



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

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July 31, 2024

Director Charles F. Sams III
National Park Service
1849 C Street NW
Washington, DC 20240

Dear Director Sams,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments regarding how the National Park Service's (NPS) proposed Tribal Consultation Policy-DO-71C.

NATHPO is the only national organization devoted to supporting Tribal historic preservation programs. Founded in 1998, NATHPO is a 501(c)(3) non-profit membership association of Tribal government officials who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples.

Our organization strongly supports the NPS's efforts to strengthen its consultation with Tribal Nations and sincerely appreciates the time that has gone into drafting the Tribal Consultation Policy. That said, we have a few concerns regarding the policy that we urge you and other staff at the NPS to consider.

A significant concern that we have is that NPS staff drafted the policy without consulting with Tribal Nations. This is a fundamental flaw in a Tribal Consultation Policy. During a July 23rd listening session, Anna Mae Starkey, Cultural Regulatory Specialist at United Auburn Indian Community, raised this concern with NPS staff. NPS staff told Ms. Starkey that "specific Tribal consultation" was not done. NPS staff added that in lieu of engaging in consultation they used the consultation that was done for the agency-wide Department of the Interior (DOI) Tribal Consultation Policy that was done in 2021 and 2022. NPS has specific issues and interests that are different from other DOI bureaus and therefore, it is important to engage in Tribal Consultation in creating the NPS Tribal Consultation Policy.

Besides our concerns about the lack of Tribal consultation, NATHPO also is worried about the foundation on which the Tribal Consultation Policy is based. The policy is based on Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," which President Clinton issued in 2000, and two DOI Departmental Manuals. While we recognize the value of Executive Order 13175 and Departmental Manuals, we are also aware of their limitations. A President who is not supportive of consultation with Tribal Nations could issue a new executive order that supersedes Executive Order 13175 and a DOI that is not supportive of consultation with Tribal Nations could write new Departmental Manuals. We strongly urge the NPS to advocate for the passage of laws that would make it much more difficult for a future President or DOI staff to undermine Tribal consultation.

During their presentation on the proposed Tribal Consultation policy, NPS staff noted that consultation is a trust responsibility. While NATHPO greatly appreciates the recognition that consultation is a trust responsibility, we are disappointed that NPS fails to recognize that adequate funding for THPOs to engage in the consultation process is also a trust responsibility. As the Supreme Court has determined, the federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (*Seminole Nation v. United States*, 1942).

PROTECTING NATIVE PLACES

THPOs are appointed by their Tribal governments and when federal agency officials consult with THPOs on the impact that projects with a federal nexus will have on Tribal Nations' cultural resources and sacred places, they are participating in government-to-government interaction as defined by law.

While Executive Order 13175 and President Biden's "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships" are an expression of what the law requires, the failure of the federal government to provide adequate funding for THPOs is a failure to adhere to the law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes.¹

The protection and preservation of Tribal Nations' cultural resources more broadly and THPO funding specifically meet the definition of a trust responsibility. While NATHPO greatly appreciates the promulgation of policies on Tribal consultation, federal funding for THPOs and other Tribal Nation departments must be at a level that allows for meaningful government-to-government consultation.

THPOs' work at its core is government-to-government consultation, but the levels at which the federal government has funded THPOs has not allowed this work to take place.

In Fiscal Year 2025, THPOs are receiving on average \$104,000 from the Historic Preservation Fund (HPF). NATHPO strongly supports a reauthorization of the HPF that would require that:

- THPOs receive a minimum of 20 percent of the HPF each year, and;
- directs the National Park Service to review if THPO funding is keeping pace and adjust the funding to reflect the annual increase in the number of THPOs.

We also urge the Administration to propose budgets and Congress to pass appropriations bills that reflect the important role that THPOs play in protecting the places that tell the stories of Tribal Nations.

Although we have these fundamental concerns about the proposed NPS Tribal Consultation Policy, NATHPO greatly appreciates that the proposed policy reflects a sincere desire by NPS to engage in effective consultation with Tribal Nations. We specifically appreciate that the proposed policy recognizes the importance of indigenous knowledge (IK) as a valid and self-supporting way of knowing in the consultation process. This reflects an overall commitment by the Biden Administration. Just this year, the Advisory Council on Historic Preservation finalized its [Policy Statement on Indigenous Knowledge and Historic Preservation](#) that builds on the 2023 government-wide [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#).

¹ <https://www.bia.gov/faqs/what-federal-indian-trust-responsibility>

Thank you for your and the NPS' commitment to engaging in meaningful Tribal consultation that is consistent with the trust responsibility of the federal government and thank you for considering our comments.

Sincerely,

A handwritten signature in black ink that reads "Valerie J. Grussing". The signature is written in a cursive, flowing style.

Valerie J. Grussing, PhD
Executive Director