



**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

July 31, 2025

Secretary Howard Lutnick
U.S. Department of Commerce
1401 Constitution Avenue NW, Washington
Washington, DC 20230

ATTN: Docket No. NOAA-HQ-2025-0207

RE: NOAA's solicitation of comments on its proposal to establish new, and amend its existing, categorical exclusions (CEs) in its agency NEPA implementing procedures

Dear Secretary Lutnick,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments regarding the National Oceanic and Atmospheric Administration's (NOAA) proposal to establish new, and amend its existing, categorical exclusions (CEs) in its agency NEPA implementing procedures.

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 have some general concerns about the overall process of each federal department having its own NEPA regulations and some specific concerns regarding the Department of Commerce regulations. The decision to replace the Council on Environmental Quality's (CEQ) standards with agency specific standards creates inefficiencies and will place Tribal Nations' cultural resources and sacred places in jeopardy.

Each Department having its own NEPA regulations places a heavy burden on Tribal Historic Preservation Officers (THPOs). Rather than having an understanding of the CEQ's NEPA regulations, they now must attempt to understand differing regulations for all of the federal departments, and, in some cases, for each agency within a federal department.

While we have concerns about the decision to replace global NEPA regulations with agency specific regulations, if that is the new process, then there needs to be consultation on each agency's proposed NEPA standards. Consultation entails direct nation-to-nation conversations, rather than a virtual meeting where all Tribal Nations are invited to participate. Before the Department implements these rules, we strongly urge that you participate directly in consultation with Tribal Leaders and to address the concerns they have.

In reviewing proposed NEPA regulations for all departments and agencies, we have found that the system is rife with contradictory information, most prominently the deadlines for when comments are due. In many instances, the notice in the Federal Register will have one date and regulations.gov will have a different date. If departments and agencies cannot even effectively post details of the comment

PROTECTING NATIVE PLACES

deadlines of their NEPA regulations, why should Tribal Nations have any confidence that they will effectively engage in Tribal consultation. Overall, it reflects the slapdash nature in which these regulations have been drafted and raises serious concerns about the ability to effectively carry out a law that is an important tool Tribal Nations use to protect their cultural resources and sacred places.

Regarding DOC's specific NEPA proposal, NATHPO has a few concerns and suggestions on how to address those issues with the proposal.

1. The proposed rule fails to acknowledge or incorporate Tribal treaty rights or reserved rights (e.g., rights to hunt, fish, gather, and access sacred sites) as factors in environmental review. These rights are often intrinsically linked to historic properties and cultural landscapes protected under NHPA. NEPA requires federal agencies to consider the full range of environmental, cultural, and historic impacts—omitting these rights from consideration violates the federal trust responsibility and fails to meet NEPA's procedural integrity.
2. Language formerly requiring explicit Section 106 consideration in Categorical Exclusions (CE) has been removed. This omission creates regulatory ambiguity and increases the risk that federal undertakings with adverse effects to historic properties, including sites of Tribal significance, will bypass NHPA compliance. There is no clear mandate to consult with Tribal Historic Preservation Officers (THPOs) or Tribal governments, even when actions clearly implicate their ancestral lands or cultural heritage.
3. The rule fails to reference Executive Order 13007, which requires agencies to accommodate access to and avoid adverse impacts on Indian sacred sites. Many of these sacred sites are integral to cultural identity and are eligible for or listed on the National Register of Historic Places. Without procedural guidance or mention of EO 13007, USDA risks allowing projects to proceed under CEs or Environmental Assessments (EAs) without evaluating sacred site impacts or engaging in good faith consultation.
4. The proposed rule treats "extraordinary circumstances" narrowly, referencing "historic properties" in a general sense, but failing to define or explicitly include cultural landscapes, traditional cultural places (TCPs), or Indigenous Knowledge (IK). This is inconsistent with 36 CFR 800 and the 2024 Advisory Council on Historic Preservation (ACHP) Policy Statement on Indigenous Knowledge and Historic Preservation. The rule should embed these concepts as core components of DOC's NEPA responsibilities.
5. There is no reference to Native American Graves Protection and Repatriation Act (NAGPRA) or Archaeological Resources Protection Act (ARPA) obligations for inadvertent discoveries or land-altering activities. Many of DOC's categorical exclusions, including dam construction, habitat improvements, and range projects, entail surface disturbance where ancestral burials, cultural items, or archaeological features may be encountered. Failing to establish a response protocol jeopardizes federal compliance and deepens Tribal mistrust.

All the above issues can and should be addressed before this rule is finalized. Specifically, we urge the DOC to:

1. Restore clear NHPA triggers, by reinstating language requiring NHPA Section 106 review consistent with 36 CFR 800—especially those invoking CEs with ground disturbance or potential to affect historic properties, particularly in locations that might contain properties that may be of religious and cultural significance to Indian Tribes.
2. Acknowledge treaty and reserved rights by amending the rule to explicitly require NEPA analysis of impacts to Tribal treaty rights, cultural practices, and traditional access to lands and waters.

3. Define cultural landscapes as extraordinary circumstances to ensure the rule elevates projects potentially affecting cultural landscapes, sacred sites, or TCPs to an EA or EIS threshold.
4. Require Tribal consultation at the scoping stage, not just after NEPA determinations are made, and ensure THPOs are considered key parties under 36 CFR Part 800.
5. Establish NAGPRA/ARPA discovery protocols and coordination requirements with Tribes if ancestral remains or artifacts are found during any USDA-supported activity.

The NEPA and NHPA Tribal consultation processes are fundamental tools that THPOs use to protect places that are important to their nations. While NATHPO shares frustration with the current project review process, NATHPO strongly opposes a weakening of Tribal consultation. Such an action would contradict the Federal Indian trust responsibility, one of the most important principles in federal Indian law.

The best way to address a consultation process that at times is inefficient and fails to provide for adequate protection of Tribal Nations' cultural resources and sacred places, would be to increase federal support for THPOs. In Fiscal Year 2025, THPOs are receiving on average \$100,900 from the Historic Preservation Fund (HPF). NATHPO strongly supports a reauthorization of the HPF that would require that:

- THPOs receive a minimum of 20 percent of the HPF each year, and;
- direct the National Park Service to review if THPO funding is keeping pace and adjust the funding to reflect the annual increase in the number of THPOs.

We also urge the Administration to propose budgets and Congress to pass appropriations bills that reflect the important role that THPOs play in protecting the places that tell the stories of Tribal Nations.

Consistency and certainty are important for both THPOs and the companies whose projects are essential for all Americans, including members of Tribal Nations. We are confident that with thoughtful changes and proper funding for THPOs, the project permitting process can be efficient, while at the same time guaranteeing that Tribal Nations' cultural resources are protected.

Thank you for considering our comments. Please do not hesitate to contact me if you would like to discuss this matter or if I can be helpful in any other way.

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