



October 27, 2025

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Bonneville Power Administration
Department of Energy

Re: NATHPO Comments on the Draft Nationwide Programmatic Agreement for Routine Operations and Maintenance by the Four Federal Transmission Utilities

Federal Transmission Utilities representatives,

The National Association of Tribal Historic Preservation Officers (NATHPO) appreciates the opportunity to provide comments on the draft Nationwide Programmatic Agreement (NPA) concerning routine operations and maintenance activities by the four Federal Transmission Utilities (FTUs). NATHPO submits these comments to assist the FTUs in strengthening the NPA to ensure full compliance with Section 106 and to uphold Tribal sovereignty and consultation obligations.

NATHPO supports efforts to improve efficiency, consistency, and transparency in Section 106 compliance. However, efficiency cannot come at the expense of statutory compliance or Tribal sovereignty. The NPA's aim to expedite consultation should be reframed to ensure that it strengthens, rather than compresses or bypasses, the duty to consult or the duty to take into account effects on properties of traditional religious and cultural significance (PTRCS) to Indian Tribes.

Stipulation and Appendix Comments

These comments are offered as an initial and instructive foundation for improving the NPA's consultation framework and creating a clear record for future revisions. We anticipate formal government-to-government consultation with Indian Tribes on the next draft. This submission establishes a record for tracking improvements and benchmarking unresolved issues.

A. Terminology. NATHPO appreciates that the draft NPA attempts to acknowledge the importance of Indigenous Knowledge in identifying and considering properties of traditional religious and cultural significance. However, the document relies on terminology, Tribal Indigenous Knowledge, which is not grounded in federal law, regulation, or policy.

The introduction of a new acronym that is inconsistent with existing federal terminology risks fragmenting or misrepresenting Indigenous Knowledge (IK) as it is recognized in both the ACHP's Policy Statement on Indigenous Knowledge and Historic Preservation (2024) and the Council on Environmental Quality (CEQ) and Office of Science and Technology Policy (OSTP) Guidance for Federal Departments and Agencies on Indigenous Knowledge (2022). Both use the term "Indigenous Knowledge."

Further, referencing Indigenous Knowledge in this manner risks creating the perception that there are parallel or equivalent systems of expertise held by non-Indigenous entities within this context, which is

inconsistent with how Indigenous Knowledge is treated under federal guidance. Relying on the term “Indigenous Knowledge” will ensure alignment across federal policy frameworks, reduce confusion, and affirm that the NPA draws from recognized guidance.

NATHPO recommends that:

- The NPA replace all references to “*Tribal Indigenous Knowledge (TIK)*” with “*Indigenous Knowledge (IK)*”, consistent with the terminology used by the ACHP, CEQ, and OSTP.
- The NPA explicitly cite the ACHP’s characterization of Indigenous Knowledge as articulated in its 2024 policy and recognize that this understanding, not a new definition, should guide implementation.
- The NPA clarify that Indigenous Knowledge informs all aspects of Section 106 implementation, including identification, evaluation, assessment of effects, and resolution, and should be engaged through government-to-government consultation with Tribes.

B. Area of Potential Effects. The draft limits the Area of Potential Effects (APE) to the horizontal and vertical limits of work. The APE should be defined consistent with 36 CFR 800.16(d), ensuring that it includes both direct and indirect effects on setting, feeling, association, and visual, audible, and atmospheric elements and is not limited to areas of physical disturbance.

C. Identification and Prior Survey Criteria, Stipulation III.B.2. To determine if additional survey or identification is necessary the CRS will review prior reports and existing databases as part of the background research and literature review; however, there is no requirement to confirm that prior consultation met applicable standards or that Tribes had a meaningful opportunity to participate in identifying properties of religious and cultural significance. This omission risks reliance on incomplete or outdated information and may result in failure to identify properties significant to Tribes.

NATHPO recommends the FTUs revise the identification and prior survey criteria to require that the CRS’s background research and literature review include a review of prior consultation records. The CRS should determine whether consultation associated with prior identification efforts:

1. Included all Indian Tribes that may attach religious and cultural significance to properties within the APE;
2. Provided Tribes a meaningful opportunity to review, comment, and identify additional properties or changed conditions; and
3. Addressed an undertaking of comparable type, scope, and potential effects.

Recommended adding a new sub-criterion to III.B.2.a.ii(following a-c):

(d) There is a verifiable consultation record with all Indian Tribes that may attach religious and cultural significance to properties within the APE; that Tribes were given a meaningful opportunity to review, comment; and that the scope of consultation addressed an undertaking of comparable type, scope, and potential effects. If these conditions are not met, the FTU will conduct renewed identification and consultation before proceeding.

D. Recognition of Tribal Expertise and Application of IK. NATHPO acknowledges that the FTUs have appropriately cited 36 C.F.R. § 800.4(c)(1) in recognizing that Indian Tribes possess “special expertise” in

evaluating properties that may be of religious and cultural significance to them. However, limiting this recognition solely to the evaluation phase is inconsistent with the ACHP's IK Policy and the overall intent of 36 C.F.R. Part 800.

ACHP's policy emphasizes that IK is relevant and necessary across all four stages of the Section 106 process—identification, evaluation, assessment of effects, and resolution of adverse effects. Restricting Tribal expertise to “evaluation” alone isolates Tribes from processes that require their input to identify, document, and assess the very properties whose significance they are uniquely qualified to interpret.

To align with both regulation and policy, NATHPO requests that this stipulation (III.B.2.c.i) be revised as follows to explicitly recognize that Indian Tribes are the appropriate subject matter experts in the identification, documentation, evaluation, and assessment of effects related to properties that may be of religious and cultural significance to them:

Special Expertise and Indigenous Knowledge: Pursuant to 36 C.F.R. § 800.4(c)(1), the FTUs recognize that Indian Tribes possess special expertise in identifying, documenting, evaluating, and assessing effects on properties that may be of religious and cultural significance to them. Consistent with the Advisory Council on Historic Preservation's Policy Statement on Indigenous Knowledge and Historic Preservation (2024), the FTUs will treat Indian Tribes as the appropriate subject matter experts for such properties and will integrate Indigenous Knowledge throughout all stages of the Section 106 process, including identification, evaluation, and resolution of effects, in consultation with affected Tribes.

This clarification ensures the NPA accurately reflects the full scope of Tribal expertise and prevents procedural segmentation that disconnects Tribes from early-stage processes needed to meaningfully inform decision-making.

E. Use of Vague Terms, “same,” “similar,” and “previously disturbed”. Throughout the draft NPA, the FTUs rely on ambiguous terms such as “same,” “similar,” and “previously disturbed” to define the scope of undertakings and determine when consultation with Indian Tribes is required. For example, Section III.B.2(c)(a)(i) states:

“The CRS would consult with Tribes when the undertaking would not be limited to the same, or similar, physical footprint as existing transmission-related infrastructure.”

Similarly, Appendix F references areas that are “significantly disturbed” or “unlikely to retain significant intact cultural deposits” as a basis for concluding that no historic properties are affected.

This language is vague and potentially misleading. Without clear definitions, these terms allow for discretionary interpretations that could exclude Indian Tribes from consultation or prematurely dismiss the possibility that historic properties, including PTRCS, may still exist within these areas.

NATHPO requests the following clarifications and revisions:

1. Define “similar” and “same footprint” in measurable and objective terms, such as defined spatial boundaries, depth of disturbance, or nature of the activity. These determinations must not rely solely on agency or contractor judgment.

2. Clearly define “previously disturbed,” including how disturbance will be assessed, and by whom. The FTUs should clarify whether “disturbance” refers to surface alteration, soil compaction, prior infrastructure installation, or other physical factors.
3. Explicitly state that prior disturbance does not negate the potential eligibility of properties of religious and cultural significance to Indian Tribes.

F. Expedited Consultation. NATHPO recognizes that the FTUs express a preference for avoiding adverse effects to historic properties and appreciates the inclusion of measures intended to minimize such impacts. However, throughout the draft, the NPA allows consultation with Indian Tribes to be bypassed when certain internal conditions or “streamlined” findings are met. Allowing a CRS to make a finding of “no historic properties affected” or “no adverse effect” without consultation under specified stipulations or appendices is inconsistent with the statutory requirements of the NHPA.

54 U.S.C. § 302706 establishes both the eligibility of Tribal cultural properties and the corresponding duty to consult. The consultation requirement at § 302706(b) is statutory, not discretionary. It cannot be waived, limited, or reinterpreted by regulation, nor can it be modified through a program alternative under 36 C.F.R. § 800.14.

NATHPO recommends that the FTUs consider the following:

1. **Clarify that consultation cannot be compressed or bypassed.** Consultation with Indian Tribes under 54 U.S.C. 302706(b) is a statutory requirement that cannot be waived, limited, or replaced by any regulation or process, including any expedited review approach similar to 36 CFR 800.3(g). Public involvement under 36 CFR 800.2(d) does not substitute for government-to-government consultation under 36 CFR 800.2(c)(2).
2. **Require verifiable consultation records or a documented history of comparable consultation.** Before proposing a finding of “no historic properties affected” or “no adverse effect,” each FTU must demonstrate that prior consultation or survey documentation meets a comparable standard of adequacy in type, scope, and potential effects. Reliance on prior information is appropriate only when the following conditions are met:
 - a. The FTU possesses verifiable written records that clearly document consultation conducted for an undertaking of similar type, scale, and potential effects, consistent with 36 C.F.R. § 800.4(b)(1);
 - b. The prior record includes evidence that affected Tribes were notified and had a reasonable opportunity to provide input at that time;
 - c. The documentation provides sufficient detail on the nature of properties considered, the consultation conducted, and the resulting findings to demonstrate that a reasonable and good faith identification effort occurred; and
 - d. Environmental conditions and the scope of potential effects have not materially changed since that prior consultation.

If these criteria are not fully met, the FTU must conduct new or supplemental consultation to achieve compliance.

3. **Establish time limits for reliance on prior data.** Consultation records and survey data older than five years should be presumed outdated unless reconfirmed through renewed consultation,

consistent with 36 CFR 800.4(c)(1). Reliance on outdated or incomplete data undermines the reasonable and good faith identification standard.

4. **Add a clarifying statement to Stipulation III.E.** *“Consultation with Indian Tribes pursuant to 54 U.S.C. 302706(b) is a statutory requirement and cannot be waived or limited by this agreement. The FTUs will ensure that consultation occurs for all undertakings that may affect properties of religious and cultural significance to Indian Tribes, regardless of programmatic conditions, expedited review procedures, or prior survey data. Findings of no historic properties affected or no adverse effect shall not be proposed without documented consultation with affected Tribes, unless a Tribe has explicitly waived consultation in writing for that specific undertaking.”*

G. Resolution of Adverse Effects and IK. NATHPO appreciates that the FTUs do not seek to limit mitigation measures. Consistent with the ACHP’s Policy, IK should inform avoidance, preservation in place, minimization, and only when unavoidable, mitigation. For these properties, IK should guide the selection, design, and implementation of treatment measures, with deference to affected Tribes, appropriate confidentiality, and fair compensation when Tribes contribute expertise, monitoring, or other services.

Recommended replacement for “Resolution of adverse effects” paragraph (III.F.1): *“Following a finding of adverse effect (Stipulation III.E.3), the CRS will, in consultation with the SHPO, affected Indian Tribes, and other consulting parties, develop measures to resolve adverse effects through either an HPTP or an MOA. For properties of traditional religious and cultural significance to Indian Tribes, Indigenous Knowledge shared through consultation should guide how adverse effects are avoided, minimized, and, only when unavoidable, mitigated. Resolution should prioritize avoidance and preservation in place, then minimization, and then mitigation. Treatment measures may include onsite or offsite actions and must be culturally appropriate, as determined by the affected Tribe. The FTUs should provide fair compensation when Tribes contribute Indigenous Knowledge, participate in monitoring, or otherwise support implementation of treatment measures.”*

H. Treatment of Human Remains, Burials, and Funerary Objects. The draft references the ACHP Burial Policy but does not describe implementation. The FTUs should:

1. Incorporate by reference the ACHP Burial Policy’s implementation guidance.
2. Identify how specific principles will be applied in planning, budgeting, discovery response, and treatment.
3. Affirm preservation in place as the preferred treatment.
4. Require FTUs to fund and support actions needed to protect or respectfully relocate remains or burial sites as part of project management, not only as mitigation.
5. Clarify that these responsibilities apply regardless of land status or jurisdiction.
6. Develop internal procedures with Tribes and NATHPO addressing early notification, Tribal decision roles, budgeting for protective actions, and annual reporting metrics.

I. Confidentiality. NATHPO requests that the FTUs clarify what is meant by “confidential” within the context of this NPA, including whether such information will be withheld from public disclosure under 54 U.S.C. § 307103 (NHPA § 304) or 16 U.S.C. § 470hh (ARPA § 9), exempt from disclosure under FOIA

pursuant to 5 U.S.C. § 552(b)(3), and restricted from internal or contractor distribution to personnel without a need to know.

NATHPO also requests that the FTUs describe how sensitive information will be identified, labeled, and tracked internally to ensure consistent protection and appropriate use. This should include standard metadata or document-marking conventions, requirements for maintaining separate, access-controlled databases, and protocols for handling information obtained directly from Tribes through consultation or Tribal monitors.

Finally, consistent with the federal trust responsibility, the FTUs must commit to consulting with affected Tribes prior to any internal, inter-agency, or public disclosure of information about PTRCS, including in response to FOIA requests or data-sharing agreements.

Without clear definitions and uniform procedures, this provision risks inconsistent implementation, potential violations of Tribal sovereignty, and inadvertent disclosure of sensitive cultural information.

J. Training, Stipulation VII. Require joint FTU and Tribal training that includes THPO and Tribal cultural staff perspectives and practice-based scenarios that apply the NPA. Include orientation on IK, confidentiality, APE setting for cultural landscapes, and ACHP's IK and Burial Policies. Provide periodic refreshers and onboarding for new CRS staff.

K. Annual Reporting, Monitoring, and Oversight, merged Stipulations IX and X. Ensure Indian Tribes and NATHPO are explicitly provided roles in Annual reporting (IX) and Monitoring and Implementation review (X.A-B).

L. Amendments and Appendix Updates, Stipulation XII. Add NATHPO as a reviewing party, distinct from the signatories, for any NPA amendment and any Appendix F update. Provide NATHPO written notice and an opportunity to review and comment on any proposed revision to appendix F.

M. Appendix F, Conditions to Avoid or Minimize Effects. Appendix F does not adequately address nonvisible or intangible properties like cultural landscapes and sacred sites.

Recommendations.

1. Add an introductory condition that the CRS may recommend no historic properties affected only where the FTU has documented consultation with all Tribes that may attach religious and cultural significance to properties within the APE for undertakings of similar scope and effects.
2. Set a five-year threshold for prior surveys or consultation records used to support findings, subject to confirmation through renewed consultation where conditions have changed.
3. Acknowledge that absence of surface evidence does not justify a no effect finding. Identification and documentation of PTRCS, and pother sites with intangible characteristics, require consultation and Tribal expertise.
4. Require that conditions be met before applying Appendix F:
 - a. Verifiable written record of consultation with each relevant Tribe.
 - b. Prior consultation addressed a comparable or broader undertaking.
 - c. Confirmation that landscape conditions have not materially changed.

N. Definition of PTRCS. The current definition reads narrowly and risks excluding property types that Tribes recognize as holding religious and cultural significance. The definition should be expanded to guide FTU application:

“For purposes of this agreement, Properties of Traditional Religious and Cultural Significance (PTRCS) to Indian Tribes include, without limitation, traditional cultural places, archaeological sites, structures, sacred sites, burial areas (including the area around the burial, and the general place where burials are), cultural landscapes, and other historic property types that Tribes identify as holding religious and cultural significance. PTRCS may be located on or off Tribal lands and may include resources with tangible or intangible attributes, including places whose significance is expressed through use, ceremony, stories, songs, or other cultural relationships.”

Conclusion and Next Steps

The draft Nationwide Programmatic Agreement represents a significant opportunity to improve coordination, consistency, and trust between federal transmission utilities and Tribal Nations. However, several provisions risk compressing or bypassing consultation through reliance on expedited approaches.

NATHPO respectfully urges BPA, WAPA, SWPA, and TVA to revise the NPA consistent with these recommendations to ensure that efficiency in process does not come at the expense of meaningful consultation, Indigenous Knowledge, or Tribal sovereignty.

NATHPO remains ready to collaborate with the FTUs and lead agencies in implementing or addressing these recommendations, including through guidance development, training, and model procedures that support consistent and culturally informed implementation of Section 106.

Lemlmtš (thank you) for the opportunity to comment,

A handwritten signature in blue ink that reads "Ira L. Matt". The signature is stylized with a long horizontal line extending from the "I" and a flourish at the end of the "t".

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Senior Advisor
NATHPO

Cc: Valerie Grussing, Executive Director, National Association of Tribal Historic Preservation Officers
Erik Hein, Executive Director, National Conference of State Historic Preservation Officers
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