

# NHPPA & Tribal participation in protecting Native places

VALERIE J. GRUSSING, PhD  
NATHPO EXECUTIVE DIRECTOR  
[valerie@nathpo.org](mailto:valerie@nathpo.org)



# NATHPO



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.

# Consultation on Cultural Resources

- EO 13175: Government-to-government
- National Historic Preservation Act
- Requirements & best practices
- Regular, meaningful, robust, effective
- Listening & respect
- Challenges, opportunities & possibilities



# Requirements

- Executive Order 13175 (2000):  
regular & meaningful
- Presidential Memo (2009):  
accountability, plan & reporting
- Presidential Memo (2021):  
strengthening, robust



# What Does Meaningful Mean?

## Meaningful:

1. Full of meaning! Significant

## Meaning:

1. Significant quality!
  2. Logical connotation/denotation of a word
- "Many words have more than one meaning"*

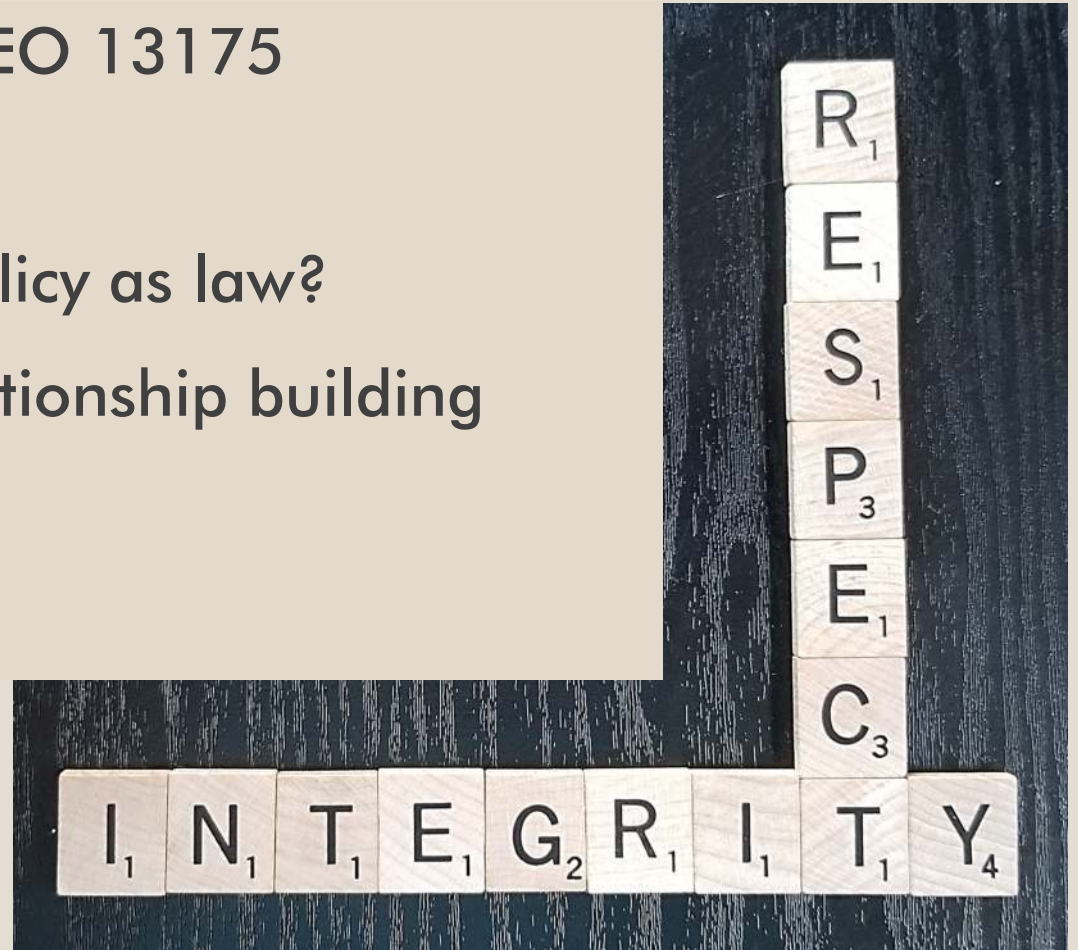


Robust: able to perform without failure under a wide range of conditions



# About Those Requirements

- Agency policies implementing EO 13175
- Tribal policies
- Unified federal consultation policy as law?
- Checking the boxes versus relationship building
- Integrity & respect



# Cultural Resources

- Archaeological sites
- Landscapes
- Sacred sites
- Natural resources with cultural value
- Subsistence
- Ancestral lands
- “historic properties”



# NHPA

- Passed 1966, amended 1992, recodified 2014 at Title 54 U.S.C. § 100101
- Section 106: agencies consider effects of undertakings
- Section 110: agencies inventory historic properties
- Section 304: sensitive info protected (if...)
- National Register of Historic Places
- SHPOs & THPOs!
- Sections 101(d)2 & 101(d)5
- Consultation requirements



# National Register

---

- NPS administers
- [Bulletin 15](#): Applying criteria for evaluation
- “historic properties”
- 5 property categories
- Significance – 4 types
- Integrity – 7 aspects
- [Bulletin 38](#): TCPs
- Facilitates consideration in Section 106



# Section 106 Review Process

36 CFR § 800.3-7

C  
O  
N  
S  
U  
L  
T  
A  
T  
I  
O  
N



## INITIATE the process

- Determine undertaking
- Coordinate with other reviews
- Identify SHPO/THPO, Indian tribes/NHOs, and other parties
- Plan to involve the public

*No undertaking with potential to affect historic properties?*

NO



## IDENTIFY historic properties

- Determine APE and scope of effort
- Make reasonable and good faith effort to identify
- Determine National Register eligibility
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*No historic properties present or affected?*

NO



## ASSESS adverse effects

- Apply Criteria of Adverse Effects
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*No historic properties adversely affected?*

NO



## RESOLVE adverse effects

- Develop and consider alternatives or modifications to avoid, minimize, or mitigate adverse effects
- Notify the ACHP
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*AGREEMENT or Council Comment*

PROCEED

## ACHP process flowchart

- Agencies must “consider the effects of their undertakings on historic properties”
- ACHP oversees regs at 36 CFR § 800
- DAPL, KXL
- Cape Wind

# Tribal Cultural Landscapes

- Guiding principles of self-determination
- Building relationships
- Integrated resource management at landscape scale
- Natural resources with cultural value
- Intangible heritage values

OCS Study  
BOEM 2015-047

## **A Guidance Document for Characterizing Tribal Cultural Landscapes**

### Authors

David Ball, Rosie Clayburn, Roberta Cordero, Briece Edwards, Valerie Grussing, Janine Ledford, Robert McConnell, Rebekah Monette, Robert Steelquist, Eirik Thorsgard, Jon Townsend

Prepared under BOEM Interagency Agreement M12PG00035  
by

Bureau of Ocean Energy Management, Pacific OCS Region  
National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries  
Makah Tribe  
Confederated Tribes of Grand Ronde Community of Oregon  
Yurok Tribe  
National Marine Sanctuary Foundation

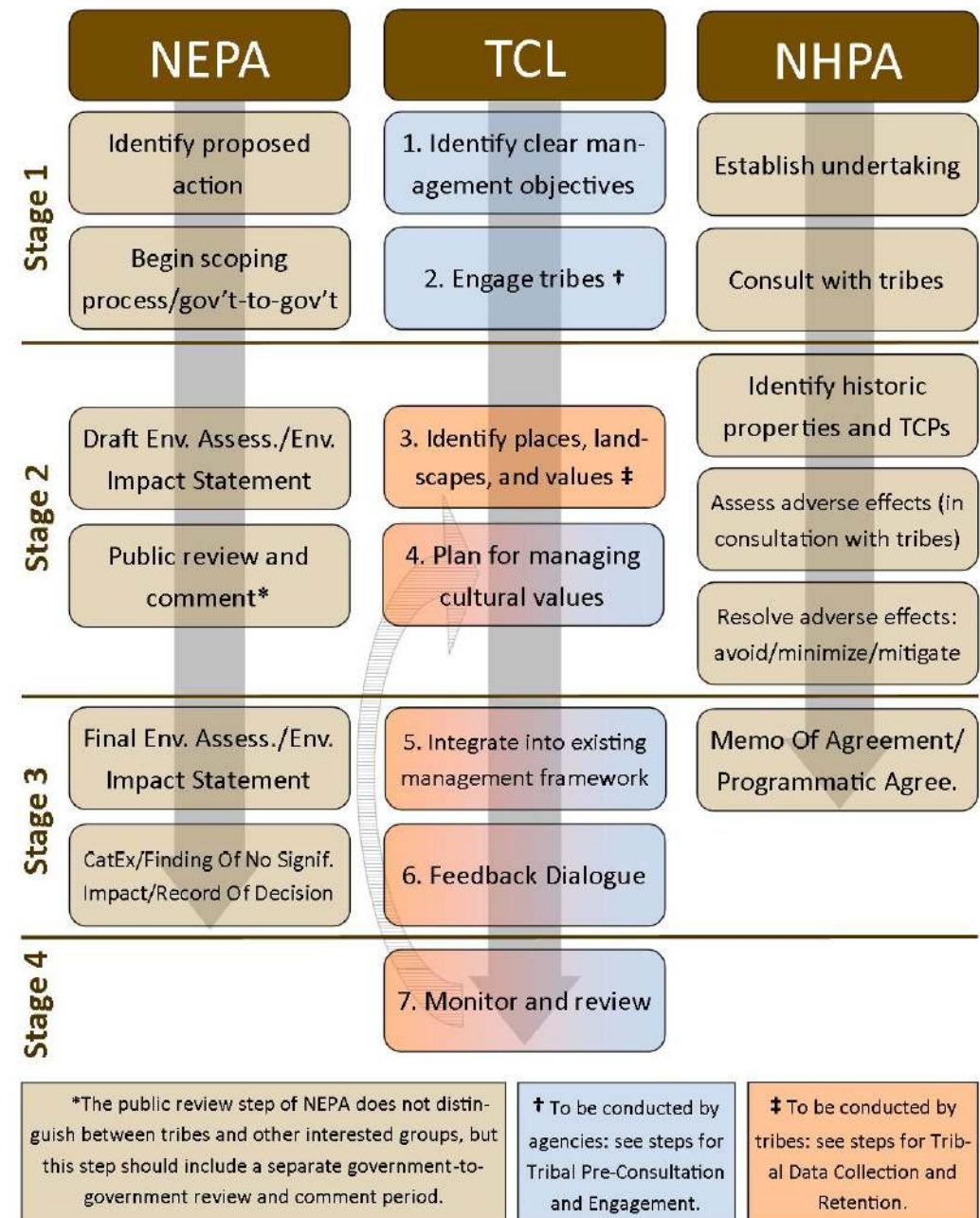
November 30, 2015



# TCL Process

## Process for Application

- Plan for managing cultural values
- Repeat as needed!





# UNDRIP

- Endorsed in Obama Admin but effectively neutered by DOS interpretation
- Free and Prior Informed Consent

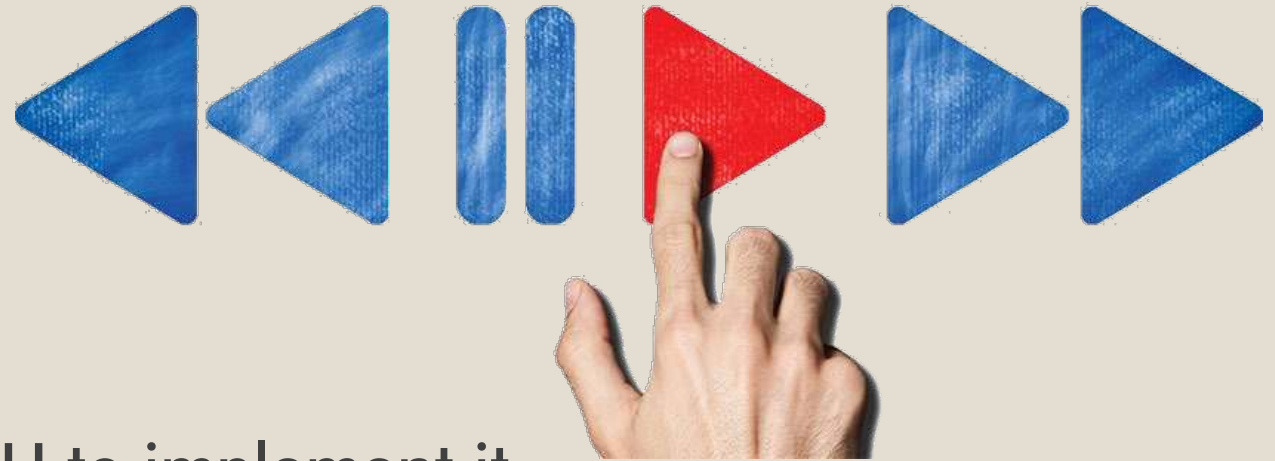


"'Consent of the governed'? — that could be a deal-breaker."



# Other Laws & Policies

- Antiquities Act
- ARPA
- NAGPRA
- Treaty Rights MOU 2016
- EO 13007, Sacred Sites MOU to implement it
- GAO report 2017
- Numerous proposed bills



# WA Consultation Codified

- EO 21-02 turned into law by being put in capital budget (good for 2 yrs)
- All state \$ used for any project are subject to EO
- Inslee vetoed FPIC provision (not consultation) but EO still applies to funding
- Applied to funding off tribal land, didn't define consent
- Huge issue with consent is intertribal disagreements
- Tribes have different views on wanting TCPs out there or not, wanting location info in DAHP system or just "ask the tribe"
- In WA all arch sites protected on private property, no digging without a permit even for like septic replacement. 15-17k reviews last year.

# CEQA & Tribal Cultural Resources

---

- Mandates consultation on Tribal Cultural Resources (TCRs).
- TCRs are defined in section 21074 of the CA Public Resources Code. This is the change that went into effect with the passage of AB52
- [High-level explainer](#) from the CA Native American Heritage Commission
- The state and associated agencies really do reach out for AB52 consultation, but that doesn't mean they listen

# Tribal Laws, Codes & Policies

---

- Tribal Consultation: Best Practices in Historic Preservation (NATHPO)
- Tribes, of course, may have their own
- THPOs, Tribal Registers
- Thacker Pass
- Line 3 lawsuit

# Sacred Sites Summit

- What is. What is the state of current sacred sites protection in the U.S.? What is the existing policy framework and what are the gaps from the Tribal perspective?
- What should be. What is needed to close the gaps? What solutions would truly address the issues and protect places that define us?
- Action. We will catalyze real progress by defining recommendations and deliberate, measurable steps forward for preservation and reconciliation.

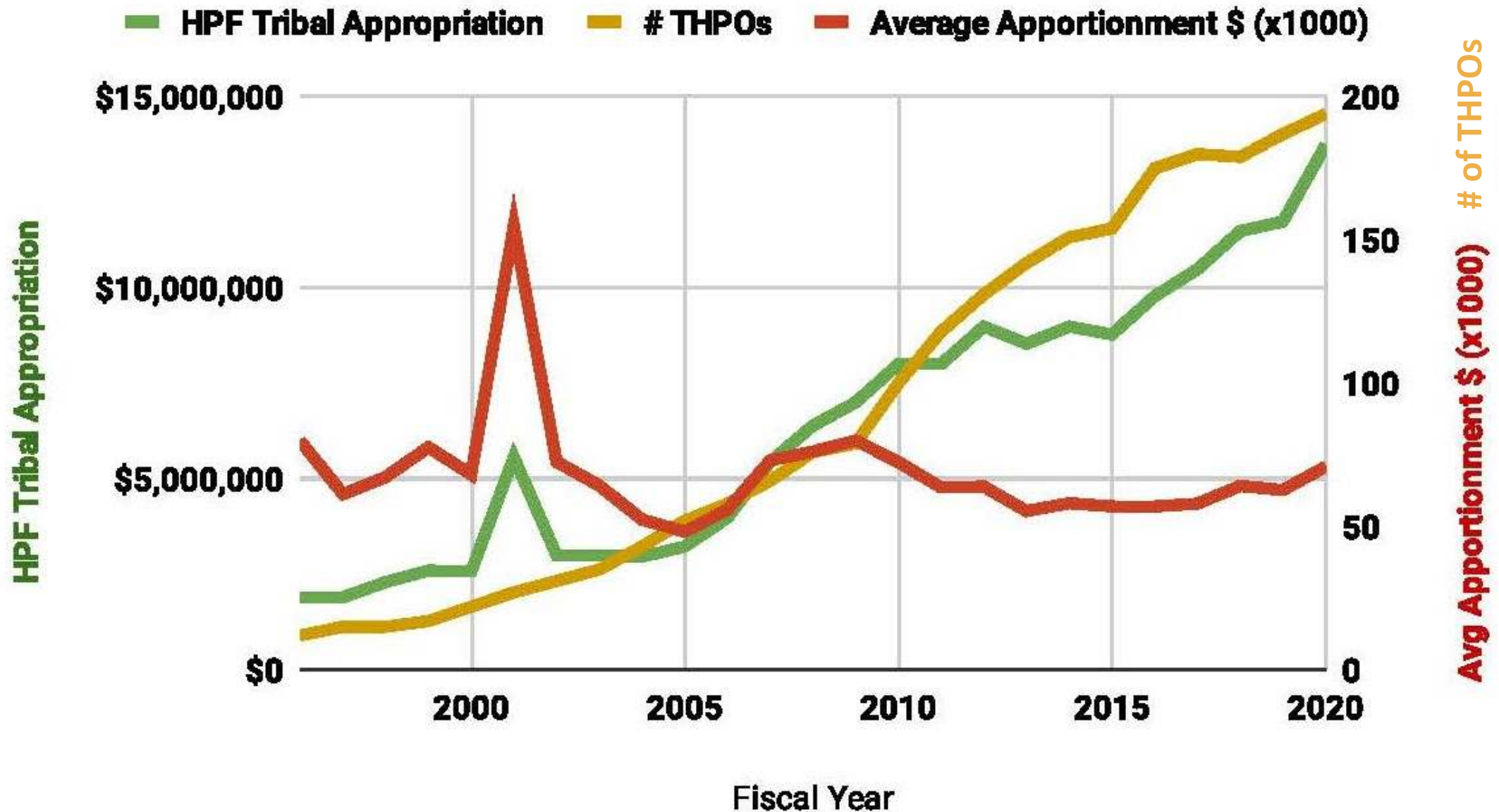


# A Seat at the Table

- Same language & cultural understandings?
- Grown-up table – complete with meal and utensils.
- Which tribes, where, how?
- Tribal capacity:
  - Funding/staffing
  - Knowledge/tools



# Historic Preservation Fund Appropriations for Tribes







# Making Meaningful Mean Something

[valerie@nathpo.org](mailto:valerie@nathpo.org)

If we're to live up to our own time,  
then victory won't lie in the blade.  
But in all the bridges we've made,  
that is the promise to glade,  
the hill we climb.

If only we dare.

It's because being American is more than a pride we inherit,  
it's the past we step into  
and how we repair it.



-Amanda Gorman