

# National Environmental Policy Act/ National Historic Preservation Act: Federal Appellate Court Addresses Mootness Issue



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

10/09/2019

The United States Court of Appeals for the Tenth Circuit (10th Circuit) addressed in an October 4th opinion a mootness issue associated with National Environmental Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”) claims.

The question considered was whether the completion of a challenged structure mooted the NEPA and NHPA claims.

The Caddo Nation of Oklahoma (“Caddo Nation”) filed suit against the Wichita and Affiliated Tribes (collectively, “Wichita Tribe”) asserting violations of NEPA and NHPA during their process of planning to build a Tribal History Center (“History Center”) funded by the United States Department of Housing and Urban Development (“HUD”).

The U.S. District Court (“Court”) denied a request for a temporary restraining order preventing continuing construction of the History Center while appellate proceedings were underway. The Court subsequently held it lacked jurisdiction because construction of the History Center was completed during the pendency of the appeal. The request by the Caddo Nation (i.e., a temporary restraining order) was deemed moot.

The 10th Circuit had recognized in a previous appeal the possibility Caddo Nation might have viable NEPA claims regarding the operation of the History Center or other activities on the site. As a result, the matter was remanded for further proceedings to the Court with it stating the:

Caddo Nation may seek to amend its complaint or file a new motion for a preliminary injunction on the History Center’s use pending the outcome of its [NEPA] and [NHPA] claims.

The Caddo Nation filed an Amended Complaint to which the Wichita Tribe responded by filing a Motion to Dismiss.

The Court concluded all claims set out in the Amended Complaint, with the exception of the NEPA and the NHPA claims, were barred by tribal sovereign immunity. It stated that the Wichita Tribe had agreed to comply with NEPA and the NHPA and therefore waived its sovereign immunity when accepting money from HUD. Nevertheless, the District Court held that the Caddo Nation’s NEPA and NHPA claims were mooted by the completion of the History Center.

The 10th Circuit held that the Court was correct in concluding that most aspects of the Caddo Nation’s NEPA and NHPA claims were moot. The History Center facilities, which included a 4,000 square foot

museum, traditional glass house and grass arbor, was complete. Therefore, claims regarding these associated structures were deemed moot.

The 10th Circuit, however, noted that the ceremonial dance grounds, which had been included in the Wichita Tribe's NEPA Environmental Assessment, had not been completed. Consequently, the NEPA and NHPA claims were not moot. As a result, the 10th Circuit affirmed in part, reversed in part, and remanded to the Court for further proceedings consistent with the Opinion.

A copy of the Opinion can be downloaded [here](#).