

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

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### **Testimony to the House Appropriations Subcommittee on the Interior, Environment and Related Agencies Budget, Fiscal Year 2014**

The National Association of Tribal Historic Preservation Officers (NATHPO) submits testimony to the House Appropriations Subcommittee on Interior, Environment and Related Agencies on the Fiscal Year 2014 budget (suggested dollar amount in parenthesis).

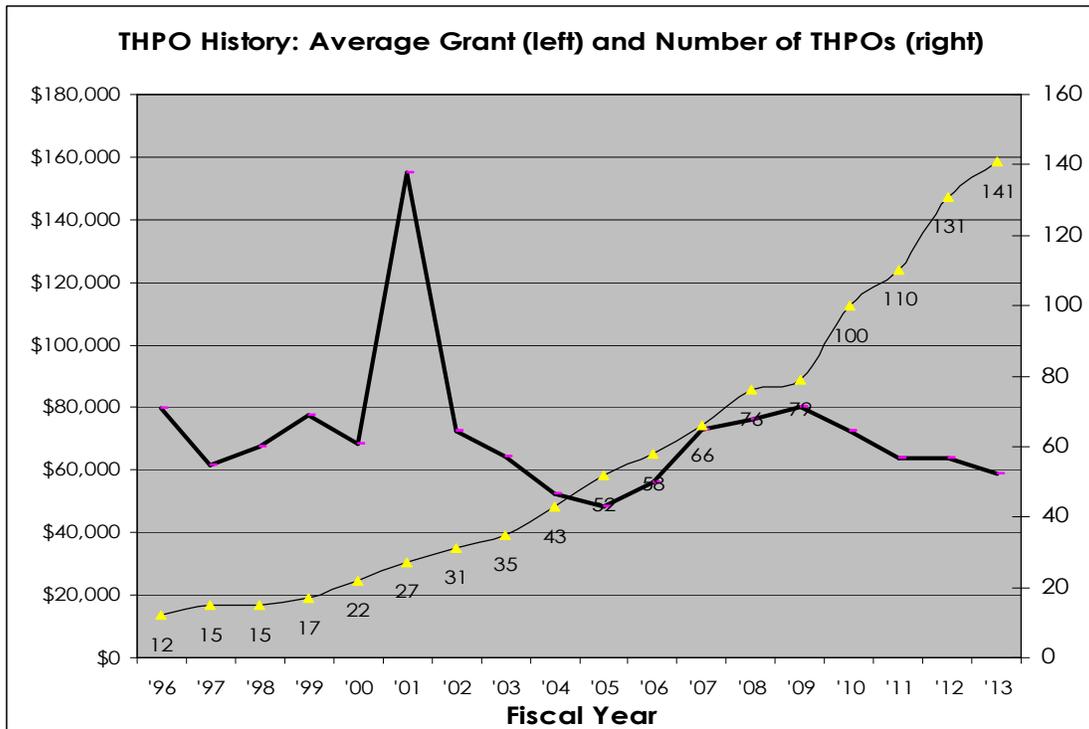
1. National Park Service, Historic Preservation Fund, Tribal line item (\$9.985 million); State Historic Preservation Officers (\$50 million); Underserved communities (\$3 million)
2. National Park Service, National NAGPRA Program:
  - a. Exclusively for NAGPRA Grants (\$2.331 million)
  - b. Program administration (\$1 million for Program/Alternative Use)
3. Bureau of Indian Affairs – Create line items and support the following divisions:
  - a. 12 Regional Offices support for Cultural Resource compliance (\$3 million)
  - b. Central Office cultural resource efforts throughout the bureau (\$200,000)
  - c. NAGPRA compliance work (\$765,000)
  - d. To fight ARPA crimes on Indian reservations (\$200,000)
4. Smithsonian Institution: For repatriation activities, including Review Committee and repatriation office (\$1.25 million)

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1. National Park Service, Historic Preservation Fund – Tribal line item (\$9.985 million)

As of April 15, 2013, there are 141 NPS-recognized THPOs in the country. These Indian tribes have assumed the responsibilities of the State Historic Preservation Officers (SHPOs) for their respective tribal lands, authorized by the 1992 amendments to the National Historic Preservation Act, and have a land base exceeding 30 million acres in 30 states. The Historic Preservation Fund is the main source of funding to implement the nation's historic preservation programs and its revenues are generated from oil and gas development on the Continental Shelf.

**What are Tribal Historic Preservation Officers?** THPOs are federally recognized tribal governments that have entered into an agreement with the Department of the Interior to assume the federal compliance role of the SHPO, as codified in 36 CFR Part 800. They are actively involved with projects to improve Indian schools, roads, health clinics and housing. THPOs are also the first responders when a sacred site is threatened, when an ancestral home is uncovered, and when Native ancestors are disturbed by development. THPOs are also responsible for their tribe's oral history programs and operating tribal museums and cultural centers. They perform many functions and responsibilities in Indian country and are an active expression and exercise of tribal sovereignty. For the past 15 years, these programs have become increasingly popular and successful with tribal governments. For the first time, they are recognized as the authentic representatives of cultures and societies that have been in existence for countless generations.

**What is at stake without additional funds for Indian tribes?** Without an increase in FY2014 for the expected increase in the number of tribes participating in the THPO program, Native American cultural properties located on millions of acres of tribal lands are at risk. For the past several years, each THPO program has been asked to conduct important federal compliance work with fewer financial resources. There are 141 THPOs in FY13 and there are expected to be at least 150 THPOs in FY14. It is essential that THPO programs be provided with adequate funding to meet the increasing needs and demands on their time to comply with federal, state, and tribal laws. Funding for THPO programs overall cannot remain static or decrease while the number of THPOs participating in the program continues to increase. This chart demonstrates the program growth:



**Additional Information on THPOs and THPO Success Stories:**

- Even though the tribes are not required to provide a match to the Federal dollars received, Indian tribes provide at least a 1:2 match (\$1 Federal to \$2 tribal support).
- The Standing Rock Sioux Tribe became aware of a Federal Highway Administration project, which led to the protection of Pe Sla, a sacred site that is the heart of the Black Hills of South Dakota
- The Bois Forte Band of Chippewa preserved Farm Point that has a long history in their community
- The Leech Lake Band of Ojibwe helped preserve a family cemetery of over 200 individuals

**Other Line Items of the Historic Preservation Fund:**

- NATHPO supports \$50 million for the State Historic Preservation Officers (SHPOs)
- NATHPO supports the concept outlined in the new line item of \$3 million for grants to Underserved Communities, as proposed by the Administration, with the understanding that Indian tribes are eligible to apply

## 2. National Park Service, National NAGPRA Program

NAGPRA provides for the disposition of Native American cultural items — human remains, funerary objects, sacred objects, and objects of cultural patrimony — removed from Federal or tribal lands, or in the possession or control of museums or federal agencies, to lineal descendants, Indian tribes, or Native Hawaiian organizations based on descent or cultural or geographic affiliation. NAGPRA also prohibits trafficking of Native American cultural items. The Secretary of the Interior has established and maintains the NAGPRA Review Committee to monitor and review the summary, inventory, and repatriation requirements of the Act.

### NAGPRA Grants Program – NATHPO Recommends for FY2014:

- a. \$2.331 million to be used exclusively for NAGPRA Grants to Indian tribes, Native Hawaiian organizations, and museums. The maximum amount of funds to be awarded in grants to Indian tribes and museums must be a priority, especially as all parties work to implement the Final rule of 43 CFR 10.11 that went into effect in 2010. One key provision of this rule on the disposition of culturally unidentifiable human remains is that a museum or Federal agency that is unable to prove right of possession must offer to transfer control of the human remains to the appropriate Indian tribe/s and Native Hawaiian organization/s.
- b. \$1 million, additionally, for NAGPRA program administration, including the publication of Federal Register notices, grant administration, civil penalty investigations, and Review Committee costs.

For the past several years, the President's budget has proposed a 25% reduction in NAGPRA Grants, although upon closer examination, no actual savings have been achieved. Rather, the overall amount of funds from the U.S. Congress has remained level funded from FY2010 at \$2.331 million, but the NPS has moved \$581,000 – or 25% of \$2.331 million – via an "internal transfer or other non-policy/program change" to fund NPS "cultural resources/National Register programs." NATHPO understands that in these difficult fiscal times, austerity measures must be considered, but reducing grants to Indian tribes and museums severely impairs their ability to comply with NAGPRA while no actual federal savings will be realized.

## 3. Bureau of Indian Affairs – Create line items and support the following divisions:

The BIA has federally mandated responsibilities to work with Indian tribes and comply with the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). Indian tribes have only two sources of reliable – though underfunded – federal programs to support their respective efforts to preserve and protect their cultural resources and comply with federal law: NAGPRA Grants and the Tribal Historic Preservation Officer (THPO) funding. There is no line item within the BIA budget to support tribal efforts to comply and fully participate in the federal historic preservation structure (comply with NHPA, NEPA, and NAGPRA), as well as preserve and protect tribal cultures. In an effort to begin addressing this need, the Affiliated Tribes of Northwest Indians (ATNI) passed the resolution, "BIA Budget Cultural Resource Line Item," earlier this year. The resolution calls for the BIA to create and support a financial line item in their budget that supports tribal efforts to preserve and protect tribal cultures and participate in the federally-funded development projects.

Bureau of Indian Affairs – To create line items and support the following divisions:

- a. To support Cultural Resource compliance at the 12 Regional BIA Offices (\$250,000 x 12 regional offices = \$3 million)
- b. Central Office cultural resource efforts throughout the bureau (\$200,000)
- c. NAGPRA compliance work (\$765,000)
- d. To fight ARPA crimes on Indian reservations (\$200,000)

BIA, continued

Currently the BIA does not have any budget line items that are devoted to complying with the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Resources Protection Act (ARPA), and executive orders and directives in the cultural resource field. Funds are not only needed for the BIA to comply with their internal development efforts, such as roads and forestry, but also to conduct project reviews of outside development projects, such as oil and gas development that are estimated to number over 7,000 per year.

Because the BIA lacks funds in the cultural resource field, it is unable to comply with the federal Executive Order directing federal agencies to inventory the historic properties under their control. The BIA estimates that it may take up to \$1 million to complete their inventory of over 6,000 structures that have not yet been evaluated.

In 2010, the Government Accountability Office (GAO) released the results of their audit that included the BIA, "NAGPRA: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act." This report marked the first time that federal auditors have examined a major federal Indian law enacted to facilitate the return of Native American human remains and cultural objects. In order to comply with the GAO recommendations, the BIA needs to devote funds to comply with NAGPRA, but at this time, no line item is dedicated for this function.

Finally, ARPA crime on Indian reservations continues to be a major problem, as looters and traffickers continue to steal valuable cultural resources from tribal and federal lands. The BIA does not have any special agents or law enforcement forces to combat this uniquely destructive crime in Indian country. NATHPO urges the creation of a dedicated line item for this important function of the BIA.

#### 4. Smithsonian Institution, National Museum of the American Indian and the National Museum of Natural History Repatriation Programs

In June 2011, the GAO released their report, "Smithsonian Institution: Much Work Still Needed to Identify and Repatriate Indian Human Remains and Objects." The GAO stated that the Smithsonian's process to repatriate thousands of Native American human remains and funerary objects in its collections is lengthy and resource intensive and it may take several more decades to return items to tribes under its current system. NATHPO requests that the Smithsonian Institution receive \$1.25 million for its repatriation activities, including operation costs of the Review Committee and repatriation office, as originally authorized by the Congress, with the requirement that the Smithsonian complies with the GAO recommendations in full.

### **Background on the National Association of Tribal Historic Preservation Officers:**

NATHPO is a national not-for-profit membership association of tribal governments that are committed to preserving, rejuvenating, and improving the status of tribal cultures and cultural practices by supporting Native languages, arts, dances, music, oral traditions, cultural properties, tribal museums and cultural centers, and tribal libraries. NATHPO assists tribal communities protect their cultural properties, whether they are naturally occurring in the landscape or are manmade structures. In addition to members who serve as the Tribal Historic Preservation Officer (THPO) for their respective tribe, our membership includes many other tribal government officials who support our mission and goals. NATHPO provides technical assistance, training, timely information, original research, and convenes a national conference of tribal representatives, preservation experts, and federal agency officials.