



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

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Joy Beasley
Associate Director, Cultural Resources, Partnerships, and Science
National Park Service
1849 C Street NW, Room 3316
Washington, DC 20240

Dear Associate Director Beasley,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments to the National Park Service (NPS) Cultural Resources, Partnerships, and Science Directorate regarding the NPS' intent to create a Nationwide Programmatic Agreement (NPA) to provide consistency in the application of Section 106 compliance procedures for federal cultural resources financial assistance activities.

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.

On a foundational level, NATHPO has fundamental concerns about the NPA. Based on the current THPO workload and the level at which THPOs are funded, it is difficult to determine if the NPA is necessary. If THPOs were adequately funded, it might be possible to effectively review if there is a need for "consistency" in how NPS carries out its Section 106 process for its cultural resources financial assistance programs. In regard to THPOs, the issues that NPS is seeking to address with the NPA could potentially be resolved if THPOs were appropriately funded and therefore could more effectively engage with NPS staff. With that in mind, until THPOs are funded at a level that permits effective engagement with NPS, it is unwise to streamline the Section 106 process.

In addition to having a fundamental concern about whether an NPA is the best way to address the issues raised in the "Summary of Needs and Benefits" section, NATHPO also finds specific aspects of the proposed NPA to be problematic. NATHPO requests that the NPS not move forward with the NPA.

However, within the confines of the draft NPA, the issues below would need to be addressed, at minimum.

- NATHPO is particularly concerned about the inclusion of the Native American Graves Protection and Repatriation Act (NAGPRA), in the undertakings in the NPA. We are concerned that this would exacerbate the existing problems with NAGPRA, such as those described in [this story](#) in The Washington Post. As with Section 106 consultation, a fundamental problem regarding NAGPRA is funding and Tribal capacity, not efficiency. NPS has consistently requested funding amounts for NAGPRA that are woefully inadequate and, furthermore, Tribal Nations receive relatively little of this funding, since much of it goes to universities and museums.
- In the [draft NPA](#) on page 14: "All human remains encountered as a result of Federal financial assistance provided by the NPS shall be treated in accordance with NAGPRA, its regulations, or the applicable laws and regulations of the State, Tribe, and/or municipality in which the project is located." The statement implies that either NAGPRA or other local laws apply to disposition of

PROTECTING NATIVE PLACES

Native American human remains. NAGPRA's repatriation provisions apply to any institution that receives federal funds and has possession or control of Native American human remains, which is precisely the scope of this statement. The National Park Service does not have the authority to waive NAGPRA's requirements. NATHPO requests changing this sentence as follows: "All human remains encountered as a result of Federal financial assistance provided by the NPS shall be treated in accordance with NAGPRA and its regulations; *and, if applicable*, the laws and regulations of the State, Tribe, and/or municipality in which the project is located."

- We are also concerned that the programs listed in the NPA often have consultation requirements that go beyond or are separate from Section 106. Execution of this NPA could be used as a checkbox exercise to assert that consultation is complete under the NPA, allowing the effects of these programs to avoid consultation as required under Executive Order 13175 and subsequent DOI policy. At minimum, the NPA needs to clearly state that it does not obviate program consultation separate from Section 106 consultation and/or under E.O. 13175.
- NATHPO strongly believes that before moving ahead with the NPA, NPS should consult with all 574 federally recognized Tribal Nations. The impact of the NPA on other grant programs is unclear and by actively engaging Tribal Nations, NPS would have a better understanding of how the NPA could adversely affect other grant programs specifically and Tribal Nations in general. A failure to consult with all 574 federally recognized Tribal Nations could seriously confound existing good work and relationships and exacerbate long-term challenges.

When it comes to Section 106 and consultation with Tribal Nations, NPS should set a positive example for other federal departments and agencies. That would mean advocating for and allocating the resources that THPOs need to effectively engage in the Section 106 process and being extremely careful when it comes to streamlining the process. Recent NPS budget requests do not permit for effective THPO function and consultation, and it is unclear if the streamlining efforts provided for in this NPA are necessary. Overall, the proposed NPA oversimplifies a very complex arrangement of programs and authorities, and we respectfully request that the NPS withdraw it.

Thank you for the opportunity to comment on this proposal.

Sincerely,



Valerie J. Grussing, PhD
Executive Director