



**NATIONAL ASSOCIATION
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**Testimony of the National Association of Tribal Historic Preservation Officers
Reno Franklin, Chairman of the Kashia Band of Pomo Indians
Roundtable on Historic and Cultural Preservation
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Ranking Member Grijalva and fellow members of the House of Representatives, I appreciate the opportunity to participate in this Roundtable on Historic and Cultural Preservation. I serve as Chairman of the Kashia Band of Pomo Indians and Tribal Historic Preservation Officer (THPO) for the Enterprise Rancheria of Maidu Indians. I also serve as a Board Member of the Advisory Council on Historic Preservation (ACHP). I speak to you today also as a representative of the National Association of Tribal Historic Preservation Officers (NATHPO), which is a national non-profit 501(c)(3) membership organization, founded in 1998, of Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance.

While efforts to streamline the permitting process for projects and limit THPO consultation on the impact on Tribal Nations' cultural resources and sacred places is an immediate challenge, there are deeper, historic issues that need to be addressed.

If we want to understand the opportunities and challenges for the historic and cultural preservation community in general and THPOs specifically, we must look at American history and the historic preservation movement with clear eyes.

The National Trust for Historic Preservation was established by charter by Congress, which President Truman signed into law on October 26th, 1949. The National Historic Preservation Act, which President Johnson signed into law on October 15th, 1966, created the ACHP and State Historic Preservation Officers (SHPO).

Certainly in 1949, and most likely still in 1966, there was no notion that Tribal Nations had something worth preserving. At best, there was a Western perspective that Tribal Nations were extinct, or soon to be extinct cultures, whose sacred objects and photos could now be celebrated and put in museums.

In 1949, the United States government was still fully committed to a policy of erasing Tribal Nations' cultures. The elimination of Tribal Nations' culture, language, and religion is not an ancillary part of America's story. It is at the very heart of that story. In 1966, the federal government was still—as directed by federal statute—actively engaged in the process of “terminating” Tribal Nations.

The historic preservation movement, as it was originally conceived, was committed to preserving the places associated with a culture that was dedicated to eliminating Tribal Nations' cultures.

I do not offer this history as an attack or criticism of the panelists representing the National Trust, ACHP, and the SHPOs. I provide this history in order for you to fully grasp the challenges that THPOs face and help Congress craft policies that effectively address those challenges.

Despite the best efforts of the federal government and the American people, Tribal Nations did not disappear. Their stories are tales of resilience and now a resurgence of their cultures. The creation of THPOs in the 1992 reauthorization of the National Historic Preservation Act was an important step in the federal government recognizing something that seems quite obvious: Tribal Nations, not Western archaeologists and anthropologists, should lead the effort to preserve their culture and sacred places.

By 1998, 12 Tribal Nations had established THPOs. There are currently 221 THPOs, and five to 10 Tribal Nations establish new THPOs each year.

The creation of a THPO by a Tribal Nation is an act of sovereignty and NATHPO strongly supports these efforts. Unfortunately, the process for a Tribal Nation to create a THPO is arduous and demeaning. The National Park Service requires Tribal Nations to prove that they are "capable" of taking on SHPO responsibilities. Yes, that is the actual word: "capable." The process of creating a THPO, not the laws intended to protect Tribal Nations' cultural resources, are what need to be "streamlined."

The establishment of new THPOs is so important because THPOs play a vital role in addressing the generational trauma that Tribal Nations have experienced. One of the best ways to address trauma caused by attacks on Tribal Nations' cultures is to preserve and protect those cultures. The work that THPOs do is not just about "preserving the story of Tribal Nations," it is also a celebration of vibrant culture that is alive and strong, despite the concerted effort of the US government and settlers to destroy it.

Congress and the Biden Administration can support this work by providing THPOs with the funding that they need. Not only can they do this, they must provide this funding. There is no question that providing THPOs with significantly more than they are currently receiving to protect and preserve Tribal Nations cultural resources and sacred places is a trust responsibility.

The Bureau of Indian Affairs explains on its website:

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). 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.*¹

The protection and preservation of Tribal Nations' cultural resources more broadly and THPO funding specifically—unquestionably meet the definition of a trust responsibility. The NHPA is a federal law and significantly more funding is needed to carry out its mandates with respect to Tribal Nations. Tribal Nations have a broad perspective on what constitutes “cultural resources,” and that definition encompasses the “lands, assets, and resources” that the federal government has a fiduciary obligation to protect. The chronic underfunding of THPOs is an abrogation of that fiduciary obligation.

The failure to support THPOs and more broadly to support the protection and preservation of Tribal Nations' cultural resources and sacred places goes beyond the failure to provide adequate funding for THPOs. The federal government has failed to use the law to protect places like Oak Flat in Arizona or Thacker Pass in Nevada.

While I greatly appreciate Ranking Member Grijalva's legislative efforts to protect Oak Flat, which the Western Apache call Chích'il Bił Dagoteel and the Navajo call Chéch'il Bił Dahoteel, this should not be necessary. There should be no question about whether it is right or wrong for the federal government to transfer Forest Service land to a mining company that plans to develop a copper mine and destroy a site that is sacred to Tribal Nations. Similarly, the development of a lithium mine on Bureau of Land Management land will destroy Thacker Pass, which is called Peehee mu'huh in the Paiute language. This area is sacred to several Tribal Nations and the site of an 1865 massacre of Tribal members by the U.S. Army in 1865.

While Oak Flat and Thacker Pass are among the most egregious instances of the failure of the federal government to protect and preserve Tribal Nations cultural resources and sacred places, they are far from the only examples.

I greatly appreciate the Biden Administration's support for preserving sacred places and its recognition of Tribal sovereignty, unfortunately their actions have not always matched their lofty words.

It is important to note that the failures to protect Tribal Nations' cultural resources and sacred places is not solely a reflection of this or previous administration's failures but also evidence of flaws within the NHPA. While the 1992 amendments to the law that created THPOs were long overdue and greatly appreciated, they failed to address the challenges associated with protecting Tribal Nations cultural resources and sacred places.

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

I am very proud of the ACHP's recent policy statement on burial sites, human remains, and funerary objects that recognize the expertise of Tribal Nations, and another policy statement calling for the integration of Indigenous Knowledge into historic preservation decision making process. Unfortunately, these policy statements do not address the fundamental problems that THPOs face in the efforts to protect their Nations' cultural resources and sacred places.

At its heart, the NHPA is intended to protect historic buildings, bridges, and other parts of the built environment. The law is not designed to protect the landscapes, watersheds, and wildlife that are central to the culture of Tribal Nations. It is one thing to talk about adverse effects and mitigation—as the NHPA does—when you are discussing a truss bridge over a river. It is not appropriate to discuss such things when you are talking about a Tribal Nations' cultural resources and sacred places.

The 1992 addition of THPOs to the NHPA did not fundamentally change an anachronistic law. Whether it is in the NHPA or elsewhere in the law, there need to be true protections for Tribal Nations cultural resources and sacred places.

To sum up, in order to better protect and preserve Tribal Nations' cultural resources and sacred places, Congress and Biden Administration officials should address these issues:

1. Remove barriers to Tribal Nations establishing THPOs
2. Provide THPOs with funding that truly meets the federal government's trust responsibility
3. Use the existing laws to offer greater protections to Tribal Nations' cultural resources and sacred places.
4. Explore how existing laws can be amended or new laws created that truly protect Tribal Nations cultural resources and sacred places.

Thank you for holding this roundtable discussion and considering my testimony. I would be pleased to answer any questions you have.