



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

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Shoba Sivaprasad Wadhia
Officer for Civil Rights and Civil Liberties
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20032

Dear Ms. Wadhia,

The National Association of Tribal Historic Preservation Officers (NATHPO) has the following comments regarding how the Department of Homeland Security's (DHS) Environmental Justice Strategic Plan may impact Tribal Nations in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and President Biden's "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships."

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.

Our organization strongly supports Executive Order 13175 and President Biden's "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships." NATHPO greatly appreciates the DHS' commitment to adhering to both the Executive Order and the memo. Both documents importantly recognize that the federal government has a relationship with members of Tribal Nations that is unique.

Tribal Nations are sovereign nations and as the President's memorandum makes clear the relationship between the federal government and Tribal Nations is a government-to-government relationship. Furthermore, the federal government has signed treaties with Tribal Nations and there are treaty and trust responsibilities associated with those documents. As the Supreme Court has determined, the federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian Tribes (*Seminole Nation v. United States*, 1942).

THPOs are appointed by their Tribal governments as the official with whom federal agency officials must consult on potential impact that projects with a federal nexus will have on Tribal Nations' cultural resources and sacred places.

While Executive Order 13175 and President Biden's "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships" are an expression of what the law requires, the failure of the federal government to provide adequate funding for THPOs is a failure to adhere to the law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court

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has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes.¹

The protection and preservation of Tribal Nations' cultural resources more broadly and—THPO funding specifically—meet the definition of a trust responsibility.

While we applaud DHS and other federal agencies for efforts to adhere to the Executive Order and memo, federal funding for THPOs and other Tribal Nation agencies must be at a level that allows for meaningful government-to-government consultation. Tribes must have the capacity to engage in consultation as well as federal initiatives. Exerting sovereignty, influencing actions that impact them, and having a real seat at the table requires staff and resources.

THPOs' work at its core is government-to-government consultation, but the levels at which the federal government has funded THPOs has not allowed this work to take place. In Fiscal Year 2025, THPOs are receiving on average \$104,000 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.

Additionally, a critical ingredient of environmental justice with regard to Tribal Nations is indigenous knowledge (IK). Just this year, the Advisory Council on Historic Preservation finalized its [Policy Statement on Indigenous Knowledge and Historic Preservation](#) that builds on the 2023 government-wide [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#). It is important and now required that DHS acknowledge IK as a valid and self-supporting way of knowing, and we would like to see this incorporated into the EJ Strategic Plan.

These are not ancillary issues but rather central to the DHS' and every other federal agency's environmental justice plan. We greatly appreciate the DHS' commitment to environmental justice and consultation with Tribal Nations and look forward to an overall federal budget that reflects those commitments.

Thank you for considering our comments.

Sincerely,



Valerie J. Grussing, PhD
Executive Director

¹ <https://www.bia.gov/faqs/what-federal-indian-trust-responsibility>