



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

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September 27, 2023

Ms. Amy B. Coyle
Deputy General Counsel,
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: CEQ-2023-0003

Dear Ms. Coyle,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments regarding the Council on Environmental Quality's (CEQ) proposal to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

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.

NEPA is a valuable tool for ensuring that Tribal Nations' perspectives are considered in agency decision-making and Tribal Historic Preservation Officers (THPOs) strongly support CEQ's efforts to prevent unnecessary delays in projects that address environmental challenges. In many instances, Tribal Nations would benefit greatly from these projects. NATHPO appreciates CEQ's efforts and intent to promote better informed Federal decisions that protect and enhance the quality of the human environment, including by ensuring climate change, environmental justice, and other environmental issues are fully accounted for in agencies' decision-making processes.

Unfortunately, the amendments to NEPA that were included in the Fiscal Responsibility Act of 2023 (FRA) and the way CEQ is implementing these amendments fail to address the main cause of delays in THPO consultation on the effect that projects would have on Tribal Nations' cultural resources and sacred places. These delays are not caused by burdensome regulations but rather by a failure to adequately fund THPO offices and subsequent inadequate staffing and capacity.

THPO funding is a trust responsibility of the federal government and, unfortunately, the federal government has failed to meet that responsibility. Setting a two-year time limit on EIS completion (and one year for EAs) would in no way address the fact that there has been an exponential increase in projects with a federal nexus and a very modest increase in THPO funding. The law requires THPOs to determine the impact that this flood of new projects will have on Tribal Nations' cultural resources and sacred places. When it comes to the work that THPOs do, placing a two-year time limit on NEPA reviews is the equivalent of telling a drowning man to swim faster, rather than throwing him a lifeline.

We have concerns about provisions in the proposed rule related to expediting timelines, document page limits, and non-specific emergencies. Tribal Nations do not need any additional handicaps on providing meaningful input on potential effects of proposed actions.

That said, we greatly appreciate the inclusion of provisions aimed at enhancing protections for Tribal Nations' cultural resources and sacred places and supporting the use of Tribal Knowledge in the consultation process. NATHPO specifically appreciates and supports these provisions:

PROTECTING NATIVE PLACES

- § 1501.3(d)(1)) requiring agencies to consider the characteristics of the relevant geographic area such as proximity to unique or sensitive resources or vulnerable communities, including Tribal Nations' sacred sites. This change will ensure that agencies consider the impact of projects on nearby cultural resources, sacred places, and Tribal landscapes.
- § 1501.3(d)(2)(x) requiring agencies to consider effects on the rights of Tribal Nations reserved through treaties, statutes, or Executive Orders. Tribes' ability to exercise these rights often depends on protection of the resources that support the rights, and agencies should consider impacts to such resources.
- § 1501.7(b) clarifying that participating federal agencies may designate a Federal, State, Tribal, or local agency as a joint lead agency upon invitation to and acceptance by such agency. This change would strengthen the role of Tribal Nations in the consultation process.
- § 1501.8(a) clarifying that the meaning of "special expertise" can include Indigenous Knowledge. Regarding a definition, we recommend following the lead of the Advisory Council on Historic Preservation's Office of Tribal and Indigenous Peoples (OTIP). While there is no legal definition of Indigenous Knowledge in the National Historic Preservation Act (NHPA), OTIP is working with Indian Tribes, kanaka maoli (indigenous people of the Hawaiian Islands) and Native Hawaiian organizations (NHOs) to develop appropriate means to explain the importance and role of Indigenous Knowledge has in all four steps of the NHPA Section 106 process.

ACHP is developing a policy statement to further inform how Indigenous Knowledge (IK) should be integrated into the Section 106 process. This policy statement will build on the recently released government-wide *Guidance for Federal Departments and Agencies on Indigenous Knowledge* in an effort to tailor many of those messages to the needs of the historic preservation community. The policy will also be informed by concepts discussed the ACHP's existing information paper *Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants*.

While these changes are important and, quite frankly, overdue, we encourage CEQ to seriously consider potential unintended harms of the proposed rule. Provisions that may reduce timelines or otherwise "streamline" the NEPA process are red flags for Tribal Nations, as they frequently serve to further weaken Tribal involvement and input. In many cases, Tribes do not want to impede or delay projects, but it is critical that they have a full seat at the table, complete with meal and utensils, to meet both the purpose and intent of NEPA as well as the federal trust responsibility to Tribes.

The Biden Administration has voiced a clear commitment to strengthening government-to-government relations with Tribal Nations and supporting Tribal sovereignty. A key part of those commitments is guaranteeing that Tribal Nations have the necessary resources to adequately determine the impact a project with a federal nexus will have on their cultural resources and sacred places. Tribal Nations' problems with NEPA will not be addressed by streamlining and technology, but rather by providing Tribal Nations with the resources that they need to consult effectively.

Sincerely,



Valerie J. Grussing, PhD
Executive Director