CHILKAT INDIAN VILLAGE
"Yee gu.aa yax x'wan."

An Indian Reorganization Act Village
Under Act of Congress June 15th 1935
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October 29, 2026

Dear President Mallot and AFN Leadership,

The Chilkat Indian Village (Klukwan) Tribal Council sincerely appreciated the opportunity extended to us to participate as guests in the AFN's Legislative and Legal Committee meeting on October 28, 2026. Gunalchéesh for letting our voices be heard as you all discussed AFN's strategy for AFN Resolution 26-49 on S. 5653, the Bipartisan American Affordability and Jobs Act (BAAJA). We understand how complex and fast-moving the S. 5653 process has been and how AFN leadership is navigating its many responsibilities and opportunities associated with congressional permitting reform. We appreciate AFN's commitment to its Tribal Nations, Alaska Native Corporations, and the Alaska Native community at large. As AFN leadership works with our Alaskan congressional delegation, CIV wanted to offer the following analysis for your consideration. Yesterday's committee meeting was a meaningful step forward in advocating on behalf of our community. AFN leadership should be aware of all the proposed changes to Section 106 of the National Historic Preservation Act as it carries out its advocacy strategy.

To complement consultant Leif Fossenbeck's analysis, we offer the following breakdown of changes proposed in S. 5653 below. The outlined changes work together. They decide which places count, which projects are reviewed, how much of a place is considered, who decides whether there is harm, and what a court can do when the law is broken. Amending one provision leaves the rest in place, so a narrow fix, such as simply changing "may consult" to "shall consult," would not restore the rights Tribes and ANCs hold today.

That is why a redline of Section 2301 will not work. Each change is a separate gate, and a project needs to get past only one of them to escape meaningful review. Fixing the definition of places of religious and cultural significance protects nothing if the project is no longer an "undertaking" because its only federal tie is a grant or loan. Restoring consultation when places are identified means little if the agency still decides on its own whether there is harm, can set preservation aside "in the sole discretion" of one official, and faces only a remand if a court finds the law was broken. Any provision left standing becomes the route around the ones that were fixed, so a line-by-line negotiation would still leave Tribes and ANCs with less than they hold today. These amendments rewrite the NHPA itself. They would apply to every federal undertaking in Alaska and across the country, not only to the energy and transmission projects the bill is meant to accelerate.

We strongly urge AFN leadership to hold the line: all of the language regarding the National Historic Preservation Act must be removed from S. 5653, or the entire bill must be opposed. Opposing only portions of the bill will compromise the sovereignty of our Alaska Native Nations and the rights of our Alaska Native Corporations.

Gunalchéesh for your consideration,

Kimberley A Strong

Hus.kéi, Kimberley A. Strong, President

Provision	Current law	What Title III does	What it means for Alaska Tribes and ANCs
A. WHO HOLDS THESE RIGHTS			
"Indian tribe" under the NHPA 54 U.S.C. § 300309	The NHPA defines "Indian tribe" to include "a Native village, Regional Corporation or Village Corporation" as defined in the Alaska Native Claims Settlement Act. Separately, federal agencies must consult ANCs on the same basis as Indian tribes under Executive Order 13175. Pub. L. 108-199, div. H, § 161, as amended by Pub. L. 108-447, div. H, tit. V, § 518.	Changes the Section 106 process that every "Indian tribe" goes through, including every Native village and every Regional and Village Corporation.	ANC rights in Section 106 come directly from the NHPA itself. The 2004 ANC consultation statute will not fill the gap: it guarantees ANCs consultation on the same basis as Tribes, and if Title III guts consultation for Tribes, ANCs lose it too. Every change below applies to federally recognized Tribes and to ANCs alike.
B. CHANGES IN DEFINITIONS			
Places of religious and cultural significance Proposed 54 U.S.C. § 302706(a)(1)	Properties "of traditional, religious, and cultural importance to an Indian tribe" may be eligible for the National Register, and agencies must consult any Indian tribe that attaches religious and cultural significance to them (§ 302706(b)).	For the first time, federal law would define what makes a place significant to a Tribe: "an identifiable geographic location or feature at which an event of continuing religious or cultural significance to a living community occurred." No savings clause protects places already listed or found eligible.	Places valued for continuing use, gathering, or belief, rather than for a single event that "occurred" there, may not qualify. A place that does not qualify receives no Section 106 review at all, and agencies could use the new test to reevaluate places already recognized.

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Undertaking Proposed § 306108(a)(7)	Section 106 applies to projects that federal agencies carry out, assist, fund, permit, license, or approve.	Requires a federal permit, license, or approval and "substantial Federal control and responsibility." Excludes "non-discretionary" actions, renewals of special use permits without substantive changes, transfers of special use permits, and actions taken under an agreement once it is signed.	Fewer projects are reviewed at all. Permit renewals and transfers on federal land proceed without review, even where knowledge of a place has grown since the original approval.
Area of potential effects Proposed § 306108(a)(2)(B); § 306108(c)(2)(D)(iii)(II)(cc)	Agencies consider the full area in which a project may affect historic properties.	Excludes any area affected solely by a portion of the project not subject to federal control or responsibility. Where a place extends beyond that area, the agency considers "only the portion of the property within the area of potential effects."	A cultural landscape can be reviewed one slice at a time. A linear project crossing ANCSA, allotment, state, and federal land could be reviewed only on its federal segments, with no one looking at the place as a whole.
Adverse effect Proposed § 306108(a)(1)(B)	Agencies consider direct, indirect, and cumulative effects on the qualities that make a place significant, including its setting and feeling.	Excludes visual, atmospheric, and audible effects unless they significantly diminish eligible characteristics. Counts only effects that "directly alter" a property, limits review to its character-defining features, drops "feeling" from the aspects of integrity, and excludes effects tied to other past, existing, or future projects.	Noise, sightlines, and the experience of a place, which often matter most for ceremonial and subsistence use, largely stop counting. Harm that accumulates project by project is never measured.

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C. CHANGES IN FEDERAL FUNDING			
Federally funded projects Proposed § 306108(a)(7)	A project funded by a federal agency is an undertaking subject to Section 106, whether or not it also needs a federal permit.	Excludes projects whose only federal involvement is a loan, grant, or other financial assistance.	Projects built with federal grant or loan dollars and no federal permit would receive no Section 106 review, whatever places lie in their path. In rural Alaska, where much community infrastructure depends on federal funding, this could take a large share of local projects out of review entirely.
Historic Preservation Fund Proposed § 303102 (Sec. 2302(a))	$150 million is deposited into the Fund each year from offshore oil and gas revenues, through fiscal year 2026.	Replaces the automatic deposit with $200 million "authorized to be appropriated" for fiscal years 2027 through 2036.	An authorization is a ceiling, not a check. Nothing reaches the Fund unless Congress passes an appropriation each year, so the headline number guarantees nothing to Tribal or State preservation offices.
Tribal database grants Proposed § 302703(b) (Sec. 2302(c))	No equivalent program.	$20 million a year "authorized to be appropriated" for fiscal years 2027 through 2030, awarded competitively to THPOs to build databases of places of traditional religious or cultural importance that federal agencies and SHPOs can access. Confidentiality protects only against disclosure "to the public" by the grant recipient.	The money is not guaranteed, lasts four years, and would average less per office than THPOs receive today. To benefit, a Tribe must record its sacred places in a system it does not control. Many communities deliberately do not record these places, because disclosure itself can bring harm.

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Funding penalties for THPOs Proposed § 302707	Tribes assume historic preservation functions on their lands voluntarily, as sovereigns.	The Secretary evaluates every Tribal program at least every two years. A THPO that "does not regularly comply with timelines for consultation" is deficient. The Secretary must then suspend contracts, cooperative agreements, and Historic Preservation Fund grants, and after two years "assume all or part of the functions of the Tribal Historic Preservation Officer."	Federal funding becomes a lever over a sovereign program. There are at least two THPOs in Southeast Alaska. Deadlines missed because of chronic underfunding become grounds to cut funding further and to place federal officials in the Tribe's role.
D. HOW THESE RIGHTS ARE EXERCISED			
Consultation when places are identified Proposed § 306108(c)(2)(B)(iii)–(iv)	Agencies must consult any Indian tribe that attaches religious and cultural significance to properties a project may affect (§ 302706(b)).	The agency "may consult" when it sets the area of potential effects and identifies historic properties. It must request information but incorporates it only "as applicable" and only if provided within 30 days. If the agency finds no historic properties, its Section 106 obligations end.	Consultation becomes optional at the step that decides whether a historic property is there at all. If the agency finds none, review ends, and Tribes and ANCs never reach the later steps. Thirty days is a short window for councils, elders, and cultural committees, particularly during subsistence seasons.
Deciding whether there is harm Proposed § 306108(c)(2)(D)(i), (D)(ii)(III); § 306108(c)(5)(C)	Findings of effect are developed through consultation with Tribes and other consulting parties.	The agency decides on its own whether there is an adverse effect. If it finds no adverse effect, its Section 106 obligations end. If a Tribe misses the 30-day deadline, the agency proceeds without it.	Even where a historic property is found, Tribes and ANCs have no guaranteed role in deciding whether it would be harmed. A no-adverse-effect finding made without them ends review before any discussion of avoiding or reducing harm.

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Agency override Proposed § 306108(c)(2)(D)(iii)(II)(ff)	Agencies must consider ways to avoid, minimize, or mitigate harm through consultation.	An agency may decline to avoid, minimize, or mitigate harm whenever, "in the sole discretion" of the federal official, "other considerations outweigh the consideration of historic preservation."	"Other considerations" is undefined. One official can decide that a project matters more than a place, and courts are directed to defer.
Courts Proposed § 306108(c)(9)(C)(i), (D)(i)(I)	A court that finds a Section 106 violation may set aside the approval or stop the project while the agency corrects it.	Makes "the only remedy" a remand "without vacatur or issuance of an injunction." Suits must be filed within 150 days.	A court can find that the law was broken and still not stop construction. A burial ground or village site destroyed during remand cannot be restored.

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