



September 28, 2026

Travis Voyles, Vice Chairman
Advisory Council on Historic Preservation
401 F Street NW, Room 308
Washington, DC 20001

**Re: Objection to Termination of Section 106 Consultation for the
Triumphal Arch Project**

Dear Vice Chairman Voyles,

The National Trust for Historic Preservation strongly objects to your decision to terminate Section 106 consultation on the proposed Triumphal Arch project. While 36 C.F.R. § 800.7 provides a mechanism for terminating consultation when agreement cannot be reached, that authority should not be used to short circuit an already-rushed consultation process that remains burdened by substantial unresolved legal deficiencies.

The Vice Chairman Lacks the Authority to Terminate Consultation

The Advisory Council on Historic Preservation (“ACHP”) has delegated its authority to terminate Section 106 consultations exclusively to the Executive Director.¹ The Vice Chairman cannot unilaterally terminate consultation, as your letter purports to do. As a member of the Council, the National Trust objects to your violation of the Advisory Council’s Operating Procedures, and we urge you to retract your ultra vires termination.

The ACHP’s Operating Procedures are clear: “The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a) to determine that further consultation will not be productive and terminate consultation, and to notify other consulting parties, providing them the reasons for terminating in writing.” This narrow delegation is in direct contrast to more common delegation language in the ACHP’s Operating Procedures, which typically empowers the Executive Director to redelegate authority to the Chairman.² No such redelegate authority is included here.

¹ Pg. 21, ¶ 7, ACHP Operating Procedures (as amended July 12, 2023).

² For example, the ACHP Operating Procedures for Section 800.6(c)(1), which delegates the authority to terminate existing MOAs, has the following commonly used clause: “[T]he Executive Director is hereby authorized to redelegate this responsibility to execute, amend or terminate a Memorandum of Agreement to the Chairman when the Executive Director so recommends due to the specific nature of the case.” Pg. 21, ¶ 5, ACHP Operating Procedures (as amended July 12, 2023).

The ACHP Cannot Review an Undertaking That Has Been Dramatically Altered, with No Assessment of the New Adverse Effects.

The undertaking currently reflected in the record before the ACHP is no longer the undertaking that the federal government now intends to execute. Throughout the Section 106 consultation, the National Park Service (“NPS”) represented that the proposed Arch is a commemorative work intended to celebrate the 250th anniversary of American independence. However, just eight days ago, on September 20, the President publicly announced that at the military’s request he agreed to convert the Arch “into a top grade Military Complex/Triumphal Arch, to house, store, and have the rapid ability to use large numbers of drones, plus Snipers, on both the roof and plaza areas, and additionally have and hold large quantities of sniper ammunition.”³

The NPS has not provided any documentation nor details of this proposed military use. None of the plans, drawings, assessments, or consultation materials provided to consulting parties describe such a use. This is in clear violation of 36 C.F.R. § 800.11(a), which states that “[T]he agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis.” Neither consulting parties nor the ACHP (to our knowledge) have been provided with any explanation of how the President’s announcement may require a change in the design of the undertaking and/or a change in its proposed operations. The new purpose of the Arch will clearly change (and exacerbate) its adverse effects on historic properties and its environmental impacts, but no evaluation has been released addressing the potential impacts of the newly repurposed project.

If the structure is now intended to serve military or security functions, obvious questions follow. Will the design of the Arch and plaza change to accommodate those functions? Will additional security features, barriers, surveillance systems, lighting, access controls, or operational infrastructure be required? Will public access be restricted or eliminated to the Arch and to the immediately adjacent traffic circle? Will the observation deck and interpretive features, which form a central component of the proposed mitigation strategy, remain available to the public? How does this change in use affect the FAA’s assessment of the project?

Consulting parties have sought answers to these questions. None have been provided. The Section 106 process cannot be completed or terminated when the undertaking itself is a moving target. Consulting parties are entitled to evaluate the project the government actually intends to build, not a project that is subsequently redefined through public announcements outside the consultation process. Before the ACHP transmits comments to the Secretary of the Interior, it should require the NPS to reopen both the Section 106 consultation and its review under the National Environmental Policy Act (“NEPA”), to evaluate the resulting effects of the President’s change in plans.

³ President Donald J. Trump, Truth Social Post (Sept. 20, 2026), available at <https://truthsocial.com/@realDonaldTrump/posts/117303154231930646>.

The Decision to Terminate Consultation Mischaracterizes the Record

The assessment of the consultation process advanced by the NPS and the ACHP is flawed. The dispute raised by the consulting parties is not a disagreement over mitigation; instead, the dispute focuses on the NPS's failure to fulfill its legal obligations to identify all historic properties, fully evaluate effects, consider alternatives, and seek avoidance and minimization of harm as required by the National Historic Preservation Act.

The NPS openly acknowledges that consulting parties, State Historic Preservation Offices, and the public consistently identified alternatives that could avoid or substantially minimize adverse effects, including relocation of the project, reduction in height and massing, and alternative commemorative concepts, including the concepts reviewed by Congress for the same location in 1924-25. However, the NPS simultaneously declared that those alternatives are off limits because they would alter the "fundamental nature" of the project. There is no legal authority nor precedent that allows for an exemption from the requirements of Section 106 based on the "fundamental nature" of a federal undertaking. Further, the NPS's refusal to consider any alterations to the height, scale, mass, design, or location of the proposed Arch is far beyond the "fundamental nature" of the proposed undertaking and represents a refusal to consider avoidance or minimization measures for the totality of the project.

The National Trust additionally objects to the ACHP's acknowledgement of "the NPS's efforts to identify historic properties and assess effects to them."⁴ The NPS has not met its legal obligations related to the identification of historic properties and the assessment of adverse effects. For example, the NPS has failed to consider or identify National Register-eligible historic properties and has instead improperly limited its identification and assessment efforts to properties that have already been listed in the National Register. The NPS has also refused to consider the cumulative effects of this undertaking, including its impacts on heritage tourism activities at the Lincoln Memorial, National Mall, and Arlington National Cemetery, and the reasonably foreseeable future impacts of allowing a new memorial to be built on the National Mall that violates both the Commemorative Works Act and Height of Buildings Act. 40 U.S.C. §§ 8901–8909 and Pub. L. 61-196, 36 Stat. 452.

Your rationale for termination is that further consultation is unlikely to produce agreement. That conclusion fundamentally mischaracterizes the record. The principal obstacle to agreement was not an inability of consulting parties to identify avoidance or minimization measures. To the contrary, consulting parties repeatedly identified alternatives that would avoid or substantially reduce adverse effects, including relocation of the structure, changes to its height and massing, and alternative commemorative designs. The obstacle was NPS's categorical refusal to consider those alternatives. As a result, the NPS's execution of the Section 106 process has been flawed and incomplete. The ACHP should direct the NPS to remedy these clear deficiencies rather than simply terminating consultation.

⁴ Pg.1, ¶ 2, Letter from Travis Voyles to Tammy Stidham (Sept. 24, 2026).

Legal Deficiencies Remain Unaddressed and Unresolved

Termination is particularly inappropriate because numerous legal deficiencies remain unresolved. As the National Trust and other consulting parties have repeatedly explained, serious concerns remain regarding the:

- Failure to identify all historic properties within the Area of Potential Effects, including properties eligible for the National Register.
- Failure to resolve disagreements regarding No Adverse Effect determinations as required by 36 C.F.R. § 800.5(c)(2).
- Failure to satisfy the heightened obligation under Section 110(f) to minimize harm to National Historic Landmarks to the maximum extent possible. While the ACHP's termination letter noted this requirement, it did not hold the NPS accountable for failing to comply with it.
- Failure to consider the cumulative adverse effects of the undertaking, including reasonably foreseeable future adverse effects.
- Failure to adequately address the relationship between this undertaking and other federal legal requirements, including NEPA, Section 4(f), the Commemorative Works Act, and the Height of Buildings Act.

The Short-Circuited Timetable Imposed by the ACHP Undermines the Public Participation That Section 106 Was Designed to Protect.

This undertaking has generated extraordinary public opposition. The NPS received more than 100,000 public comments criticizing the project, an unmistakable indication that the public cares deeply about the future of this nationally significant landscape. Rather than respond to the concerns repeatedly raised by the public and consulting parties, the NPS simply pushed ahead, accelerating the process toward a predetermined outcome.

The Section 106 process is not merely a procedural exercise in which public participation is tolerated only until it becomes inconvenient. Section 106 was enacted to ensure that federal agencies confront the consequences of their actions on historic resources and seriously evaluate opportunities to avoid and minimize harm. If 36 C.F.R. § 800.7 is going to be used as a basis to simply declare that the most meaningful avoidance measures are beyond consideration and then terminate consultation because disagreement remains, the consultation process becomes little more than a formality. That outcome is profoundly inconsistent with both the letter and spirit of the National Historic Preservation Act.

Historically significant places, and most especially those places of national significance, are important to our cultural inheritance. The purpose of Section 106 is to ensure transparency, accountability, and public participation before irreversible decisions are made, along with a meaningful effort to seek and evaluate alternatives and modifications to the proposal that could avoid or minimize its adverse effects. The landscape affected by this proposal, including Arlington National Cemetery, the George Washington Memorial Parkway, and the visual connection between the Lincoln Memorial and the Arlington House, are among the

nation's most sacred civic spaces. When unprecedented adverse effects are proposed for places of such consequence, fundamental disagreement is not a reason to end public debate; it is a reason to continue it.

Your decision to terminate consultation has the practical effect of curtailing that debate at the very moment when public scrutiny is most needed. And that harm is exacerbated by your unilateral decision to submit comments to the Secretary of the Interior only two weeks after announcing the termination, rather than using the full 45 days allowed by the regulations. This action unfortunately reinforces the perception that the federal agencies are just going through the motions of pretending to take into account the views of the public.

Major decisions affecting the nationally significant public landscapes in our nation's capital deserve a full, transparent, and meaningful public process. Closing the door on consultation before fundamental legal issues have been resolved undermines public confidence in that process and weakens the values that Section 106 was designed to protect. In preparing comments to the Secretary of the Interior on this project, the ACHP must acknowledge that consultation ended with substantial legal deficiencies unresolved, with avoidance alternatives never meaningfully considered, and with extraordinary public opposition left unanswered.

The Proposed Mitigation is Grossly Inadequate.

The NPS has already acknowledged that the proposed Arch would adversely affect at least 42 historic properties, including six National Historic Landmarks, 8 historic districts, 8 cultural landscapes, and 20 historic properties with individual significance. The actual adverse effects will be even greater, in light of NPS's failure to identify all historic properties, and failure to resolve objections to some of its No Adverse Effect determinations. Given the magnitude of these adverse effects, the proposed mitigation is grossly inadequate.

In our view, additional mitigation is needed in the form of a substantial mitigation fund. One of the fundamental principles of historic preservation is that adverse effects can be reduced if they are reversible. The mitigation fund should be kept available for future demolition of the Arch, and the amount of the fund should be sufficient to cover that cost. We urge the ACHP to include this recommendation as a part of its comments.

Conclusion

As a member of the Council, we again urge you to retract your unauthorized termination of this Section 106 consultation. The recent radical changes to the purpose and function of the Arch require additional evaluation, as there is nothing in the record yet that even attempts to assess these new effects. We suggest that you schedule a special meeting of the ACHP to discuss this particular undertaking and for the membership to review the actions that you have taken. Given the national importance of this Section 106 consultation and the overwhelming public concern about this project, the National Trust firmly believes that the utmost adherence to the law must be required and that the voices of the American people should not be prematurely silenced.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Merritt". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Elizabeth Merritt,
Deputy General Counsel

cc:

Ross Bradford, Acting General Counsel & Chief Legal Officer, National Trust

Reid Nelson, Executive Director, ACHP

Kelly Fanizzo, General Counsel, ACHP

Jaime Loichinger, ACHP

Brent Leggs, President & CEO, National Trust

Robert Nieweg, Acting Chief of Preservation Advocacy and Initiatives, National Trust

Shaw Sprague, VP Government Relations, National Trust

Chris Cody, Senior Associate General Counsel, National Trust