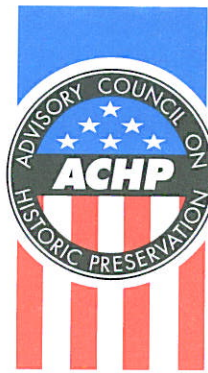


John L. Nau, III
Chairman

Susan S. Barnes
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

Memorandum

December 27, 2005

To: Senior Policy Officials

From: Chairman

Subject: Agency Section 106 agreements with Indian tribes and Native Hawaiian organizations

The 1992 amendments to the National Historic Preservation Act recognized and expanded the role of Indian tribes and Native Hawaiian organizations in the national preservation program. In response to these changes, the Advisory Council on Historic Preservation (ACHP) revised its regulations to clarify their role in the Section 106 review process. The revisions included a provision (36 C.F.R. 800.2(C)(2)(E)) for Federal agencies to enter into agreements with Indian tribes and Native Hawaiian organizations that specify how they will carry out responsibilities under the regulations. Such agreements can address all aspects of a tribe's or Native Hawaiian organization's participation in the review process and provide for additional rights or concurrence in agency decisions in the Section 106 process. With this provision, the ACHP offered Federal agencies and their tribal and Native Hawaiian partners a vehicle for shaping Section 106 consultation in a way that benefits all parties.

The ACHP commends those Federal agencies that have entered into agreements with Indian tribes and Native Hawaiian organizations. I want to encourage all agencies, including those that are not land managers, to develop such consultation agreements. Most agencies are organized on a state or regional basis and are, therefore, able to identify the Indian tribes or Native Hawaiian organizations with an interest in that area.

Consultation agreements can provide predictability for both the agency and the Indian tribe or Native Hawaiian organization; address issues such as confidentiality of information and access to sacred places; and outline protocols for government-to-government consultation. The consultation leading to these agreements often forges positive relationships even before the agreements take effect. An excellent example of how such an agreement can lead to and support a positive relationship is the memorandum of understanding (MOU) between the Hopi Tribe and the Kaibab National Forest. First executed in 1999 and amended several times since, the MOU sets forth procedures for consultation, addresses confidentiality issues, and ensures access to ceremonial places. A copy is enclosed for your information.

While the ACHP is aware that there are a number of consultation agreements, few have been filed with us. The regulations require that a copy of such agreements be provided to both the ACHP and the appropriate SHPO. These agreements serve not only as a record of how the Federal agency will meet its requirements to consult with Indian tribes or Native Hawaiian organizations but also serve as examples of successful consultation strategies.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Please do not hesitate to contact the ACHP for further assistance in the development of these agreements. Valerie Hauser, Native American Program Coordinator, can be reached at 202-606-8503 or vhauser@achp.gov.

John L. Nau, III

Enclosure