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August 8, 2019

Vicki Christiansen, Chief  
U.S. Forest Service  
1849 C Street NW  
Washington DC 20240

Re: U.S. Forest Service (USFS) Regulation Identifier Number 0596-AD31

Chief Christiansen:

Thank you for the opportunity to submit comments on the Proposed Rule revising the USDA Forest Service's National Environmental Policy Act (NEPA) regulations. The National Association of Tribal Historic Preservation Officers (NATHPO) is a nonprofit organization whose members are the Tribal government officials (Tribal Historic Preservation Officers, or THPOs) and their staff who carry out the national historic preservation program as delegates of the Secretary of the Interior on tribal land, pursuant to the National Historic Preservation Act of 1966, as amended (NHPA). NATHPO serves as a communications vehicle among THPOs, SHPOs, federal agencies and other organizations. It also educates the public and elected officials about the national historic preservation program, legislation, policies and regulations.

As the entity representing a key constituency who would be impacted by the changes proposed, we have several concerns. As stated in the proposed rule, NEPA regulations and process are a key component of how the agency performs environmental analysis and makes decisions. In the current Administration, we are understandably skeptical of the sweeping claims that "the proposed rule will help the Forest Service make timelier decisions based on high quality, science-based analysis, and will improve the Forest Service's ability to get work [done] on the ground while meeting its environmental stewardship responsibilities."

We appreciate that the agency published an Advance Notice of Proposed Rulemaking (ANPR) and is considering comments received during that time. We also appreciate that the agency is conducting tribal consultation separately from the public comment period. NATHPO does not necessarily oppose efforts to increase efficiency of environmental and historic review processes. We reiterate the comments noted in the proposed rule that any gains on this front "should not come at a cost to public involvement or conservation of natural resources," including tribal involvement and cultural resources.

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NATHPO is a non-profit membership association of tribal government officials committed to protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance.

“Pursuant to Executive Order 13175, the Agency has assessed the impact of this proposed rule on Indian tribal governments and has determined that the proposed rule would not significantly or uniquely affect communities of Indian tribal governments.” Although NATHPO does not necessarily agree with this determination of no effect, or its rationale, we appreciate that, “the Forest Service is sending letters inviting federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed rule. The Forest Service will continue to conduct government-to-government consultation on the rule until the final rule is published.”

The proposed changes may indeed have implications for tribes, which often have substantial traditional cultural and ancestral connections to federal lands. These proposed changes could adversely affect tribes’ ability to protect sacred and significant cultural sites. Agencies are already challenged by identification of properties of religious and cultural significance to tribes. Efforts to streamline review processes can impact tribes’ ability to participate in consultations, especially off tribal land, where many culturally important sites are located.

Specific impacts to tribal participation in revised NEPA review processes include:

- More categorical exclusions resulting in fewer NEPA documents for public review;
- Missed opportunities for consultation under Section 106 of the National Historic Preservation Act (NHPA), which should be coordinated and integrated with thorough NEPA review;
- Certain types of categorical exclusions may be of special interest to tribes; and
- Requirement for consultation prior to Determination of NEPA Adequacy.

The proposed rule recognizes that public engagement strategies “are not a substitute for fulfilling Tribal consultation requirements.” NATHPO, its members, stakeholders, and partners, request two things. First, we strongly encourage agency leadership to ensure that staff and representatives at every level are knowledgeable and trained in best practices of tribal consultation and employ them in this rulemaking process and any subsequent regulatory changes. Second, if this consultation produces feedback that tribal communities will indeed be adversely affected by these proposed changes, that this input is truly incorporated into the decision-making process as (or *whether*) the rulemaking proceeds.

We thank you for your leadership in following established policies and practices for upholding federal trust responsibilities to Indian Tribes in decisions that impact their resources, places, and communities.

Sincerely,



Valerie J. Grussing, PhD  
Executive Director

Cc: Lenise Lago, Associate Chief, U.S. Forest Service  
Doug Stephens, National Heritage Program Manager, U.S. Forest Service  
Fred Clark, Director, Office of Tribal Relations, U.S. Forest Service

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