



ADVISORY COUNCIL ON HISTORIC PRESERVATION FALL BUSINESS MEETING

NOVEMBER 15, 2023



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MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
November 15, 2023

PROVISIONAL AGENDA

Call to Order 9 a.m. EST

- I. Chair's Welcome
 - A. Reflections on Frederick Douglass Site Visit
 - B. Update on ACHP Positions Funded by the Federal Permitting Improvement Steering Council
 - C. Delivery of Report on the Application and Interpretation of the Secretary of the Interior's Standards for the Treatment of Historic Properties

- II. Executive Director's Report

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 - A. Chair Involvement in Section 106 Cases
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 - 2. Update on Major Program Alternatives under Development
 - 3. Government-wide Housing-related Program Alternative
 - C. Housing Guidance on Historic Building Interiors
 - D. Preserve America EO 13287 Section 3 Report Key Recommendations

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 - A. ACHP Comments on Legislation
 - B. Policy Statement on Housing and Historic Preservation

- V. Tribal and Indigenous Peoples
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 - B. Update on Engagement with White House Council on Native American Affairs

- VI. Communications, Education, and Outreach
 - A. Developing New Audiences and Expanding Outreach
 - B. Preserve America EO 13287 Section 3 Report Outreach and Distribution

- VII. New Business

- VIII. Adjourn



MEETING
ADVISORY COUNCIL ON HISTORIC PRESERVATION
November 15, 2023
Auditorium, First Floor
National Building Museum, Washington, D.C.

ANNOTATED AGENDA

Call to Order 9 a.m. EST

- I. Chair's Welcome
 - A. Reflections on Frederick Douglass Site Visit. *Chair Sara Bronin will reflect upon yesterday's member visit to the Frederick Douglass National Historic Site.*
 - B. Update on ACHP Positions Funded by the Federal Permitting Improvement Steering Council (Permitting Council). *Chair Bronin will summarize the goals of the ACHP's new partnership with the Permitting Council and update the members on the status of efforts to recruit eight positions in support of it.*
 - C. Delivery of Report on the Application and Interpretation of the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards). *Chair Bronin will update the members on the status of her efforts to review the Secretary's Standards and develop a chair's report with findings and recommendations on improving their application to historic preservation reviews.*

- II. Executive Director's Report. *Executive Director Reid Nelson will report on the status of FY 2024 budget expenditures and the FY 2025 budget estimate, staff recruitment, and ACHP operations.*

- III. Regulations and Governance
 - A. Chair Involvement in Section 106 Cases. *Vice Chairman and Regulations and Governance Committee Chairman Jordan Tannenbaum will summarize staff recommendations and committee discussions on efforts to better incorporate the chair into Section 106 reviews. Members should be prepared to provide input on appropriate steps to do so, including the potential need to amend the Operating Procedures.*
 - B. Section 106 Program Alternatives
 - 1. Proposed Amendment to Broadband on Federal Lands Program Comment. *Vice Chairman Tannenbaum will ask staff to summarize a request to amend the ACHP's current Program Comment to expand it for broader use and seek input on the ACHP's consultation plan for considering these amendments.*
 - 2. Update on Major Program Alternatives under Development. *Vice Chairman Tannenbaum will call on staff to update the members on major program alternatives under development.*
 - 3. Government-wide Housing-related Program Alternative. *Vice Chairman Tannenbaum will seek input from the members on the potential need for additional program alternatives related to housing.*

- C. *Housing Guidance on Historic Building Interiors. Vice Chairman Tannenbaum will ask staff to summarize plans to develop guidance to accompany the housing policy statement to address efficiencies in Section 106 reviews regarding interiors.*
 - D. *Preserve America EO 13287 Section 3 Report Key Recommendations. Vice Chairman Tannenbaum will ask staff to update the members on the progress reports submitted to the ACHP and the development of the report to the President that will include recommendations for improving the stewardship of historic properties. Vice Chairman Tannenbaum will seek member input on tentative findings and recommendations to be included in the report.*
- IV. Policy and Legislative Affairs
- A. *ACHP Comments on Legislation. Policy and Legislative Affairs Committee Chairman Sonny Ward 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. Committee Chairman Ward will ask staff to update the members on recent consultations with State Historic Preservation Officers, Indian Tribes, and Native Hawaiian organizations on the development of the housing policy, the scope of public comments received, and anticipated adjustments to the document. Members will be asked for any additional input on the policy in preparation for an unassembled meeting vote to adopt it in December.*
- V. Tribal and Indigenous Peoples
- A. *Draft Principles for Policy Statement on Indigenous Knowledge and Historic Preservation. Tribal and Indigenous Peoples Committee Chairman Reno Franklin will ask staff to update members on efforts to develop a policy statement on Indigenous Knowledge and historic preservation and seek member input on its content.*
 - B. *Update on Engagement with White House Council on Native American Affairs (WHCNAA). Committee Chairman Franklin will summarize recent engagement with the WHCNAA and upcoming events and activities.*
- VI. Communications, Education, and Outreach
- A. *Developing New Audiences and Expanding Outreach. Communications, Education, and Outreach Committee Chair Monica Rhodes will ask staff to summarize efforts to expand ACHP outreach, including the recent engagement of a contractor in analyzing current efforts and making recommendations for improvements.*
 - B. *Preserve America E.O. 13287 Section 3 Report Outreach and Distribution. Committee Chair Rhodes will summarize plans to distribute the ACHP's upcoming Section 3 Report to the President and seek input from the members on engaging appropriate new audiences on its findings and recommendations.*
- VII. New Business. *There is none at this time.*
- VIII. Adjourn. *The meeting will adjourn by noon EST.*



ACHP CHAIR INVOLVEMENT IN SECTION 106 CASES

Introduction. The National Historic Preservation Act (NHPA) places the authority over the Section 106 process on the full, 24-member board. Through established [Operating Procedures](#), amended as recently as July 12, 2023, the ACHP membership has delegated the vast majority of its authorities under the regulations implementing Section 106 to the executive director. Section 106 authorities that have been retained by the full membership relate to the approval of alternate procedures, program comments, and exemptions (36 C.F.R. § 800.14), and the formulation and transmittal of formal comments for terminated consultations (36 C.F.R. § 800.7). Those delegations have remained largely unchanged since 2000.

In 2016, the NHPA was amended to make the chairman a full time, Senate confirmed position. Those amendments were the culmination of efforts dating back to the Preserve America Summit of 2006, where participants reviewed the major components of the national historic preservation program. That summit led to the report *Preserve America: Recommendations to Improve the Structure of the Federal Historic Preservation Program*, adopted by the ACHP at its February 2009 meeting. Among other things, the report noted that federal preservation programs lacked strong leadership and recommended that the ACHP be headed by a full-time chairman who is appointed by the President with the advice and consent of the Senate.

While those 2016 amendments did not add to, or change, any authorities of the chairman or to the full membership, ACHP members and staff have been working to better integrate Chair Sara Bronin into the daily operations of the ACHP given the full-time leadership that position now provides. Chair Bronin began this effort by first looking at various operational aspects of the agency, including the recent modernization and improvement of the Operating Procedures. For reference, one minor adjustment to the Section 106 delegation component of the Operating Procedures was made, namely to allow the chair to further delegate the approval of program programmatic agreements to the executive director.

It is now appropriate to look further into these Section 106 delegations and internal agency practices to determine in what circumstances further direct involvement by the chair in Section 106 matters may be appropriate and advantageous to the ACHP.

In 2018, a questionnaire was sent to the membership about various organizational issues. One broad question¹ solicited member views on whether Section 106 delegations needed to be modified in light of the advent of a full time, Senate confirmed chairman. The responses at the time reflected a lack of consensus with some members noting a resistance to any changes; some stating a lack of enough knowledge to form an opinion; and others supporting more information sharing with the membership and a clearer process for the chairman regarding terminations. As a result of this lack of consensus, no amendments were made to the Operating Procedures regarding delegations; however, it is important to note that the questionnaire preceded any experience with a full time, Senate confirmed chairman (Aimee

¹ “The Delegation of Authority found in Appendix B of the Operating Procedures (pages 16-24) allocates specific responsibilities of the Section 106 regulations among the members, the Chairman, and the Executive Director (ACHP staff). Often ACHP members have an interest in an ongoing Section 106 review, but their participation needs to be consistent with their role as the ultimate decision-makers in the event of a termination and must also conform to ethics and conflicts of interest standards. Current guidelines for member involvement in cases that are pending before the staff or the Chairman are found on page 11. Do these need to be modified?”

Jorjani was onboarded late in the summer of 2019). With the experience of having had two full-time chairs since then, it is appropriate to reconsider this issue.

Proposed Action. The membership should consider whether any further changes should be made to the Section 106 delegations in the Operating Procedures and internal agency practices in order to better integrate the chair into Section 106 reviews.

Staff has carried out an analysis of the recently amended Operating Procedures and internal protocols to determine ways that the chair can be better integrated into the Section 106 review process. Below are a number of protocols the ACHP could implement in order to advance Section 106 goals. While the majority of individual Section 106 consultations delegated to the executive director would remain as such, the following circumstances may warrant direct chair involvement in individual Section 106 reviews:

- a. There is clear congressional interest in the undertaking, or the ACHP has been contacted directly by a Member of Congress;
- b. There is substantial statewide or national media interest and press coverage regarding the undertaking or the Section 106 review;
- c. The chair has been directly contacted by an assistant secretary or equivalent official in the Administration about the undertaking and determines that the chair's involvement is necessary to address those interests; or
- d. The executive director determines during an ongoing consultation that the involvement of the chair is likely to resolve a complex policy issue where one or more parties have been resistant.

The director of the Office of Federal Agency Programs (OFAP), in coordination with the executive director, would provide the chair a monthly list of any reviews that meet such criteria. The chair would then determine which of those she would like to involve herself through public statements and/or communications with agency leadership as stated above. In considering the number of cases that would potentially meet one of these criteria, OFAP estimates this would likely include approximately five consultations per year. Similar to Appendix A of 36 CFR Part 800, while a case may meet these criteria, it would be at the discretion of the chair to determine if she would exercise this ability to make public statements.

This proposed change would require an amendment to the Operating Procedures in Appendix B, to add a preface indicating the above actions and criteria, without the need to modify the more specific delegations in that appendix. OFAP staff, in developing this analysis, believes that the other delegations remain an effective tool to conduct Section 106 reviews, and no further amendments would be needed.

Action Needed. Members should be prepared to discuss this proposal at the business meeting. While no formal action is expected at that time, if members believe an amendment is warranted, the plan would be to draft the amendment to the Operating Procedures based on member feedback and then present it for an unassembled meeting vote after the conclusion of the business meeting.

November 1, 2023



SECTION 106 PROGRAM ALTERNATIVES UNDER DEVELOPMENT Office of Federal Agency Programs

Introduction. The Office of Federal Agency Programs (OFAP) is currently representing the ACHP in a variety of consultations on the development of nationwide program alternatives. An overview of these program alternatives and some points for discussion are provided for members to consider as part of the Regulations and Governance Committee meeting and business meeting.

ACHP: Proposed Amendment to the Communications Projects on Federal Lands and Property Program Comment. The National Telecommunications and Information Administration (NTIA) recently requested the ACHP consider amending the 2017 [Program Comment](#) to expand its scope to be available to all federal agencies, including licensing and assistance agencies. Such an amendment would also expand the scope of the Program Comment beyond federal lands and property. While infrequently used, the Program Comment establishes efficient and effective procedures for the consideration of historic properties in the deployment of communications projects and activities, including broadband and next generation technologies (e.g., 5G infrastructure), on federal land and property, particularly in rural and underserved communities. Many of these efficiencies are based on procedures already established under ACHP Program Alternatives, including Nationwide Programmatic Agreements (NPAs) and other Program Comments. NTIA's request is due to the significant funding it received to provide broadband expansion throughout the country; several other assistance agencies have similar extraordinary funding levels and would likely benefit from a consistent review process that the Program Comment offers.

The Program Comment's amendment stipulation allows the chair to approve an amendment following consultation with federal agencies, the National Conference of State Historic Preservation Officers (NCSHPO), the National Association of Tribal Historic Preservation Officers, the National Trust for Historic Preservation, and industry representatives, as appropriate.

Staff will summarize these amendments and then members should be prepared to offer feedback on the request, as well as OFAP staff's proposed consultation plan to develop an amendment to assist federal agencies in improving broadband access throughout the country.

ACHP: Consideration of a Government-Wide Housing Program Alternative. As part of the current effort to update the Housing Policy Statement, Chair Sara Bronin has requested that the members consider whether there is a need for a government-wide housing program alternative to assist agencies in addressing compliance with Section 106. In considering this, staff has assessed the program alternatives that are currently in effect that address housing, including several Program Comments for the Army, and program alternatives that are under development for the Forest Service and National Park Service, including statewide PAs for the Department of Housing and Urban Development. Staff notes that the majority of government-owned housing and most programs that provide assistance to local communities are covered by an existing program alternative. Given these program alternatives and other efficiencies already in place, the members will be asked to discuss whether additional Section 106 measures would be appropriate to address the nationwide housing crisis, or to implement the Housing Policy.

Army: Program Comment on Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features. On September 19, 2023, the Army notified the ACHP of its intent to request a Program Comment for Preservation of Pre-1919 Historic Army Housing, Associated Buildings and Structures, and Landscape Features pursuant to 36 CFR 800.14 (e). The Army's

intent in requesting this program comment is to establish a programmatic approach for complying with Section 106 regarding repetitive management actions occurring on the Army's inventory of pre-1919 housing. It should be noted that approximately 70 percent of the properties in this category are either individually listed as or contributing to National Historic Landmarks. The Army is excluding cessation of maintenance, demolition, and new construction as management actions from consideration under this proposed program comment. The Army intends to submit its formal request to the ACHP for action on the program comment on or about January 31, 2024.

Staff will provide a brief overview of the Army's consultation plan to the members, and they should be prepared to discuss any concerns that should be incorporated into that plan.

National Park Service (NPS): Program Comment for Rehabilitation, Alteration, Leasing, and Other Management Activities at National Park Service Mission 66-Era Facilities. NPS proposes a program comment to facilitate the reuse and preservation of Mission 66 historic properties by allowing park superintendents to determine them as eligible for the National Register, thus expediting reviews for proposed undertakings. The program comment would support NPS' efforts to utilize Mission 66-era historic properties to meet mission needs, fulfill legislated mandates to improve the visitor experience and accessibility, address longstanding deferred maintenance, and advance ongoing stewardship efforts. Park use of the proposed program comment would be optional, prohibited in certain circumstances, and it would not amend or otherwise change the existing NPA for the National Park System (2008) nor any other Section 106 agreements. NPS has completed internal coordination and early external consultation, is initiating formal consultation in early November, and planning to host an initial round of consultation meetings in early December.

Members should be prepared to share feedback on the proposal, including any concerns with the timeline NPS proposes to complete this effort.

Bureau of Land Management (BLM): National Programmatic Agreement Amendment. The current iteration of the BLM's national programmatic agreement was executed by BLM, the ACHP, and NCSHPO in 2012. The national programmatic agreement governs BLM activities on federal, state, and private lands that have the potential to impact historic properties and authorizes BLM state offices to maintain protocol agreements with individual State Historic Preservation Offices (SHPOs), as well as outlines a framework for how BLM will consult with Tribes in the context of an ongoing government-to-government relationship and to obtain their views on the potential effects on historic properties of significance to them. To develop this second amendment, BLM initiated consultation with the ACHP and NCSHPO in spring 2023 and subsequently with all federally recognized Tribes, individual SHPOs, and other interested parties. Currently, BLM is proceeding with specific text edits in collaboration with NCSHPO and the ACHP in advance of a second public comment period in late fall, before finalizing the amendment and distributing for signature in early 2024. Given the constrained timing, BLM may opt for a second extension not to exceed two years after the current expiration date; this will prevent any potential disruptions to BLM's National Historic Preservation Act commitments and processes.

While the amendment does not require approval by the members, they should feel free to share any concerns with the proposed amendment that staff can then incorporate into a revised draft.

Forest Service (FS): Amendment #1 to the Phasing NPA. FS has proposed an amendment to the National Phasing Programmatic Agreement for Phasing Section 106 of the National Historic Preservation Act for Large-Scale, Multi-Year Projects (Phasing NPA) following the initial results of the first year of the two-year monitoring period. The Phasing NPA was executed in December 2021 with a two-year monitoring period that requires the FS to solicit comments on the implementation of the Phasing NPA and facilitates the signatories' assessment of whether any improvements are needed. As a result of the first year's monitoring, FS identified three areas for minor technical amendments on the following topics:

1. Allow activities that are categorical exclusions under the agency's National Environmental Policy Act regulations to qualify for use of the Phasing NPA (Section IV.C.5.);
2. Allow FS to accept non-written communications from Heritage Implementation Plan (HIP) consulting parties who respond to initial HIP invitations (Section V.C); and
3. Clarify the Tribal Signatory process to identify which agency official may accept a Tribal Signatory page (Section V.D).

No other changes have been made to the Phasing NPA. NCSHPO is planning to vote on the Forest Service's Amendment #1 to the Phasing NPA during its October board meeting; depending on the outcome of that vote, the ACHP may then also execute the amendment.

While the amendment does not require approval by the members, they should share any feedback they have on the NPA's implementation.

Department of Homeland Security (DHS): Nationwide Programmatic Agreement Regarding Maintenance, Repair and Upgrades to Improve Climate Resiliency and Sustainability, Reduce Energy and Water Consumption and Increase Use of Renewable Energy at the Department of Homeland Security Facilities. In anticipation of increased undertakings at its facilities to address climate resilience, DHS has initiated consultation on an NPA for activities that would enhance climate resiliency and sustainability at DHS-owned federal facilities. DHS had consultation meetings with SHPOs and Tribes in October and anticipates submitting a draft PA to the ACHP and NCSHPO in December.

Members are invited to share feedback on this effort, including how climate resiliency efforts may complement or differ from improved operations and maintenance activities at similar facilities.

NPS: Nationwide Programmatic Agreement for Cultural Resources Financial Assistance Programs. NPS is consulting on the development of an NPA to address its compliance with Section 106 for its cultural resources financial assistance programs, including grants provided by the Historic Preservation Fund. After completing its first round of consultation in August, NPS is working on the draft agreement itself, informed by that consultation and feedback received in both verbal and written correspondence. NPS is anticipating another round of consultation in the winter on the full NPA draft.

Members are invited to provide observations on NPS's proposal to inform the second round of consultation.

National Aeronautics and Space Administration (NASA): Nationwide Programmatic Agreement for Management of Facilities at National Aeronautics and Space Administration Centers. NASA has proposed an NPA to address the identification, evaluation of its Centers and assessment and resolution of adverse effects, as well as provide an expedited consultation process for many routine maintenance and operation undertakings. NASA has conducted several meetings with NCSHPO members to discuss their comments on the draft PA; NASA has also had breakout sessions with the SHPOs and ACHP staff to refine the PA's use of Heritage Zones, which would be areas where consideration of alternatives to avoid adverse effects would be prioritized. NASA is revising the draft PA later this fall, with the goal of executing the PA in the beginning of 2024.

Members are encouraged to share any reactions to NASA's proposal, to be incorporated into further revisions to the draft PA.

November 1, 2023



SECTION 3 OF EXECUTIVE ORDER 13287, “PRESERVE AMERICA” Office of Federal Agency Programs

Background. Section 3 of Executive Order (EO) 13287, “Preserve America” calls for federal real property managers to assess every three years the status of their inventory of historic properties, their condition and management needs, and how historic properties under their ownership or control might support economic development. Agencies are further required to report their progress in identifying, using, and protecting these historic properties to the ACHP and the Secretary of the Interior (SOI) every three years. These reports provide the basis for the ACHP’s own triennial report on the state of federal stewardship of historic properties, which will be issued on February 15, 2024.

ACHP staff previously provided advisory guidelines on preparing these reports to Senior Policy Officials, Federal Preservation Officers, and other relevant federal partners in May 2023. As identified then, the themes for the 2024 Section 3 report include *infrastructure, job creation, equity, and climate change*.

As of October 24, 2023, 20 agencies have submitted Section 3 progress reports to the ACHP. Five other agencies have submitted drafts of their reports, while awaiting agency approval to finalize them. ACHP staff is now reviewing the reports to develop draft recommendations for the members to consider and discuss.

Next Steps. One of the most important aspects of the ACHP’s Section 3 Report is the presentation of recommendations, based on emerging issues in the management of historic properties within the individual agency Section 3 reports. The recommendations will offer a range of actions for the ACHP and its partners to further the goals of EO 13287, the National Historic Preservation Act, and real property management. The ACHP is committed to assisting federal agencies in moving forward with these recommendations so that future actions proposed by the Administration, and agencies themselves, recognize historic properties as important public assets worthy of full consideration in federal property management.

These draft recommendations, as well as a draft outline of the report, remain under development and will be presented to the members no later than November 10 in order to inform discussions at the Regulations and Governance Committee meeting on November 13 and the business meeting on November 15.

Action Needed. Members are invited to provide input on the draft recommendations and report outline in both the committee and business meetings. Members should also be prepared to discuss how to encourage more agencies to complete and submit these reports for future reporting cycles.

November 1, 2023



PROPOSED ACHP ACTION ON PENDING LEGISLATION Office of Policy and Legislative Affairs

Introduction. Five bills currently pending in Congress are appropriate for member review and possible action. Staff is recommending that the members consider motions regarding these bills. As discussed further below, taking action on these bills is consistent with the legislative priorities for the 118th Congress adopted by the ACHP.

Broadband Bills with Section 106 Exemptions. The **American Broadband Deployment Act** ([H.R. 3557](#)) would preempt state and local requirements for review and management of wireless telecommunications and cable projects by establishing detailed expedited review processes. Of more immediate concern to the ACHP, the bill also would exempt a variety of broadband projects from review under Section 106, as well as review under the National Environmental Policy Act. The exemption provisions of the bill also are embodied in a stand-alone bill, the **Broadband for Americans through Responsible Streamlining Act** ([H.R. 4141](#)).

Included among the broadband projects that would be exempted from Section 106 review are those that: involve easements on federal property or in public rights-of-way; are in flood plains or at brownfield sites; involve modifications of facilities such as collocation, replacement, upgrading, or removal; are in areas where major disasters or emergencies have been declared (for a term of five years); or involve replacement facilities in public rights-of-way within certain size and placement parameters. The Federal Communication Commission (FCC) attempted to exempt many of these same activities through an agency order in 2018. That order was challenged in court and subsequently struck down.

These bills also provide that submitting certain FCC forms to Indian Tribes would be presumed to be sufficient for Tribes to determine whether proposed new cell tower construction or wireless antenna collocation would affect historic properties of religious or cultural significance. The bills also state that Tribes that do not respond within 45 days of receiving such forms would be presumed to have no interest in the projects.

While less extensive in scope than the two bills previously mentioned, the **Closing Long Overdue Streamlining Encumbrances To Help Expeditiously Generate Approved Permits Act (CLOSE THE GAP Act)** ([S. 2855](#)) also would exempt certain broadband projects from review under Section 106 and the National Environmental Policy Act. Communications projects sited on certain federal lands would be exempted if located in areas that have been previously disturbed for a communications use. The federal lands in question would be those managed by the National Park Service (NPS); Bureau of Land Management; Bureau of Reclamation; United States Fish and Wildlife Service; Bureau of Indian Affairs (BIA); and the Forest Service. The bill does not contain any exceptions for National Parks, National Monuments, or other protected areas. There also are no provisions for considering the views of Indian Tribes regarding the land that BIA holds in trust for Tribes.

In the past, the ACHP has generally opposed legislative exemptions to Section 106, since administrative options already are available under the ACHP's regulations to permit streamlining of Section 106 review. The ACHP is actively engaged in this regard on broadband issues, including work on an amendment to the ACHP's 2017 [Program Comment for Communications Projects on Federal Lands and Property](#). (For more information on this Program Comment, see the "Section 106 Program Alternatives Under

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Development” paper in Tab 1. Among other provisions, this program comment already provides a mechanism for agencies to streamline Section 106 review in previously disturbed areas on federal lands. This program comment and other administrative options could be emphasized in any correspondence on the bills to Congress.

The first two bills have been reported out of committee; the latter is scheduled for a subcommittee hearing. The Administration has not issued a Statement of Administration Policy on any of the bills; however, this does not preclude the ACHP from taking a position. Opposing these bills would be consistent with both past practice and ACHP legislative priorities for the 118th Congress—balancing regulatory/permitting reform and streamlining with protection of historic properties; and addressing the impacts of accelerated infrastructure development on historic properties. Staff suggests that the Policy and Legislative Affairs Committee consider recommending the adoption of the following motion:

Moved, that: the ACHP opposes the provisions of the American Broadband Deployment Act (H.R. 3557), the Broadband for Americans through Responsible Streamlining Act (H.R. 4141), and the CLOSE THE GAP Act) (S. 2855) that would exempt projects from review under Section 106; draws the Congress’s attention to existing administrative streamlining options; and directs the chair to so advise the Congress.

These proposed broadband project exemptions appear to be part of an uptick in proposed legislative exemptions to Section 106 in the current Congress. Already, the ACHP has written to object to proposed exemptions for permits to access federal energy resources from nonfederal surface estate (in the Lower Energy Costs Act) and for semiconductor development and manufacturing projects (in the National Defense Authorization Act). In both cases, ACHP action was needed in between scheduled business meetings. In accordance with the Operating Procedures, the chair sought and obtained the consensus of the committee chairs before taking action.

Given the ACHP’s long-term, consistent opposition to legislative exemptions to Section 106, there may be a rationale for streamlining the process for seeking member input on individual bills. Empowering the chair to convey to Congress the ACHP’s opposition to legislative exemptions after consultation with the committee chairs, without full member consideration of individual bills, would facilitate addressing this important legislative policy issue. Staff recommends that the members consider supporting this approach to addressing proposed legislative exemptions.

Truth and Healing Commission on Indian Boarding School Policies Act. [This bill](#) (S. 1723) would create the Truth and Healing Commission on Indian Boarding School Policies (Commission) to investigate and report on the histories, policies, and long-term effects of Indian Boarding Schools; to make recommendations on federal action in the light of the findings; and to promote healing for Indian Boarding School survivors and their communities. From 1819 to 1969, many American Indian, Alaska Native, and Native Hawaiian children were removed from their homes and sent to Indian Boarding Schools that were directly or indirectly supported by the federal government. Forced assimilation practices at the schools resulted in intergenerational trauma and cultural disconnection.

An unknown number of children died at the schools, and in some cases their burial sites remain unknown. The Commission’s recommendations would address appropriate forms of memorialization and preservation of these burials. The Commission’s duties would include locating burials; locating and preserving the records documenting interments; and sharing information on burial sites with affected lineal descendants, Indian Tribes, and the State of Hawaii’s Office of Hawaiian Affairs. The bill also references the applicability of the Native American Graves Protection and Repatriation Act; would authorize reburial of remains on federal land; and would authorize federal agencies to enter into co-stewardship agreements for the management of Indian Boarding Schools and their cemeteries.

The bill provides for the Commission to be supported by a Survivors Truth and Healing Subcommittee and a Native American Truth and Healing Advisory Committee. The National Association of Tribal Historic Preservation Officers would be a member of the latter. The bill also would establish a Federal Truth and Healing Advisory Committee at the Department of the Interior. As the bill currently is written, the executive director of the ACHP (or their designee) would be a member of this federal advisory committee. Staff recommends that the members consider requesting that the chairman instead be named as the ACHP's representative. The chairman would be in a position to appoint the ACHP Tribal/Native Hawaiian member as their designee. Naming the Tribal/Native Hawaiian member directly to the advisory committee could be problematic since a vacancy in that position would leave the ACHP unrepresented. In contrast, the vice chairman could serve whenever the ACHP chairman position is vacant.

With amendments, the bill was unanimously reported favorably out of the Senate Indian Affairs Committee in June. The Administration has not issued a Statement of Administration Policy on the bill; however, this does not preclude the ACHP from taking a position. The Department of the Interior has not had an opportunity to testify on the current version of the bill; however, the department's 2022 *Federal Indian Boarding School Initiative Investigative Report*—which is referenced in the bill—concluded that further investigation is required to determine the legacy impacts of the Indian boarding school system. In 2022, Interior Secretary Deb Haaland testified in support of a version of the bill then before the Senate Committee on Indian Affairs. It also is important to note that Secretary Haaland sponsored an earlier version of the bill in the 116th Congress when she was serving in the House of Representatives.

Expressing support for the bill would be consistent with the ACHP's trust responsibility to Indian Tribes; the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects; and an ACHP legislative priority for the 118th Congress—supporting designation or protection of historic properties that reflect the full American story and discouraging proposals that would destroy or diminish diverse histories. Staff suggests that the Policy and Legislative Affairs Committee take into account any feedback from the Tribal and Indigenous Peoples Committee on the following motion and then consider recommending its adoption:

Moved, that: the ACHP supports creation of a commission to investigate Indian Boarding Schools and the burials associated with them, as provided for in the Truth and Healing Commission on Indian Boarding School Policies Act (S. 1723); urges that the bill reference the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects and its companion guidance document; recommends that the bill provide for the chairman of the ACHP to represent the agency on the Federal Truth and Healing Advisory Committee; and directs the chair to so advise the Congress.

Neighborhood Homes Investment Act. [This bill](#) (S. 657/H.R. 3940) would create a federal tax credit to encourage revitalization of homes in distressed areas where the cost of building or rehabilitating a house is greater than the potential sale price. The new tax credit would cover the cost of that gap, thus making housing rehabilitation or construction financially feasible. The bill is modeled after the low-income housing tax credit and would focus on communities with the greatest need, such as those with high poverty rates, low median family incomes, and low home values. Advocates estimate that the bill would facilitate rehabilitation or construction of a half million homes over 10 years.

Obviously, the bill has significant potential to promote rehabilitation of historic homes. However, there is a problematic provision in the bill. "Reasonable development costs" for the new tax credit would include land acquisition, rehabilitation, construction, and environmental remediation, but also would include demolition. The credit would be administered by a designated state agency in each state, which would develop standards regarding reasonable development costs for their state. The National Trust for Historic Preservation and the National Conference of State Historic Preservation Officers have advocated for removal or qualification of the demolition reference.

The bill has been referred to committee. When introduced in previous Congresses, the bill garnered bipartisan support but did not pass. The Administration has not issued a Statement of Administration Policy on either bill; however, this does not preclude the ACHP from taking a position on them.

Expressing support for the bill would be consistent with ACHP legislative priorities for the 118th Congress—supporting preservation of historic properties in community development, including in creation of affordable housing; and maintaining and enhancing tax incentives for historic preservation. However, qualifying that support to address the demolition provision appears warranted. Staff suggests that the Policy and Legislative Affairs Committee consider recommending the adoption of the following motion:

Moved, that: the ACHP supports the Neighborhood Homes Investment Act (S. 657/H.R. 3940); urges that the bill be revised to discourage incentivizing demolition of historic buildings; and directs the chair to so advise the Congress.

School Infrastructure Modernization Act and the Rehabilitation of Historic Schools Act. These almost identical bills ([S. 1523](#) and [H.R. 3181](#)) would make historic school buildings that continue to operate as schools eligible for the federal Historic Tax Credit. Currently, a building rehabilitation must be for a different purpose than that for which the building was previously used in order to qualify for the credit. These bills would waive this “prior use” rule for historic schools.

Both bills have been referred to committee. The Administration has not issued a Statement of Administration Policy on either bill; however, this does not preclude the ACHP from taking a position. Expressing support for these bills would be consistent with an ACHP legislative priority for the 118th Congress—maintaining and enhancing tax incentives for historic preservation. Staff suggests that the Policy and Legislative Affairs Committee consider recommending the adoption of the following motion:

Moved, that: the ACHP supports the School Infrastructure Modernization Act (S. 1523) and the Rehabilitation of Historic Schools Act (H.R. 3181); and directs the chair to so advise the Congress.

American Battlefield Protection Program Enhancement Act. [This bill](#) (H.R. 3448) would make improvements to the American Battlefield Protection Program (ABPP) administered by NPS. Four types of grants are available under the program: Preservation Planning Grants; Battlefield Land Acquisition Grants; Battlefield Restoration Grants; and Battlefield Interpretation Grants. The bill would allow nonprofits and Tribes to apply for Battlefield Land Acquisition Grants directly instead of through a state or local government sponsor; allow Battlefield Restoration Grants to be used on a broader range of battlefield property than currently the case; clarify that Revolutionary War and War of 1812 sites are eligible for Battlefield Land Acquisition Grants; and provide for periodic updating of existing NPS reports that define what battlefields are eligible for grants.

A nationwide programmatic agreement is in place for Section 106 compliance for ABPP grant programs. In December 2022, the ACHP, NPS, National Conference of State Historic Preservation Officers, and other concurring parties finalized an amendment to the document. Passage of the bill presumably will require further revision to the programmatic agreement.

The bill passed unanimously out of the House Natural Resources Committee. The Administration has not issued a Statement of Administration Policy on the bill; however, this does not preclude the ACHP from taking a position. In [testimony](#) before the House Natural Resources Committee, NPS indicated support for the goals of the bill while raising some issues regarding implementation. Expressing support for the bill would be consistent with an ACHP legislative priority for the 118th Congress—supporting preservation-friendly programs and funding. Staff suggests that the Policy and Legislative Affairs Committee consider recommending the adoption of the following motion:

Moved, that: the ACHP supports the American Battlefield Protection Program Enhancement Act (H.R. 3448); recommends that Congress work with the National Park Service to address issues raised by the agency in its congressional testimony on the bill; and directs the chair to so advise the Congress.

Action Needed. The Policy and Legislative Affairs Committee should consider recommending to the full membership the adoption of the five motions previously noted. Also, the committee should consider reporting at the business meeting the outcome of its discussion regarding empowering the chair to convey to Congress the ACHP's opposition to legislative exemptions without member consideration of individual bills.

November 1, 2023



HOUSING AND HISTORIC PRESERVATION POLICY STATEMENT Office of Policy and Legislative Affairs

Background. A general consensus was reached at the July 2023 business meeting to move forward with drafting of a housing and historic preservation policy statement based on an outline reviewed by the members. Based on member input on the outline, plus feedback from the Chair’s Expert Advisory Committee, a [draft policy statement](#) was developed. It was discussed by the Policy and Legislative Affairs (PLA) Committee at its July 6 meeting. The consensus of the committee members was that the general direction of the draft is sound. The draft was then shared with the full membership, seeking a general consensus on proceeding with consultation with key stakeholders and making the document available for public comment. No “red flags” were raised as a result of that review, and consultation and public outreach commenced.

Consultation, Outreach, and Next Steps. Virtual consultation events have taken place for State Historic Preservation Officers (October 18) and Tribal and Native Hawaiian leaders (October 27). The [call for public comments](#) notes that the deadline to provide comments ends November 11. Tribal and Native Hawaiian representatives have until November 26 to provide comments. This is accordance with the ACHP’s Tribal consultation procedures implementing Executive Order 13175: Consultation and Coordination With Indian Tribal Governments, which provide for Tribes and Native Hawaiian organizations to have 30 days following a consultation meeting to provide comments. The Chair has also spoken at conferences, contacted leaders of national nonprofits dealing with housing, and written an [op-ed](#) to solicit further feedback.

A preliminary report will be provided at the business meeting on external comments and consultation to date. The goal is to revise the draft policy statement based on the input received and seek member approval of the revised document via an unassembled meeting in December.

Option for Section 106 Guidance on the Treatment of Interiors. The draft policy statement builds upon and incorporates portions of the ACHP’s 2006 [Affordable Housing and Historic Preservation Policy Statement](#), which focuses principally on Section 106 review of affordable housing projects and the need for flexibility in those reviews. Except in the rare cases where interior elements of a building contribute to maintaining a historic district’s character, both the existing and proposed policies state that review under Section 106 of projects in districts should focus on proposed changes to the exterior of buildings. The new policy goes further, recommending that application of the Secretary of the Interior’s Standards during Section 106 review of housing projects should focus on the exterior of all buildings.

To assist Section 106 participants in implementing this policy principle, ACHP guidance may be needed to address how federal agencies and consulting parties make reasonable decisions about contributing interiors. The guidance would outline questions to consider in determining whether certain interior features are fundamental in conveying a building’s significance and the appropriate level of mitigation for any resulting adverse effects to interiors, commensurate with the scope of the overall project.

Action Needed. A preliminary report will be provided at the committee meeting on external comments and consultation to date. Members will be invited to provide any further feedback on the draft policy statement and to discuss the option of the ACHP developing guidance regarding treatment of historic building interiors during Section 106 review of housing projects.

November 1, 2023



ACHP POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND HISTORIC PRESERVATION Office of Tribal and Indigenous Peoples

Background. In 2018, the Office of Tribal and Indigenous Peoples (OTIP) launched an initiative to promote an understanding of and respect for Indigenous Knowledge in the Section 106 process. ACHP efforts to advance awareness and understanding of Indigenous Knowledge have included assisting the Department of State in drafting the [U.S. statement on IK](#), co-sponsoring side events at the United Nations Permanent Forum on Indigenous Issues in 2019 and 2023, releasing the information paper [Traditional Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#) in 2019, supporting development of the Administration's [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) released in November 2022, and serving as a co-chair on the [National Science and Technology Council](#)'s Reporting and Implementation subcommittee in 2023. Throughout this process, Tribal and Native Hawaiian organization (NHO) leaders have made it clear that further action from the ACHP would be needed. In response, ACHP members identified the development of a policy statement as the most effective mechanism to advance the integration of Indigenous Knowledge into the Section 106 process.

Feedback and Recommendations. To inform development of the policy statement, staff from the Office of Tribal and Indigenous Peoples has conducted 12 listening sessions and outreach opportunities in 2023 with Indian Tribes, NHOs, federal agency personnel, and State and Tribal Historic Preservation Officers.

During these events participants have overwhelmingly supported the ACHP's proposal to develop this policy, including the need for it to specifically address how Indigenous Knowledge should be addressed throughout the Section 106 process. Participants have also advised that Indigenous Knowledge needs to be recognized as expertise that does not require external verification; designated representatives of Indian Tribes and NHOs should be identified as subject matter experts and recognized as professionals in the Secretary of the Interior's Professional Qualification Standards; that, where relied on consistent with ACHP guidance, designated representatives of Indian Tribes and NHOs should be compensated accordingly; federal agencies maintain the confidentiality of sensitive information including being more cognizant of how and why such information is sought after and how it is applied; increased clarity regarding the administrative record including minimum standards for consultation; the need for increased training across the federal government and with contractors; deferring to the expertise and knowledge of Indian Tribes and NHOs when addressing properties that may be of religious and cultural significance; establishing agency protocols or processes to increase accountability; and, holding contractors and nonfederal entities more accountable to action Indigenous Knowledge in decision making.

Policy Principles. In response to the initial comments and recommendations, and accounting for guidance provided by ACHP members, staff has compiled 14 principles. This initial set of principles includes both broad statements and specific directions designed to further inform the role Indigenous Knowledge has in historic preservation including the Section 106 process. Outreach with consulting parties is ongoing, but the attachment reflects the most recent language as of October 2023.

Action Needed. Members will be invited to discuss the draft at the business meeting, but no formal action is planned at that time. Please provide any written comments on the draft principles via email to OTIP Director Ira Matt at imatt@achp.gov.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Attachments: Draft Policy Statement on Indigenous Knowledge and Historic Preservation
Summary of Comments and Early Coordination Efforts

November 1, 2023



DRAFT ADVISORY COUNCIL ON HISTORIC PRESERVATION POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND HISTORIC PRESERVATION

[MONTH/DAY, 2023]

PRINCIPLES These principles should be applied to the maximum extent practicable by federal agencies, state and local governments, and nongovernmental institutions, including private contractors (hereafter “Preservation Partners”),¹ to advance the integration of Indigenous Knowledge into historic preservation decision making. The following principles represent minimum standards that preservation partners seek to advance as part of their site stewardship, Section 106, sacred sites management, other historic preservation related actions, consistent with their unique mission and authorities.

Valid and Self Supporting. The Indigenous Knowledge held by an Indian Tribe, NHO, or other Indigenous Peoples is a valid and self-supporting source of information and does not require verification by any other knowledge system to inform federal decision making. Knowledge Holders are, and should be recognized as, subject matter experts regarding the application of Indigenous Knowledge with respect to the identification and documentation, evaluation, assessment of effects, and in the resolution of adverse effects to properties that may be of religious and cultural significance, many of which may also be sacred sites.

The Section 106 Process. For purposes of Section 106, the term “Indigenous Knowledge” includes the information or knowledge held by Indian Tribes and NHOs that can assist federal agencies in identifying, evaluating, assessing, and resolving adverse effects to properties that may be of religious and cultural significance to them. Deference should be provided to the expertise of “Knowledge Holders” when relying on Indigenous Knowledge to inform decision-making in the Section 106 process. Properly accounting for the views and concerns of Indian Tribes and NHOs includes the responsibility that agencies, consistent with 800.2(c)(2)(ii), incorporate Indigenous Knowledge in a successive and cumulative manner throughout the 4-step Section 106 process.

Identification and Documentation. Indigenous Knowledge is frequently used by Indian Tribes and NHOs to identify properties that may be of religious and cultural importance to them in the Section 106 review process. The development and implementation of identification efforts, including background research and field surveys, should be informed by Indigenous Knowledge to ensure these actions more effectively account for properties that may be of religious and cultural significance. Documentation of such properties should be based in the Indigenous Knowledge of the associated Indian Tribe or NHO to effectively account for the qualities and characteristics necessary to inform subsequent decision-making including evaluation, assessment of effect, and resolution of adverse effects.

Evaluation. The “special expertise” identified in 36 CFR Section 800.4(c)(1) is a component of Indigenous Knowledge. In order to “acknowledge” that Indian Tribes and NHOs possess special

¹ For the purposes of this policy statement, “Preservation Partners” is inclusive of State Historic Preservation Officers, Federal Preservation Officers, federal staff, contractors, local government, and all other personnel that are involved with historic preservation that are not an Indian Tribe or Native Hawaiian organization.

expertise in evaluating historic properties that may be of religious and cultural significance to them, federal agencies should rely on designated representatives of Indian Tribes or NHOs, or their identified Knowledge Holders, to inform the significance and integrity when making determinations of eligibility. Preservation partners are not the experts on what constitutes Indigenous Knowledge or how it should be applied when evaluating the eligibility of a potential historic property of religious and cultural significance.

Assessment of Adverse Effects. Indian Tribes and NHOs are the authorities and experts about their respective cultures. In order to understand if and how an undertaking may affect a historic property of religious and cultural significance, the federal agency must take into account, and should base its decision making on, the Indigenous Knowledge and comments provided by associated Indian Tribes or NHOs.

Resolution of Adverse Effects. Agencies should provide deference to the expertise of associated Indian Tribes or NHOs when seeking to resolve adverse effects to a historic property of religious and cultural significance. Efforts taken to avoid or minimize adverse effects should reflect the Indigenous Knowledge and other comments provided by the Indian Tribe or NHO recognizing they are uniquely suited to inform those decisions. There are no limitations on what constitutes appropriate mitigation. Efforts to reach consensus on mitigation should prioritize the preferences of Indian Tribes or NHOs in relation to historic properties of religious and cultural significance. Mitigation options should not be classified as “creative,” “off-site,” or “compensatory,” where those terms could constrain resolution.

Agreement Documents and Program Alternatives. Section 106 agreement documents and program alternatives should seek to include language or stipulations that address the role Indigenous Knowledge and designated representatives have within the section 106 process and how federal decisions will take provided confidential information into account consistent with this policy. Indian Tribes and NHOs should be invited signatories to agreement documents when historic properties of religious and cultural significance are subject to the terms of the agreement or when phased identification and evaluation efforts are proposed that may need to incorporate Indigenous Knowledge or when a property that may be of religious and cultural significance to them could be encountered. Agreement documents that seek to expedite the Section 106 process cannot, without their consent, limit the ability of an Indian Tribe or NHO to participate in consultation, provide information to consulting parties, or request modifications to an undertaking covered by the agreement.

Compensation. Indigenous Knowledge is a form of expertise and designated representatives of Indian Tribes or NHOs, and their recognized Knowledge Holders, are the subject matter experts with the appropriate background and qualifications to inform federal agency decision-making. If a federal agency requests, needs, and/or relies on an Indian Tribe or NHO’s Indigenous Knowledge to carry out activities that are the federal agency’s responsibility under the NHPA, the Indian Tribe or NHO should be reimbursed or compensated.

Administrative Record. Any determination, finding, or agreement that includes properties that may be of religious and cultural significance to an Indian Tribe or NHO should include sufficient documentation to enable any reviewing party to identify when and how consultation efforts facilitated opportunities for Indigenous Knowledge to inform decision making. These records should also reflect if and how Indigenous Knowledge was incorporated into final decisions, or include justifications as to why not, being cognizant not to disclose any information deemed sensitive by the Indian Tribe or NHO.

Consultation Timelines. The NHPA’s implementing regulations set the minimum standards for federal agency interactions with its Preservation Partners including Indian Tribe and NHOs. When seeking information from an Indian Tribe or NHO regarding properties that may be of religious and cultural

significance, federal agencies should provide as much advanced notice as possible and should extend timelines accordingly, where appropriate. Timelines should reflect the complexity and nature of the undertaking and should accommodate the internal decision-making processes that Indian Tribes and NHOs have.

Protocols and Processes. Preservation Partners should ensure Indigenous Knowledge and Knowledge Holders are accounted for in policy, guidance, or other technical resources that inform their ongoing historic property stewardship and cultural resources management actions, including under Sections 106 and 110 of the NHPA, Executive Order 13007: Indian Sacred Sites, and as a part of other relevant actions. These should be completed in consultation with Indian Tribes and NHOs and should account for applicable principles identified in this policy.

SOI Professional Qualification Standards. When appropriate, and consistent with departmental procedures, the Department of the Interior should pursue amendments to the Secretary of Interior's Professional Qualification Standards to identify Indian Tribe or NHO Knowledge Holders, or other designated representatives, as subject matter experts who meet the professional standards needed to inform findings and determinations relevant to properties that may be of religious and cultural significance, including TCPs and other site and significance types that rely on or incorporate Indigenous Knowledge in order to inform eligibility.

Acquisition and Handling of Sensitive Information. Indigenous Knowledge frequently includes information that is sensitive, sacred, or internal to an Indian Tribe or NHO. The potential acquisition of Indigenous Knowledge should include consideration of how it would influence decision-making and should account for any cultural, governmental, legal, or moral protocols that dictate its application and use. If Indigenous Knowledge is acquired, maximum effort should be taken to limit the disclosure of confidential or sensitive information through all available mechanisms.

Sacred Sites. Locations identified as sacred sites by Indian Tribes or NHOs may also be historic properties of religious and cultural significance. The responsibility to consider access to and protection of sacred sites consistent with Executive Order 13007: Indian Sacred Sites is separate from and in addition to an agency's Section 106 review for any proposed undertakings. Federal agencies and departments should seek to develop procedures specific to Executive Order 13007 that incorporate Knowledge Holders and Indigenous Knowledge to inform the identification of, protection of, and access to these sites.



ACHP POLICY STATEMENT ON INDIGENOUS KNOWLEDGE AND HISTORIC PRESERVATION: SUMMARY OF COMMENTS AND EARLY COORDINATION EFFORTS

The Advisory Council on Historic Preservation (ACHP) is developing a policy statement that seeks to further inform how Indigenous Knowledge should be accounted for in the field of historic preservation, including the Section 106 process. This policy statement will build on the recently released government-wide [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) in an effort to tailor many of those messages to the needs of the historic preservation community. The policy will also be informed by concepts discussed in the ACHP's existing information paper, [Indigenous Knowledge and the Section 106 Process: Information for Federal Agencies and Other Participants](#).

Outreach and Early Coordination

To inform agency actions, the ACHP has facilitated listening sessions with Indian Tribes, the Native Hawaiian community, Federal Preservation Officers (FPOs), and other federal agency cultural resources personnel. The ACHP has provided updates and sought feedback with additional consulting parties, including State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), through presentations and panel discussions at conferences and other public forums. The following list summarizes key outreach and early coordination opportunities the ACHP has participated in to inform this policy including with ACHP leadership:

January 10, 2023—Discussion with ACHP Native American Affairs Committee
February 21, 2023—Discussion with ACHP Native American Affairs Committee
March 1, 2023—Discussion with ACHP members at the business meeting
March 28, 2023—Listening session with Indian Tribes and Native Hawaiians
April 1, 2023—Listening session with Indian Tribes and Native Hawaiians
April 3, 2023—Listening session with Indian Tribes and Native Hawaiians
April 13, 2023—Listening session with Indian Tribes and Native Hawaiians
April 25, 2023—Presentation and discussion at the United Nations Permanent Forum on Indigenous Issues (UN PFII)
May 1, 2023—Presentation/discussion at the Southeast SHPO/THPO Meeting hosted by NCSHPO, NATHPO, NPS, and the Tennessee Historical Commission
May 10, 2023—Discussion with ACHP Native American Affairs Committee
June 1, 2023—Listening session and presentation with Indian Tribes and Native Hawaiians
June 5, 2023—Listening session and presentation with Indian Tribes and Native Hawaiians
June 29, 2023—Listening session and presentation with Department of Interior bureau and agency FPOs and other natural and cultural resources personnel
July 10, 2023—Discussion with ACHP Native American Affairs Committee

The ACHP will continue to host listening sessions with consulting parties in 2023. Government-to-government consultation with Indian Tribes and consultation with Native Hawaiian organization (NHO) leaders will also be conducted in early 2024.

Summary of ACHP Member Feedback

ACHP members broadly supported development of a policy that further informs the role Indigenous Knowledge has in the Section 106 process. They also recognized that the current regulations

implementing the Section 106 process, and many agency and departmental protocols and practices, do not fully account for Indigenous Knowledge. To advance this effort, members directed staff to conduct outreach with Indian Tribes, Native Hawaiian organizations, FPOs, THPOs/SHPOs, and the broader historic preservation community. Members further advised that staff address the following considerations when developing the policy:

- Ensuring the policy supports deference to Indigenous Knowledge, where appropriate
- Recognizing natural resources as cultural resources
- Characterizing what Indigenous Knowledge is for the purposes of Section 106
- Ensuring the policy could be applied broadly by federal agencies, local and state governments, contractors, and other nongovernmental institutions.
- Address the role Indigenous Knowledge can have in all four steps of the Section 106 process
- Confirming that Indigenous Knowledge can be seen as a valid and self-supporting source of information in the Section 106 process
- Making sure the policy accounts for historic preservation concerns outside of Section 106 (i.e., Executive Order 13007)
- Inform potential updates to the Secretary of the Interior’s Professional Qualification Standards
- Accounting for Indigenous Knowledge as sensitive information

Summary of Feedback Received from Consulting Parties

The following summary conveys comments and recommendations provided to the ACHP during the above listed listing sessions, presentations, and outreach opportunities. This feedback is continually being updated to reflect additional input and understanding.

Indigenous Knowledge is expertise and should be respected and compensated accordingly. Many participants expressed that they are frequently asked to “prove” or “validate” Indigenous Knowledge and that federal agencies and their contractors do not understand that Indigenous Knowledge is valid and self-supporting information. Commenters asked for clear language about Indigenous Knowledge as expertise and requested a policy statement that clarifies that Indigenous Knowledge does not require validation or corroboration from another source. Some federal commenters asked for clear language to support federal agency efforts to rely on and defer to Indigenous Knowledge to determine whether a site or place is National Register eligible. Additionally, participants voiced frustration at what they perceived to be ongoing disrespect for Indigenous Knowledge through minimizing language, requesting “proof” from another knowledge source, disregarding requests regarding the solicitation and sharing of sensitive information, and failing to incorporate Indigenous Knowledge into Section 106-related decisions about properties of religious and cultural significance to Indian Tribes and NHOs. Participants also highlighted a perceived over-reliance on archaeological evidence, clarifying that archaeologists who are not explicitly approved by an Indian Tribe or NHO who ascribe significance to a property do not have the expertise to understand certain aspects of significance, integrity, potential adverse effects caused by a proposed undertaking, or how to avoid, minimize, or mitigate those adverse effects. Comments raised the need for deference to Indigenous Knowledge in cases where that expertise is required to make fully informed decisions in the Section 106 process. Other participants raised the importance of compensating Indigenous Knowledge holders who are essential to assisting federal agencies in carrying out their Section 106 responsibilities.

Indigenous Knowledge is applicable throughout the Section 106 process. Individuals asked the ACHP to clarify and underscore the importance of Indigenous Knowledge throughout the Section 106 process, emphasizing that that Indigenous Knowledge is essential to the identification and evaluation of sites of religious and cultural significance to Indian Tribes and NHOs, to understanding what actions may have an adverse effect on those sites, and to identifying the best methods of avoiding, minimizing, or mitigating those impacts. Participants pointed out that the Section 106 process is sequential, and the regulations already direct federal agencies to “acknowledge” the special expertise of Indian Tribes and NHOs in the

evaluation of historic properties and properties of religious and cultural significance to Indian Tribes at 800.4(c)(1). Commenters clarified that the same expertise required to evaluate those properties would also be needed to identify what actions might impact the significance and integrity of those properties. Additionally, some participants mentioned Indigenous Knowledge's importance to understanding the cumulative effects of federal undertakings. Others noted that Indigenous Knowledge and Tribal consultation needs to be a part of identification plans early in the process and should be reflected in identification scoping and documentation efforts to ensure Indigenous Knowledge can be appropriately integrated.

Appropriately incorporating Indigenous Knowledge requires working with designated officials and experts. Some participants shared concerns that federal officials are not aware of which individuals are designated by Tribal leadership as experts who have been authorized to share information and knowledge with federal officials. They flagged the potential for federal officials or contractors to ask for information from sources other than official sources that are authorized by an Indian Tribe.

Indigenous Knowledge is frequently confidential and/or sensitive. Commenters flagged confidentiality as a key concern, sharing that due to a lack of understanding or lack of respect for Indigenous Knowledge, agencies frequently ask for more information than is required to make decisions. Participants flagged that if an Indian Tribe says an area is significant or sacred, it is significant or sacred, and more details are often not needed for an agency to make a determination. Other commenters shared that it is important for federal agencies to explain how Indigenous Knowledge will be shared, stored, published, or used and that often, Indian Tribes and NHOs are asked for information without necessary details on how it will be protected or where it will be shared. Some participants remarked that having clear language about the differences between the National Environmental Policy Act (NEPA) and the National Historic Preservation Act and how Section 304 could be applied to information shared during reviews pursued using a NEPA substitution would be helpful.

There is a perceived lack of accountability for incorporating Indigenous Knowledge. Participants expressed a perceived lack of accountability in cases when agencies do not incorporate Indigenous Knowledge into federal decision making or the Section 106 process. Some participants referenced a need for federal agencies to document how Indigenous Knowledge was considered throughout the Section 106 process as part of a reasonable and good faith effort to identify historic properties and properties of religious and cultural significance to Indian Tribes and NHOs. Some commenters suggested that including Indigenous Knowledge earlier in the process would increase the likelihood that agencies will incorporate Indigenous Knowledge into all steps of the Section 106 process.

Most participants preferred the phrase Indigenous Knowledge to Traditional Knowledge. Some participants shared that they feel the word "traditional" is used to diminish Indigenous ways of knowing and create a binary between western science and Indigenous Knowledge when one does not exist. Other commenters recommended a section discussing Indigenous and western scientific approaches in a pre-ample, and others pointed out that Indigenous Knowledge is knowledge gained through repeated empirical testing of an environment and often scientific in nature.

Implementation plans discussed in the policy statement should emphasize training. Throughout, participants referenced training needs for federal, state, and local organizations and individuals involved in the Section 106 process, as well as contractors involved in federal undertakings or in survey and identification efforts as a part of the Section 106 process. Participants also referenced a need for ACHP staff involved in providing technical assistance to federal agencies to be trained on the importance of Indigenous Knowledge throughout the Section 106 process and asked that any implementation plan drafted as part of an Indigenous Knowledge statement include a clear plan for implementing training within the ACHP.



**ACHP INVOLVEMENT IN THE WHITE HOUSE COUNCIL ON
NATIVE AMERICAN AFFAIRS
Office of Tribal and Indigenous People**

Background. President Barack Obama established the White House Council on Native American Affairs (WHCNAA) in 2013 via Executive Order 13647 to improve the coordination of federal programs and resources for the benefit of Tribes and Tribal communities. Co-chaired by the Secretary of the Interior Deb Haaland and White House Domestic Policy Advisor Neera Tanden, WHCNAA membership consists of heads of federal departments, agencies, and offices, including the chair of the ACHP. A primary focus of the ACHP's participation in the WHCNAA is ensuring that historic properties, cultural resources, and sacred sites—particularly those significant to Indian Tribes, Native Hawaiian organizations, and other Indigenous Peoples—are considered across federal initiatives.

Annual Tribal Nations Summit. The WHCNAA organizes an annual White House Tribal Nations Summit to provide an opportunity for the leaders from all federally recognized Indian Tribes to interact directly with the President and representatives from the highest levels of the Administration. In 2022, the ACHP participated in the summit, where many WHCNAA committee and subcommittee accomplishments that [the ACHP helped to advance](#) were shared directly with Tribal leaders. A summary of 2022 announcements can be found in 2022's [White House Tribal Nations Summit Progress Report](#) and [Tribal Nations Summit Fact Sheet](#). In 2023, the ACHP has supported the development and advancement of several deliverables through WHCNAA committees and subcommittees that will be announced at the 2023 Tribal Nations Summit. While a date has not yet been finalized for the 2023 Summit, the Office of Tribal and Indigenous Peoples (OTIP) anticipates that it will occur in November or early December 2023.

Sacred Sites Best Practice Guide. In 2023, the WHCNAA Climate Change, Homelands, and Treaties Committee Sacred Sites Working Group plans to announce a *Best Practices Guide for Tribal and Native Hawaiian Sacred Sites* that provides best practices and guidance for the management, treatment, and protection of sacred sites, and seeks to identify and address barriers to federal-level protection. As a signatory to the Interagency Sacred Sites Memorandum of Understanding, the ACHP staff have been collaborating with this effort to ensure that considerations and guidance related to the implementation of responsibilities under the National Historic Preservation Act, as well as comments related to the ACHP's mission shared by Tribal and Native Hawaiian representatives during consultation on a draft guide are adequately reflected.

Memorandum of Agreement (MOA) on Native Languages Implementation. As of 2023, 18 agencies, including the ACHP, have signed onto the Native Languages MOA, committing to advancing Native languages through interagency collaboration. In 2023, the ACHP participated in interagency consultation with Tribal leaders on efforts to develop a 10-year National Plan on Native Language Revitalization through the WHCNAA Education Committee. The Plan will establish an all-of-government strategy to work with Tribal Nations and, as appropriate, nonprofit organizations, subject matter experts, and other entities for the revitalization, protection, and preservation of Native languages. In October 2023, OTIP staff participated in the Native Language Summit 2023 in Albuquerque, New Mexico, consistent with the ACHP's commitment to the Native Languages MOA. The Summit connected Tribal, Native Hawaiian, federal, state, and local officials; community organizations; educators; and language experts to discuss the integration of Native language instruction throughout all aspects of education and included sessions on

the 10-year National Plan on Native Language Revitalization. The ACHP will continue to support this effort, and OTIP intends to pursue listening sessions with Tribes and Native Hawaiian organizations in 2024 to further identify how federal agencies can better account for Native languages in the implementation of their historic preservation responsibilities.

Action Needed. No action is needed from members at this time.

November 1, 2023



MEDIA PROFILE FOR THE ACHP **Office of Communications, Education, and Outreach**

Background. No matter how big any organization is, or what industry an organization is in, creating a media profile is essential. The Office of Communications, Education, and Outreach (OCEO) analyzes key factors each year, including identifying and listing audiences, goals, strategies, and tactics in order to be certain that outreach goals consistently meet the goals of the Administration and the chair. One of the top priorities is identifying ways to get the agency's name in relevant and important media.

Current Activity. OCEO was tasked with finding a contractor to supplement the work of the office, with a focus on ensuring that the ACHP could strengthen efforts to place opinion pieces (op-eds) into publications as well as assessing the ACHP's current media profile and identifying more opportunities to place leadership or staff in interviews. The agency is now working with The Hatcher Group (Hatcher), a public relations firm based in Maryland. One of the first tasks Hatcher took on (after placing two op-eds, one in *The Hill* and one in *Newsweek*), was analyzing the ACHP's social and earned online media footprint. This includes an audit of articles as well as social media.

All organizations depend on media coverage to amplify their messages, raise the visibility of what they do, and market themselves. Having an updated, accurate media profile will help the ACHP to attract new constituents, raise brand awareness of the agency, strengthen the ACHP's brand, and help the agency to grow and develop the work the agency does. Importantly, correctly targeted media outreach will ensure that the agency continues to be seen as a leader in the national historic preservation program.

Hatcher's report provides a snapshot of how the ACHP, its followers, and its engaged communities are currently performing in online social media and news. The goal is to understand "the now" to help inform the agency's strategy for growth in 2024 and beyond.

Hatcher investigated, among other things, an analysis of past social media performance and media coverage to examine what went well, what did not, and how target markets responded to specific subjects. It includes the following:

- A high-level media coverage report and key relevant topics discussed in the media
- Deeper dive analyses on all of the ACHP's social media accounts
- A Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis
- Key topics for messaging and other recommendations to increase social media engagement.

During the November Communications, Education, and Outreach Committee meeting, Hatcher team members will present their findings and ask for input from the committee.

Action Needed. Members will be asked to provide input on options for further outreach, including letters to the editor, op-eds, news articles, as well as ideas for popular and related publications.

November 1, 2023



SECTION 3 REPORT OUTREACH AND DISTRIBUTION Office of Communications, Education, and Outreach

Background. On March 3, 2003, President George W. Bush signed Executive Order 13287, “Preserve America,” which encouraged federal agencies to manage their federally owned historic properties as valuable assets that could support agency missions and also stimulate local economic development. Section 3 requires that agencies with real property management responsibilities report every three years on progress in the identification, protection, and use of historic properties in federal ownership and also make this report available to the ACHP and the Secretary of the Interior. Please see the “Section 3 of Executive Order 13287, Preserve America” paper in Tab 1 for more background on the Section 3 Report to the President.

This report outlines the real progress that has been made by federal agencies and is an excellent tool to promote the importance of preserving the federal government’s vast stock of historic places. There is a great need to ensure the report is seen by the people who provide funding for historic preservation as well as the public.

Current Activity. It is important that these successes, and the findings and recommendation in the report, lead to a broad discussion about, and consideration of, how the federal government can improve its preservation program. Work is underway to develop the 2024 outreach and distribution plan in order to advertise these accomplishments widely. The plan includes the following:

- Distribute the report to the President and Members of Congress
- Deliver the report to key congressional staff members, including the ACHP’s Authorization and Appropriations Committees
- Work with individual congressional offices to publicize Section 3 report projects in their districts
- Send the report to preservation partners, State Historic Preservation Officers (SHPOs), and Tribal Historic Preservation Officers (THPOs)
- Share the report on the ACHP website and social media channels
- Highlight success stories from agencies on ACHP social media, similar to Section 106 Success Stories with videos
- Tag other federal agencies in social media when publicizing success stories
- Distribute the report to traditional local media for highlighted projects. Work with SHPOs and THPOs to promote these stories.
- Talk about the report on the ACHP’s podcast Preservation Perspectives
- Work with The Hatcher Group on other media opportunities.

Action Needed. Members are asked to share their thoughts on the distribution of the Section 3 Report and suggest other promotional opportunities.

November 1, 2023