



Hualapai Department of Cultural Resources

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Secretary David Bernhardt
Department of the Interior
1849 C Street NW
Washington DC 20240

April 30, 2019

Mr. Bernhardt:

Please consider this comment letter on behalf of the Hualapai Tribe of Arizona, regarding the National Park Service's proposed revisions to Title 36 of the Code of Federal Regulations, Parts 60 and 63, governing the listing of properties in the National Register of Historic Places (NRHP).

Although ostensibly based on 2016 amendments to the National Historic Preservation Act (NHPA), the proposed rule goes far beyond the amendments and contradicts the intent of the NHPA, proposing significant changes that would inappropriately and negatively impact the role of the Keeper of the NRHP, State Historic Preservation Officers (SHPOs), Indian tribes, Tribal Historic Preservation Officers (THPOs), and the public interest.

DOI has asserted that this proposed rule will have no direct effects on tribes, and therefore no consultation is required. On the contrary, the very promulgation of these rule changes would constitute an undertaking, requiring government-to-government consultation with tribes. By changing the processes that federal agencies may use to make decisions that affect outcomes about National Register eligibility and, possibly, nominations, the potential for adverse effects on places and properties holding significance to tribes is enormous.

It must be noted that many, probably most, places of significance to Indian tribes are not located on reservation lands, but are rather on public lands throughout the U.S. Furthermore, Indian tribes have taken an increasingly greater role in identification, evaluation, and decision making in partnership with federal and state agencies.

For example, the Hualapai Tribe in recent years conducted an ethnohistoric study of a proposed wind farm on BLM lands in northwestern Arizona. As a result of this study, several Traditional Cultural Places (TCPs) were identified and evaluated for National Register

eligibility. The tribe continues to be engaged with the BLM in developing a Memorandum of Agreement and a Historic Properties Management Plan intended to create the best mitigation strategies for avoiding or minimizing adverse effects to these places. Should the proposed rule change take effect, we fear that in future circumstances the consideration of such places would not be given proper attention and adverse effects will occur, should the federal land management agency choose not to request a consensus determination from the appropriate State Historic Preservation Office or Keeper of the National Register of Historic Places.

It is important to note that many Indian tribes have the knowledge, expertise, and capacity to identify and evaluate for National Register eligibility historic properties on federal lands, especially those tribes with Tribal Historic Preservation Offices and/or Cultural Resource departments. For their work to be ignored or to lie in a state of limbo because of federal agency indifference, inaction, or even hostility based on arbitrary political, environmental, or cultural views is unconscionable. It is also contrary to the regulations of the Advisory Council on Historic Preservation, in which it is expressly stated: "The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them." 36 C.F.R. § 800.4(c)(1).

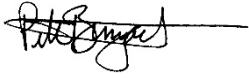
The assertion that the proposed rule does not constitute an undertaking is wrong and fails to recognize that tribes often have substantial ancestral, cultural, and spiritual connections to federal lands, and the proposed changes would adversely affect tribes' ability to protect sacred and significant cultural sites. The failure of DOI and NPS to recognize their consultation responsibilities in even proposing the rule constitutes an abrogation of the federal government's trust responsibilities toward Indian tribes.

The current DOI Policy on Consultation with Indian Tribes (implementing E.O. 13175) requires government-to-government consultation between tribal officials and departmental officials on departmental actions with tribal implications, **including rulemakings** that may have a substantial direct effect on an Indian Tribe on matters including tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands.

This action falls squarely within these terms, for areas both on federally managed lands and off. In many cases, current patterns of tribal ownership and management of land have little relationship to areas of tribal significance. The NHPA requires the federal government to consult with tribes on areas where historic properties hold religious and cultural significance for them, regardless of location. 54 U.S.C. § 302706. When such properties are located on federal land, the federal agency has a duty to manage and maintain them "in a way that considers the preservation of their historic, archeological, architectural, and cultural values." 54 U.S.C. § 306102(b)(2). Agencies are required to do this in consultation with tribes. 54 U.S.C. § 306102(b)(4). For DOI to claim otherwise in this case is erroneous, disingenuous, and contrary to numerous federal statutes, orders, and policies.

The Hualapai Tribe hereby requests initiation of formal consultation, as required under federal law and DOI policy, before this rulemaking proceeds further. A 60-day public comment period does not constitute government-to-government consultation and will not be considered as such.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bungart", with a horizontal line extending to the right.

Peter Bungart
Director/THPO
Hualapai Tribe
Dept. of Cultural Resources

Cc: Dr. Damon R. Clarke, Chairman, Hualapai Tribe
Daniel Jorjani, Acting Solicitor, DOI
Andrea Travnicek, Acting Assistant Secretary for Fish, Wildlife, and Parks, DOI
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