



**NATIONAL ASSOCIATION
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Testimony of the National Association of Tribal Historic Preservation Officers

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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 the Environmental Director and Tribal Historic Preservation Officer for the Pala Band of Mission Indians and I am the Chair 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.

Thank you, Ranking Member Grijalva for your steadfast support for the preservation and protection of Tribal Nations' cultural resources and sacred places.

THPOs and our partners, the State Historic Preservation Officers (SHPOs), are the backbone of our nation's efforts to preserve and protect the places and resources that tell the story of our country. THPOs are officials designated by federally recognized Tribal governments to protect culturally important places that perpetuate Native identity, resilience, and cultural endurance. THPOs' work is grounded in Tribal sovereignty, traditional knowledge, and cultural values.

Under the National Historic Preservation Act (NHPA), THPOs are required to consult on federally funded and permitted projects, but, unfortunately, they have not received the funding necessary to adequately fulfill this responsibility. THPOs receive funding through the Historic Preservation Fund (HPF), which became law in 1976, and since then has been authorized at \$150 million per year. The HPF was last reauthorized in 2016 and that authorization expired on September 30th of this year.

While the expiration of the authorization of the HPF was disappointing, it is incumbent on Congress not to quickly and simply reauthorize the law as it is, but rather to amend the HPF so it provides THPOs with the funding needed to protect and preserve Tribal Nations' cultural resources and sacred places.

NATHPO strongly supports reauthorizing the HPF at, at least \$300 million per year and including provisions requiring appropriators to direct a minimum of 20 percent of the annual funding to

THPOs and to require the National Park Service to regularly review if the funding level for THPOs is keeping pace with the number of THPOs.

Since Fiscal Year 2014, the total HPF appropriation has grown from \$56.4 million to \$204.5 million, but the portion that THPOs receive has only grown from \$8.9 million to \$23 million. When dispersed among the 221 Tribal Nations out of 574 Tribal Nations with THPOs, this amounts to an average of slightly more than \$100,000 per THPO. The Fiscal Year 2023 THPO funding level represents only 11 percent of the total HPF.

This situation for THPOs is particularly problematic because, unlike with SHPOs, every year five to 10 more Tribal Nations establish a THPO.

Unfortunately, both the Biden Administration and Congress have failed to understand that providing THPOs with the same amount they received in the previous fiscal year is not “level funding.” With five to 10 new THPOs per year, that “level funding” is spread among a larger number of THPOs and therefore, although the total funding amount for all THPOs remains the same, each individual THPO receives less than did in the previous fiscal year. This is the equivalent of expecting a growing child to wear the shoe that fit her last year and is a challenge that our colleagues, the SHPOs, do not have to contend with because their numbers are not expanding.

While NATHPO was grateful for the \$8 million increase from \$16 million to \$23 million that THPOs received in Fiscal Year 2023, that increase did not offset years of very slight increases. For example, when THPOs received \$16 million in Fiscal Year 2022, that represented a \$1 million increase from the \$15 million that THPOs received in Fiscal Year 2021 and amounted to about an additional \$2,000 per THPO in Fiscal Year 2022.

I would like to take this opportunity to urge the Biden Administration to request \$34 million for THPOs in Fiscal Year 2025. This increase is especially important following enactment of laws, such as the Bipartisan Infrastructure Act and Inflation Reduction Act, that led to the creation of federally supported transportation and green energy projects that THPOs have to consult on. This means that the Biden Administration and Congress have increased the workload on THPOs, while not also increasing support for THPOs at a commensurate level.

The failure to provide THPOs with the funding that they need is fundamentally different from failing to provide adequate funding for other federal programs because THPO funding is a trust responsibility of the federal government. The protection and preservation of Tribal Nations’ cultural resources more broadly and—THPO funding specifically—meet the definition of a trust responsibility.

Funding for THPOs must be understood in the broadest context possible. The protection and preservation of Tribal Nations’ cultural resources and sacred places is an essential step for

healing generational trauma that resulted from the federal government's efforts to eliminate Tribal Nations.

To effectively protect and preserve their cultural resources and sacred sites, THPOs need more than an increase in THPO funding levels in the Historic Preservation Fund; THPOs also need greater flexibility to holistically protect and preserve Tribal Nations' cultural resources and sacred sites.

With the creation of THPOs in the 1992 reauthorization of the NHPA, the protection of Tribal Nation's cultural resources was shoehorned into a law that was created for the purpose of protecting tangible historic resources such as buildings, bridges, and archaeological sites. The legislative framework creating THPOs was a poor fit and has become more problematic as Tribal Nations have asserted their sovereignty over the past 30 plus years. The creation of THPOs was not accompanied by a broader definition of what constitutes a cultural resource.

As Ranking Member Grijalva knows well, the deficiencies in the existing law are particularly apparent in the failure of the NHPA to protect Oak Flat, a sacred place for several Tribal Nations. Oak Flat is listed on the National Register of Historic Places, but that is in no way stopping the transfer of Oak Flat from the Forest Service to Resolution Copper, which will ultimately lead to the destruction of this sacred site.

Similarly, even though the Reno-Sparks Indian Colony has said that Thacker Pass is eligible to be listed on the National Register of Historic Places, the Bureau of Land Management has permitted Lithium America to develop a mine that would threaten the site. Thacker Pass, known as Peehee Mu'huh in Paiute, or "rotten moon," is held sacred by the three Native American tribes as the site of a massacre that took place in 1865.

While Oak Flat and Thacker Pass have received attention from the media, there are many other places that are sacred to Tribal Nations that have been destroyed or are threatened because the existing laws do not offer adequate protections. In particular, the NHPA was not written with Tribal Nations' sacred sites in mind. We need a law with the flexibility to stop a project if the damage or destruction to a Tribe's sacred places is too great.

Besides working on legislation that truly protects Tribal Nations' sacred places, we need enactment of laws that recognize the breadth of the work that THPOs do—including repatriation and language revitalization—and the important role Tribal knowledge and expertise should play in the consultation process.

While providing THPOs the resources that they need and modernizing anachronistic laws are things that Congress should do to protect Tribal Nations' cultural resources and sacred places, streamlining the permitting process is something it should not do. The law currently has tools for an expedited review process. Furthermore, it is not appropriate to be discussing speeding up the

process at a time when THPOs do not have the funding they need to adequately do their work. Once THPOs are funded at a level that allows them to address the flood of requests for consultation both on Tribal Nations' current lands and their ancestral lands, there can be a thoughtful conversation about potential changes to the permitting process. Until then, that conversation cannot take place because it is impossible to determine if there is truly a problem and, if so, what is the scope of that problem.

The delays in projects that are directly caused by failing to adequately fund THPOs not only threaten Tribal Nations' cultural resources and sacred sites; they also hinder the American economy by creating unnecessary delays in infrastructure and clean energy projects that are important for the country, including Tribal Nations. In fact, in many cases, Tribal Nations would benefit the most from the completion of these projects.

Finally, I want to highlight that while NATHPO strongly supports environmental justice and equity for all communities, the situation for Tribal Nations is fundamentally different from African Americans, Hispanic Americans, and other communities that have borne the brunt of dirty water and air. Unlike these other communities, Tribal Nations are sovereign nations and this means that there is a fundamental difference in the relationship between them and the federal government.

Our historic and cultural preservation programs reflect the America of 2023, not the America of 1966 when the NHPA became law or 1976 when the HPF became law. Today's America recognizes that Tribal Nations' cultural and natural resources are worthy of preserving and protecting – that Tribal Nations' sacred places are deserving of reverence and respect. Today's America acknowledges the unjust removal of peoples from lands they have stewarded since time immemorial, and that restoration of rights and traditional knowledge is the only way forward together. It is time for the respect America has for Tribal Nations to be reflected in the way it funds THPOs and the sacred work they do to protect Native places.

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