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**MEETING**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**July 12, 2023**

**PROVISIONAL AGENDA**

**Call to Order 9 a.m. EDT**

- I. Chair's Welcome
  - A. Welcome to the Council on Environmental Quality
  - B. Expanding Capacity- Budget Requests, Intergovernmental Personnel Act, and Interns
  - C. Oak Flat Update
  - D. Reflections on Site Visit/Traditional Trades
- II. Executive Director's Report
- III. Governance Issues
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  - B. Implementation of the Policy Statement on Burials, Human Remains, and Funerary Objects
- VI. Program Issues
  - A. Preserve America E.O. 13287 Section 3 Report Key Topics/Themes
  - B. Update on the Section 106 Regulations Discussion
- VII. Communications, Education, and Outreach
  - A. Youth Engagement Concept Plan
  - B. ACHP/HUD Awards Ceremony
- VIII. New Business
- IX. Adjourn



**MEETING**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**July 12, 2023**

**ANNOTATED AGENDA**

- I. Chair's Welcome
  - A. Welcome to the Council on Environmental Quality. *Chair Sara Bronin will welcome the Council on Environmental Quality as the ACHP's newest voting member.*
  - B. Expanding Capacity—Budget Requests, Intergovernmental Personnel Act, and Interns. *Chair Bronin will summarize efforts to expand ACHP capacity, establish fellowships, and further develop the intern program.*
  - C. Oak Flat Update. *Chair Bronin will provide an update regarding the ACHP's 2021 comments to the Secretary of Agriculture on the Resolution Copper Mining Project and Land Exchange.*
  - D. Reflections on Site Visit/Traditional Trades. *Chair Bronin will share her perspectives on traditional trades and the July 11 site visit to Frederick, Maryland.*
  
- II. Executive Director's Report. *Executive Director Reid Nelson will report on efforts to develop the FY 2025 budget estimate, staff recruitment, and ACHP operations.*
  
- III. Governance Issues
  - A. Operating Procedures Amendments. *Chair Bronin will seek member adoption of the updated ACHP Operating Procedures. Action needed.*
  - B. Committee Assignments, Names, and Scopes. *Chair Bronin will lead a discussion on recent adjustments to committee assignments and other possible changes to the four ACHP standing committees.*
  
- IV. Policy Issues
  - A. ACHP Comments on Legislation. *Preservation Initiatives Committee Chairman Rick Gonzalez will summarize the committee's consideration of various draft legislation and propose that the ACHP comment on certain bills. Action needed.*
  - B. Policy Statement on Housing and Historic Preservation (discussion). *Chair Bronin will announce next steps in developing an expanded policy statement on housing and historic preservation and seek member input on the draft structure.*
  - C. Policy Guidance Regarding ACHP Advising on State and Local Legislation (discussion). *Chair Bronin will provide an overview of and seek comment on the draft of an appendix to the Operating Procedures that would guide the ACHP in determining when to comment on state and local legislation and seek member input on the draft.*
  - D. Updates
    - 1. Policy on Climate Change and Historic Preservation. *Committee Chairman Gonzalez will summarize committee discussions on the development of an implementation plan for the newly adopted Climate Change and Historic Preservation Policy Statement.*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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2. Secretary of the Interior Standards on Rehabilitation. *Chair Bronin will summarize the feedback she has received thus far on the application of the Secretary of the Interior's Standards on Rehabilitation and discuss possible next steps.*

V. Native American Affairs

- A. Policy Statement on Indigenous Knowledge and Historic Preservation (discussion). *Native American Affairs Committee Chairman Reno Franklin will update members on efforts to develop a policy statement on Indigenous Knowledge and historic preservation and seek member input on its content.*
- B. Implementation of the Policy Statement on Burials, Human Remains, and Funerary Objects. *Committee Chairman Franklin will update members on efforts to implement the recently adopted policy statement on Burials, Human Remains, and Funerary Objects and seek member input on further implementation steps.*

VI. Program Issues

- A. Preserve America E.O. 13287 Section 3 Report Key Topics/Themes (discussion). *Federal Agency Programs Committee Chairman Jay Vogt will update members on the issuance of guidance to federal agencies on the development of Section 3 reports and efforts to refine the themes and potential findings for the ACHP's upcoming report.*
- B. Update on the Section 106 Regulations Discussion (discussion). *Committee Chairman Vogt will summarize the analysis conducted by staff to determine whether updates to the Section 106 regulations may be necessary and seek member input on plans to improve implementation.*

VII. Communications, Education, and Outreach

- A. Youth Engagement Concept Plan (discussion). *Communications, Education, and Outreach Committee Vice Chairman Kristopher King will update members on efforts to develop a plan for further engaging youth in the work of the ACHP.*
- B. ACHP/HUD Awards Ceremony. *Communications, Education, and Outreach Committee Vice Chairman King will invite members to attend the ACHP/HUD Awards ceremony on July 27 at HUD Headquarters.*

VIII. New Business. *There is none at this time.*

IX. Adjourn. *The meeting will adjourn by noon EDT.*



## AMENDMENTS TO THE ACHP OPERATING PROCEDURES

**Introduction.** As part of her effort to review existing procedures at the ACHP, Chair Sara Bronin initiated a review of the Operating Procedures earlier this year. The chair presented proposed amendments to the membership on May 17, 2023, and received comments through June 16. Members also received an updated version of the proposed amendments, and discussed the amendments during a video conference call, on June 12.

The proposed amendments are intended to better align the Operating Procedures with current agency practice, improve on ACHP record-keeping and membership protocols, account for the arrival of a full-time chair, clarify the ACHP's donations authority, reflect statutory and regulatory guidance, change passive voice to active where possible, and correct internal inconsistencies and statutory references.

Comments were received from the National Conference of State Historic Preservation Officers, the ACHP Foundation, Vice Chairman Jordan Tannenbaum, the Department of Housing and Urban Development, the General Services Administration, and other members in the June 12 video conference call.

A track changed version of the Operating Procedures showing all proposed amendments as of June 22 is attached. That version also includes comment bubbles explaining the basis of amendments that have been incorporated in response to member and observer comments.

**Action Needed.** The members will be invited to vote on the adoption of the amendments to the Operating Procedures at the July 12 business meeting. A vote of a two-thirds majority (16) is needed to adopt the amendments.

**Attachments:** Track changed and clean versions of the Operating Procedures of the Advisory Council on Historic Preservation

*June 29, 2023*

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## OPERATING PROCEDURES OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

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### INTRODUCTION

These procedures provide guidance for the operation of the Advisory Council on Historic Preservation ("Council"). They supplement and clarify more general requirements appearing in the National Historic Preservation Act ("Act"), the Administrative Procedure Act, and the Council's regulations. In addition, the Council follows administrative procedures of the Department of the Interior relating to finance, personnel, budget, and travel in lieu of developing its own procedures. The Council ~~as an agency is composed of~~ has 24 members (collectively referred to as the "Membership"), headed by a Chairman, ~~and. It has~~ a staff which is ~~directed-~~ overseen by an Executive Director.

**Commented [SB1]:** Architect of the Capitol (AOC) suggested that we convert this and other sections to active voice (denoted after this comment as "Active voice conversion per AOC").

**Commented [SB2]:** Reid Nelson suggested this word choice change.

### I. STATEMENT OF POLICY

The ~~law~~ entrusts the ~~egal~~ authorities of the Council ~~are for the most part entrusted~~ to the Membership. To carry out these authorities in an efficient and prompt manner, the Membership recognizes that the Chairman and the Executive Director, under the supervision of the Chairman, must possess the authority to act on behalf of the Membership on a daily basis, conforming to general policies and specific directives established by the Membership. Frequent and open communication among the Executive Director, the Chairman, and the Membership is necessary for proper coordination with, and conformance to, these policies and directives.

**Commented [SB3]:** Active voice conversion per AOC.

The ~~role of the~~ Membership ~~is to~~ sets general policy for programs and activities, initiate or approve programs and activities, and exercise long term oversight ~~on the execution of the~~ Council's policies, programs and activities. Members participate in specific programs and activities individually, in groups, and as the full Membership.

**Commented [SB4]:** Active voice conversion per AOC.

The Chairman ~~is charged with~~ undertakes the ~~day-to-day pursuit and continuing~~ oversight of the ~~execution-implementation~~ of such policies, programs and activities. The Chairman ensures that the Executive Director is carrying out approved policies and conforming to them. The Chairman makes policy decisions on behalf of the Membership as needed when the Membership is unavailable to act, consulting with the Membership as appropriate. In the absence or unavailability of the Chairman, the Vice Chairman performs the functions of the Chairman.

**Commented [SB5]:** Active voice conversion per AOC.

**Commented [SB6]:** NCSHPO suggested deleting "day-to-day" here to differentiate Chair responsibilities from "daily" responsibilities of Executive Director.

The Executive Director ~~is responsible for~~ undertakes the daily ~~execution-implementation~~ of programs and activities, subject to the policy guidance of the Chairman and the Membership. The Executive Director supervises the staff of the Council and ensures that their individual actions and objectives are consistent with the policies established by the Membership.

**Commented [SB7]:** Active voice conversion per AOC.

## II. COUNCIL ORGANIZATION

### A. Council Membership

The National Historic Preservation Act specifies that the Membership shall consist of 24 members. Six members (the Secretary of the Interior, the Secretary of Agriculture, the Architect of the Capitol, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and the General Chairman of the National Association of Tribal Historic Preservation Officers) serve *ex officio*. The President appoints the remaining 18 members (four general public members, four experts, a governor, a mayor, a member of an Indian tribe or a Native Hawaiian organization, and the heads of seven Federal agencies).

### B. Designees

Federal members, the Chairman of the National Trust, the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Governor may designate another officer of their department, agency, or organization to serve on the Council in their stead. In accordance with ~~Section 201(b) of the Act~~ 54 U.S.C. § 304101(b), Federal agencies may only designate an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities. ~~Guidance for naming designees is set forth in~~ Appendix A to these Operating Procedures, entitled "Membership Credentials," ~~sets forth guidance for naming designees.~~ A designee must provide the Chairman with a letter of designation, setting forth the basis for the designation, prior to participating in activities of the ACHP as a designee. ~~Members should update ACHP staff in a timely fashion regarding a change of incumbents in their designated positions by sending information about such changes to designeeupdates@achp.gov. Failure to do so can result in ACHP communications, including notifications and requests for action, not reaching the relevant designees.~~

**Commented [SB8]:** Active voice conversion per AOC.

**Commented [SB9]:** Suggestion from Javier Marques given "issues we've faced keeping our directories and e-mail lists up to date."

### C. Membership Credentials

1. **Qualifications.** ~~Section 201 of the Act~~ 54 U.S.C. § 304101 sets forth ~~the~~ criteria for members of the Council and their designees. Individual members or their designees should meet the qualifications set forth in Appendix A to these Operating Procedures, entitled "Membership Credentials."

~~2. **Credentials Committee.** The Chairman shall appoint a standing Credentials Committee, comprising three Council members who shall participate personally. The Credentials Committee shall advise the Chairman and the members on credentials issues as needed.~~

3. **Credentials review.** ~~At the request of~~ The Chairman, ~~the Credentials Committee~~ will review the credentials of any designee named by an agency or organization pursuant

to the Act ~~and provide its views to the Chairman~~. If the Chairman determines that a designation may be deficient, the Chairman shall consult with the member making the designation to resolve the issue. The Chairman may take such other actions as appropriate to ensure that the intent of the statute is carried out.

#### D. Observers

1. **Member-designated observers.** Any member, including one not authorized by statute to designate an alternate representative, may, after submitting a written request (including electronic mail) to the Chairman and with the written approval of the Chairman, designate an observer who may actively participate in any or all activities of the Membership on behalf of the specified member in the absence of the Member or such member's designee pursuant to Section II.B. of these Operating Procedures, but may not make or second any motion and may not vote. These observers shall have a fixed term not to exceed two (2) years commencing from the date of the Chairman's written approval. A Member may reappoint Member-designated observers.

**Commented [SB10]:** NCSHPO-requested clarification

2. **Chairman-designated observers.** ~~With the concurrence of a majority of the members,~~ ¶The Chairman may invite the head of a Federal, State, Tribal, or local public agency or non-profit organization to become an observer when the Chairman determines that the participation of such agency or organization will benefit the Council. The head of such an observer's entity may designate someone else within the entity to participate with the ACHP in his or her stead so long as that designee is an official with major entity-wide responsibilities. The status of Chairman-designated observers is to be distinguished differs from the status of instances where the Chairman may invite an individual invited by the Chairman to participate in a specific matter before the Council. The Membership shall set a fixed term for each Chairman-designated observer and may terminate observer status at any time by majority vote. These observers shall have a fixed term not to exceed two (2) years commencing from the date of the written invitation by the Chairman to the observer. The Chairman may reappoint Chairman-designated observers. The Chairman may appoint up to five (5) observers without the concurrence of a majority of the Membership, and may appoint more than five (5) observers with the concurrence of a majority of the Membership.

**Commented [SB11]:** NCSHPO-requested clarification

**Commented [SB12]:** Active voice conversion per AOC.

**Commented [SB13]:** NCSHPO-requested clarification (first sentence). Second sentence suggested to promote flexibility in appointing observers; membership may terminate observer status per subpart 4.

3. **Participation of observers.** Observers may attend all meetings and may speak when recognized by the Chairman or the subgroup chairman, as applicable, but may not make or second any motion and may not vote. Challenges to the credentials or participation of an observer shall be resolved in accordance with Section II.C.3-2 of these Operating Procedures.

4. **Termination.** The Chairman, or the Membership by majority vote of those present and voting, may terminate the observer status of a Chairman-designated observer at any time. The appointing Member, or the Chairman in consultation with the appointing Member, may terminate the status of Member-designated observer at any time.

**Commented [SB14]:** NCSHPO and ACHP Foundation raised the issue of termination and we propose this language distinguishing between Chairman-appointed and Member-appointed observers.

## E. Council Subgroups

**1. Establishment.** The Chairman may establish standing and ad hoc subgroups to carry out the Council's business. The Chairman shall appoint to such subgroups a chairman and subgroup ~~members-participants~~ who may be chosen from the Membership or may be others, and shall notify the Membership in writing of such appointment or appointments.

**2. Non-Member Subgroup Participants.** ~~The participation of a~~ Subgroup ~~members-participants~~ who ~~are-is~~ not selected from the Membership and ~~are~~ is not an official designee shall be ~~governed-by~~ subject to the restrictions under Section II.D.3 of these ~~o~~Operating ~~p~~Procedures.

**3. Changes and Termination.** At his or her discretion, the Chairman may substitute any subgroup ~~member-participant~~ or chairman and may terminate the subgroup.

**4. Powers.** Unless given a specific delegation of authority by majority vote of the Membership, the powers of subgroups shall be limited to advising the Chairman and the Membership on the exercise of their legal authorities. When a subgroup ~~is carrying~~ carries out advisory functions, it is not expected to entertain motions or hold votes but, rather, have its chairman report to the Chair or Council, as appropriate, about the subgroup's discussions and advice.

**5. Alternate Participation in Subgroup.** ~~Where a~~ Federal agency Members, the Architect of the Capitol, the Governor, the Mayor, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, ~~and-or~~ the General Chairman of the National Association of Tribal Historic Preservation Officers, ~~or their designees,~~ has been appointed to a subgroup, ~~the~~ such entity or individual may name one alternate ~~representatives-participant~~ to participate in subgroup functions, ~~including-and this alternate participant may making-~~ make motions, seconding motions, and voting, when the subgroup is carrying out those limited advisory functions. The ~~Member-or designee~~ appointed participant should notify the chairman of the subgroup and the Executive Director in writing when naming such an alternate ~~s~~ participant.

**6. Rules of Order.** Subgroups established under this section shall generally adhere to these ~~o~~Operating ~~p~~Procedures and to Robert's Rules of Order.

**Commented [SB15]:** Sentence converted to singular (participants to participant).

**Commented [SB16]:** Active voice conversion per AOC.

**Commented [SB17]:** NCSHPO-requested clarification

**Commented [SB18]:** Conversion to singular for grammatical purposes.

**Commented [SB19]:** Active voice conversion per AOC.

## III. COUNCIL MEETINGS

This section of these ~~o~~Operating ~~p~~Procedures establishes general procedures that pertain to meetings of the Membership or of subgroups established under Section II.E of these ~~o~~Operating ~~p~~Procedures. Procedures governing meetings held in the course of the Section 106 process set

forth in the Council's regulations are contained in Section V.

### A. Types of meetings

Formal actions of the Membership may be take formal actions at meetings of the Membership or subgroups may take formal actions, in accordance with Section II.E, by subgroups. Meetings of the Membership or of subgroups may be held in regular session, in special session, or unassembled.

Commented [SB20]: Active voice conversion per AOC.

1. **Regular session.** Normally, the Membership shall conduct its business at meetings held in regular session with full adherence to these Operating Procedures. The Chairman shall schedule the regular meetings of the Membership, which will generally be held quarterly three to four times per year.

2. **Special session.** When the Chairman determines that circumstances warrant a departure from normal procedures, such as to discuss a time-sensitive proposed program alternative or to discuss legal matters outside the public view, the Chairman may call a meeting in special session.

3. **Unassembled meeting.** When the Chairman determines that the Membership or a subgroup should act on a single or limited number of issues and a regular or special meeting is not warranted, the Chairman may convene an unassembled meeting. In an unassembled meeting, business will be conducted by mail, telephone, electronic mail, facsimile, or other such methods of communications. Reasonable notice of unassembled meetings shall be given by the Executive Director. No business shall be transacted at unassembled meetings that will violate the principles of public participation adopted by the Membership.

### B. Public participation and disclosure

The public may attend, either in-person or virtually as circumstances allow or require, regular and special session meetings of the Membership. However, the Council will not provide public attendance will not be provided for with the following exceptions: 1) unassembled meetings and 2) meetings or portions of meetings dealing with subjects properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). The public shall have access to materials transmitted to and from members in the conduct of an unassembled meeting, with the exception of materials properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). When the Chairman determines that business before the Council requires exclusion of the public, the Chairman shall limit the closing of the meeting to the time necessary to transact the confidential business.

Commented [SB21]: Active voice conversion per AOC.

### C. Meeting place

The Council shall hold in-person regular and special session M meetings of the Membership and

Commented [SB22]: Active voice conversion per AOC.

~~subgroups shall be held~~ in places generally accessible to the public and, ~~whenever possible,~~ to people with disabilities. However, normal Federal office building security requirements that restrict access to individuals who have made their desire to attend known beforehand shall not be considered to make a meeting place unacceptable. ~~The Council shall broadcast virtual and hybrid regular and special session meetings of the Membership shall be broadcast via online simulcast, webinar, or virtual meeting format.~~

**Commented [SB23]:** Active voice conversion per AOC.

**Commented [SB24]:** GSA commented that we recognize the possibility of hybrid meetings.

#### D. Public Notice

The Executive Director shall ~~notify the Membership of, and publish in the Federal Register notice of,~~ regular and special session meetings ~~of the Membership~~ at least 7 days before the meeting date. If 7 days notice of special session meetings is not possible under the circumstances, the Executive Director shall make a good faith effort to provide notice ~~to the Membership and to the public~~ as early as possible. The Executive Director may provide other means of notice as the Executive Director determines to be necessary. In providing such additional notice, the Executive Director shall make a good faith effort to provide actual notice to local governments, Indian tribes, the public and other interested persons where such notice is not precluded by excessive cost or burdens on staff time. Notice of meetings of subgroups shall be given as determined appropriate by the Executive Director.

**Commented [SB25]:** ACHP Foundation, with the concurrence of Javier Marques, note that Federal Register publication costs time and money but is not a legal requirement and that “contemporary technology” provides a more effective means of notice.

#### E. Quorum

Thirteen voting members shall constitute a quorum necessary for the transaction of business at a meeting of the Membership. ~~Subgroups will only need a quorum when carrying out non-advisory authorities formally delegated by the Membership. Such a quorum shall be a simple majority of the voting members in the subgroup, namely, Members or their official designees under Sections II.A. and II.B. of these Operating Procedures. A quorum for subgroups shall be a simple majority of the voting subgroup members.~~

#### F. Call to Order

Meetings of the Membership may be called to order by the Chairman or, in the Chairman's absence, by the Vice-Chairman. Should both be absent, a non-Federal member previously designated by the Chairman shall call the meeting to order.

Meetings of subgroups may be called to order by their respective chairmen or any subgroup ~~member-participant~~ previously designated by the subgroup's chairman.

#### G. Order of business

~~With the exception of unassembled meetings, Regular~~ meetings of the Membership shall generally adhere to the following order ~~of business~~:

1. Adoption of the agenda.

2. Consideration of the minutes.
3. Reports of subgroups.
4. Staff reports.
5. Special or priority business.
6. Unfinished business.
7. New business.

The Chairman may make adjustments in the order of business to facilitate the purpose of such meeting conduct of Section 106 case reviews and to meet other special scheduling needs.

The Chairman shall establish the order of business for special session meetings and unassembled meetings in a manner that facilitates the purpose of such meetings.

#### H. Agenda

Regular Mmeetings of the Membership shall be conducted in accordance with an agenda adopted by the Membership at the beginning of each meeting. A provisional agenda shall be sent to the Membership prior to the regular meeting.

#### I. Recorder

The Chairman ~~or the chairman of any subgroup~~ shall appoint a recorder who shall be responsible for keeping the minutes of any regular or special session the meeting. The chairman of any subgroup shall appoint a person responsible for providing a summary of any subgroup meeting.

#### J. Minutes

The recorder of any regular or special session meeting shall keep full and accurate minutes of the meeting. Except as directed by the Chairman, transcripts shall not be required. The recorder shall prepare minutes~~Minutes shall be prepared~~ promptly after a meeting and the Membership shall review and approve such minutes~~at the subsequent meeting of the Membership or the subgroup.~~

**Commented [SB26]:** Active voice conversion per AOC.

**Commented [SB27]:** "Subgroup" meeting minutes are not kept; summaries are kept, so reference to subgroup here is deleted.

#### K. Motions and Resolutions

Motions and resolutions made and considered in any meeting of the Membership or subgroup shall generally conform to Robert's Rules of Order. The recorder of such meeting shall~~All motions and resolutions shall be~~ accurately record all motions and resolutions~~ed~~ in the minutes along with a record of the action taken on each at the meeting.

**Commented [SB28]:** Active voice conversion per AOC.

#### L. Procedural questions

The Chairman or subgroup chairman shall resolve~~Questions of meeting procedure shall be resolved by the Chairman or subgroup chairman~~ in accordance with Robert's Rules of Order. In

**Commented [SB29]:** Active voice conversion per AOC.

the event of conflict between Robert's Rules and these procedures, the specific terms of these procedures shall take precedence.

### M. Voting

Only members or duly authorized designees may vote at meetings of the Membership or subgroups. In regular or special session meetings, voting may be voice or show of hands, as determined by the Chairman or subgroup chairman, unless a roll call vote is required. Voting in unassembled meetings may be by mail, telephone, electronic mail, facsimile, or other such methods of communications, as determined by the Chairman or subgroup chairman. In any event, all votes cast in an unassembled meeting shall be recorded as a roll call vote.

Roll call votes shall be required whenever the Membership or a subgroup takes a final action on any recommendation, advice, or comment; on the adoption of any rule, procedure, or policy; or any question pertaining to budget or administration; or any other matter which the Chairman or subgroup chairman determines requires a record of how each member voted. Unless a voting member objects, the Chairman or subgroup chairman may waive the roll call requirement.

Matters voted on by the Membership or subgroups shall require a simple majority of those present and voting. Exceptions are: comments rendered under Section 106 (~~including program comments pursuant to 36 C.F.R. § 800.14(e)~~), exemptions granted under ~~Section 214 of the Act~~ 54 U.S.C. § 304108(c), evaluations of Federal agency activities under ~~Section 202(b) of the Act~~ 54 U.S.C. § 304102, specific delegations of authority to subgroups authorizing subgroups to act on behalf of the Membership, and recommendations to the President or the Congress. These exceptions require the vote of a majority of the Membership. ~~However, the adoption of positions on legislation, regardless of whether such positions are intended to be communicated to the President or Congress, only require a simple majority of those present and voting.~~

No member shall be permitted to vote on a matter in which the member or the member's agency or organization has a direct interest not common to other members, such as comments rendered under Section 106 that will be addressed to the member's agency or an action that may present a personal conflict of interest. Members abstaining from voting shall so indicate during a roll call vote or at the close of a vote by voice or by show of hands.

### N. Proxies

A member or his/her duly authorized designee may give a proxy to another voting member to be cast on any number of specific issues on a meeting agenda. Voting by proxy is permitted at meetings of the Membership and subgroups unless expressly prohibited by the Chairman when the subgroup is established. No member may hold more than two proxies. Valid proxies shall be counted as members present and qualified to vote whenever a point of order is raised about the presence of a quorum.

### O. Business Meeting Participation

**Commented [SB30]:** Javier Marques noted an updated statutory reference could be added here.

To reduce comment bubble clutter, we have not noted other statutory reference updates in this version, but instances of such should be self-explanatory.

**Commented [SB31]:** ACHP Foundation suggested language to clarify that positions on legislation be addressed to ensure consistency with the removal of the phrase in 2015 "adoption of positions on legislation" from the list. Javier Marques suggests the new language to address the suggestion.

Participation at the table in ACHP business meetings shall be limited to Members (or, in the absence of a Member, the Designees for such a Member under Section II.B. of these Operating Procedures), and Chairman-designated Observers duly named in accordance with the Act and these Operating Procedures. With the prior approval of the Chairman, a member-designated observer may, in the absence of the relevant Member or such member's designee under Section II.B. of these Operating Procedures, participate at the table, subject the restrictions set forth at Section II.D.1. of these Operating Procedures.

#### IV. COUNCIL ADMINISTRATION

##### A. Financial Administration

1. **Budget Formulation.** The Chairman, ~~in consultation with the Membership or an appropriate subgroup,~~ shall establish the budget request level for the Council each fiscal year. The budget request shall reflect the established programs and priorities of the Council. The Executive Director, under the supervision of the Chairman, shall prepare the budget request and supporting documentation. When the budget request is formally submitted to the Office of Management and Budget (OMB) and the Congress in accordance with statute, it shall be made available to individual members on request. All members shall conform to applicable OMB directives regarding the confidentiality of budget information and materials. The Chairman or the Executive Director shall regularly report to the Membership on the progress of the budget review and appropriations process.

2. **Operating Program Detailed Budget.** The Executive Director shall prepare the annual ~~operating program for the Council~~ detailed budget in accordance with established Council programs and priorities, ~~and applicable OMB directives, and Congressional funding.~~ The Executive Director shall submit the ~~operating program~~ detailed budget to the Chairman for review to ensure conformance with Council policies. The Executive Director shall develop any necessary reprogramming of funds or personnel levels in consultation with the Chairman.

3. **Donations.** In accordance with ~~Section 205(g) of the Act~~ 54 U.S.C. § 304105(g) (donations authority), the Executive Director shall accept and administer donations received by the Council. The Executive Director shall consult with the Chairman regarding the collection and disbursement of donations and shall report on the status of donations at each regular session meeting.

In accordance with the donations authority, the Council may use any donations may be used in ways consistent with the Council's duties and the purposes of the Act. Such use includes, but is not limited to, funding internships in the Council, research on historic preservation issues, events encouraging public involvement in or education about historic preservation, and Council visits to historic sites.

Commented [SB32]: Active voice conversion per AOC.

In order to avoid any questioning of Council operations, and consistent with the federal ethics recommendations about otherwise permissible gifts at 5 C.F.R. § 2635.201(b), the Executive Director will consider declining donations that the Executive Director believes might lead a reasonable person with knowledge of the relevant factors to question his or her integrity. Factors in making this determination include whether:

(i) The gift has a high market value;

(ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;

(iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and

(iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

Accordingly, this may include the Executive Director may consider declining donations from entities ~~(other than federal agencies)~~ that the Executive Director knows are consulting parties in Section 106 reviews where the Council is formally involved, or from entities having or seeking contracts with the Council.

**Commented [SB33]:** Active voice conversion per AOC.

**Commented [SB34]:** GSA asked the reasoning behind this parenthetical. In response, it was stricken. In a nutshell, the parenthetical was added due to the technicality that federal agencies are never prohibited sources under the rules of ethics. But we should remove the parenthetical to give the ED latitude to decline a federal agency donation in the unlikely case that one such agency presents a large donation while a controversial 106 case of it is before the ACHP.

## **B. Personnel Management**

**1. Applicable Regulations and Procedures.** Except in those areas where the Membership or staff has adopted its own specific regulations or procedures for the conduct of personnel management matters, the Council shall follow applicable provisions of the Department of the Interior.

**2. Interim Regulations and Procedures.** If a particular situation arises in which the Chairman determines that following the Department of the Interior provision is inconsistent with the policies of the Council, the Chairman, in consultation with the Membership or the Executive Director, may establish an interim procedure to supersede the Department of the Interior provision. The Chairman shall provide notice of such interim procedure to all potentially affected parties. The Chairman shall propose, within 180 days after the development of an interim procedure, for action by the Membership, an amendment to the ~~e~~Operating ~~p~~Procedures or to applicable Council regulations that would make such final.

### **23. Appointment and Compensation**

*a. Council members.* The Chairman, in consultation with the Membership

or an appropriate subgroup, shall establish necessary policies governing the payment of compensation and reimbursement of travel and subsistence expenses in accordance with ~~54 U.S.C. § 304104~~Section 204 of the Act.

*b. Council staff.* The Executive Director shall appoint and fix the compensation of staff in accordance with the provisions of ~~54 U.S.C. § 304105(b) through (d)~~Sections 205(b) through (d) of the Act. ~~The Executive Director shall consult with the Chairman regarding decisions affecting the appointment or fixing of compensation of staff at the level of GS-14 or above.~~

**Commented [SB35]:** ACHP Foundation suggests deletion as it is inconsistent with the statutory role of the Executive Director regarding staff.

*c. Senior Executive Service.* The selection and management of Council employees in the Senior Executive Service shall conform to the appropriate regulations and procedures established by the Department of the Interior, provided that the provisions of ~~Sections 205 (a) and (e) of the Act~~54 U.S.C. § 304105(a) and (c) regarding employees in the competitive service above the highest rate for the grade GS-15 shall also govern the appointment and fixing of compensation of employees in the Senior Executive Service. The Chairman shall appoint individuals to serve on the necessary appraisal and resource boards. At least one member of each such board shall be chosen from the Membership.

**34. Performance Appraisal Plans for Non-SES Employees.** In accordance with applicable regulations of the Department of the Interior, the Executive Director shall establish and administer the necessary performance appraisal plans for staff that are non-SES. ~~The Executive Director shall consult with the Chairman in the development or revision of such plans.~~

**4. Grievance Procedures.** The Council shall follow the applicable regulations and procedures of the Department of the Interior regarding grievance proceedings, ~~provided that the Chairman shall appoint from the Membership the necessary individuals or subgroups to carry out specific reviews or actions.~~

### C. Information Management

**1. Notification of Council Activities.** The Executive Director shall ~~provide notice to the Membership of the formation of subgroups. Non-Federal members shall be provided information on Council activities within the member's State by copy of correspondence. Federal members shall be provided information on Council activities affecting their agency by copy of correspondence.~~

**2. Monthly Report.** ~~The Executive Director shall~~regularly provide the Membership with a regular written or verbal reports, generally on a monthly or bi-monthly basis, which shall include information on staff activities, budget matters, pending litigation and

legislation, recently concluded Section 106 cases, and other matters of general interest. ~~The monthly report shall also contain a schedule of upcoming meetings of subgroups, meetings conducted under the Section 106 process, and other meetings.~~ Additional materials will be included as appropriate.

**32. Distribution of other Council materials to members.** The Executive Director shall ensure that all members are provided with copies of Council documents and publications.

**43. Distribution of Council materials to the public.**

*a. Policy of availability.* It is the policy of the Membership to make Council materials available to the public and other interested parties. Accordingly, under normal circumstances, the Executive Director shall provide documents reflecting final action on the website of the Council ~~upon request without requiring formal submission of a Freedom of Information Act request.~~ When the Executive Director determines that a formal Freedom of Information Act request is necessary, the requester of Council materials shall be so informed. The Executive Director shall respond to Freedom of Information Act requests in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations.

*b. Withholding documents from disclosure.* The Council may withhold ~~information and documents may be withheld~~ from public disclosure only in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations at 36 C.F.R. Part 810.

**Commented [SB36]:** Active voice conversion per AOC.

## V. SECTION 106 ADMINISTRATION

This section of these ~~e~~Operating ~~p~~Procedures applies to the conduct of business under the Section 106 process set forth in the Council's regulations at 36 C.F.R. Part 800.

### A. Delegation of Authority

The regulations ~~implementing Section 106 of the Act require~~ provide for the Council to participate in the Section 106 process in various ways. The delegation of responsibilities to the Chairman and the Executive Director is set forth in the document entitled "Delegation of Authority" incorporated into these ~~e~~Operating ~~p~~Procedures as Appendix B.

### B. Meeting ~~p~~Procedures

1. **Public ~~m~~Meetings.** In the course of Section 106 review of any particular case, the Membership, a subgroup, or the Executive Director, in consultation with the Chairman, may conduct a public meeting for the purpose of gathering and disseminating information on the undertaking under consideration. Such meetings shall be open to the public and be

held near the site of the undertaking at a place accessible to the public. The Executive Director shall provide appropriate notice of such meetings at least 15 days in advance of the meeting. Notice shall be designed to reach the Membership and relevant representatives of national, State, or local governments, public applicants for Federal assistance, permits or licenses, Indian tribes, Native Hawaiian organizations and other interested persons.

2. **Council eComment.** When the Membership is called upon to provide comments on an undertaking when no Memorandum of Agreement is submitted or when the parties to the Section 106 consultation fail to reach agreement, the Chairman shall schedule the matter for hearing at a regular session meeting, establish a subgroup to hear the matter at a meeting of such subgroup, or provide comments without convening a meeting.

*a. Meetings of the Membership.* Meetings of the Membership to consider an undertaking shall be conducted in accordance with Section III of these eOperating pProcedures.

*b. Meetings of Subgroups.* Meetings of subgroups designated to consider and provide comments on a particular undertaking shall conform to the procedures set forth in the document entitled “Panel Meeting Procedures,” incorporated into these eOperating pProcedures as Appendix C.

*c. Comment Wwithout a Mmeeting.* The Chairman may determine that comments on a particular undertaking shall be given without convening a meeting to consider the undertaking. In such cases, the Chairman may provide comments in one of two ways:

(i) The Chairman may conduct the review of the undertaking in an unassembled meeting in accordance with Section III.A.3 of these eOperating pProcedures. The Chairman shall forward to the Membership the documentation submitted by the agency under Sections 800.7(c)(1) and 800.11(g) of the regulations, a report on the case from the Executive Director, and other pertinent information. The Chairman shall specify the date by which members must return their comments. The Chairman shall prepare a final comment document, taking into account the views of the Membership, and transmit that comment to the agency official; or

(ii) The Chairman may develop comments on the undertaking and then circulate these comments to the Membership for consideration. The Chairman shall consider any comments received from the Membership in preparing the final comment document, which the Chairman shall then transmit to the agency official and to the Membership.

## VI. MEMBER INVOLVEMENT IN SECTION 106 CASES

### A. Cases ~~p~~Pending at the ~~s~~Staff ~~I~~Level

It is the policy of the Council to encourage member participation wherever appropriate and in accordance with the applicable federal rules of ethics, with the understanding that the Membership will need to maintain impartiality should there be a termination of the Section 106 process, leading to a formal Council comment. ~~The Executive Director shall establish a process for the timely notification to members of pending cases in which they may have an interest, the provision of reasonable opportunities for members to attend meetings about such cases and continuing communication with members about the progress of such cases.~~ Participation of a ~~m~~Member shall not supersede the specific authorities for Section 106 case management delegated to the Chairman or the Executive Director under these ~~o~~Operating ~~p~~Procedures.

### B. Cases ~~p~~Pending ~~b~~Before the Chairman

When a Section 106 case is being reviewed by the Chairman for the determination on the method of rendering comment in the event of a termination of consultation or a request for comments without submission of a Memorandum of Agreement, the Chairman shall notify the Membership of the case at the beginning of the Chairman's review period. ~~If three members so request within 7 days of receiving such notice, the Chairman shall schedule the case for consideration by the Membership at a meeting.~~

## VII. LEGISLATIVE MATTERS

### A. Formulation of Policy and Positions

Policy and positions on federal, state, and local legislative proposals shall be established by action of the Membership. In those situations where the need for timely action precludes formal approval by the Membership, the Chairman and the Executive Director may establish and convey as appropriate an interim position by consulting with the Membership or an appropriate subgroup. The Chairman or the Executive Director shall notify the Membership when such action is to be taken, invite the views of members on the issue, and report to the Membership on any legislative positions taken or testimony delivered in a timely manner. The Membership shall be provided an opportunity to ratify or revise that interim position at the next meeting of the Membership. In the event a Member questions the consistency of a proposed interim legislative position with Administration policy, the Chairman will convene an unassembled meeting and take a vote of the full Membership on the proposed position or defer consideration of the position to the next meeting of the Membership.

### B. Authority to Testify

The Chairman, or another member or staff designated by the Chairman, is authorized to testify on federal, state, or local legislative matters on behalf of the Membership. Where time permits, testimony should be developed in consultation with the Membership or an appropriate subgroup. The Chairman may provide other testimony as may be consistent with policy and positions on legislative proposals established by the Council in accordance with Section VII.A. of these Operating Procedures. Absent extraordinary circumstances, the Council and its Chairman will may provide testimony and advice on state or local draft legislation only if requested to do so by a legislator, senior executive branch staff, state historic preservation office, tribal historic preservation office, representative of a municipality or local agency, or representative of a nonprofit organization.

**Commented [SB37]:** NCSHPO suggested converting from mandatory to permissive; prior language suggested that Council/Chair must provide testimony if requested by these individuals.

### **C. Conduct of Legislative Liaison Activities**

The Executive Director is responsible for the monitoring of legislative matters affecting the Council, overseeing liaison with members and committees of Congress, and representing the Membership in legislative activities conducted at the professional staff level in the Congress and within the Administration. The Executive Director shall discharge these duties in consultation with the Chairman and the Membership or an appropriate subgroup.

### **VIII. AMENDMENTS**

These procedures may be amended, revised, or repealed by vote of a two-thirds majority of the Membership (16).

*Adopted August 1987*

*Amended July 2001, May 2012, July 2015, ~~and~~ March 2017, and [July 2023].*

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## APPENDIX A: MEMBERSHIP CREDENTIALS

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### INTRODUCTION

The National Historic Preservation Act Amendments of 1980 reconstituted the Membership of the Council with the objective of providing "a more balanced forum where representatives of various interests can deliberate on policy questions and reach true 'public interest' decisions on historic preservation matters" (House Report, p. 40). The legislation, as further amended in 1992, 2006, and 2016, goes on to name the representation to the Council leaving some discretion to the President in the appointment of agency heads, expert members, general public members, a governor, a mayor, and a member of an Indian tribe or Native Hawaiian organization. The amendments also permit certain institutional members of the Council to designate representatives to the Council. In the President's exercise of the appointments authority and in the selection of designees for institutional members, care must be taken to ensure that the intent of the statute is fulfilled. The purpose of this document is to provide the decision makers with guidance from the Council on these matters. Furthermore, this document establishes a process of review for credentials questions and decisions.

### STATEMENT OF POLICY

The National Historic Preservation Act, as amended, clearly indicates the intent of Congress to establish a Council comprised of individuals who possess the authority and expertise that is inherent in the top-level policymaking positions of Government and the private sector. It is the objective of the Council, through this document on credentials, to carry out this Congressional intent. Each member who participates in the activities of the Council should possess the level of authority or expertise that the Congress envisioned for the respective Membership category which that member represents. The objective of this policy is to ensure that members of the Council are peers, occupying comparable positions within their organizations or fields.

**1. Federal members.** The statute specifies that the Secretary of the Interior, the Secretary of Agriculture, and the heads of seven other agencies whose activities affect historic preservation appointed by the President shall sit on the Council. The Architect of the Capitol also is named as an *ex officio* member. The statute further allows each agency head to designate another officer of the agency to sit in his/her stead. A limitation on this authority for executive branch members was added in the 1980 amendments: ~~no~~ such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated. (~~Section 201(b) of the Act~~ 54 U.S.C. § 304101(b)).

A designee need not be an Assistant Secretary *per se*. In agencies where the title of Assistant Secretary does not exist, the level at which the approximate equivalent of assistant secretarial

Commented [SB38]: Typo resulting from conversion from WordPerfect.

powers are exercised is appropriate. In all cases, the alternative designation may be used when the officer to be designated has responsibilities that are agency-wide in that they extend to the full scope of activities of the member agency and not just one subdivision, office, division, or bureau within the member agency. For example, an officer that has been appointed the Senior Policy Official of the member department or agency (not a bureau or other component of the member's department or agency) under Section 3(e) of Executive Order 13287 meets the statutory standard for a designee by the inherent definition of the officer's duties under the Executive Order. Factors for the agency head to consider for other officials include the scope of their responsibilities, the level at which they sit in the department or agency, the official to whom they report, and the nature of their duties and authorities as they relate to the department or agency's historic preservation responsibilities.

The Architect of the Capitol is not subject to the specific limitations that ~~Section 201(b) of the Act~~ 54 U.S.C. § 304101(b) places on designees. However, the principles articulated in this document for Executive Branch agencies should guide any designations made by the Architect.

**2. Non-Federal *ex officio* members.** The statute names the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Chairman of the National Trust for Historic Preservation as *ex officio* Council members. The authority of ~~Section 201(b) of the Act~~ 54 U.S.C. § 304101(b) to name designees is extended to these three members, but the restrictions applied to Federal members do not pertain. The policies inherent in the provisions relating to Federal designees should guide designations in these cases. Designees should be in a policymaking position within the organization and have major, organization-wide responsibilities. Recognizing the corporate nature of these organizations, designations should generally be restricted to officers of the board or corporation and the chief executive officer.

**3. Expert members.** The statute directs the President to appoint four experts in the field of historic preservation to be selected from the disciplines of architecture, history, archeology, and other appropriate disciplines. These are specified in the legislative history to include, but not be limited to, urban planning, engineering, recreation, landscape architecture, anthropology, economics, human geography, or law, when the practice of the discipline "directly or primarily" involves historic preservation (House Report, p. 41).

Professional criteria for historians, architects, and archeologists have been established by the Secretary of the Interior to set standards for professional representation on State Review Boards (36 C.F.R. 61.5). These standards may serve as guidance for threshold qualifications for expert Council members. However, noting the level of other Council members as well as the Council's role in setting Government-wide and national policies, an added dimension of national recognition or accomplishment within a member's discipline might well be considered when these appointments to the Council are made. This could be evidenced by a demonstrated record of professional achievement, through research, publication, practice, or academic activity, that reflects a recognized national stature within the discipline.

The statute does not permit an expert member to designate an alternate representative.

**4. Governor and Mayor.** The statute requires the President to appoint a governor and a mayor to the Council. The purpose is “to better represent the concerns of State and local government in the Council’s deliberations” (House Report, p. 44). The statute permits the governor to have a designee. While the Act does not provide restrictions for the appointment of a governor designee other than needing to be “another officer of his department, agency, or organization,” it would be appropriate for such a designee to meet standards comparable to those set forth for federal Member Designees. The Council believes the elected nature of these officials precludes recommending further criteria for this class of member. The statute does not permit a mayor to designate an alternate representative.

**5. General public members.** The statute requires the President to appoint three at-large members from the general public. In addition, the Chairman is appointed from the general public. This class of member is intended “to provide a voice for the citizens whose daily lives are affected by historic preservation activities. They may be appointed as representatives of a group “such as civic associations or labor unions or as individual citizens” (House Report, p. 41). Because of the broad range of suitable representatives of the public, the Council believes that any specific criteria on individual members’ credentials would be inappropriate. However, due consideration should be given to the contribution a general public member can make to the Council’s activities, either in a representational or individual capacity. The statute does not permit a general public member to designate an alternate representative.

**6. Indian Tribe or Native Hawaiian organization member.** The statute requires the President to appoint “one member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member.” (~~Section 201(a)(11) of the Act~~ [54 U.S.C. § 304101\(a\)\(12\)](#)). Due to the broad range of suitable representatives of Indian tribes or Native Hawaiian organizations, the Council believes that any specific criteria on individual members’ credentials would be inappropriate. The statute does not permit the Indian tribe or Native Hawaiian organization member to designate an alternate representative.

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## APPENDIX B: DELEGATION OF COUNCIL FUNCTIONS UNDER 36 C.F.R. PART 800

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### BACKGROUND

~~On December 12, 2000, the Council published final revisions of its~~The regulations implementing Section 106 of the Act. ~~The revised regulations, are~~ codified at 36 C.F.R. part 800, ~~went into effect January 11, 2001.~~

~~Just as the superseded regulations, t~~These revised regulations give the ~~Council~~Membership, ~~as a whole,~~ the responsibility to carry out its purposes.

~~As it did under the superseded regulations, the Council~~However, the Membership wished to ~~delegates~~ some of its responsibilities under the ~~revised~~ regulations to the Chairman and to the Executive Director, ~~as set forth in this Appendix. This document sets out these delegations.~~

In some cases, the Council intends to delegate a responsibility to both the Chairman and the Executive Director. When that is the case, this document will either describe those circumstances in which each party shall take responsibility or authorize the Chairman to redelegate responsibility to the Executive Director for a particular matter or situation.

This delegation will go into effect immediately upon adoption by the Membership.

### POLICY

This document allocates the Council's responsibilities under the regulations between the policymaking parts of the agency, represented by the Chairman and the members, and the professional staff of the agency, represented by the Executive Director. Generally, the Council, in the form of the Chairman and the members, retains final decision-making authority in those areas where there are conflicts between historic preservation values and Federal project needs requiring a resolution that reflects the public interest. Delegation to the professional staff is made for the areas of routine administration and resolution of cases that do not present significant controversy or questions of policy.

Nothing in this delegation of authority shall prohibit the Executive Director from seeking advice or guidance from the Chairman or prohibit the Chairman from seeking advice or guidance from the members when carrying out the responsibilities duly delegated to them.

Commented [SB39]: GSA requested hyphen here.

## DEFINITIONS

**Chairman.** The term "Chairman" refers to the Chairman of the Council appointed by the President, or another individual member of the Council designated by the Chairman to act on behalf of the Chairman in a particular matter or for a particular time.

**Executive Director.** The term "Executive Director" means the Executive Director of the Council, or an individual Council employee designated by the Executive Director to act in the Executive Director's behalf on a particular matter or for a particular time.

**Members.** The term "Members" refers to the members of the Council and their official designees.

**NHPA.** The term "NHPA" means the National Historic Preservation Act as amended. (~~46 U.S.C. § 470 et seq.~~ 54 U.S.C. §§ 300101 et seq.)

Unless otherwise noted, the term "Section" refers to sections within 36 C.F.R. part 800.

## SECTION BY SECTION DELEGATIONS

**Section 800.2(b)(1).** The general responsibilities of the Council, mentioned by Section 800.2(b), in deciding whether to enter the Section 106 process, as well as the documentation and notification requirements under this decision, is delegated as detailed below on the specific portions of the regulations concerning such determinations and decisions.

**Section 800.2(c)(2)(ii)(E).** The Council hereby delegates to the Executive Director its responsibility under Section 800.2(c)(2)(ii)(E) to receive copies of agreements whereby an Agency Official grants Indian tribes or Native Hawaiian organizations additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in subpart B of the revised regulations.

**Section 800.3(c)(4).** The Council hereby delegates to the Executive Director its responsibility under Section 800.3(c)(4) to consult with the Agency Official when the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination and the Agency Official decides to consult with the Council, in lieu of the SHPO/THPO, instead of proceeding to the next step in the process based on the finding or determination.

**Section 800.3(d).** The Council hereby delegates to the Executive Director its responsibility under Section 800.3(d), regarding consultation on tribal land, to complete the Section 106 process with the Agency Official and Indian tribe when the SHPO has withdrawn from the process and as appropriate.

**Section 800.4(c)(2).** The Council hereby delegates to the Executive Director its responsibility under the third sentence of Section 800.4(c)(2) to request the Agency Official to obtain a

determination of eligibility pursuant to 36 C.F.R. Part 63.

The Council hereby delegates to the Executive Director its responsibility under the last sentence of Section 800.4(c)(2) to receive and, where appropriate, to grant a petition asking that the Council request the Agency Official to obtain a determination of eligibility of a property off tribal lands, where the petition is received from an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the property and that does not agree with an Agency Official's determination of its eligibility.

**Section 800.4(d)(1).** The Council hereby delegates to the Executive Director its responsibility under Section 800.4(d)(1) to object within 30 days of receipt of an adequately documented finding of "no historic properties affected."

**Section 800.5(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(i) to receive, and respond to, a request from an Agency Official to review a finding of no adverse effect pursuant to Section 800.5(c)(3) (see below), where the SHPO/THPO or any consulting party disagree with the Agency Official's finding within the 30-day review period.

**Section 800.5(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(ii) to: (1) receive, from an Indian tribe or Native Hawaiian organization that has made known to an Agency Official that it attaches religious and cultural significance to a historic property subject to the finding of no adverse effect and that disagrees with such finding by the Agency Official, a request to review such finding pursuant to Section 800.5(c)(3) (see below), and (2) respond to such a request.

**Section 800.5(c)(2)(iii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(iii) to decide and request, guided by Appendix A, the Agency Official to submit to it the no adverse effect finding along with the required documentation, for the Council's review pursuant to Section 800.5(c)(3) (see below).

**Section 800.5(c)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(3) to review findings of adverse effects and to notify the Agency Official as to the determination on whether the adverse effect criteria have been correctly applied.

**Section 800.6(a)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to receive notifications of adverse effect findings.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to: (1) receive any invitations or requests, from an Agency Official, the SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party, to participate in the consultation for the resolution of adverse effects, (2) notify in writing to the Agency Official and all consulting parties as to whether the Council will participate in such consultation and, if it does decide to participate, that its decision to participate meets the criteria

under Appendix A, (3) advise the head of the agency of its decision to enter the process, and (4) actually participate in such consultation.

**Section 800.6(a)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(2) to invite other individuals or organizations to become consulting parties when the Council is participating in the consultation to resolve adverse effects.

**Section 800.6(b)(1)(iv).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(iv) to receive copies of executed Memoranda of Agreement, along with the required documentation.

**Section 800.6(b)(1)(v).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(v) to: (1) receive a request to join consultation where the Agency Official and SHPO/THPO fail to agree on terms of a Memorandum of Agreement, (2) decide whether to accept such a request, and (3) notify the agency when such a request is declined.

**Section 800.6(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(2) to participate in consultation regarding ways to avoid, minimize or mitigate adverse effects and its responsibilities under Section 800.6(b)(2) to execute Memoranda of Agreement. The Executive Director is hereby authorized to redelegate this responsibility to execute a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

**Section 800.6(c)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(1) to execute, amend, or terminate a Memorandum of Agreement to which the Council is a signatory. The Executive Director is hereby authorized to redelegate this responsibility to execute, amend or terminate a Memorandum of Agreement to the Chairman when the Executive Director so recommends due to the specific nature of the case.

**Section 800.6(c)(7).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(7) to receive amended Memoranda of Agreement to which the Council is not a signatory .

**Section 800.7(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a) to determine that further consultation will not be productive and terminate consultation, and to notify other consulting parties, providing them the reasons for terminating in writing.

**Section 800.7(a)(1).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(a)(1) to receive a request for Council comment, pursuant to Section 800.7(c), from the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities, when the Agency Official terminates consultation.

**Section 800.7(a)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(2) to execute a Memorandum of Agreement with the Agency Official when the SHPO terminates consultation. The Executive Director is hereby authorized to redelegate this responsibility to execute such a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

**Section 800.7(a)(4).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(4) to notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of a termination, when the Council has terminated consultation (see Section 800.7(a) above), and to consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

**Section 800.7(b).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(b) to determine whether it is appropriate for the Council to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed.

**Section 800.7(c)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(c)(1) to request the Agency Official to provide additional information on an undertaking and provide assistance to the Council in arranging an onsite inspection and an opportunity for public participation (this subsection relates to occasions where the Council is to provide comment without a memorandum of agreement).

**Section 800.7(c)(2).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(2) to transmit the Council's comments in accordance with Section 800.7(c)(3).

**Section 800.7(c)(4)(i).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(4)(i) to receive the summary of a decision from an agency head that has taken Council comments into account.

**Section 800.8(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c) to receive advance notification from an Agency Official that it intends to use the NEPA process and documentation to comply with Section 106 in lieu of the procedures under Sections 800.3 through 800.6.

**Section 800.8(c)(1)(iii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(1)(iii) to engage in consultation regarding effects, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents.

**Section 800.8(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(i) to receive the DEIS or EIS, when such documents

are being prepared, from the Agency Official.

**Section 800.8(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standards set forth in Section 800.8(c)(1) or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to receive, and resolve, objection referrals from the Agency Official.

**Section 800.8(c)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(3) to review objections, and to notify the Agency Official as to whether it agrees or disagrees with the objection.

**Section 800.8(c)(5).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(5) to receive notification from the Agency Official that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Sections 800.3 through 800.6 will be followed as necessary.

**Section 800.9(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(a) to receive, and respond to, requests for the Council's advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the Council's regulations, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

**Section 800.9(c)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2) to receive notification and documentation from an Agency Official that it (the Agency Official) has determined that [Section 110\(k\) of the NHPA, 54 U.S.C. § 306113](#) is applicable and that circumstances may justify granting the assistance at issue.

**Section 800.9(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(i) to formulate its opinion, and provide it to the Agency Official, as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects (see Section 800.9(c)(2) above).

**Section 800.9(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(ii) to receive notification from the Agency Official as to its consideration of the Council's opinion on whether to grant assistance to the applicant (see Section 800.9(c)(2) above).

**Section 800.9(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d) to evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes

reached advance the purposes of the NHPA.

**Section 800.9(d)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(1) to request, and receive, from Agency Officials documentation of agency policies, operating procedures and actions taken to comply with Section 106, and to request and receive from other participants in the Section 106 process available information and documentation.

**Section 800.9(d)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(2) to make recommendations to participants, the heads of Federal agencies, and the Secretary of the Interior on actions to improve the efficiency and effectiveness of the Section 106 process, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

**Section 800.10(b).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(b) to receive requests from Agency Officials to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Section 800.6.

**Section 800.10(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(c) to request a report from the Secretary of the Interior under ~~Section 213 of the NHPA~~ [54 U.S.C. § 304110](#) to assist in a consultation involving a National Historic Landmark.

**Section 800.10(d).** The Council hereby delegates to the ~~Chairman~~ [Executive Director](#) its responsibilities under Section 800.10(d) to report the outcome of the Section 106 process (regarding National Historic Landmarks under Section 800.10) to the Secretary of the Interior and the head of the agency responsible for the undertaking.

**Section 800.11(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(a) to: (1) determine whether applicable documentation standards are not met, (2) notify the Agency Official as to such determination and specify the information needed to meet the standard, (3) receive requests to review, and actually review, disputes regarding whether documentation standards are met, and (4) provide its views to the Agency Official and the consulting parties as to such disputes.

**Section 800.11(c)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(c)(2) to: (1) consult with the Secretary of the Interior in reaching determinations on the withholding and release of information due to confidentiality issues under ~~Section 304 of the NHPA~~ [54 U.S.C. § 307103](#), (2) receive from the relevant Federal agency, available information related to the confidentiality concern, and (3) advise the Secretary of the Interior and the relevant Federal agency as to the confidentiality issue.

**Section 800.12(a).** The Council hereby delegates to the Executive Director its responsibilities

under Section 800.12(a) to engage in consultation regarding the development of emergency procedures.

**Section 800.12(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to receive notification from an Agency Official whose agency has not developed emergency procedures, that it proposes an emergency undertaking as an essential and immediate response to a disaster or emergency.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to comment on such emergency undertakings within the timeframe available.

**Section 800.12(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(c) to object to a proposed emergency action by a local government (acting as Agency Official) regarding an imminent threat to public health or safety declared by the local government.

**Section 800.12(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(d) to receive, decide, and respond to, a request for an extension of the 30-day period within which emergency undertakings must be implemented in order for the emergency procedures under Section 800.12 to apply.

**Section 800.13(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(2) to receive a report from the Agency Official on its actions to mitigate effects on subsequently discovered historic properties or unanticipated effects.

**Section 800.13(b)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(3) to receive, and respond to, notifications from the Agency Official as to actions taken to resolve adverse effects after subsequent discoveries, and to receive reports of the actions when they are completed.

**Section 800.14(a)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(1) to consult with the Agency Official and others during the development of alternate procedures.

Nevertheless, the Council retains for the members its responsibility under Section 800.14(a)(2) to review proposed alternate procedures, determine whether they are consistent with the Council's regulations and, if so, notify the Agency Official of this determination.

**Section 800.14(a)(4).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(4) to provide Federal agencies notice and opportunity to comment on proposed alternate procedures under ~~Section 101(d)(5) of the NHPA~~ [54 U.S.C. § 302705](#).

**Section 800.14(b).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b) to negotiate a Programmatic Agreement with an Agency Official.

**Section 800.14(b)(2)(iii).** The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(2)(iii) to execute and terminate program Programmatic Agreements. The Chairman has the discretion to further delegate, in writing, these responsibilities to the Executive Director.

**Section 800.14(b)(2)(v).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b)(2)(v) to determine whether the terms of a Programmatic Agreement are not being carried out.

**Section 800.14(b)(4).** The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(4) to designate an agreement document as a prototype programmatic agreement.

**Section 800.14(c)(5).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(5) to receive requests for exempted categories.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(c)(5) to review such requests and decide whether to approve or reject the proposed exemption based on the consistency of the exemption with the purposes of the NHPA, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with Section 214 of the NHPA, 54 U.S.C. § 304108(c).

**Section 800.14(c)(6).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(6) to determine that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of the Council's regulations.

The Council retains for its members its responsibilities under Section 800.14(c)(7) to terminate an exemption and to notify the Agency Official 30 days before the termination becomes effective.

**Section 800.14(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(d) to: (1) establish standard treatments, (2) publish notice of standard treatments in the Federal Register, (3) arrange for public participation in the development of standard treatments, (4) request an Agency Official to arrange for public involvement when the Agency Official has proposed the standard treatment, (5) notify and consider the views of SHPO/THPOs on the proposed standard treatment, (6) follow the consultation requirements under Section 800.14(f) with regard to proposed standard treatments that may affect historic properties on tribal lands or those of religious and cultural significance to tribes, and (7) terminate standard treatments by publication of a notice in the Federal Register 30 days before the termination takes effect.

**Section 800.14(e).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(e) to receive requests for program comments.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(e)(3) through (5) to: (1) notify and consider the views of SHPO/THPOs on the proposed program comments, (2) follow the consultation requirements under Section 800.14(f) as required, (3) request additional information, (4) seek the consent of the Agency Official to extend the period for providing comment, (5) provide, or decline to provide, program comments, (6) notify the Agency Official when it decides to decline to comment, and (7) determine to withdraw a program comment.

**Section 800.14(f)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(f)(2) to receive from Agency Officials summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations as part of the documentation for the proposed program alternative.

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## APPENDIX C: PANEL MEETING PROCEDURES

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### INTRODUCTION

The Council membership is called upon to issue formal comments in the rare instances where an adverse effect to a historic property is not resolved pursuant to the Section 106 regulations. The Council's Operating Procedures, at Section V.B.2.b., provide for subgroups of Council members ('panels') to meet with the purpose of considering and providing such formal comments. This Appendix sets forth the procedures for conducting such panel meetings.

### A. ORGANIZATION

1. **Chairman.** ~~The Chairman of the Council shall designate the~~ panel chairman ~~is designated by the Chairman of the Council~~ from the non-Federal membership of Council. The panel chairman may designate a member of the panel to sit in his/her stead during temporary absence from a panel meeting or other panel functions. Should the designated panel chairman be unable to complete his/her assignment as panel chairman, the Chairman of the Council shall designate a successor from those non-Federal members already serving on the panel.

**Commented [SB40]:** Active voice conversion per AOC.

2. **Panel Membership.** The Chairman of the Council shall designate panel members. A panel shall consist of three non-Federal members and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking at issue. ~~The Chairman of the Council may designate~~ Substitute members ~~may be designated by the Chairman of the Council~~ at any time. ~~Consistent with the federal rules of ethics, panel members will not include those with a conflict of interest or an impartiality issue regarding the undertaking at issue.~~

**Commented [SB41]:** Active voice conversion per AOC.

**Commented [SB42]:** ACHP Foundation-requested clarification.

### B. CONDUCT OF PUBLIC PANEL MEETINGS

1. **Notice.** Generally, ~~the Executive Director shall provide~~ 10 days notice of all public meetings involving Council review of undertakings by publication in media reasonably determined to reach interested members of the public.~~shall be given by publication in the Federal Register.~~ -In exceptional cases, no less than 7 days notice shall be given by such publication in the Federal Register. ~~The Executive Director will make reasonable efforts to directly provide such notification to known consulting parties through electronic mail.~~ -~~As circumstances warrant, further notice may be given as follows:~~

(a) ~~Mailing notice to those who have requested it on an individual undertaking;~~

~~(b) Use of notice in local newspaper, local media, and newsletters that may be expected to reach potentially interested persons; and/or~~

~~(c) Posting of notice on and off site in the area where the undertaking is proposed to be located.~~

2. **Agenda.** The public panel meeting shall be conducted in accordance with a provisional agenda that is adopted by the panel. Copies of the agenda shall be made available to the public prior to the meeting.

3. **Order of Business.** Unless the panel chairman determines otherwise, the agenda shall provide for the taking of public testimony, a site visit, reports from the consulting parties and any others deemed necessary by the panel chairman, and a commenting session.

4. **Public Testimony and Reports.** Unless otherwise specified by the panel chairman, public testimony and reports shall conform to general guidelines established by the Council for presentations at meetings.

5. **Written Statements.** Written statements may be submitted to the panel. The panel chairman may extend the period for submission of written statements beyond the meeting, provided such extension is consistent with the comment period under 36 CFR Section 800.7(c)(2). The panel will fully consideration of written statements by the panel will be ensured only if statements are received by the deadline established by the panel chairman at least seven days prior to the panel meeting.

**Commented [SB43]:** Active voice conversion per AOC.

6. **Required Reports.** Unless the panel Cchairman determines otherwise, reports to the panel shall conform to general guidelines established by the Council for presentations at meetings.

7. **Onsite Inspections.** The panel Cchairman may schedule an onsite inspection as part of the panel meeting or incidental to the meeting. The Agency Official, the State Historic Preservation Officer / Tribal Historic Preservation Officer, and the Executive Director, or their designated representatives, shall be invited to attend. Other parties may attend as the panel Chairman deems appropriate.

8. **Open Meetings.** ~~All panel meetings shall be open to the public. The Council will provide reasonable facilities shall be provided for attendance of interested members of the public to the public panel meeting. Exceptions are permissible only in accordance with the Freedom of Information Act.~~

**Commented [SB44]:** Active voice conversion per AOC.

9. **Minutes.** A recorder designated by the panel chairman will keep mMinutes of public panel meetings shall be kept and made and make such minutes readily available to the public (with the exceptions permissible under the Freedom of Information Act) within a reasonable time after the public panel meeting. The Executive Director shall send any

**Commented [SB45]:** Active voice conversion per AOC.

In addition, this adds that the panel chairman will designate a meeting recorder.

**Commented [SB46]:** Active voice conversion per AOC.

In addition, this adds that the Executive Director will be responsible for sending minutes to the Council.

such minutes ~~shall be sent~~ to all members of the Council as soon as they are available.

### C. PANEL COMMENTS

1. **Deliberations.** The Council will maintain records of the deliberations of the panel in formulating its comments and will make such available to the public upon request, ~~subject to shall be open to the public.~~ Exceptions ~~are~~ permissible only ~~in accordance-~~ ~~with~~by the Freedom of Information Act.

2. **Voting.** All members of the panel must vote on the panel's final comments. Panel members may vote by proxy given to the panel ~~chairman of the panel~~. All final votes on panel comments shall be on record. All actions relating to panel comments shall require a simple majority for passage.

3. **Form of Comments.** ~~The panel shall issue a verbal summary of its comments at the close of the meeting at which the comments are adopted. Once adopted, and within the timeframe established by 36 C.F.R. § 800.7, the Executive Director shall transmit~~ Written comments shall be transmitted within 15 days of the initial panel meeting to the head of the Federal agency requesting comment or having responsibility for the undertaking and to all members of the Council. The comments shall have three parts: an introduction; a finding of facts; and conclusion and recommendations.

4. **Distribution of Comments.** ~~The Council shall not release w~~Written comments of the panel ~~shall not be released~~ until they have been received by the relevant head of the Federal agency. Comments transmitted via electronic mail are considered to be received at the moment they are sent by the Council, requesting comment. Immediately As soon as reasonably possible after the comments are made to received by the relevant Federal agency, the Executive Director will make available the comments of the Council ~~will be forwarded to the President and Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the Federal Register. The comments of the Council shall be available to the State Historic Preservation Officer / Tribal Historic Preservation Officer; and other consulting parties, and posted on the website and/or social media of the Council. the public upon receipt of the comments by the head of the Federal agency. The Council recommends that~~ comments of the Council should be included in the final environmental impact statement (FEIS) or Record of Decision (ROD) prepared pursuant to the National Environmental Policy Act, if such an FEIS or ROD was prepared.

5. **Report to Full Council.** The ~~chairman of the panel~~ chairman, the Chairman, or the Executive Director shall report the actions taken by the panel to the Membership via electronic mail, at the next meeting of the full Council. Other reports shall be submitted to the Council. The Council may issue a final report to the President and Congress under authority of 54 U.S.C. § 304102(b) ~~Section 202(b) of the Act~~ describing the actions taken by the agency in response to the Council's comments including recommendations for

**Commented [SB47]:** Converted "chairman of the panel" to the more frequently used "panel chairman."

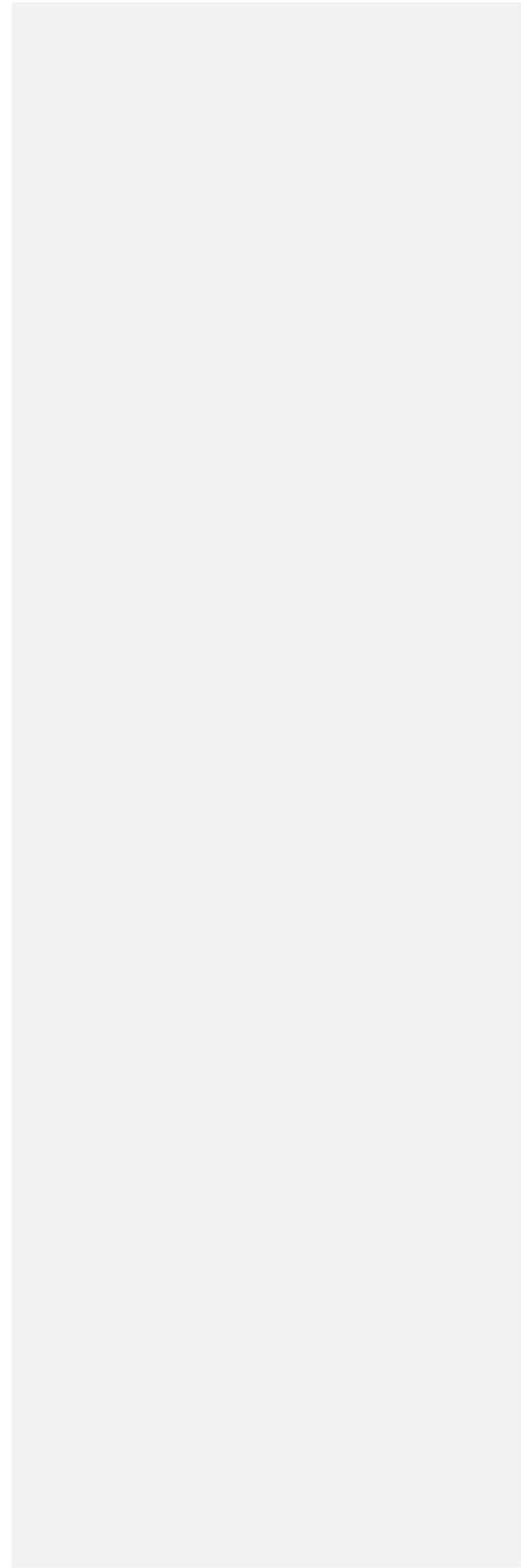
**Commented [SB48]:** Active voice conversion per AOC.

In addition, this adds that the Executive Director will be responsible for transmitting comments to the agency head.

**Commented [SB49]:** Active voice conversion per AOC.

**Commented [SB50]:** Converted "chairman of the panel" to the more frequently used "panel chairman."

changes in Federal policy and programs, as appropriate.



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# OPERATING PROCEDURES OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

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## INTRODUCTION

These procedures provide guidance for the operation of the Advisory Council on Historic Preservation ("Council"). They supplement and clarify more general requirements appearing in the National Historic Preservation Act ("Act"), the Administrative Procedure Act, and the Council's regulations. In addition, the Council follows administrative procedures of the Department of the Interior relating to finance, personnel, budget, and travel in lieu of developing its own procedures. The Council has 24 members (collectively referred to as the "Membership"), headed by a Chairman, and a staff which is overseen by an Executive Director.

## I. STATEMENT OF POLICY

The law entrusts the authorities of the Council to the Membership. To carry out these authorities in an efficient and prompt manner, the Membership recognizes that the Chairman and the Executive Director, under the supervision of the Chairman, must possess the authority to act on behalf of the Membership on a daily basis, conforming to general policies and specific directives established by the Membership. Frequent and open communication among the Executive Director, the Chairman, and the Membership is necessary for proper coordination with, and conformance to, these policies and directives.

The Membership sets general policy for programs and activities, initiate or approve programs and activities, and exercise long term oversight of the Council's policies, programs and activities. Members participate in specific programs and activities individually, in groups, and as the full Membership.

The Chairman undertakes the pursuit and oversight of the implementation of such policies, programs and activities. The Chairman ensures that the Executive Director is carrying out approved policies and conforming to them. The Chairman makes policy decisions on behalf of the Membership as needed when the Membership is unavailable to act, consulting with the Membership as appropriate. In the absence or unavailability of the Chairman, the Vice Chairman performs the functions of the Chairman.

The Executive Director undertakes the daily implementation of programs and activities, subject to the policy guidance of the Chairman and the Membership. The Executive Director supervises the staff of the Council and ensures that their individual actions and objectives are consistent with the policies established by the Membership.

## II. COUNCIL ORGANIZATION

### A. Council Membership

The National Historic Preservation Act specifies that the Membership shall consist of 24 members. Six members (the Secretary of the Interior, the Secretary of Agriculture, the Architect of the Capitol, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and the General Chairman of the National Association of Tribal Historic Preservation Officers) serve *ex officio*. The President appoints the remaining 18 members (four general public members, four experts, a governor, a mayor, a member of an Indian tribe or a Native Hawaiian organization, and the heads of seven Federal agencies).

### B. Designees

Federal members, the Chairman of the National Trust, the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Governor may designate another officer of their department, agency, or organization to serve on the Council in their stead. In accordance with 54 U.S.C. § 304101(b), Federal agencies may only designate an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities. Appendix A to these Operating Procedures, entitled "Membership Credentials," sets forth guidance for naming designees. A designee must provide the Chairman with a letter of designation, setting forth the basis for the designation, prior to participating in activities of the ACHP as a designee. Members should update ACHP staff in a timely fashion regarding a change of incumbents in their designated positions by sending information about such changes to [designeeupdates@achp.gov](mailto:designeeupdates@achp.gov). Failure to do so can result in ACHP communications, including notifications and requests for action, not reaching the relevant designees.

### C. Membership Credentials

1. **Qualifications.** 54 U.S.C. § 304101 sets forth the criteria for members of the Council and their designees. Individual members or their designees should meet the qualifications set forth in Appendix A to these Operating Procedures, entitled "Membership Credentials."

2. **Credentials review.** The Chairman will review the credentials of any designee named by an agency or organization pursuant to the Act. If the Chairman determines that a designation may be deficient, the Chairman shall consult with the member making the designation to resolve the issue. The Chairman may take such other actions as appropriate to ensure that the intent of the statute is carried out.

### D. Observers

1. **Member-designated observers.** Any member, including one not authorized by statute to designate an alternate representative, may, after submitting a written request (including electronic mail) to the Chairman and with the written approval of the Chairman, designate an observer who may actively participate in any or all activities of the Membership on behalf of the specified member in the absence of the Member or such member's designee pursuant to Section II.B. of these Operating Procedures, but may not make or second any motion and may not vote. These observers shall have a fixed term not to exceed two (2) years commencing from the date of the Chairman's written approval. A Member may reappoint Member-designated observers.

2. **Chairman-designated observers.** The Chairman may invite the head of a Federal, State, Tribal, or local public agency or non-profit organization to become an observer when the Chairman determines that the participation of such agency or organization will benefit the Council. The head of such an observer's entity may designate someone else within the entity to participate with the ACHP in his or her stead so long as that designee is an official with major entity-wide responsibilities. The status of Chairman-designated observers differs from the status of individuals invited by the Chairman to participate in a specific matter before the Council. These observers shall have a fixed term not to exceed two (2) years commencing from the date of the written invitation by the Chairman to the observer. The Chairman may reappoint Chairman-designated observers. The Chairman may appoint up to five (5) observers without the concurrence of a majority of the Membership, and may appoint more than five (5) observers with the concurrence of a majority of the Membership.

3. **Participation of observers.** Observers may attend all meetings and may speak when recognized by the Chairman or the subgroup chairman, as applicable, but may not make or second any motion and may not vote. Challenges to the credentials or participation of an observer shall be resolved in accordance with Section II.C.2 of these Operating Procedures.

4. **Termination.** The Chairman, or the Membership by majority vote of those present and voting, may terminate the observer status of a Chairman-designated observer at any time. The appointing Member, or the Chairman in consultation with the appointing Member, may terminate the status of Member-designated observer at any time.

## **E. Council Subgroups**

1. **Establishment.** The Chairman may establish standing and ad hoc subgroups to carry out the Council's business. The Chairman shall appoint to such subgroups a chairman and subgroup participants who may be chosen from the Membership or may be others, and shall notify the Membership in writing of such appointment or appointments.

2. **Non-Member Subgroup Participants.** A subgroup participant who is not selected from the Membership and is not an official designee shall be subject to the restrictions

under Section II.D.3 of these Operating Procedures.

3. **Changes and Termination.** At his or her discretion, the Chairman may substitute any subgroup participant or chairman and may terminate the subgroup.

4. **Powers.** Unless given a specific delegation of authority by majority vote of the Membership, the powers of subgroups shall be limited to advising the Chairman and the Membership on the exercise of their legal authorities. When a subgroup carries out advisory functions, it is not expected to entertain motions or hold votes but, rather, have its chairman report to the Chair or Council, as appropriate, about the subgroup's discussions and advice.

5. **Alternate Participation in Subgroup.** Where a federal agency Member, the Architect of the Capitol, the Governor, the Mayor, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, or the General Chairman of the National Association of Tribal Historic Preservation Officers has been appointed to a subgroup, such entity or individual may name one alternate participant to participate in subgroup functions, and this alternate participant may make motions, second motions, and vote, when the subgroup is carrying out those limited advisory functions. The appointed participant should notify the chairman of the subgroup and the Executive Director in writing when naming such an alternate participant.

6. **Rules of Order.** Subgroups established under this section shall generally adhere to these Operating Procedures and to Robert's Rules of Order.

### III. COUNCIL MEETINGS

This section of these Operating Procedures establishes general procedures that pertain to meetings of the Membership or of subgroups established under Section II.E of these Operating Procedures. Procedures governing meetings held in the course of the Section 106 process set forth in the Council's regulations are contained in Section V.

#### A. Types of meetings

The Membership may take formal actions at meetings of the Membership or subgroups may take formal actions in accordance with Section II.E. Meetings of the Membership or of subgroups may be held in regular session, in special session, or unassembled.

1. **Regular session.** Normally, the Membership shall conduct its business at meetings held in regular session with full adherence to these Operating Procedures. The Chairman shall schedule the regular meetings of the Membership, which will generally be held three to four times per year.

2. **Special session.** When the Chairman determines that circumstances warrant a departure from normal procedures, such as to discuss a time-sensitive proposed program alternative or to discuss legal matters outside the public view, the Chairman may call a meeting in special session.

3. **Unassembled meeting.** When the Chairman determines that the Membership or a subgroup should act on a single or limited number of issues and a regular or special meeting is not warranted, the Chairman may convene an unassembled meeting. In an unassembled meeting, business will be conducted by mail, telephone, electronic mail, facsimile, or other such methods of communications. Reasonable notice of unassembled meetings shall be given by the Executive Director. No business shall be transacted at unassembled meetings that will violate the principles of public participation adopted by the Membership.

## **B. Public participation and disclosure**

The public may attend, either in-person or virtually as circumstances allow or require, regular and special session meetings of the Membership. However, the Council will not provide public attendance for the following: 1) unassembled meetings and 2) meetings or portions of meetings dealing with subjects properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). The public shall have access to materials transmitted to and from members in the conduct of an unassembled meeting, with the exception of materials properly withheld from public disclosure in accordance with 5 U.S.C. §552(b). When the Chairman determines that business before the Council requires exclusion of the public, the Chairman shall limit the closing of the meeting to the time necessary to transact the confidential business.

## **C. Meeting place**

The Council shall hold in-person regular and special session meetings of the Membership in places generally accessible to the public and to people with disabilities. However, normal Federal office building security requirements that restrict access to individuals who have made their desire to attend known beforehand shall not be considered to make a meeting place unacceptable. The Council shall broadcast virtual and hybrid regular and special session meetings of the Membership via online simulcast, webinar, or virtual meeting format.

## **D. Notice**

The Executive Director shall notify the Membership of regular and special session meetings of the Membership at least 7 days before the meeting date. If 7 days notice of special session meetings is not possible under the circumstances, the Executive Director shall make a good faith effort to provide notice to the Membership and to the public as early as possible. The Executive Director may provide other means of notice as the Executive Director determines to be necessary. In providing such additional notice, the Executive Director shall make a good faith

effort to provide actual notice to local governments, Indian tribes, the public and other interested persons where such notice is not precluded by excessive cost or burdens on staff time. Notice of meetings of subgroups shall be given as determined appropriate by the Executive Director.

### **E. Quorum**

Thirteen voting members shall constitute a quorum necessary for the transaction of business at a meeting of the Membership. Subgroups will only need a quorum when carrying out non-advisory authorities formally delegated by the Membership. Such a quorum shall be a simple majority of the voting members in the subgroup, namely, Members or their official designees under Sections II.A. and II.B. of these Operating Procedures.

### **F. Call to Order**

Meetings of the Membership may be called to order by the Chairman or, in the Chairman's absence, by the Vice-Chairman. Should both be absent, a non-Federal member previously designated by the Chairman shall call the meeting to order.

Meetings of subgroups may be called to order by their respective chairmen or any subgroup participant previously designated by the subgroup's chairman.

### **G. Order of business**

Regular meetings of the Membership shall generally adhere to the following order:

1. Adoption of the agenda.
2. Consideration of the minutes.
3. Reports of subgroups.
4. Staff reports.
5. Special or priority business.
6. Unfinished business.
7. New business.

The Chairman may make adjustments in the order of business to facilitate the purpose of such meeting and to meet other special scheduling needs.

The Chairman shall establish the order of business for special session meetings and unassembled meetings in a manner that facilitates the purpose of such meetings.

### **H. Agenda**

Regular meetings of the Membership shall be conducted in accordance with an agenda adopted by the Membership at the beginning of each meeting. A provisional agenda shall be sent to the Membership prior to the regular meeting.

## **I. Recorder**

The Chairman shall appoint a recorder who shall be responsible for keeping the minutes of any regular or special session meeting. The chairman of any subgroup shall appoint a person responsible for providing a summary of any subgroup meeting.

## **J. Minutes**

The recorder of any regular or special session meeting shall keep full and accurate minutes of the meeting. Except as directed by the Chairman, transcripts shall not be required. The recorder shall prepare minutes promptly after a meeting and the Membership shall review and approve such minutes at the subsequent meeting.

## **K. Motions and Resolutions**

Motions and resolutions made and considered in any meeting of the Membership or subgroup shall generally conform to Robert's Rules of Order. The recorder of such meeting shall accurately record all motions and resolutions in the minutes along with a record of the action taken on each at the meeting.

## **L. Procedural questions**

The Chairman or subgroup chairman shall resolve questions of meeting procedure in accordance with Robert's Rules of Order. In the event of conflict between Robert's Rules and these procedures, the specific terms of these procedures shall take precedence.

## **M. Voting**

Only members or duly authorized designees may vote at meetings of the Membership or subgroups. In regular or special session meetings, voting may be voice or show of hands, as determined by the Chairman or subgroup chairman, unless a roll call vote is required. Voting in unassembled meetings may be by mail, telephone, electronic mail, facsimile, or other such methods of communications, as determined by the Chairman or subgroup chairman. In any event, all votes cast in an unassembled meeting shall be recorded as a roll call vote.

Roll call votes shall be required whenever the Membership or a subgroup takes a final action on any recommendation, advice, or comment; on the adoption of any rule, procedure, or policy; or any question pertaining to budget or administration; or any other matter which the Chairman or subgroup chairman determines requires a record of how each member voted. Unless a voting member objects, the Chairman or subgroup chairman may waive the roll call requirement.

Matters voted on by the Membership or subgroups shall require a simple majority of those present and voting. Exceptions are: comments rendered under Section 106 (including program

comments pursuant to 36 C.F.R. § 800.14(e)), exemptions granted under 54 U.S.C. § 304108(c), evaluations of Federal agency activities under 54 U.S.C. § 304102, specific delegations of authority to subgroups authorizing subgroups to act on behalf of the Membership, and recommendations to the President or the Congress. These exceptions require the vote of a majority of the Membership. However, the adoption of positions on legislation, regardless of whether such positions are intended to be communicated to the President or Congress, only require a simple majority of those present and voting.

No member shall be permitted to vote on a matter in which the member or the member's agency or organization has a direct interest not common to other members, such as comments rendered under Section 106 that will be addressed to the member's agency or an action that may present a personal conflict of interest. Members abstaining from voting shall so indicate during a roll call vote or at the close of a vote by voice or by show of hands.

## **N. Proxies**

A member or his/her duly authorized designee may give a proxy to another voting member to be cast on any number of specific issues on a meeting agenda. Voting by proxy is permitted at meetings of the Membership and subgroups unless expressly prohibited by the Chairman when the subgroup is established. No member may hold more than two proxies. Valid proxies shall be counted as members present and qualified to vote whenever a point of order is raised about the presence of a quorum.

## **O. Business Meeting Participation**

Participation at the table in ACHP business meetings shall be limited to Members (or, in the absence of a Member, the designee for such a Member under Section II.B. of these Operating Procedures), and Chairman-designated observers duly named in accordance with the Act and these Operating Procedures. With the prior approval of the Chairman, a member-designated observer may, in the absence of the relevant Member or such member's designee under Section II.B. of these Operating Procedures, participate at the table, subject the restrictions set forth at Section II.D.1. of these Operating Procedures.

# **IV. COUNCIL ADMINISTRATION**

## **A. Financial Administration**

**1. Budget Formulation.** The Chairman shall establish the budget request level for the Council each fiscal year. The budget request shall reflect the established programs and priorities of the Council. The Executive Director, under the supervision of the Chairman, shall prepare the budget request and supporting documentation. When the budget request is formally submitted to the Office of Management and Budget (OMB) and the Congress in accordance with statute, it shall be made available to individual members on request. All members shall conform to applicable OMB directives regarding the confidentiality of

budget information and materials. The Chairman or the Executive Director shall regularly report to the Membership on the progress of the budget review and appropriations process.

**2. Detailed Budget.** The Executive Director shall prepare the annual detailed budget in accordance with established Council programs and priorities, applicable OMB directives, and Congressional funding. The Executive Director shall submit the detailed budget to the Chairman for review to ensure conformance with Council policies. The Executive Director shall develop any necessary reprogramming of funds or personnel levels in consultation with the Chairman.

**3. Donations.** In accordance with 54 U.S.C. § 304105(g) (donations authority), the Executive Director shall accept and administer donations received by the Council. The Executive Director shall consult with the Chairman regarding the collection and disbursement of donations and shall report on the status of donations at each regular session meeting.

In accordance with the donations authority, the Council may use any donations in ways consistent with the Council's duties and the purposes of the Act. Such use includes, but is not limited to, funding internships in the Council, research on historic preservation issues, events encouraging public involvement in or education about historic preservation, and Council visits to historic sites.

In order to avoid any questioning of Council operations, and consistent with the federal ethics recommendations about otherwise permissible gifts at 5 C.F.R. § 2635.201(b), the Executive Director will consider declining donations that the Executive Director believes might lead a reasonable person with knowledge of the relevant factors to question his or her integrity. Factors in making this determination include whether:

- (i) The gift has a high market value;
- (ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;
- (iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and
- (iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

Accordingly, the Executive Director may consider declining donations from entities that the Executive Director knows are consulting parties in Section 106 reviews where the Council is formally involved, or from entities having or seeking contracts with the

Council.

## **B. Personnel Management**

**1. Applicable Regulations and Procedures.** Except in those areas where the Membership or staff has adopted its own specific regulations or procedures for the conduct of personnel management matters, the Council shall follow applicable provisions of the Department of the Interior.

**2. Interim Regulations and Procedures.** If a particular situation arises in which the Chairman determines that following the Department of the Interior provision is inconsistent with the policies of the Council, the Chairman, in consultation with the Membership or the Executive Director, may establish an interim procedure to supersede the Department of the Interior provision. The Chairman shall provide notice of such interim procedure to all potentially affected parties. The Chairman shall propose, within 180 days after the development of an interim procedure, for action by the Membership, an amendment to the Operating Procedures or to applicable Council regulations that would make such final.

### **3. Appointment and Compensation**

*a. Council members.* The Chairman, in consultation with the Membership or an appropriate subgroup, shall establish necessary policies governing the payment of compensation and reimbursement of travel and subsistence expenses in accordance with 54 U.S.C. § 304104.

*b. Council staff.* The Executive Director shall appoint and fix the compensation of staff in accordance with the provisions of 54 U.S.C. § 304105(b) through (d).

*c. Senior Executive Service.* The selection and management of Council employees in the Senior Executive Service shall conform to the appropriate regulations and procedures established by the Department of the Interior, provided that the provisions of 54 U.S.C. § 304105(a) and (c) regarding employees in the competitive service above the highest rate for the grade GS-15 shall also govern the appointment and fixing of compensation of employees in the Senior Executive Service. The Chairman shall appoint individuals to serve on the necessary appraisal and resource boards. At least one member of each such board shall be chosen from the Membership.

**4. Performance Appraisal Plans for Non-SES Employees.** In accordance with applicable regulations of the Department of the Interior, the Executive Director shall establish and administer the necessary performance appraisal plans for staff that are

non-SES.

4. **Grievance Procedures.** The Council shall follow the applicable regulations and procedures of the Department of the Interior regarding grievance proceedings.

### **C. Information Management**

1. **Notification of Council Activities.** The Executive Director shall regularly provide the Membership with written or verbal reports, generally on a monthly or bi-monthly basis, which shall include information on staff activities, budget matters, pending litigation and legislation, recently concluded Section 106 cases, and other matters of general interest. Additional materials will be included as appropriate.

2. **Distribution of other Council materials to members.** The Executive Director shall ensure that all members are provided with copies of Council documents and publications.

3. **Distribution of Council materials to the public.**

*a. Policy of availability.* It is the policy of the Membership to make Council materials available to the public and other interested parties. Accordingly, under normal circumstances, the Executive Director shall provide documents reflecting final action on the website of the Council. When the Executive Director determines that a formal Freedom of Information Act request is necessary, the requester of Council materials shall be so informed. The Executive Director shall respond to Freedom of Information Act requests in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations.

*b. Withholding documents from disclosure.* The Council may withhold information and documents from public disclosure only in accordance with 5 U.S.C. § 552 and the Council's Freedom of Information Act regulations at 36 C.F.R. Part 810.

## **V. SECTION 106 ADMINISTRATION**

This section of these Operating Procedures applies to the conduct of business under the Section 106 process set forth in the Council's regulations at 36 C.F.R. Part 800.

### **A. Delegation of Authority**

The regulations implementing Section 106 of the Act provide for the Council to participate in the Section 106 process in various ways. The delegation of responsibilities to the Chairman and the Executive Director is set forth in the document entitled "Delegation of Authority" incorporated into these Operating Procedures as Appendix B.

## B. Meeting Procedures

1. **Public Meetings.** In the course of Section 106 review of any particular case, the Membership, a subgroup, or the Executive Director, in consultation with the Chairman, may conduct a public meeting for the purpose of gathering and disseminating information on the undertaking under consideration. Such meetings shall be open to the public and be held near the site of the undertaking at a place accessible to the public. The Executive Director shall provide appropriate notice of such meetings at least 15 days in advance of the meeting. Notice shall be designed to reach the Membership and relevant representatives of national, State, or local governments, public applicants for Federal assistance, permits or licenses, Indian tribes, Native Hawaiian organizations and other interested persons.

2. **Council Comment.** When the Membership is called upon to provide comments on an undertaking when no Memorandum of Agreement is submitted or when the parties to the Section 106 consultation fail to reach agreement, the Chairman shall schedule the matter for hearing at a regular session meeting, establish a subgroup to hear the matter at a meeting of such subgroup, or provide comments without convening a meeting.

*a. Meetings of the Membership.* Meetings of the Membership to consider an undertaking shall be conducted in accordance with Section III of these Operating Procedures.

*b. Meetings of Subgroups.* Meetings of subgroups designated to consider and provide comments on a particular undertaking shall conform to the procedures set forth in the document entitled "Panel Meeting Procedures," incorporated into these Operating Procedures as Appendix C.

*c. Comment Without a Meeting.* The Chairman may determine that comments on a particular undertaking shall be given without convening a meeting to consider the undertaking. In such cases, the Chairman may provide comments in one of two ways:

(i) The Chairman may conduct the review of the undertaking in an unassembled meeting in accordance with Section III.A.3 of these Operating Procedures. The Chairman shall forward to the Membership the documentation submitted by the agency under Sections 800.7(c)(1) and 800.11(g) of the regulations, a report on the case from the Executive Director, and other pertinent information. The Chairman shall specify the date by which members must return their comments. The Chairman shall prepare a final comment document, taking into account the views of the Membership, and transmit that comment to the agency official; or

(ii) The Chairman may develop comments on the undertaking and then circulate these comments to the Membership for consideration. The Chairman shall consider any comments received from the Membership in preparing the final comment document, which the Chairman shall then transmit to the agency official and to the Membership.

## **VI. MEMBER INVOLVEMENT IN SECTION 106 CASES**

### **A. Cases Pending at the Staff Level**

It is the policy of the Council to encourage member participation wherever appropriate and in accordance with the applicable federal rules of ethics, with the understanding that the Membership will need to maintain impartiality should there be a termination of the Section 106 process, leading to a formal Council comment. Participation of a Member shall not supersede the specific authorities for Section 106 case management delegated to the Chairman or the Executive Director under these Operating Procedures.

### **B. Cases Pending Before the Chairman**

When a Section 106 case is being reviewed by the Chairman for the determination on the method of rendering comment in the event of a termination of consultation or a request for comments without submission of a Memorandum of Agreement, the Chairman shall notify the Membership of the case at the beginning of the Chairman's review period.

## **VII. LEGISLATIVE MATTERS**

### **A. Formulation of Policy and Positions**

Policy and positions on federal, state, and local legislative proposals shall be established by action of the Membership. In those situations where the need for timely action precludes formal approval by the Membership, the Chairman and the Executive Director may establish and convey as appropriate an interim position by consulting with the Membership or an appropriate subgroup. The Chairman or the Executive Director shall notify the Membership when such action is to be taken, invite the views of members on the issue, and report to the Membership on any legislative positions taken or testimony delivered in a timely manner. The Membership shall be provided an opportunity to ratify or revise that interim position at the next meeting of the Membership. In the event a Member questions the consistency of a proposed interim legislative position with Administration policy, the Chairman will convene an unassembled meeting and take a vote of the full Membership on the proposed position or defer consideration of the position to the next meeting of the Membership.

### **B. Authority to Testify**

The Chairman, or another member or staff designated by the Chairman, is authorized to testify on federal, state, or local legislative matters on behalf of the Membership. Where time permits, testimony should be developed in consultation with the Membership or an appropriate subgroup. The Chairman may provide other testimony as may be consistent with policy and positions on legislative proposals established by the Council in accordance with Section VII.A. of these Operating Procedures. Absent extraordinary circumstances, the Council and its Chairman may provide testimony and advice on state or local draft legislation only if requested to do so by a legislator, senior executive branch staff, state historic preservation office, tribal historic preservation office, representative of a municipality or local agency, or representative of a nonprofit organization.

### **C. Conduct of Legislative Liaison Activities**

The Executive Director is responsible for the monitoring of legislative matters affecting the Council, overseeing liaison with members and committees of Congress, and representing the Membership in legislative activities conducted at the professional staff level in the Congress and within the Administration. The Executive Director shall discharge these duties in consultation with the Chairman and the Membership or an appropriate subgroup.

## **VIII. AMENDMENTS**

These procedures may be amended, revised, or repealed by vote of a two-thirds majority of the Membership (16).

*Adopted August 1987*

*Amended July 2001, May 2012, July 2015, March 2017, and [July 2023].*

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## APPENDIX A: MEMBERSHIP CREDENTIALS

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### INTRODUCTION

The National Historic Preservation Act Amendments of 1980 reconstituted the Membership of the Council with the objective of providing "a more balanced forum where representatives of various interests can deliberate on policy questions and reach true 'public interest' decisions on historic preservation matters" (House Report, p. 40). The legislation, as further amended in 1992, 2006, and 2016, goes on to name the representation to the Council leaving some discretion to the President in the appointment of agency heads, expert members, general public members, a governor, a mayor, and a member of an Indian tribe or Native Hawaiian organization. The amendments also permit certain institutional members of the Council to designate representatives to the Council. In the President's exercise of the appointments authority and in the selection of designees for institutional members, care must be taken to ensure that the intent of the statute is fulfilled. The purpose of this document is to provide the decision makers with guidance from the Council on these matters. Furthermore, this document establishes a process of review for credentials questions and decisions.

### STATEMENT OF POLICY

The National Historic Preservation Act, as amended, clearly indicates the intent of Congress to establish a Council comprised of individuals who possess the authority and expertise that is inherent in the top-level policymaking positions of Government and the private sector. It is the objective of the Council, through this document on credentials, to carry out this Congressional intent. Each member who participates in the activities of the Council should possess the level of authority or expertise that the Congress envisioned for the respective Membership category which that member represents. The objective of this policy is to ensure that members of the Council are peers, occupying comparable positions within their organizations or fields.

**1. Federal members.** The statute specifies that the Secretary of the Interior, the Secretary of Agriculture, and the heads of seven other agencies whose activities affect historic preservation appointed by the President shall sit on the Council. The Architect of the Capitol also is named as an *ex officio* member. The statute further allows each agency head to designate another officer of the agency to sit in his/her stead. A limitation on this authority for executive branch members was added in the 1980 amendments: no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated. (54 U.S.C. § 304101(b)).

A designee need not be an Assistant Secretary *per se*. In agencies where the title of Assistant Secretary does not exist, the level at which the approximate equivalent of assistant secretarial

powers are exercised is appropriate. In all cases, the alternative designation may be used when the officer to be designated has responsibilities that are agency-wide in that they extend to the full scope of activities of the member agency and not just one subdivision, office, division, or bureau within the member agency. For example, an officer that has been appointed the Senior Policy Official of the member department or agency (not a bureau or other component of the member's department or agency) under Section 3(e) of Executive Order 13287 meets the statutory standard for a designee by the inherent definition of the officer's duties under the Executive Order. Factors for the agency head to consider for other officials include the scope of their responsibilities, the level at which they sit in the department or agency, the official to whom they report, and the nature of their duties and authorities as they relate to the department or agency's historic preservation responsibilities.

The Architect of the Capitol is not subject to the specific limitations that 54 U.S.C. § 304101(b) places on designees. However, the principles articulated in this document for Executive Branch agencies should guide any designations made by the Architect.

**2. Non-Federal *ex officio* members.** The statute names the President of the National Conference of State Historic Preservation Officers, the General Chairman of the National Association of Tribal Historic Preservation Officers, and the Chairman of the National Trust for Historic Preservation as *ex officio* Council members. The authority of 54 U.S.C. § 304101(b) to name designees is extended to these three members, but the restrictions applied to Federal members do not pertain. The policies inherent in the provisions relating to Federal designees should guide designations in these cases. Designees should be in a policymaking position within the organization and have major, organization-wide responsibilities. Recognizing the corporate nature of these organizations, designations should generally be restricted to officers of the board or corporation and the chief executive officer.

**3. Expert members.** The statute directs the President to appoint four experts in the field of historic preservation to be selected from the disciplines of architecture, history, archeology, and other appropriate disciplines. These are specified in the legislative history to include, but not be limited to, urban planning, engineering, recreation, landscape architecture, anthropology, economics, human geography, or law, when the practice of the discipline "directly or primarily" involves historic preservation (House Report, p. 41).

Professional criteria for historians, architects, and archeologists have been established by the Secretary of the Interior to set standards for professional representation on State Review Boards (36 C.F.R. 61.5). These standards may serve as guidance for threshold qualifications for expert Council members. However, noting the level of other Council members as well as the Council's role in setting Government-wide and national policies, an added dimension of national recognition or accomplishment within a member's discipline might well be considered when these appointments to the Council are made. This could be evidenced by a demonstrated record of professional achievement, through research, publication, practice, or academic activity, that reflects a recognized national stature within the discipline.

The statute does not permit an expert member to designate an alternate representative.

**4. Governor and Mayor.** The statute requires the President to appoint a governor and a mayor to the Council. The purpose is “to better represent the concerns of State and local government in the Council’s deliberations” (House Report, p. 44). The statute permits the governor to have a designee. While the Act does not provide restrictions for the appointment of a governor designee other than needing to be “another officer of his department, agency, or organization,” it would be appropriate for such a designee to meet standards comparable to those set forth for federal Member Designees. The Council believes the elected nature of these officials precludes recommending further criteria for this class of member. The statute does not permit a mayor to designate an alternate representative.

**5. General public members.** The statute requires the President to appoint three at-large members from the general public. In addition, the Chairman is appointed from the general public. This class of member is intended "to provide a voice for the citizens whose daily lives are affected by historic preservation activities. They may be appointed as representatives of a group “such as civic associations or labor unions or as individual citizens" (House Report, p. 41). Because of the broad range of suitable representatives of the public, the Council believes that any specific criteria on individual members' credentials would be inappropriate. However, due consideration should be given to the contribution a general public member can make to the Council's activities, either in a representational or individual capacity. The statute does not permit a general public member to designate an alternate representative.

**6. Indian Tribe or Native Hawaiian organization member.** The statute requires the President to appoint “one member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member.” (54 U.S.C. § 304101(a)(12)). Due to the broad range of suitable representatives of Indian tribes or Native Hawaiian organizations, the Council believes that any specific criteria on individual members' credentials would be inappropriate. The statute does not permit the Indian tribe or Native Hawaiian organization member to designate an alternate representative.

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## **APPENDIX B: DELEGATION OF COUNCIL FUNCTIONS UNDER 36 C.F.R. PART 800**

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### **BACKGROUND**

The regulations implementing Section 106 of the Act are codified at 36 C.F.R. part 800.

These regulations give the Membership the responsibility to carry out its purposes.

However, the Membership delegates some of its responsibilities under the regulations to the Chairman and to the Executive Director, as set forth in this Appendix.

In some cases, the Council intends to delegate a responsibility to both the Chairman and the Executive Director. When that is the case, this document will either describe those circumstances in which each party shall take responsibility or authorize the Chairman to redelegate responsibility to the Executive Director for a particular matter or situation.

This delegation will go into effect immediately upon adoption by the Membership.

### **POLICY**

This document allocates the Council's responsibilities under the regulations between the policymaking parts of the agency, represented by the Chairman and the members, and the professional staff of the agency, represented by the Executive Director. Generally, the Council, in the form of the Chairman and the members, retains final decision-making authority in those areas where there are conflicts between historic preservation values and Federal project needs requiring a resolution that reflects the public interest. Delegation to the professional staff is made for the areas of routine administration and resolution of cases that do not present significant controversy or questions of policy.

Nothing in this delegation of authority shall prohibit the Executive Director from seeking advice or guidance from the Chairman or prohibit the Chairman from seeking advice or guidance from the members when carrying out the responsibilities duly delegated to them.

## DEFINITIONS

**Chairman.** The term "Chairman" refers to the Chairman of the Council appointed by the President, or another individual member of the Council designated by the Chairman to act on behalf of the Chairman in a particular matter or for a particular time.

**Executive Director.** The term "Executive Director" means the Executive Director of the Council, or an individual Council employee designated by the Executive Director to act in the Executive Director's behalf on a particular matter or for a particular time.

**Members.** The term "Members" refers to the members of the Council and their official designees.

**NHPA.** The term "NHPA" means the National Historic Preservation Act as amended. (54 U.S.C. §§ 300101 et seq.)

Unless otherwise noted, the term "Section" refers to sections within 36 C.F.R. part 800.

## SECTION BY SECTION DELEGATIONS

**Section 800.2(b)(1).** The general responsibilities of the Council, mentioned by Section 800.2(b), in deciding whether to enter the Section 106 process, as well as the documentation and notification requirements under this decision, is delegated as detailed below on the specific portions of the regulations concerning such determinations and decisions.

**Section 800.2(c)(2)(ii)(E).** The Council hereby delegates to the Executive Director its responsibility under Section 800.2(c)(2)(ii)(E) to receive copies of agreements whereby an Agency Official grants Indian tribes or Native Hawaiian organizations additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in subpart B of the revised regulations.

**Section 800.3(c)(4).** The Council hereby delegates to the Executive Director its responsibility under Section 800.3(c)(4) to consult with the Agency Official when the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination and the Agency Official decides to consult with the Council, in lieu of the SHPO/THPO, instead of proceeding to the next step in the process based on the finding or determination.

**Section 800.3(d).** The Council hereby delegates to the Executive Director its responsibility under Section 800.3(d), regarding consultation on tribal land, to complete the Section 106 process with the Agency Official and Indian tribe when the SHPO has withdrawn from the process and as appropriate.

**Section 800.4(c)(2).** The Council hereby delegates to the Executive Director its responsibility under the third sentence of Section 800.4(c)(2) to request the Agency Official to obtain a

determination of eligibility pursuant to 36 C.F.R. Part 63.

The Council hereby delegates to the Executive Director its responsibility under the last sentence of Section 800.4(c)(2) to receive and, where appropriate, to grant a petition asking that the Council request the Agency Official to obtain a determination of eligibility of a property off tribal lands, where the petition is received from an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the property and that does not agree with an Agency Official's determination of its eligibility.

**Section 800.4(d)(1).** The Council hereby delegates to the Executive Director its responsibility under Section 800.4(d)(1) to object within 30 days of receipt of an adequately documented finding of "no historic properties affected."

**Section 800.5(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(i) to receive, and respond to, a request from an Agency Official to review a finding of no adverse effect pursuant to Section 800.5(c)(3) (see below), where the SHPO/THPO or any consulting party disagree with the Agency Official's finding within the 30-day review period.

**Section 800.5(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(ii) to: (1) receive, from an Indian tribe or Native Hawaiian organization that has made known to an Agency Official that it attaches religious and cultural significance to a historic property subject to the finding of no adverse effect and that disagrees with such finding by the Agency Official, a request to review such finding pursuant to Section 800.5(c)(3) (see below), and (2) respond to such a request.

**Section 800.5(c)(2)(iii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(2)(iii) to decide and request, guided by Appendix A, the Agency Official to submit to it the no adverse effect finding along with the required documentation, for the Council's review pursuant to Section 800.5(c)(3) (see below).

**Section 800.5(c)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.5(c)(3) to review findings of adverse effects and to notify the Agency Official as to the determination on whether the adverse effect criteria have been correctly applied.

**Section 800.6(a)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to receive notifications of adverse effect findings.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(1) to: (1) receive any invitations or requests, from an Agency Official, the SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party, to participate in the consultation for the resolution of adverse effects, (2) notify in writing to the Agency Official and all consulting parties as to whether the Council will participate in such consultation and, if it does decide to participate, that its decision to participate meets the criteria

under Appendix A, (3) advise the head of the agency of its decision to enter the process, and (4) actually participate in such consultation.

**Section 800.6(a)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(a)(2) to invite other individuals or organizations to become consulting parties when the Council is participating in the consultation to resolve adverse effects.

**Section 800.6(b)(1)(iv).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(iv) to receive copies of executed Memoranda of Agreement, along with the required documentation.

**Section 800.6(b)(1)(v).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(1)(v) to: (1) receive a request to join consultation where the Agency Official and SHPO/THPO fail to agree on terms of a Memorandum of Agreement, (2) decide whether to accept such a request, and (3) notify the agency when such a request is declined.

**Section 800.6(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(b)(2) to participate in consultation regarding ways to avoid, minimize or mitigate adverse effects and its responsibilities under Section 800.6(b)(2) to execute Memoranda of Agreement. The Executive Director is hereby authorized to redelegate this responsibility to execute a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

**Section 800.6(c)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(1) to execute, amend, or terminate a Memorandum of Agreement to which the Council is a signatory. The Executive Director is hereby authorized to redelegate this responsibility to execute, amend or terminate a Memorandum of Agreement to the Chairman when the Executive Director so recommends due to the specific nature of the case.

**Section 800.6(c)(7).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.6(c)(7) to receive amended Memoranda of Agreement to which the Council is not a signatory .

**Section 800.7(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a) to determine that further consultation will not be productive and terminate consultation, and to notify other consulting parties, providing them the reasons for terminating in writing.

**Section 800.7(a)(1).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(a)(1) to receive a request for Council comment, pursuant to Section 800.7(c), from the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities, when the Agency Official terminates consultation.

**Section 800.7(a)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(2) to execute a Memorandum of Agreement with the Agency Official when the SHPO terminates consultation. The Executive Director is hereby authorized to redelegate this responsibility to execute such a Memorandum of Agreement to the Chairman where the Executive Director so recommends due to the specific nature of the case.

**Section 800.7(a)(4).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(a)(4) to notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of a termination, when the Council has terminated consultation (see Section 800.7(a) above), and to consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

**Section 800.7(b).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(b) to determine whether it is appropriate for the Council to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed.

**Section 800.7(c)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.7(c)(1) to request the Agency Official to provide additional information on an undertaking and provide assistance to the Council in arranging an onsite inspection and an opportunity for public participation (this subsection relates to occasions where the Council is to provide comment without a memorandum of agreement).

**Section 800.7(c)(2).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(2) to transmit the Council's comments in accordance with Section 800.7(c)(3).

**Section 800.7(c)(4)(i).** The Council hereby delegates to the Chairman its responsibilities under Section 800.7(c)(4)(i) to receive the summary of a decision from an agency head that has taken Council comments into account.

**Section 800.8(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c) to receive advance notification from an Agency Official that it intends to use the NEPA process and documentation to comply with Section 106 in lieu of the procedures under Sections 800.3 through 800.6.

**Section 800.8(c)(1)(iii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(1)(iii) to engage in consultation regarding effects, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents.

**Section 800.8(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(i) to receive the DEIS or EIS, when such documents

are being prepared, from the Agency Official.

**Section 800.8(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standards set forth in Section 800.8(c)(1) or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(2)(ii) to receive, and resolve, objection referrals from the Agency Official.

**Section 800.8(c)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(3) to review objections, and to notify the Agency Official as to whether it agrees or disagrees with the objection.

**Section 800.8(c)(5).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.8(c)(5) to receive notification from the Agency Official that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Sections 800.3 through 800.6 will be followed as necessary.

**Section 800.9(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(a) to receive, and respond to, requests for the Council's advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the Council's regulations, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

**Section 800.9(c)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2) to receive notification and documentation from an Agency Official that it (the Agency Official) has determined that 54 U.S.C. § 306113 is applicable and that circumstances may justify granting the assistance at issue.

**Section 800.9(c)(2)(i).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(i) to formulate its opinion, and provide it to the Agency Official, as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects (see Section 800.9(c)(2) above).

**Section 800.9(c)(2)(ii).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(c)(2)(ii) to receive notification from the Agency Official as to its consideration of the Council's opinion on whether to grant assistance to the applicant (see Section 800.9(c)(2) above).

**Section 800.9(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d) to evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes

reached advance the purposes of the NHPA.

**Section 800.9(d)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(1) to request, and receive, from Agency Officials documentation of agency policies, operating procedures and actions taken to comply with Section 106, and to request and receive from other participants in the Section 106 process available information and documentation.

**Section 800.9(d)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.9(d)(2) to make recommendations to participants, the heads of Federal agencies, and the Secretary of the Interior on actions to improve the efficiency and effectiveness of the Section 106 process, provided that the Executive Director may refer specific matters to the Chairman and Council for action.

**Section 800.10(b).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(b) to receive requests from Agency Officials to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Section 800.6.

**Section 800.10(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(c) to request a report from the Secretary of the Interior under 54 U.S.C. § 304110 to assist in a consultation involving a National Historic Landmark.

**Section 800.10(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.10(d) to report the outcome of the Section 106 process (regarding National Historic Landmarks under Section 800.10) to the Secretary of the Interior and the head of the agency responsible for the undertaking.

**Section 800.11(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(a) to: (1) determine whether applicable documentation standards are not met, (2) notify the Agency Official as to such determination and specify the information needed to meet the standard, (3) receive requests to review, and actually review, disputes regarding whether documentation standards are met, and (4) provide its views to the Agency Official and the consulting parties as to such disputes.

**Section 800.11(c)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.11(c)(2) to: (1) consult with the Secretary of the Interior in reaching determinations on the withholding and release of information due to confidentiality issues under 54 U.S.C. § 307103, (2) receive from the relevant Federal agency, available information related to the confidentiality concern, and (3) advise the Secretary of the Interior and the relevant Federal agency as to the confidentiality issue.

**Section 800.12(a).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(a) to engage in consultation regarding the development of emergency

procedures.

**Section 800.12(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to receive notification from an Agency Official whose agency has not developed emergency procedures, that it proposes an emergency undertaking as an essential and immediate response to a disaster or emergency.

The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(b)(2) to comment on such emergency undertakings within the timeframe available.

**Section 800.12(c).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(c) to object to a proposed emergency action by a local government (acting as Agency Official) regarding an imminent threat to public health or safety declared by the local government.

**Section 800.12(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.12(d) to receive, decide, and respond to, a request for an extension of the 30-day period within which emergency undertakings must be implemented in order for the emergency procedures under Section 800.12 to apply.

**Section 800.13(b)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(2) to receive a report from the Agency Official on its actions to mitigate effects on subsequently discovered historic properties or unanticipated effects.

**Section 800.13(b)(3).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.13(b)(3) to receive, and respond to, notifications from the Agency Official as to actions taken to resolve adverse effects after subsequent discoveries, and to receive reports of the actions when they are completed.

**Section 800.14(a)(1).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(1) to consult with the Agency Official and others during the development of alternate procedures.

Nevertheless, the Council retains for the members its responsibility under Section 800.14(a)(2) to review proposed alternate procedures, determine whether they are consistent with the Council's regulations and, if so, notify the Agency Official of this determination.

**Section 800.14(a)(4).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(a)(4) to provide Federal agencies notice and opportunity to comment on proposed alternate procedures under 54 U.S.C. § 302705.

**Section 800.14(b).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b) to negotiate a Programmatic Agreement with an Agency Official.

**Section 800.14(b)(2)(iii).** The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(2)(iii) to execute and terminate program Programmatic Agreements. The Chairman has the discretion to further delegate, in writing, these responsibilities to the Executive Director.

**Section 800.14(b)(2)(v).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(b)(2)(v) to determine whether the terms of a Programmatic Agreement are not being carried out.

**Section 800.14(b)(4).** The Council hereby delegates to the Chairman its responsibilities under Section 800.14(b)(4) to designate an agreement document as a prototype programmatic agreement.

**Section 800.14(c)(5).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(5) to receive requests for exempted categories.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(c)(5) to review such requests and decide whether to approve or reject the proposed exemption based on the consistency of the exemption with the purposes of the NHPA, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with 54 U.S.C. § 304108(c).

**Section 800.14(c)(6).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(c)(6) to determine that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of the Council's regulations.

The Council retains for its members its responsibilities under Section 800.14(c)(7) to terminate an exemption and to notify the Agency Official 30 days before the termination becomes effective.

**Section 800.14(d).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(d) to: (1) establish standard treatments, (2) publish notice of standard treatments in the Federal Register, (3) arrange for public participation in the development of standard treatments, (4) request an Agency Official to arrange for public involvement when the Agency Official has proposed the standard treatment, (5) notify and consider the views of SHPO/THPOs on the proposed standard treatment, (6) follow the consultation requirements under Section 800.14(f) with regard to proposed standard treatments that may affect historic properties on tribal lands or those of religious and cultural significance to tribes, and (7) terminate standard treatments by publication of a notice in the Federal Register 30 days before the termination takes effect.

**Section 800.14(e).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(e) to receive requests for program comments.

Nevertheless, the Council retains for the members its responsibilities under Section 800.14(e)(3) through (5) to: (1) notify and consider the views of SHPO/THPOs on the proposed program comments, (2) follow the consultation requirements under Section 800.14(f) as required, (3) request additional information, (4) seek the consent of the Agency Official to extend the period for providing comment, (5) provide, or decline to provide, program comments, (6) notify the Agency Official when it decides to decline to comment, and (7) determine to withdraw a program comment.

**Section 800.14(f)(2).** The Council hereby delegates to the Executive Director its responsibilities under Section 800.14(f)(2) to receive from Agency Officials summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations as part of the documentation for the proposed program alternative.

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## APPENDIX C: PANEL MEETING PROCEDURES

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### INTRODUCTION

The Council membership is called upon to issue formal comments in the rare instances where an adverse effect to a historic property is not resolved pursuant to the Section 106 regulations. The Council's Operating Procedures, at Section V.B.2.b., provide for subgroups of Council members ('panels') to meet with the purpose of considering and providing such formal comments. This Appendix sets forth the procedures for conducting such panel meetings.

### A. ORGANIZATION

1. **Chairman.** The Chairman of the Council shall designate the panel chairman from the non-Federal membership of Council. The panel chairman may designate a member of the panel to sit in his/her stead during temporary absence from a panel meeting or other panel functions. Should the designated panel chairman be unable to complete his/her assignment as panel chairman, the Chairman of the Council shall designate a successor from those non-Federal members already serving on the panel.

2. **Panel Membership.** The Chairman of the Council shall designate panel members. A panel shall consist of three non-Federal members and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking at issue. The Chairman of the Council may designate substitute members at any time. Consistent with the federal rules of ethics, panel members will not include those with a conflict of interest or an impartiality issue regarding the undertaking at issue.

### B. CONDUCT OF PUBLIC PANEL MEETINGS

1. **Notice.** Generally, the Executive Director shall provide 10 days notice of all public meetings involving Council review of undertakings by publication in media reasonably determined to reach interested members of the public.. In exceptional cases, no less than 7 days notice shall be given by such publication. The Executive Director will make reasonable efforts to directly provide such notification to known consulting parties through electronic mail.

2. **Agenda.** The public panel meeting shall be conducted in accordance with a provisional agenda that is adopted by the panel. Copies of the agenda shall be made available to the public prior to the meeting.

3. **Order of Business.** Unless the panel chairman determines otherwise, the agenda shall

provide for the taking of public testimony, a site visit, reports from the consulting parties and any others deemed necessary by the panel chairman, and a commenting session.

4. **Public Testimony and Reports.** Unless otherwise specified by the panel chairman, public testimony and reports shall conform to general guidelines established by the Council for presentations at meetings.

5. **Written Statements.** Written statements may be submitted to the panel. The panel chairman may extend the period for submission of written statements beyond the meeting, provided such extension is consistent with the comment period under 36 CFR Section 800.7(c)(2). The panel will fully consider written statements only if statements are received by the deadline established by the panel chairman.

6. **Required Reports.** Unless the panel chairman determines otherwise, reports to the panel shall conform to general guidelines established by the Council for presentations at meetings.

7. **Onsite Inspections.** The panel chairman may schedule an onsite inspection as part of the panel meeting or incidental to the meeting. The Agency Official, the State Historic Preservation Officer / Tribal Historic Preservation Officer, and the Executive Director, or their designated representatives, shall be invited to attend. Other parties may attend as the panel Chairman deems appropriate.

8. **Open Meetings.** The Council will provide reasonable facilities for attendance of interested members of the public to the public panel meeting.

9. **Minutes.** A recorder designated by the panel chairman will keep minutes of public panel meetings and make such minutes readily available to the public within a reasonable time after the public panel meeting. The Executive Director shall send any such minutes to all members of the Council as soon as they are available.

## C. PANEL COMMENTS

1. **Deliberations.** The Council will maintain records of the deliberations of the panel in formulating its comments and will make such available to the public upon request, subject to exceptions permissible only by the Freedom of Information Act.

2. **Voting.** All members of the panel must vote on the panel's final comments. Panel members may vote by proxy given to the panel chairman. All final votes on panel comments shall be on record. All actions relating to panel comments shall require a simple majority for passage.

3. **Form of Comments.** Once adopted, and within the timeframe established by 36 C.F.R. § 800.7, the Executive Director shall transmit written comments to the head of the

Federal agency requesting comment or having responsibility for the undertaking and to all members of the Council. The comments shall have three parts: an introduction; a finding of facts; and conclusion and recommendations.

**4. Distribution of Comments.** The Council shall not release written comments of the panel until they have been received by the relevant head of the Federal agency. Comments transmitted via electronic mail are considered to be received at the moment they are sent by the Council. As soon as reasonably possible after the comments are received by the relevant Federal agency, the Executive Director will make available the comments of the Council to the State Historic Preservation Officer / Tribal Historic Preservation Officer and other consulting parties, and posted on the website and/or social media of the Council. The Council recommends that comments of the Council should be included in the final environmental impact statement (FEIS) or Record of Decision (ROD) prepared pursuant to the National Environmental Policy Act, if such an FEIS or ROD was prepared.

**5. Report to Full Council.** The panel chairman, the Chairman, or the Executive Director shall report the actions taken by the panel to the Membership via electronic mail. The Council may issue a final report to the President and Congress under authority of 54 U.S.C. § 304102(b) describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.



## PROPOSED ACHP ACTION ON PENDING LEGISLATION Office of Preservation Initiatives

**Introduction.** Four bills currently pending in Congress are appropriate for member review and possible action. Staff is recommending that the members consider motions regarding these bills. All address issues that the ACHP has advised upon in past Congresses. As discussed further below, taking action on these bills is consistent with the legislative priorities for the 118th Congress adopted by the ACHP.

**Historic Preservation Fund Reauthorization Act.** [This bill](#) (H.R. 3350) would reauthorize the Historic Preservation Fund (HPF) for an additional 10 years when its current authorization expires on September 30. The amount of money to be deposited in the fund each year would rise from \$150 million to \$250 million. The HPF is a critically important source of federal funding for historic preservation that provides annual support for State and Tribal Historic Preservation Offices and for several important competitive historic preservation grant programs.

The HPF was last authorized, for seven years, in 2016. At that time, the ACHP contacted Congress on several occasions to support reauthorization and to further recommend that the fund be permanently authorized. In 2022, the ACHP supported a bill in the last Congress that would have permanently authorized funding for the HPF, ensured that full funding would be available to be expended each year, and increased the annual funding level to \$300 million. Most preservation advocates believe that such an expansive bill is no longer realistic given that control of the current Congress is now split between the Democratic and Republican parties.

ACHP support for the Historic Preservation Fund Reauthorization Act would be consistent with two of the ACHP's legislative priorities for the 118th Congress—reauthorizing and making permanent the HPF and supporting preservation-friendly programs and funding. A letter from the ACHP could urge support for the bill, with its 10-year reauthorization, while also urging further consideration of permanent funding.

There is no official Statement of Administration Policy on the bill. However, the President's Budget for FY 2024 includes language requesting a stopgap reauthorization of the HPF for one year at a funding level of \$177.9 million. Current FY 2023 funding for the HPF is \$204.51 million.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved, that:** the ACHP supports the Historic Preservation Fund Reauthorization Act (H.R. 3350); urges that further consideration be given to permanent reauthorization; and directs the chair to so advise the Congress.

**Historic Tax Credit Growth and Opportunity (HTC-GO) Act.** Reintroduced in both the Senate and House, the two versions of this bill ([S. 639](#) / [H.R. 1785](#)) differ in their exact provisions, but both seek to enhance the existing historic tax credit (HTC). The bill would increase the current 20 percent credit to 30 percent for smaller projects. The bill also would expand the types of buildings eligible for rehabilitation by decreasing the rehabilitation threshold from 100 percent to 50 percent of project expenses. It also would eliminate the basis adjustment requirement for the credit and modify rules relating to nonprofit use of the credit.

Since its inception in 1976, the HTC has been one of the most important federal incentives for the preservation of historic buildings. However, the impact of the credit has diminished in recent years. As summarized by the National Trust for Historic Preservation:

*The HTC has lost investment value over the past ten years due to multiple complex factors, including new IRS rulings, administrative burdens, changes in the credit structure, along with the changes of the Tax Cuts and Jobs Act of 2017. The result is that the value of the tax credit investment has dropped 20-25%.*

*These issues, combined with rising interest rates and skyrocketing costs of materials and labor, have exacerbated financing challenges already present with these projects. Current National Park Service data shows that usage of the HTC is down 20%, for both FY22 and FY21, compared to 4 years ago.*

In the past, the ACHP has consistently and strongly supported legislation that would maintain and enhance the HTC. In 2021, the ACHP wrote to Congress to convey its support of the HTC-GO Act. Once again expressing support for the bill would be consistent with an ACHP legislative priority for the 118th Congress—maintaining and enhancing tax incentives for historic preservation. The Administration has not issued a Statement of Administration Policy on the bill; however, this does not preclude the ACHP from taking a position on the bill.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved, that:** the ACHP supports the Historic Tax Credit Growth and Opportunity (HTC-GO) Act (S. 639 / H.R. 1785); and directs the chair to so advise the Congress.

**Save Oak Flat From Foreign Mining Act.** [This bill](#) (H.R. 1351) would repeal Section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for FY 2015 (Public Law 113-291). This provision mandates a land exchange whereby copper-rich land in Arizona’s Tonto National Forest is to be transferred by the U.S. Forest Service to Resolution Copper Mining, LLC, in exchange for land owned by the company. The property that would leave federal ownership includes the Chí’chil Biłdagoteel Historic District (also known as Oak Flat), which is a historic place of profound importance to multiple Indian Tribes because of the role it plays in their religious and cultural traditions. The mining for copper that would occur following the land exchange would permanently damage a substantial portion of Oak Flat. The Save Oak Flat From Foreign Mining Act not only would stop the land exchange by repealing Section 3003, it also would withdraw Oak Flat from future disposal or use for mining or geothermal leasing.

The Forest Service initiated a Section 106 review of the land exchange, and the ACHP worked with all affected parties to seek an agreement on alternatives that would avoid, minimize, or mitigate the anticipated adverse effects on Oak Flat. No such agreement could be reached, however, given the nature and significance of the historic properties and the magnitude of the impacts. Ultimately, the ACHP terminated further consultation and issued formal comments to the Secretary of Agriculture. These comments included a recommendation that the U.S. Department of Agriculture work with the Administration and Congress to take steps to amend or repeal Section 3003.

With variations, legislation to repeal Section 3003 has been introduced in every Congress since the land exchange mandate was signed into law. In 2021, the ACHP wrote to Congress to convey its support of the previous iteration of the bill, the Save Oak Flat Act. The current bill differs from the previous, but the proposed actions to preserve Oak Flat called for in the bill remain the same.

Like the previous bill, the current bill includes a series of introductory findings that the ACHP is not in a position to address. For example, the current bill makes a number of assertions regarding the foreign ownership of Resolution Copper, LLC, for which the ACHP has no direct knowledge. In 2021, the ACHP limited its comments to Congress to providing expert advice on the preservation provisions of the bill—the repeal of the land exchange and the withdrawal of Oak Flat from future disposal or use for mining or geothermal leasing. The same could be done in any new letter sent regarding the current bill, referencing support for such provisions in Section 4 of the bill.

Once again expressing support for the key provisions of the bill would be consistent with an ACHP legislative priority for the 118th Congress—fostering stewardship of historic properties on federal lands or under federal management. The Administration has not issued a Statement of Administration Policy on the bill; however, this does not preclude the ACHP from taking a position on the bill.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved, that:** the ACHP supports the provisions of Section 4 of the Save Oak Flat From Foreign Mining Act (H.R. 1351); and directs the chair to so advise the Congress.

***Chaco Cultural Heritage Area Protection Act.*** [This bill](#) (S. 1404 / H.R. 3062) would prevent future leasing and development of oil, gas, and minerals on federal lands within a 10-mile buffer zone around Chaco Culture National Historical Park in New Mexico. This leasing withdrawal would not affect existing leases or rights and would not apply to minerals owned by private, state, or Tribal entities.

The leasing withdrawal is proposed because the National Park and surrounding area is a region of great cultural, spiritual, and historical significance to many Pueblos and Tribes. The area been listed as a UNESCO World Heritage Site since 1987, one of only 24 such sites in the United States.

The Chaco Cultural Heritage Area Protection Act has been introduced in each of the last three Congresses. During portions of this period, the Department of the Interior (DOI) has put administrative withdrawals in place. Over the past two years, a withdrawal was invoked while the Bureau of Land Management conducted an environmental review and sought public comment on the possibility of a 20-year administrative withdrawal. Following that analysis, DOI announced on June 2 that the 20-year withdrawal would go into effect. Chair Bronin sent a letter to Interior Secretary Deb Haaland on June 22 applauding this action. The Chaco Cultural Heritage Area Protection Act would make the withdrawal permanent.

In 2019, the ACHP conveyed to Congress its support for the bill as then written. The current version of the bill is essentially the same with limited clarifying edits. Once again expressing support for the bill would be consistent with an ACHP legislative priority for the 118th Congress—fostering stewardship of historic properties on federal lands or under federal management. The Administration has not issued a Statement of Administration Policy on the bill; however, DOI’s announcement of the 20-year withdrawal demonstrates the Administration’s commitment to the goals of the bill.

Staff suggests that the Preservation Initiatives Committee consider recommending the adoption of the following motion:

**Moved, that:** the ACHP supports the Chaco Cultural Heritage Area Protection Act (S. 1404 / H.R. 3062); and directs the chair to so advise the Congress.

***Action Needed.*** The Preservation Initiatives Committee should consider recommending to the full membership the adoption of the four motions previously noted.

*June 29, 2023*



## HOUSING AND HISTORIC PRESERVATION POLICY STATEMENT Office of Preservation Initiatives

**Background.** America is suffering from a massive shortage of available housing units—estimated to be in the millions—and the crisis is particularly acute regarding affordable housing. In response, in 2022 the White House released a [Housing Supply Action Plan](#) designed to combat housing scarcity and lack of affordability. It calls for action to address: incentives for land use and zoning reform and reducing regulatory barriers; the need for new and enhanced financing; supply constraints; and preserving the availability of affordable single-family homes for owner-occupants.

The plan is silent on the role that rehabilitation of historic buildings can play in addressing the housing shortage. Older and historic buildings are important sources of naturally occurring affordable housing, and nonresidential historic buildings can be adapted for use as housing. Unfortunately, these facts are too frequently overlooked. In some instances, there also is a misperception that preservation of historic buildings and historic districts represents a barrier to creation of housing rather than an opportunity. America needs to rehabilitate and reuse existing buildings, including historic buildings, for housing; the housing shortage is not a problem we can build our way out of through new construction.

**Developing a Policy Statement.** Development of an ACHP policy statement on housing and historic preservation would allow the ACHP to provide expert advice to a wide range of stakeholders on the role that historic preservation can play in alleviating the housing crisis. Such a policy statement could build upon and incorporate the [ACHP's 2007 Affordable Housing and Historic Preservation Policy Statement](#), the implementation principles of which focus principally on Section 106 review of affordable housing projects.

Attached is a draft discussion outline of a housing and historic preservation policy statement that has been developed by the chair and staff to serve as a catalyst for discussion. It follows the overall format and approach of the recently adopted Climate Change and Historic Preservation Policy Statement. The housing policy statement would speak broadly to federal agencies and to state, Tribal, and local governments, as well as community groups and nonprofit organizations. The document would define the scope of the challenge and the role that historic preservation can play. Proposed policy principles would address the following: gathering information; reusing historic buildings; expediting project permitting and environmental review; education; and collaboration.

**Action Needed.** Please provide any written comments on the draft on or before July 24, 2023, via email to [dnull@achp.gov](mailto:dnull@achp.gov). Members will be invited to discuss the draft at both the Preservation Initiatives Committee meeting and the business meeting, but no formal action is planned at this time.

**Attachment:** Housing and Historic Preservation Policy Statement Draft Discussion Outline

June 29, 2023

## **ACHP HOUSING AND HISTORIC PRESERVATION POLICY STATEMENT**

### **Draft Discussion Outline 6/13/2023**

Broad introduction – about one paragraph to set the stage

Aims to encourage rehabilitation of historic housing and adaptive use of historic buildings not originally built for housing.

#### **SCOPE OF THE ISSUE**

- Extent of the housing crisis in general and of affordable housing in particular
- Need to rehabilitate and reuse existing buildings; the shortage is not a problem we can build our way out of through new construction
- Role that rehabilitation of historic buildings can play in addressing the housing shortage
- Problem of negative misperceptions regarding the reuse of historic buildings for housing

#### **ROLE OF THE FEDERAL GOVERNMENT**

- ACHP mission and mandates that underpin the ACHP issuing this policy statement; summary of the ACHP's previous issuance of affordable housing policy statements in 1995 and 2007
- Federal agencies' roles:
  - Section 110 and Section 106 responsibilities of agencies
  - The policy statement applies to the consideration of housing issues during Section 106 reviews
  - Previous research, planning, policy development, and guidance on housing and historic preservation undertaken by federal agencies

#### **INTENDED AUDIENCE**

- Federal agencies; Tribal, state, and local governments; community groups; and nonprofit organizations (collectively, "public-serving institutions"); and the private sector

#### **POLICY PRINCIPLES**

##### *Gathering Information*

1. Public-serving institutions should:

- Assemble information about the location, size, condition, and occupancy of historic buildings in localities they serve and correlate this information with local housing needs.
- Study the costs of rehabilitation of historic buildings, relative to new construction, for housing.
- Evaluate the links between historic designation and housing affordability in multi-family housing and rural housing, and historic designation and displacement of underserved and low-income residents.
- Survey financial incentives available at the federal, state, Tribal, and local levels for rehabilitation of historic buildings for housing and assess the impact of such incentives on housing supply, housing affordability, and equitably distributed development.
- Survey laws at the federal, state, Tribal, and local levels affecting the rehabilitation of historic buildings for housing; assess the impact of such laws on housing supply, housing affordability, and equitably distributed development; and determine if such laws are applied and interpreted in a flexible manner allowing for housing construction.

#### ***Reuse Historic Buildings***

2. Federal and state governments should promote development of historic tax incentives and easier ways to twin those incentives with housing tax incentives.
3. Public-serving institutions should support and develop robust programs that assist lower- and middle-income homeowners in maintaining and weatherizing their existing homes and reducing their energy costs through renewable energy installation.
4. Public-serving institutions should promote zoning codes that encourage greater density of housing while preserving significant material elements of the community's historic buildings and that legalize previously nonconforming historic buildings. Consideration should be given to allowing and incentivizing:
  - conversion of historic single-family dwellings to multi-family dwellings
  - creation of accessory dwelling units, either in rehabilitated historic structures or through compatible new construction
  - creation or restoration of housing in the upper stories of historic commercial buildings
  - removal or reduction of parking requirements for rehabilitation projects
  - compatible infill construction of multi-family housing on vacant parcels in historic districts
5. To facilitate conversion of nonresidential historic buildings to residential use, public-serving institutions and the private sector should advocate for changes in building codes and create more flexible standards, especially for small-scale housing of four units or fewer.
6. Federal, state, Tribal, and local governments should lead by example through deaccessioning or outleasing historic government buildings for housing development.

### ***Accelerate Project Permitting and Environmental Review***

7. Federal, state, Tribal, and local governments should expedite development of housing projects through efficient and effective permitting processes and environmental reviews while still ensuring full consideration of potential impacts to historic properties.
8. All participants in Section 106 review of housing projects should approach the review flexibly in keeping with the following principles:
  - Review of effects in historic districts should focus on exterior features.
  - Consultation should consider the overall preservation goals of the community.
  - Plans and specifications should adhere to the Secretary's Standards when possible and practical.
  - Section 106 consultation should emphasize consensus building.
  - The ACHP encourages streamlining the Section 106 process to respond to local conditions.
  - The need for archaeological investigations should be avoided.
9. Federal, state, and local government entities that oversee planning, permitting processes, and environmental reviews (including Section 106 reviews) should consult with Indian Tribes, NHOs, people with disabilities, and disadvantaged and underserved communities regarding the reuse of historic buildings for housing, and explore capacity-building options for supporting their participation in consultation.

**Commented [DJN1]:** These are Implementation Principles III-VIII of the current policy statement. Current Implementation Principle I is general enough that it is reflected in the overall policy and doesn't need to be restated here. Current Implementation Principle II could be incorporated into the opening text of principle 8.

### ***Education***

10. Public-serving institutions should educate policymakers, housing advocates, and developers about the benefits of reusing historic buildings in addressing the housing crisis, the strategies and incentives available for rehabilitation, and the opportunity for historic buildings to improve their accessibility for people with a disability.
11. Public-serving institutions should educate the media and the public, including residents in underserved communities, about the benefits of reusing historic buildings in housing development and debunk misperceptions regarding historic preservation as a barrier to addressing the housing crisis.

### ***Collaboration***

12. Public-serving institutions and the private sector should cooperate and form partnerships across agencies, between levels of government, and within communities to enhance the implementation of each of the principles discussed above.



## ACHP ADVICE ON STATE AND LOCAL LEGISLATION

**Introduction.** The ACHP is charged with various duties under the National Historic Preservation Act (NHPA). The ACHP exercises some of those duties on an ongoing, daily basis, such as its oversight of the process established by Section 106 of the NHPA. However, the ACHP has less regularly exercised some of its other statutory duties, including the duty to:

advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation [54 U.S.C. § 304102(a)(4)].

This duty is important because both state and local governments have specified roles in the federal historic preservation framework, including through State Historic Preservation Offices and the Certified Local Government program, which tie these smaller political subdivisions more closely to the federal government than may be the case in other areas of federal influence.

From time to time, the ACHP has received notice of state and local bills that may impact the framework set by the NHPA or, more broadly, historic properties. Most recently, the Florida Senate passed a bill that might have negatively impacted historic districts in that state (SB 1346). The bill died in the Florida House. However, communications from individuals in Florida and ACHP members and staff raised the question as to when and whether the ACHP should provide formal comment.

To resolve this question, Chair Sara Bronin, with the consultation of several ACHP members, has developed the draft *Policy Guidance Regarding Advisory Council on Historic Preservation Advising on State and Local Legislation* for member consideration.

**Next Steps.** Members will consider and comment on the *Policy Guidance Regarding Advisory Council on Historic Preservation Advising on State and Local Legislation*.

Among other things, the draft sets out factors the ACHP would consider in deciding whether to provide advice on state or local legislation; issues that would likely result in a favorable or an unfavorable advice on legislation; and the sources of requests that could lead to the ACHP rendering advice. As for the process of formulating advice, the draft refers to the existing process in the Operating Procedures for formulating positions on legislation.

Once ACHP members have weighed in, the intent is to have final policy guidance that will be presented to the membership for adoption, most likely through an unassembled meeting vote.

**Action Needed.** Please provide any written comments on the draft on or before July 7, 2023, via email to Dru Null at [dnull@achp.gov](mailto:dnull@achp.gov). Members will be invited to discuss the draft at the business meeting, but no formal action is planned at that time.

**Attachment:** Draft Appendix D-Policy Guidance Regarding Advisory Council on Historic Preservation Advising on State and Local Legislation

June 29, 2023

## DRAFT APPENDIX D

### Policy Guidance Regarding Advisory Council on Historic Preservation

#### Advising on State and Local Legislation

June 29, 2023

#### A. Background

The National Historic Preservation Act tasks the Advisory Council on Historic Preservation (ACHP) with several duties. Among them is that the ACHP must “advise” as to state and local legislation related to historic preservation. *See* 54 U.S.C. § 304102(a)(4). Both state and local governments have specified roles in the federal historic preservation framework, including through State Historic Preservation Offices and the Certified Local Government program, which tie these smaller political subdivisions more closely to the federal government than may be the case in other areas of federal influence. For the purposes of this policy, “local government” is deemed to include any political subdivision of a state, as articulated in that state’s general statutes or other relevant law.

#### B. General Policy

The ACHP may choose to exercise its authority under the National Historic Preservation Act to advise on state and local legislation, though it will not always choose to do so. This policy sets forth the criteria that will be used by the ACHP to determine whether to advise on state or local legislation.

#### C. Determinations Regarding Advising

##### 1. Reasons the ACHP May Not Advise

The ACHP has no obligation to advise on each and every state or local legislation, and it will not always elect to do so, even though one or more of the criteria may be met. This is due both to the sheer volume of preservation-related state and local legislation and concern that lack of localized knowledge and insight could result in inadvertently overlooking controversial situations or relying on faulty second-hand information. Moreover, it will most often be the case that those representing views consistent with the ACHP’s views on any particular state or local legislation will capably and effectively communicate those views whether or not the ACHP participates.

Despite these issues, and as further described in Section C.2. below, there are scenarios where ACHP advice to state and local governments may be warranted and desirable.

##### 2. Factors to Consider in Deciding Whether to Advise

The ACHP may choose to advise on state or local legislation when one or more of the following criteria is met:

- a. *The legislation has substantial positive or adverse effects on historic properties.* These impacts may include effects on: properties that possess a national level of significance or on properties that are of noteworthy importance or are a rare property type; large numbers of historic properties, such as impacts to historic properties throughout the state or local jurisdiction or to multiple properties within a historic district; or properties associated with marginalized or underserved communities.

- b. *The legislation could advance or hinder an established ACHP policy or guidance goal.* These goals may be stated in the ACHP strategic plan, guidance documents, legislative priorities, or policy statements and have included topics such as workforce development, heritage tourism, climate change, building a more inclusive preservation program, and supporting the participation of Indian Tribes in the national preservation program.
- c. *The legislation may set a precedent for the treatment of historic properties that may be adopted by other states.* Precedents may include proposals for innovative strategies that promote the preservation of historic properties, or, conversely, novel legislation inconsistent with the National Historic Preservation Act. Precedents may also include changes to established components of state or local preservation programs, such as designation, design review, demolition review, and economic hardship provisions, among others.
- d. *The legislation attempts to interpret or change legal frameworks related to the National Historic Preservation Act or its implementing regulations.* These frameworks may include the relationships between State or Tribal Historic Preservation Offices and the federal government, the duties of State or Tribal Historic Preservation Offices or Certified Local Governments, the process under Section 106 of the National Historic Preservation Act (Section 106), or state-delegated authority related to Section 106.
- e. *The legislation presents issues of concern to Indian Tribes or Native Hawaiian organizations, where such issues are related to federal preservation law or policy.* These issues of concern may include the identification or evaluation of, or assessment of effects on, historic properties to which an Indian Tribe or Native Hawaiian organization attaches religious and cultural significance; or the interpretation of Section 106 or preservation-related authorities, such as the Native American Graves Protection and Repatriation Act.

### **3. Issues Likely Deserving of Favorable ACHP Advising**

In establishing this guidance, the ACHP recognizes that some state or local legislation will not require review on a case-by-case basis by the entire ACHP membership because its subject matter is clearly consistent with long-established ACHP positions. With that in mind, the ACHP hereby authorizes the chair to advise favorably on draft state and local legislation that proposes to:

- a. Expand or create a rehabilitation tax credit program;
- b. Increase or provide funding to State or Tribal Historic Preservation Office(s), and/or programs affiliated with such office(s);
- c. Increase or provide funding to preserve or rehabilitate a building, structure, object, site, or district, listed or eligible for listing on a register of historic places;
- d. Increase or provide funding for a public or publicly supported conservation or preservation easement program; and/or
- e. Increase or provide funding for an existing education program focused on historic preservation or cultural heritage or authorize the creation of such a program.

### **4. Issues Likely Deserving of Unfavorable ACHP Advising**

In establishing this policy, the ACHP recognizes that some state or local legislation will not require review on a case-by-case basis by the entire ACHP membership because its subject matter is clearly inconsistent with long-established ACHP positions. With that in mind, the ACHP hereby authorizes the chair to advise negatively on draft state and local legislation that proposes to:

- a. Diminish or eliminate a rehabilitation tax credit program;
- b. Reduce or eliminate funding to State or Tribal Historic Preservation Office(s), and/or programs affiliated with such office(s);
- c. Reduce or eliminate funding to preserve or rehabilitate a building, structure, object, site, or district, listed or eligible for listing on a register of historic places;
- d. Reduce or eliminate funding for a public or publicly supported conservation or preservation easement program; and/or
- e. Reduce or eliminate funding for an existing education program focused on historic preservation or cultural heritage or authorize the creation of such a program.

#### **D. Process Regarding Advising**

##### **1. Reference to Operating Procedures**

The formulation of positions on state or local legislative matters and any testimony related thereto shall be formulated in accordance with Section VII of the Operating Procedures of the ACHP.

##### **2. Third Party Requests**

Absent extraordinary circumstances, the ACHP will provide testimony and advice on state or local draft legislation only if requested to do so by any of the following individuals:

- a. A member of the ACHP or that member's designee;
- b. A Member of Congress;
- c. A state legislator;
- d. Senior state executive branch staff;
- e. State Historic Preservation Officer or appropriate deputy;
- f. Tribal Historic Preservation Officer or appropriate Tribal representative;
- g. Representative of a local government (such as a mayor or other local elected official) or a local agency (such as a historic commission chair); or
- h. Representative of a nonprofit organization with expertise in historic preservation and based in the geographic area in question.

##### **3. Reporting to the ACHP**

The chair will report to the ACHP members on any actions taken pursuant to Sections C.3. or C.4. at the next ACHP business meeting.



## CLIMATE CHANGE AND HISTORIC PRESERVATION POLICY STATEMENT Office of Preservation Initiatives

***Adoption of the Policy Statement.*** Over the past nine months, members and staff worked to develop and finalize a draft Climate Change and Historic Preservation Policy Statement, led by the Climate Change and Historic Preservation Task Force and its chair ACHP Vice Chairman Jordan Tannenbaum. Members discussed a draft at the March business meeting, then distributed the draft to stakeholders and the public for comment. In addition, two consultation/discussion events took place, one for Tribal and Native Hawaiian leaders and the other for State Historic Preservation Officers and their staffs. Based on the comments received, ACHP staff revised the draft.

On June 5, Chair Sara Bronin convened an unassembled meeting of the members to vote on the revised draft. Voting closed on June 16, with the members voting to adopt the policy statement with 20 ayes, 1 abstention, 2 not voting. [The final document](#) is now available on the ACHP website.

***Implementation Ideas.*** Some of the suggestions made by commenters on the draft policy statement were too specific for inclusion in such a broad policy document. However, a number were interesting implementation ideas that could be pursued by the preservation community now that the policy statement is final. Attached is a document that summarizes many of these ideas.

***Action Needed.*** No action at the business meeting is needed. Members are encouraged to review the attached summary of implementation ideas and consider additional options whereby they, their agency/organization, and the ACHP may work to promote the policy principles of the new policy statement.

***Attachment:*** Climate Change and Historic Preservation Policy Statement: Implementation Ideas

*June 29, 2023*



**CLIMATE CHANGE AND HISTORIC PRESERVATION POLICY STATEMENT  
IMPLEMENTATION IDEAS  
Office of Preservation Initiatives**

Public comments on the draft Climate Change and Historic Preservation Policy Statement led to important edits that improved the document. In some cases, however, the suggestions provided were too specific for inclusion in a broad policy document but were interesting implementation ideas that could be pursued by the preservation community now that the policy statement has been adopted. The following list summarizes many of these ideas.

***Develop Needed Technical Guidance***

- On applying rehabilitation standards to historic landscaping in drought conditions, wind hazard mitigation, and fire and earthquake adaptation.
- On working with tribes through a shared stewardship model to integrate Indigenous Knowledge.
- On deconstruction, building material reuse, and advancing the circular economy.

***Support Industry and Private Development***

- Advocate for guidance on rehabilitation standards applied through the current federal rehabilitation tax credit to incorporate clear language promoting specific responses to a broader range of natural hazards.
- Advocate for additional tax credits, tax basis relief, or other types of programs for those that reuse existing buildings, such as federal income tax credit for natural hazard adaptation for owners of historic private homes.
- Develop training for local and state historic preservation departments and organizations, including the mitigation industry/private sector, to support them in encouraging owners of historic properties to mitigate natural hazards.
- Encourage a new nationwide “Resilience Workforce” education development program.

***Develop Informational Resources***

- Repositories for information sharing to share models and solutions, including an assembly of information about the following: best professional practices, case studies of locations and institutions preserving their historic and cultural assets in the face of rapid climate change, and educational centers leading in research and training at the intersection of preservation and climate change.
- A website or newsletter to share information on developments in cultural heritage climate issues.
- University-level curricula for training future preservationists to understand and manage climate change.
- Historic preservation adaptation curricula at schools of architecture and engineering.

***Embed This Issue Within the Federal Government***

- Form an intra-governmental task force or ensure there is historic preservation expertise represented in existing intra-governmental climate change initiatives.
- Establish topic-specific federal working groups.

***Research***

- Develop methodologies to more accurately assess carbon (initial and recurrent) across the lifecycle of historic buildings, so as to inform decision-making about trade-offs (light retrofit, heavy retrofit, deconstruct and build new, etc.).
- Study how local knowledge (in addition to Indigenous Knowledge) can contribute to climate solutions.
- Study creation of a federal climate cultural heritage coordination office.
- Explore improvements to the Secretary of the Interior's Professional Qualification Standards with the assistance of professional architects and landscape architects who have experience with climate change and natural disasters.

*June 29, 2023*



**ACHP POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND  
HISTORIC PRESERVATION  
Office of Native American Affairs**

**Background.** In 2018, the Office of Native American Affairs (ONAA) launched an initiative to promote an understanding of and respect for Indigenous Knowledge (IK) in the Section 106 process. ACHP efforts to advance awareness and understanding of IK have included assisting the State Department in drafting the [United States statement on IK](#), co-sponsoring events at the United Nations Permanent Forum on Indigenous Issues in 2019 and 2023, developing updated African Development Bank Group [Integrated Social Safeguards](#) as a member of the State Department’s Cultural Heritage Expert Working Group, and in 2021 releasing the information paper [Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#).

Throughout this process, Tribal and Native Hawaiian organization (NHO) leaders have made it clear that further action from the ACHP would be needed. The Native American Affairs (NAA) and Federal Agency Programs committees identified the development of a policy statement as the most effective mechanism to advance the integration of IK into the Section 106 process. Committee members advised that this policy statement should be expansive and that its development was best facilitated through the NAA committee, with appropriate coordination with other committees. Since March 2023, ONAA staff has facilitated six listening sessions with Indian Tribes and Native Hawaiians to help inform the development of an outline and to inform the timing and structure of upcoming consultation events. Staff has also coordinated with Federal Preservation Officers in order to update them on input received from Indian Tribes and NHOs in addition to soliciting their comments and input. The early coordination process will continue with relevant parties as the draft document is developed.

**Feedback from Indian Tribes and Native Hawaiian Organizations.** Indian Tribes and NHOs have been supportive of the need to develop a policy statement, noting that policy can elevate the role of IK in the Section 106 process. Tribes and NHOs have reaffirmed that IK is a form of expertise that should be relied on to inform the identification, evaluation, assessment, and resolution of adverse effects to properties to which they ascribe significance. They have requested that the ACHP confirm, consistent with its 2021 information paper, that IK is a valid and self-supporting source of information that does not require verification by any other knowledge system to inform decision making. Respondents asked that the ACHP support increased consideration of IK in Section 106 agreement documents and within the administrative record (pursuant to 36 C.F.R. § 800.11). Tribes and NHOs also commented on compensation, acquisition and management of sensitive information, sacred sites, Section 110 historic preservation responsibilities, Executive Order 13007, consultation timelines, and Secretary of the Interior Professional Qualifications.

**Policy Statement.** An ACHP policy statement on IK will seek to address ongoing requests made by Indian Tribes and Native Hawaiians, meet the needs of federal agencies to incorporate IK more fully, and align with Administration directives to advance IK in federal decision making. For Indian Tribes and Native Hawaiians, IK is cross-cutting and has a role in all ways of knowing, including the identification and evaluation of historic properties, the assessment of an undertaking’s effects on such properties, and the resolution of adverse effects. Per member request, this policy will be broad and is intended to further the role that IK has in historic preservation broadly as an element of the “best available science.”

***Action Needed.*** Committee members should be ready to respond to a presentation on the policy statement outline staff will share during the Native American Affairs Committee meeting.

*June 29, 2023*



## IMPLEMENTING THE ACHP'S POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS Office of Native American Affairs

**Background.** The ACHP voted unanimously to adopt an updated “[Policy Statement on Burial Sites, Human Remains, and Funerary Objects](#)” on March 1, 2023. The policy statement establishes a set of standards and guidelines that federal and state agencies, contractors, and other relevant entities should, at a minimum, seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve. The policy statement directs the ACHP to implement and advance the 13 principles as part of its ongoing operations. The agency has taken the following actions to fulfill this directive:

**Guidance Document Explaining the Policy Statement.** The ACHP offices of Native American Affairs, Federal Agency Programs, and General Counsel, with the support of Chair Sara Bronin, drafted a guidance document, *Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects: Explanations and Discussion*, that provides additional explanations and discussion relevant to each policy principle. This document is intended to support more effective and consistent consideration of burial sites, human remains, and funerary objects.

The guidance document offers additional insight regarding how the principles should inform decision-making relevant to historic preservation, including recommendations intended to inform how federal agencies, state and local agencies, and nongovernmental institutions and private parties (such as real estate developers and cultural resources management firms) can implement the policy statement. These recommendations offer both specific and general examples ranging from development of consultation protocols by federal agencies to the development of internal guidance documents, codes of ethics, and other operating procedures by nongovernmental institutions and private parties.

Comments provided to the ACHP by federal agencies, Indian Tribes, Native Hawaiians, Black Americans, State and Tribal Historic Preservation Officers, and other consulting parties informed the development of this resource.

**Template Stipulation for Section 106 Agreement Documents.** The Office of Federal Agency Programs led development of a template stipulation that can be incorporated in Section 106 agreement documents, namely: “When applicable, the [Agency] will follow the principles within the ACHP’s Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.” The ACHP recommends that federal agencies include this language in unanticipated discovery stipulations, tailored to the specific circumstances of an undertaking, in Section 106 Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs). While the ACHP will not require inclusion of such language, ACHP staff will strongly encourage federal agencies to follow the principles in the policy statement and incorporate the reference when consulting to develop new MOAs and PAs.

**Education and Outreach.** The ACHP, including Chair Bronin and ACHP staff, has conducted extensive outreach to ensure awareness and understanding of the policy statement. Efforts to inform the ACHP’s preservation partners include email blasts to ACHP contact groups, podcast interviews, a letter to the editor, social media outreach, and conference presentations, among other efforts.

***Action Needed.*** Members should be prepared to recommend additional efforts the ACHP can take to further implement and raise awareness about the “Policy Statement on Burial Sites, Human Remains, and Funerary Objects.”

*June 29, 2023*



## SECTION 106 REGULATIONS ANALYSIS Office of Federal Agency Programs

**Background.** In May, Chair Sara Bronin shared her intention to assess the operation of the Section 106 regulations (36 CFR Part 800), along with other ACHP policies and procedures, to the Federal Agency Programs Committee and the Native American Affairs Committee. The two committees discussed their experience working with the regulations and whether improvements to implementation or updates to the regulations are needed. Chair Bronin also urged members to consider whether the regulations contain outdated provisions or specific areas in need of clarification.

ACHP staff in the offices of Federal Agency Programs, General Counsel, and Native American Affairs carried out an analysis of the regulations and the functioning of the Section 106 process to determine where improvements might be warranted. These staff members analyzed the regulations through a close reading of the regulatory text, point-by-point examination of comments raised by members in the May committee meetings, and reference to ACHP materials and case review experiences. Staff also considered reviews of the regulations carried out under President Barack Obama pursuant to EO 13563, all of which concluded the regulations were not in need of amendment.

**Findings.** After conducting this analysis, ACHP staff concluded that amendments to the regulations are not necessary to resolve issues affecting the successful conduct of Section 106 reviews. However, staff noted points where additional elaboration, policy direction, or guidance could be beneficial.

In general, a strength of the current regulations is the flexibility they offer to tailor the consultation process to the unique circumstances of a given undertaking, geographic location, group of consulting parties, and affected historic properties. That flexibility means there are points where the regulations do not provide complete specificity for all circumstances. Those circumstances are well suited to the provision of guidance where the ACHP can present factors to consider in applying the regulations and/or offer examples around specific scenarios. This formatting approach has been used previously in the sample stipulations provided in the *Guidance on Agreement Documents* and could serve as a model for additional guidance development.

Members and staff identified areas within the regulations that may not be well known by all users and warrant additional amplification, such as how and when the ACHP joins consultations or how conditions may be applied to avoid adverse effects. As to the first area deserving of additional guidance, the Appendix A criteria within the Section 106 regulations guides the ACHP's decisions to participate in individual case consultations. Raising awareness of these provisions and building broader public familiarity with them can best be accomplished through guidance and training as well as direct ACHP staff reviewer communication with consulting parties. Similarly, consulting parties and the public could benefit from additional clarification in guidance on the use of provisions in the regulations providing for the application of conditions to avoid adverse effects (36 CFR 800.5(b)).

The ACHP's guidance should also reflect growing recognition that federal agencies may use Indigenous Knowledge as an information source for historic property identification or effects assessment under 36 CFR 800.4 and 800.5, respectively. However, Indigenous Knowledge is not referenced directly in the regulations today. Instead, the regulations cite the special expertise of Indian Tribes and Native Hawaiian organizations. A draft ACHP policy statement on Indigenous Knowledge offers the opportunity to clarify

that Indigenous Knowledge is appropriately considered as information reflecting that expertise. (see the ACHP Policy Statement on Indigenous Knowledge and Historic Preservation paper in this tab for more detail.)

**Next Steps.** The passage of time and the development of new and best practices in implementing the Section 106 regulations prompt the ACHP to routinely update guidance and technical assistance information. Staff recommends that updates to two key guidance resources begin now, and that training materials integrate new examples and clarifications from them beginning in the 2024 training season.

First, staff recommends updating the ACHP's *Consultation with Indian Tribes in the Section 106 Process: A Handbook* and related information papers. These updates should incorporate advances in policy and practice for Tribal consultation and involvement, including reference to Indigenous Knowledge and any related policy statement the ACHP may adopt.

Second, staff recommends updating the ACHP's [Section 106 Regulations Section-by-Section Questions and Answers](#). This document guides agencies in carrying out procedural steps within the regulations, but it has not been updated in recent years. Substantive updates, coupled with reformatting for greater visibility and integration with the ACHP's other topical guidance, can be initiated this summer.

**Action Needed.** Members will be asked to provide comments on the staff's analysis and recommended actions.

*June 29, 2023*



## **YOUTH ENGAGEMENT CONCEPT PLAN**

### **Office of Communications, Education, and Outreach**

**Background.** In 2016, under the leadership of former Communications, Education, and Outreach Committee Chairman Robert Stanton, ACHP members voted to adopt a [Youth Strategic Plan](#). This formalized the work that staff had been doing since 2009, as well as the agency’s commitment to actively engage with a new, younger audience. Staff is currently recommending that members review the 2016 plan to determine the accuracy of current goals and to recommend new actions to take place in the future. This initiative falls under the purview of the ACHP as called for in the National Historic Preservation Act, which states that the duties of the ACHP include training and education in the field of historic preservation.

In working to meet the goals of the Youth Strategic Plan, the ACHP recently joined with other preservation leaders to acknowledge the importance of reaching out to and connecting with a younger audience. Children—even as early as elementary school—are discovering things that they love, and often those interests continue into later years. By the time most young people are 12-14 years old, they are moving toward independence and are thinking about their futures and careers. By the time they are around 15 years old, their intellectual interests gain importance. So, the desire to reach students at a younger age than post-high school makes sense in terms of their development, and it is why OCEO is working to interact with students in high school.

**Next Steps.** During the committee meeting, members will provide feedback on whether the current long-range goals are still accurate; review the updated five-year strategic goals, with an eye to suggesting edits; and discuss action items to support these new, updated five-year strategic goals. The new strategic goals provide more specificity. Several accomplishments have been added to provide context to the work the ACHP has done in the past six years or so.

**Action Needed.** Members are asked to review the attached plan and discuss it during the committee meeting. Members should also review the “Proposed Upcoming Action Items” to determine if they are feasible and worthwhile as well as provide any guidance on additional actions that would further support efforts to engage young people.

Members will also be asked to consider such efforts in their own organization or agency and how the ACHP might work directly with them.

**Attachment:** ACHP Youth Engagement Concept Plan

*June 29, 2023*

# ADVISORY COUNCIL ON HISTORIC PRESERVATION YOUTH ENGAGEMENT CONCEPT PLAN

June 2023

**Mission Statement:** The ACHP promotes active engagement of youth into the national historic preservation movement. Doing so will create a stronger preservation ethic among all Americans and promote more widespread appreciation of the importance and benefits of historic preservation as well as offer more opportunities to young people.

**Long Range Plan 1:** Bring more young people into active participation in the historic preservation movement.

**Updated: Five-Year Strategic Goal:** Engage students early with the idea of historic preservation as an interest and/or a career.

Accomplishments:

- A. Established a connection with Cranbrook Schools in Michigan, and offered a three-week internship to a high school senior.
- B. Attended a high school job fair in Montgomery County, Maryland.
- C. Developed a Youth Initiatives web page <https://www.achp.gov/initiatives/youth-outreach>
- D. Continued to build out the Preservationists in Your Neighborhood online interview series.

**Proposed upcoming action items:**

- A. Formalize the internship opportunity for high school seniors with Cranbrook Schools.
- B. Connect with more high schools and offer short one- to three-week internships for job shadowing.
- C. Work with history teachers nationwide to establish a one- to three-week internship program for graduating seniors.

**Long Range Plan 2:** Promote understanding of the importance of historic preservation to all American youth.

**Updated: Five-Year Strategic Goal:** Provide historic preservation training opportunities for all students.

Accomplishments:

- A. Established the Preservation in Practice Program, a partnership with the National Park Service and the National Trust for Historic Preservation, training 30 architecture students from Morgan State, Tuskegee, and Hampton Universities (HBCUs) in historic preservation since 2018.
- B. Established Cultural Heritage in the Forest, a partnership with USDA Forest Service, training five students from Lincoln University of Pennsylvania (HBCU) in heritage conservation in national forests. The second year of the program in 2023 will include 10 students from various HBCUs.
- C. Since 2021, annually presented a four- to five-part webinar series geared toward college students interested in historic preservation. Topics have included preserving African American Burial Grounds, Climate Change and Historic Preservation, and Preserving Historic Black Churches. The webinar series utilizes interns through the Virtual Student Federal Service to help plan and produce the series.
- D. Expanded the ACHP internship program to include the following: three or four externs per year from the Reilly BOLD Program at Douglass (Rutgers University) for Advancing Women's Professional Development; one or two interns per school year from the Virtual Student Federal Service; an HBCU-specific intern; an intern for one semester per school year, identified in conjunction with Latinos in Heritage Conservation; and the Chair's Internship program (hosting eight interns in its first summer).
- E. Offered ACHP Section 106 trainings designed specifically for students and young career professionals.

- F. Established the Traditional Trades Training Task Force, to encourage more people to go into the preservation trades.

**Proposed action items:**

- A. Partner with other federal agencies, such as GSA and VA, to establish training programs to bring college students into federal historic preservation jobs and internships.
- B. Partner with Latinos in Heritage Conservation to sponsor an annual ACHP intern.
- C. Create an ongoing specific internship for an HBCU student each year.
- D. Become more active in the Campaign for Historic Trades to build on the ACHP's now-sunsetted Traditional Trades Task Force.
- E. Use the ACHP's contacts with high schools and HBCUs to connect students to trades training and job placement.
- F. Work with OFAP to increase the ACHP training offerings for college students and young career professionals.

**Long Range Plan 3:** Encourage young people to consider careers in the field of historic preservation.

**Updated: Five-Year Strategic Goal:** Provide resources for high school history teachers and professors, as well as college and university professors to share with students on historic preservation careers.

Accomplishments:

- A. Developed a database of historic preservation undergraduate and graduate programs, as well as HBCU history professors, to communicate with and begin creating relationships.
- B. Sent several emails to these lists to alert students, teachers, and administrators to current job opportunities.
- C. Hosted a listening session to hear from educators about whether students learn about preservation, identify reasons why not, and discuss better ways to communicate.
- D. Developed a [workforce development web page](#) with resources for those seeking a career in historic preservation or wishing to advance in their career.
- E. Provided webinars on finding careers in historic preservation.

**Proposed action items:**

- A. Create a new social media campaign, The New Faces of Historic Preservation, highlighting college students and young professionals in historic preservation.
- B. Identify basic coursework necessary and steps to getting a job in historic preservation to share via social media and in emails.

**Long Range Plan 4: Develop and manage the ACHP's capacity to maintain youth initiatives.**

**Updated: Five-Year Strategic Goal:** Collaborate with ACHP staff and members, federal agencies, and historic preservation organizations to support this plan, and collaborate to leverage resources to accomplish goals.

Accomplishments:

- A. Made progress integrating youth involvement, education, and vocational components into the work of all ACHP offices, as appropriate to their overall mission and goals.
- B. Developed and included language into program alternatives to encourage outreach to local schools and possible lesson plans.

**Proposed action items:**

- A. Take more direct approach in integrating youth involvement and education into Section 106 agreements and program alternatives.
- B. Involve other federal agency offices of personnel and communications in encouraging youth initiatives and partner with such offices on preservation-related outreach efforts.