



**NATIONAL ASSOCIATION  
OF TRIBAL HISTORIC  
PRESERVATION OFFICERS**

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September 27, 2023

Anthony Morgan Rodman  
Executive Director  
White House Council on Native American Affairs  
1849 C Street NW, MS – 4146 – MIB  
Washington, DC 20240

Dear Mr. Rodman,

The National Association of Tribal Historic Preservation Officers (NATHPO) greatly appreciates and strongly supports the White House Council on Native American Affairs' proposed Best Practices Guide (BPG) for federal agencies regarding Tribal and Native Hawaiian Sacred Sites. There is a great need for federal employees and contract staff to have a better understanding of what is a sacred place and the federal policies that govern Tribal consultation and federal decision-making on and near sacred places.

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.

We are grateful that the administration has engaged in this effort and we sincerely appreciate all of the time and hard work of staff who were involved in the drafting of the BPG. The Guide takes a significant step forward by directing that "Indigenous Knowledge about Sacred Sites" be incorporated into the federal decision-making process. NATHPO urges the Council to strengthen that proposal by directing agencies to explain how they will specifically incorporate Traditional Knowledge into the decision-making process. We also urge that there be accountability for agency staff who fail to consider Traditional Knowledge in the decision-making process.

NATHPO also appreciates the staff's inclusion in the BPG of language calling on agencies to engage Tribal Nations "early and often" in the decision-making process. This proposal could be strengthened by recommending the setting of firm timelines on when Tribal Nation consultation should begin. A project proponent or a federal agency official's definition of "early and often" is likely to be quite different from a Tribal Historic Preservation Officer's (THPO's) definition of "early and often." In regard to early consultation, NATHPO asks that the guide be amended to specifically address federal agencies engaging Tribal Nations before determining an Area of Potential Effect (APE). This would help prevent federal agencies from establishing an APE that is too narrow and fails to accurately establish the effects of a proposed project over a larger landscape.

We recommend following the lead of the Advisory Council on Historic Preservation's Office of Tribal and Indigenous Peoples (OTIP), which is producing important guidance relevant to the BPG. Its *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* establishes a set of standards and guidelines that federal and state agencies, contractors, and other relevant entities should, at a minimum, seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.

ACHP is also 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

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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 in the ACHP's existing information paper Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants. We strongly encourage the WHCNA to incorporate both of these policies into the BPG.

We would be remiss if we did not note that while the proposals on the treatment of Indigenous Knowledge and "early and often" consultation are important, they will not be effective if the federal government fails to adequately fund THPOs. THPO funding is a trust responsibility of the federal government and, unfortunately, the federal government has failed to meet that trust responsibility. To truly protect and preserve Tribal Nations' sacred places it is incumbent on the Biden Administration to propose and Congress to support funding levels for THPOs that allow for meaningful consultation. While NATHPO understands that the BPG is not intended to address funding issues, the proposals in the BPG cannot be effectively implemented if THPOs do not have adequate staff and appropriate equipment.

Beyond funding of THPOs through the Historic Preservation Fund, the federal government should also establish a system for compensating Tribal Nations for consultation work they do for federal agencies. As Hualapai Tribe THPO Martina Dawley noted during a listening session on the BPG, "Tribal Nations stewardship of Federal lands, sharing of traditional knowledge, assistance and training Federal officials are services that require compensation, especially because Tribal Nations are already seriously lacking resources to do important cultural work." Ms. Dawley added, "Through colonization great harms have already been done to our lands. And it should not be expected that the Tribal Nations will now help rectify these harms without appropriate compensation."

Another issue that is outside the scope of the BPG but is critical to the underlying intent is the strengthening of existing legislation to protect sacred places. NATHPO urges the Administration to work toward creating a process that truly protects Tribal Nations' sacred places. Many of the existing laws, including the National Historic Preservation Act (NHPA), were not drafted with Tribal Nations' sacred places in mind. While the NHPA provides for the consideration of the effect that a project would have on a sacred place and how that effect can be mitigated, they do not provide for a process to stop or relocate a project that would significantly damage or destroy a sacred place.

In reviewing the BPG and considering its value, NATHPO believes it is important to place it in the context of the federal agency process and final decision to permit the establishment of a lithium mine at Thacker Pass, which Paiute Tribes refer to as Peehee Mu'huh. The Bureau of Land Management permitted the development of a lithium mine despite the fact that the site is sacred to several Tribal Nations. Unfortunately, it is at best unclear if the proposals laid out in the BPG would have changed the outcome and led to the protection of this sacred site.

The BPG represents a meaningful step forward but much more can and should be done to protect and preserve Tribal Nations' sacred places. NATHPO and its members are committed to continuing to work with the Biden Administration to find Tribally led solutions to protecting and preserving sacred places.

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