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Trump administration's EO may result in roll back of historic preservation efforts



Cultural Heritage Partners' Will Cook presents on some of the ways in which federal agencies could use EO 14156 to shirk responsibilities associated with Section 106 of the National Historic Preservation Act. (Screenshot)



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UPDATED: March 10, 2025 at 1:35 PM PDT

A state of emergency declared by executive order in January could have serious repercussions for “thousands of sacred sites and burial grounds, historic buildings and landscapes and archeological sites,” according to Cultural Heritage Partners, a law firm that deals with federal preservation law.

“We’re here today because our country’s legal protections for cultural heritage are under attack,” Marion F. Werkheiser, one of the firm’s founding partners, said in a webinar last Friday.

The webinar, which boasted more than 1,000 registrants in the field of historical preservation, was occasioned by [EO 14156](#), an executive order signed by the Trump administration which declared a national energy emergency.

That emergency order, the repercussions of which are unclear because of the strident nature of the order, may allow fossil fuel and energy companies to circumvent traditional processes used to ensure compliance with the Clean Water Act and Endangered Species Act. And those emergency processes may also be used to weaken the National Historic Preservation Act (NHPA), specifically by weakening Section 106 protections — a portion of the act that requires federal agencies to consider how their actions potentially affect historic sites and artifacts.

“For nearly 60 years, Section 106 has been the backbone of cultural heritage protection in the U.S. It ensures that before federally funded or permitted projects move forward, the government identifies and assesses potential harm to historic cultural resources,” Werkheiser told virtual attendees. “If we lose Section 106, we risk permanently losing thousands of sacred sites and burial grounds, historic buildings and landscapes and archeological sites. More than 170,000 federal undertakings were subject to Section 106 review just last year, and over 90% of the archeology that takes place in the U.S. takes place because of Section 106.”

There are nearly 60 Humboldt County properties and districts listed on the National Register of Historic Places.

Will Cook, a partner with Cultural Heritage Partners, noted that the executive order would essentially use the rubric of an emergency — conditions typically reserved for something like a natural disaster — to roll back essential functions necessary in historic preservation.

"In January 2025, President Trump signed an executive order declaring a national energy emergency ... but there is no actual national energy emergency," Cook said. "I think we're all aware that the U.S. is at the height of domestic energy production. This executive order is not about national security; it's about giving agencies and developers a blank check to void and ignore federal law."



Marion F. Werkheiser, a founding partner at Cultural Heritage Partners, fields questions about the implications of EO 14156 and the implications of the emergency declaration in a webinar last Friday. (Screenshot)

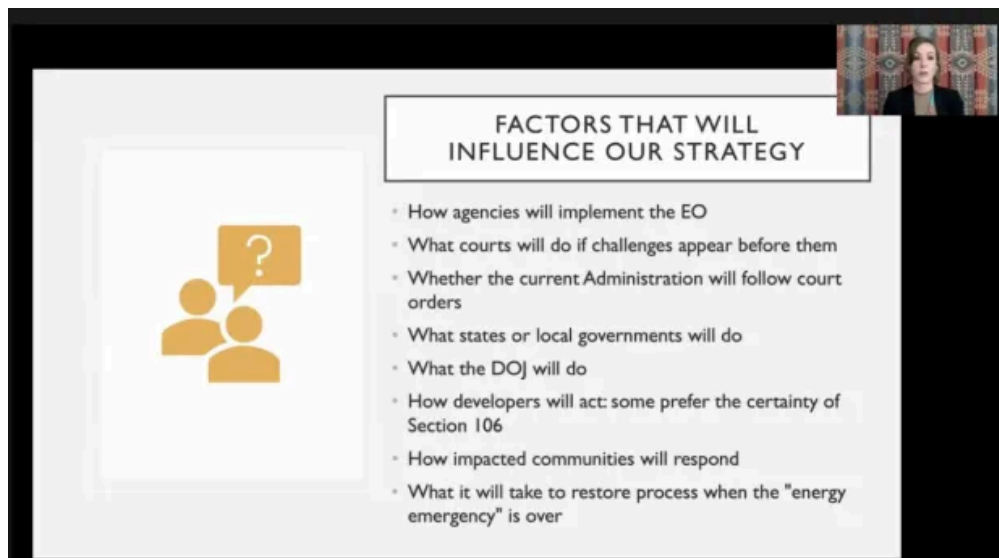
Cook said that the bill essentially fast tracks oil and gas plants, coal and uranium mines, hydroelectric power, and potentially even transportation infrastructure — but leaves “notably absent” solar and wind projects. This essentially creates a two-tier system in which sustainable energy projects are required to meet traditional regulatory challenges while extractive industries may be allowed to bypass critical safeguards that prevent the destruction of historical sites and artifacts.

“Anecdotally, energy permitting will happen very quickly with very little environmental review,” Cook told the Times-Standard. “I don’t think that’s an unreasonable prediction.”

"The Advisory Council on Historic Preservation (ACHP) has told agencies that they can bypass normal reviews on projects that fall under the emergency order's scope. Agencies are instructed to implement emergency provisions found in existing Section 106 agreements, and if there are no emergency provisions in (place), to implement what are known as the Section 106 36 CFR § 800.12(b)(I)," Cook explained, saying that in that case the project would be able to move forward with minimal obligation to stakeholders after only a seven-day period.

"There is ... no requirement to identify historic properties, no requirement to assess adverse effects, no requirement to assess cumulative effects, no requirement to engage with the public, no requirement to engage with additional consulting parties ... and most importantly no requirement to resolve adverse effects, meaning agencies no longer have an obligation ... to find ways to avoid, minimize or mitigate adverse effects," Cook said.

Cook also noted that the wholesale firing of federal employees has threatened to leave the project of historical preservation in the U.S. with a dearth of expertise. He also pointed to the revocation of two determinations of eligibility for two historic African American districts in Louisiana as part of an ongoing attack on historical preservation under the auspices of removing DEI from federal agencies.



The screenshot shows a presentation slide with a title box at the top right that reads "FACTORS THAT WILL INFLUENCE OUR STRATEGY". To the left of the list is a graphic of two stylized orange figures with a speech bubble containing a question mark. Below the title box is a bulleted list of factors:

- How agencies will implement the EO
- What courts will do if challenges appear before them
- Whether the current Administration will follow court orders
- What states or local governments will do
- What the DOJ will do
- How developers will act: some prefer the certainty of Section 106
- How impacted communities will respond
- What it will take to restore process when the "energy emergency" is over

In the top right corner of the slide, there is a small video inset showing a woman with dark hair, wearing a patterned top, speaking.

Jessie Barrington, an attorney with Cultural Heritage Partners and an enrolled citizen of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, described the firm's strategy for mounting an eventual legal challenge. (Screenshot)

And while the potential implications of EO 14156 seem deleterious at face value, Cook told the Times-Standard that a legal challenge cannot be mounted against an executive order without standing. Essentially someone has to be harmed before the potentially harmful order can be challenged in court.

Jessie Barrington, an attorney with Cultural Heritage Partners and an enrolled citizen of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians in Oregon, told the attendees that “we are developing robust legal strategies to challenge both the executive order and its implementation.”

She described ways in which the law firm is challenging the legitimacy of EO 14156 through a variety of different avenues. Those avenues include leveraging adjacent legal authorities that may remain unaffected by the executive order “such as NAGPRA, ARPA, state Section 107 equivalents, tribal laws, burial laws and tort actions.” The firm is also planning to ally with other legal entities — as well as natural resource advocates with similar concerns about attacks on the National Environmental Policy Act, Endangered Species Act and Clean Water Act.

Barrington also noted that one of the most robust potential challenges to the executive order may be that the order flouts tribal treaty rights and was created with inadequate consultation with tribal authorities.

“We suspect that tribes may have some of the strongest (potential) claims. Despite efforts to paint respect for tribes as DEI, tribes are sovereign nations with unique rights in American law. The federal government has a duty to uphold tribal treaty rights in the permitting process. The U.S. Constitution affirms treaties with tribes as the supreme law of the land.”

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Originally Published: March 10, 2025 at 1:29 PM PDT

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