



**NATIONAL ASSOCIATION  
OF TRIBAL HISTORIC  
PRESERVATION OFFICERS**

P.O. BOX 19189  
WASHINGTON, D.C. 20036-9189  
(202) 628-8476  
INFO@NATHPO.ORG  
WWW.NATHPO.ORG

May 4, 2021

Honorable Debra Haaland  
Secretary of the Interior  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240  
[Secretary\\_of\\_the\\_interior@ios.doi.gov](mailto:Secretary_of_the_interior@ios.doi.gov)  
[consultation@bia.gov](mailto:consultation@bia.gov)

Dear Secretary Haaland:

I write to congratulate you on your new position and applaud the Department of the Interior's initiative to fortify its relationship with Tribal governments through a regular, meaningful, and robust consultation process. The National Association of Tribal Historic Preservation Officers (NATHPO) is a national organization of Tribal government officials who implement federal and tribal preservation laws. Our membership is limited to federally recognized Tribal government officials who are committed to preserving, rejuvenating, and supporting American Indian and Alaska Native cultures, heritage, and practices. The repatriation of Native ancestors, funerary objects, sacred objects, and objects of cultural patrimony is of critical importance to our members.

According to the current Unified Agenda and Regulatory Plan, the National Park Service (NPS) is planning on publishing a proposed revision of regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA) imminently (43 CFR 10; RIN: 1024-AE19). It is our understanding that this draft proposed rule was developed during the Trump Administration based on a single "listening session" held with some Indian Tribes in 2011. A single listening session does not meet the standards of meaningful consultation set forth in Executive Order 13,175<sup>1</sup> and the Department of the Interior (DOI) Policy on Consultation with Indian Tribes.<sup>2</sup> The DOI Tribal Consultation policy "require[s] extra, *meaningful* efforts to involve Tribes in the decision-making process."<sup>3</sup> This has not happened.

Consultation must also begin prior to the publication of the proposed rulemaking. This also has not happened. Executive Order 13,175 makes clear that Tribal consultation must begin "early in the process of developing the proposed rule."<sup>4</sup> The DOI Tribal Consultation Policy similarly requires the NPS to begin consultation "as early as possible when considering a Departmental

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<sup>1</sup> Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

<sup>2</sup> Dep't of Interior, *Department of Interior Policy on Tribal Consultation with Indian Tribes* (2001).

<sup>3</sup> *Wyoming v. U.S. Dep't of Interior*, 136 F. Supp. 3d 1317, 1346 (D. Wyo. 2015), *vacated as moot sub nom. Wyoming v. Sierra Club*, No. 15-8126, 2016 WL 3853806 (10th Cir. July 13, 2016) (emphasis in original).

<sup>4</sup> Exec. Order No. 13,175, § 5(b)(2)(A), 65 Fed. Reg. at 67,249.

Action with Tribal Implications.”<sup>5</sup> The proposed regulations the NPS intends to publish next month have been developed in secret, without meaningful input from Tribes and without Tribal consultation. This violates the DOI Tribal Consultation Policy.<sup>6</sup>

Much has changed in the implementation of NAGPRA since 2011 that make the NPS’s previous efforts to engage with Tribes obsolete. For example, since 2011, nine Indian Tribes have been federally recognized.<sup>7</sup> These Indian Tribes were not afforded the opportunity to consult on the draft proposed rule.

Additionally, the NAGPRA regulations have been updated at least twice since 2011. In 2014, the NPS confirmed as final its 2011 interim regulations after affirming that Alaska Native Claims Settlement Act corporations do not meet NAGPRA’s definition of Indian Tribe.<sup>8</sup> And in 2015, the NPS promulgated a final rule regarding the disposition of unclaimed Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony excavated or removed from Federal lands.<sup>9</sup>

Of particular concern is the dramatic decrease in information coming from the National NAGPRA Program regarding implementation of the statute during the Trump Administration. The program stopped publishing its annual report in FY2018, the same year that the statutorily required report to Congress from the Native American Graves Protection and Repatriation Review Committee also ended. This obvious lack of transparency only heightens suspicions regarding the draft proposed rule.

NATHPO is not necessarily opposed to revising the 43 C.F.R. Part 10 regulations, and we recognize that much work has been done in preparing the current draft. However, this work has been done without any meaningful input from or consultation with Indian Tribes. The NPS must bring Indian Tribes into the decision-making process through the government-to-government consultation after this ten-year hiatus. NATHPO requests that that the DOI release the current draft proposed rule and preamble to Indian Tribes and engage in meaningful and robust government-to-government consultation. NATHPO recognizes that while the Federal Government does not maintain a government-to-government relationship with Native Hawaiians, we nevertheless encourage the NPS to engage in consultation with Native Hawaiian Organizations regarding the proposed rule, as they would be similarly affected by any changes to NAGPRA as Indian Tribe and Native Americans and Alaska Natives. After the DOI addresses and considers issues raised by Indian Tribes in this consultation, and consults with the Native American Graves Protection and Repatriation Review Committee which includes three members nominated by Indian Tribes, it can then proceed with the formal notice and comment rule-making process.

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<sup>5</sup> DOI, *Tribal Consultation Policy*, *supra* note 2, § VII(E)(1), at 11.

<sup>6</sup> *Wyoming*, 136 F. Supp. 3d at 1346 (held: failure to initiate tribal consultation *before* publication of draft regulation violated DOI Tribal Consultation Policy).

<sup>7</sup> *Compare* 86 Fed. Reg. 7,554 (Jan. 29, 2021) (recognizing 574 federally recognized Indian tribes), *with* 77 Fed. Reg. 47,868 (Aug. 10, 2012) (recognizing 566 federally recognized Indian tribes).

<sup>8</sup> *See* 79 Fed. Reg. 33,482 (June 11, 2014).

<sup>9</sup> *See* 80 Fed. Reg. 68,465 (Nov. 5, 2015).

NATHPO looks forward to working with the new Administration to ensure that Tribal voices are heard and considered in the development of regulations, policies, and actions to support American Indian, Alaska Native, and Native Hawaiian cultures, heritage, and practices.

Sincerely,

A handwritten signature in black ink that reads "Valerie J. Grussing". The signature is written in a cursive style with a large, prominent 'V' and 'G'.

Valerie J. Grussing, PhD  
Executive Director

c.c.

Lawrence Roberts, Chief of Staff  
Department of the Interior

Robert M. Anderson, Principal Deputy Solicitor  
Department of the Interior