interestingly, it's been used principally by Amtrak, we understand. There was also a property component, if you will. Perhaps the part of it that got a little bit more attention from this body.

One of the things that the program comment required was that the Department of Transportation in consultation with us issued guidance on how to implement that part of the program comment within about nine months.

We have had a number of very productive meetings with the Department of Transportation recently to provide some initial comments on that draft guidance. It will, when it's cooked a little bit further, then be available for you all to comment on. We'll make sure that happens.

I would just also add that the government shutdown threw a little bit of a wrinkle in the timeline of the development of that guidance. We're working with the Department of Transportation to identify an appropriate extension to that timeline. We'll get back to you further on that, if need be. Thank you.

Wayne: Brad, I understand you have some comments on legislative agenda.

Brad: Yes, thank you very much. A couple of things before I start. I do want to thank Drew and her staff for the work that they do for the Office of Preservation Initiatives and for our committee.

I believe this is Drew's first meeting as the new director of the Office of Preservation Initiatives. Congratulations, Drew.

[applause]

Brad: Just a couple of things on the legislative side. We're continuing to be guided by the legislative agenda and guidelines that we developed over the past year. A couple of things that are worthy of note, just for everyone. All of this information is in your materials, but I just raise a couple of them.
The appropriations that were passed in February, the preservation program received $102.66 million, which is the largest appropriation that we've had in the history of the program. I know that the preservation partners have aggressive, optimistic budget proposal for the upcoming FY2020 which will total $140 million.

We again have a chance to exceed a record appropriation in the future. I also want to call your attention to legislation that was also passed in February. The John Dingell, Jr. Conservation, Management, and Recreation Act. There are many important elements within that. A couple of them, I would just highlight.

The Land and Water Conservation Fund was permanently reauthorized, which has obviously not been done in the past. There was reauthorization for historically black colleges and universities. That was part of this, the Golden Spike National Historical Park.

Among other things were a number of new designations. There were six new national heritage areas that were designated, as well as five new national monuments, among others. That's how I'd like to leave my remarks.

Thank you.

**Male Participant:** Mr. Chairman, can I really briefly? I just want to mention that this is also Jamie Lottinger's first meeting as assistant director. Congratulations to you.

[applause]

**Male Participant:** I told you so, right? To Reid and your wonderful team, thank you very, very much for the work that you do.

Thank you.

**Wayne:** Very good. There is no new business at this time. We do have a schedule set up in consultation with Amie. We've talked to her about it. The summer meeting will be held July 9th and 10th. This is a Tuesday and Wednesday, just to make it a little bit more complicated.

The fall meeting will be November 6th and 7th. That will be a Wednesday and a Thursday. Right now, they are all scheduled here in DC, although I always recommend that we get out. The greatest meetings we've have been out of DC, for a lot of different reasons.

Before I move for a motion to adjourn, I'd like to thank staff now in presence. They've been great. John, whose leadership has been terrific, even though I kid him a lot. I've made my valedictorian statement twice now, so I'm not going to repeat that.

[laughter]

**Wayne:** I would like to continue encouraging the new chair, as well as the rest of you, to work with the White House in getting a more diverse membership on the council. When I came on board, we had one Latino from Texas. His name was John. I can't remember the last name.

**Male Participant:** That was John Garcia.
Wayne: John Garcia. We have now, I think, built a council to try to represent the full story of our history and heritage in America. I hope that continues with that initiative in the White House. I know when I was dealing with him, he was very encouraging on that. He was terrific.

With that, I'll leave you with a great, "Thank you," and move that we adjourn the meeting.

Male Participant: You've got a motion.

Wayne: Yeah.

Male Participant: I so move.

Wayne: Now we've got two. Two motions. It's all right. All those in favor say, "Aye."

Participants: Aye.

Wayne: All right. Yahoo.