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Working with Indian Tribes to Protect Cultural Resources During the COVID-19 Pandemic

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As the nation marks more than 100 days since the national emergency declaration concerning the outbreak of the coronavirus disease (COVID-19), it is an opportunity to reflect on lessons learned in coping with this unprecedented disruption of American life. The central role of the Advisory Council on Historic Preservation (ACHP) in the national historic preservation program provides a unique perspective on challenges presented in preserving the nation's heritage under the current trying circumstances. Charged with overseeing the federal historic preservation review process established by Section 106 of the National Historic Preservation Act, the ACHP works in close partnership with federal agencies, State and Tribal Historic Preservation Officers, and Indian tribes to ensure historic properties are given due consideration in federal project planning.

The spread of COVID-19 led to the closure or disruption of many governmental offices nationwide including those of Indian tribes. At the same time, however, this unprecedented event has demonstrated the benefit of developing and maintaining close working relationships between federal agencies and Indian tribes. Where such relationships existed, consultation has largely been able to continue pursuant to Section 106. Many federal agencies invested in developing relationships with Indian tribes prior to the pandemic. As a result, their Section 106 consultation efforts seem to be progressing despite the obstacles presented by COVID-19. One example of a formal federal-tribal relationship that includes a state agency is the [Tribal Consultation Committee](#) established through a Section 106 Programmatic Agreement (PA) among the North Dakota Federal Highway Administration, North Dakota Department of Transportation, and eight Indian tribes. The PA was amended in 2014 and now includes 19 Indian tribes. Having prior experience and knowledge of tribal governmental processes allows for efficient and effective use of time and resources to the benefit of all parties and can help move projects through the Section 106 process. This is particularly important as the nation moves into economic recovery phases and accelerates critical projects.

Similarly, the ACHP has regularly promoted among federal agencies the benefits of having effective working relationships with Indian tribes. In 2006, then-Chairman John L. Nau, III sent a [memorandum](#) to Senior Policy Officials recommending that their agencies consider entering into consultation agreements with Indian tribes and Native Hawaiian organizations as a way to build positive relationships.

In 2015, the ACHP issued [recommendations](#) for improving federal-tribal consultation. The recommendations were based on discussions during two summits with tribal leaders and the ACHP's experience in Section 106 consultations. In the recommendations, the ACHP suggested that "the foundation for resolving most, if not all, challenges facing Section 106 participants is a solid and productive working relationship." The ACHP went on to say, "conflicts may still arise and there may be disagreements but they can be handled, if not resolved, when participants have the trust and understanding that develops out of the effort to develop and maintain working relationships." This set of recommendations is as relevant to the current situation as it was prior to the COVID-19 pandemic.

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In its [Early Coordination with Indian Tribes During Pre-Application Processes: A Handbook](#) and the companion training [course](#) released in 2019, the ACHP continued to emphasize the importance of developing relationships between federal agencies and Indian tribes: “The ACHP has seen, time and again, that when federal agencies, applicants, and Indian tribes commit to working together to find mutually acceptable solutions, historic preservation thrives and project reviews proceed more expeditiously.”

Indian tribes are among the hardest hit by the pandemic. Rates of infection on some reservations are among the highest in the U.S. The closure of tribal enterprises has disproportionately impacted tribal economies and other local jurisdictions that benefit from tribal businesses. Many tribes have had to furlough staff including those working in historic preservation; those who are teleworking frequently lack adequate Internet and wireless connectivity to effectively participate in Section 106 reviews. Some tribal governments have paused off-reservation travel to reduce community spread of COVID-19.

While the ACHP recognizes the challenges in establishing and maintaining relationships during the present situation, federal agencies are nonetheless encouraged to reach out to Indian tribes and be creative in approaches to consultation. Face-to-face meetings are ideal ways to begin developing relationships and to work through preservation solutions but are obviously impractical currently. Instead, agencies should consider temporarily turning to virtual meetings if tribal partners have the technical capacity to join such meetings. Otherwise, federal agencies can start with telephone calls and teleconferences. The ACHP also recommends acknowledging the hardships a tribe may be encountering because of the pandemic and inquiring about ways the agency may be able to assist. For example, the ACHP has regularly sent out information about federal grant opportunities. Once face-to-face interactions are safe, federal agencies can cement their relationships with Indian tribes through in-person meetings and site visits as part of their normal Section 106 consultation.

These are challenging times for everyone. Despite the difficulties Indian tribes and federal agencies may be facing due to the pandemic, adequate tribal consultation must still be conducted for every project, even with Indian tribes whose offices may be closed or short-staffed. As the country begins recovery efforts, and tribal offices re-open to a backlog of consultation requests, it will be even more critical to effectively consult with Indian tribes to ensure the preservation of their sacred and cultural places while advancing important recovery projects. An Indian tribe’s challenges in participating in consultation could serve as a call for a federal agency to do what it can to facilitate that tribe’s involvement in the Section 106 process, taking the first step toward a solid working relationship. And as those steps proceed, the ACHP would welcome the opportunity to assist agencies in their efforts.



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