



# OFFICE OF THE GOVERNOR

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Paul J. Ray, Administrator  
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## **Re: Review of National Historic Preservation Act Rulemaking, RIN 1024-AE49**

Dear Mr. Oreska:

I write to you on behalf of the Pueblo of Acoma in opposition to the rulemaking undertaken by the Department of the Interior's (Department) National Park Service to revise 36 C.F.R. Part 60 and 36 C.F.R. Part 63. These regulations govern the listing of properties on the National Register of Historic Places (National Register) pursuant to the National Historic Preservation Act (NHPA). You have heard from many voices within and outside of Indian Country opposing this rulemaking, and the Pueblo of Acoma joins in this outcry.

I understand the Department has provided the rulemaking to the Office of Information and Regulatory Affairs (OIRA) for review under Executive Order 12866. This rulemaking is significant for a number of reasons, including its effect on tribal communities and public health. I urge you to conduct a close review of the rulemaking during your allotted review time in light of the many stakeholders' concerns, including those of the Pueblo of Acoma. I also urge you to meet with tribes on this important rulemaking, as it uniquely impacts us.

The rule as proposed would have very real consequences for tribes, including the Pueblo of Acoma, as the NHPA is extremely important to us. Tribes are inherently sovereign governmental entities to which the United States owes a trust responsibility. Regardless, the United States has stripped tribes of legal title to most of our aboriginal territory, often relocating tribes entirely off our homelands. This means many tribes have important interests tied to land to which they do not have legal title—including, for example, interests related to cultural resources. Without legal mechanisms in place, tribes often lack a voice in important federal decision-making processes affecting land to which we have sacred ties.

The NHPA is one legal mechanism that allows tribes a seat at the table, requiring that federal agencies identify historic properties within a federal undertaking's area of potential effect and assess and resolve adverse effects on those historic properties. *See* 54 U.S.C. § 306108; 36 C.F.R. Part 800. Historic properties, which are covered by the NHPA, are defined to include certain cultural resources that are included on or eligible for inclusion on the Historic Register. 54 U.S.C. § 300308. Thus, a cultural

resource's determination of eligibility for or inclusion on the National Register, *see* 54 U.S.C. §§ 302101–08, qualifies it as a historic property and thereby cements its protection under the NHPA.

In carrying out the NHPA's review processes, the NHPA mandates that federal agencies must consult with tribes each step of the way. *See, e.g.,* 54 U.S.C. § 302706(b); 54 U.S.C. § 306102(b)(4). With regard to listings on the National Register, the NHPA states that “[p]roperty of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.” 54 U.S.C. § 302706(a); *see also* 54 U.S.C. § 306102(b)(2). Tribes have the knowledge, expertise, and capacity to identify cultural resources and evaluate them for inclusion on the National Register.

The proposed rule contradicts the NHPA and harms tribes in important ways. For example, its revisions limit the role of tribes in requesting properties be added to or otherwise assessed for eligibility for the National Register, where the NHPA does not call for these limitations. The revisions also limit tribes' ability to appeal a federal agency's refusal to nominate a property for the National Register, where the NHPA contains broad appeal provisions. Importantly, in the context of a potential historic property owned by multiple landowners—such as a historic district—the revisions give fewer landowners who happen to hold a larger area of land within that property more power. The revisions allow owners of a majority of the land area to prevent a property from being listed, where the NHPA only allows a majority of the individual owners to prevent such listing.

Additionally, the Department has not engaged in proper tribal consultation on this rulemaking, asserting instead that it will have no direct effect on tribes. In recognition of the government-to-government relationship between the United States and tribes and to implement its trust obligations, the Executive Branch has taken on a duty to consult with tribes on federal policies that have tribal implications. Executive Order 13175, titled “Consultation and Coordination with Indian Tribal Governments,” was issued in 2000. Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 9, 2000). The Department has complied with this presidential mandate by enacting a tribal consultation policy. Dep't of Interior, *Department of Interior Policy on Consultation with Indian Tribes*; *see also* DEP'T OF INTERIOR, Sec. Order No. 3317, DEPARTMENT OF THE INTERIOR POLICY ON CONSULTATION WITH INDIAN TRIBES (2011). Despite the importance of the NHPA to tribes and in contravention of Executive Order 13175 and its own consultation policy, the Department did not engage in sufficient tribal consultation on this rulemaking.

On behalf of the Pueblo of Acoma, I urge you to conduct a close review of this rulemaking. I also request a meeting with you to discuss this important rule.

Sincerely,

**PUEBLO OF ACOMA**

A handwritten signature in blue ink, appearing to read "Brian D. Vallo", is written over a horizontal line.

Brian D. Vallo  
Governor

CC: Joy Beasley, National Park Service  
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